STATE OF NEW MEXICO
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 DAN ARTHUR

ON BEHALF OF

NEW MEXICO OIL AND GAS ASSOCIATION

September 19, 2025

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REBUTTAL TESTIMONY OF DAN ARTHUR

I. INTRODUCTION

My name is Daniel Arthur, and I am the lead expert witness for the New Mexico Oil and Gas Association ("NMOGA") in this Oil Conservation Commission ("OCC" or "Commission") rulemaking proceeding, Case No. 24683, which focuses on onshore oil and gas operations and the New Mexico oil and gas regulatory framework and requirements. My education, background, qualifications, and prior expert experience are set forth in my direct testimony submitted to the Commission on August 8, 2025, with my curriculum vitae attached as Appendix A thereto.

II. PURPOSE OF REBUTTAL TESTIMONY

I have reviewed the prehearing statements and direct testimony submitted by the Applicants—led by the Western Environmental Law Center ("WELC" or collectively the "Applicants")—as well as the, the Oil Conservation Division ("OCD" or "Division"), the New Mexico State Land Office ("SLO"), the Independent Petroleum Association of New Mexico ("IPANM"), and OXY USA Inc. ("Oxy"). Based on their filings, OCD and SLO generally support the Applicants' amendments, offering only limited technical changes, if any.

All direct testimony filings concerned the proposed amendments to **Sections 19.15.2.7, 19.15.5.9, 19.15.8, 19.15.9, and 19.15.25 of the New Mexico Administrative Code ("NMAC"),** which are the subject of this rulemaking proceeding. I address the testimony by regulation in that order.

III. REBUTTAL TESTIMONY

Based on my review of the parties' prehearing statements and direct testimony, the regulatory changes proposed by the Applicants—and supported by OCD and SLO—would promote waste and conflict with the Commission's and the Division's limited statutory purpose

under the New Mexico Oil and Gas Act (the "Act"), including the duty to prevent waste and protect correlative rights. In practice, the proposals would reclassify viable wells as "marginal," "non-beneficial," or "inactive," converting assets with present or future value into immediate plugging liabilities. As explained below, this outcome is neither environmentally sound nor economically prudent.

I begin by addressing the Applicants' framing of an "orphan well problem"—including their rationale, data sources, and metrics—before turning to each proposed rule change. The Applicants' direct testimony and presentations overlook key operational realities and ongoing innovation that responsibly extends the utility of inactive or intermittently producing wells, such as carbon capture–related uses, "huff-and-puff" pilots and monitoring, pressure-maintenance and enhanced oil recovery ("EOR") planning, pad-level infrastructure optimization, and lease-retention strategies. They also rely on metrics that are inherently dynamic (e.g., rolling 12-month production/day counts) and, in places, aggregate more than true orphan wells, thereby overstating the problem they seek to solve and understating the risks their proposals would create.

A. Overarching Concern with Applicants' Direct Testimony and/or Data on Orphan, Marginal, Temporarily Abandoned, and Inactive Well Risks

I begin with an analysis of the New Mexico Legislative Finance Committee's ("LFC") June 2025 Policy Spotlight on Orphaned Wells ("LFC Report"), upon which WELC predicates many of its claims for why the rules it has proposed are necessary. At least one of the Applicants' experts, Mr. Dwayne Purvis, advised the LFC in creating its LFC Report.

However, I do not find that the LFC Report conveys what the Applicants claim it does. Instead, I read the LFC Report as highlighting OCD's poor management of existing orphan wells, resulting in major cost overruns, and making *legislative* recommendations. Fundamentally, Applicants' proposals do not align with those legislative recommendations and seek to address

those recommendations through the Commission, an administrative agency, which is the wrong forum.

To address Applicants' perceived risk posed by marginal, temporarily abandoned, and inactive wells, Applicants would impose overly burdensome financial assurance requirements and strict production and injection thresholds, which I find largely unnecessary and unrealistic. Moreover, Applicants and OCD both make no qualms about the fact that this rulemaking targets small businesses and independent companies in New Mexico without providing any flexible alternatives, which I propose below and include responsive recommendations for throughout my testimony.

1. Analysis of What the Legislative Finance Committee Report Actually States and Recommends, Compared to Applicants' Characterization

I find that Applicants and their experts ignored some recommendations of the LFC Report while campaigning for others, and that, in some instances, Applicants' reliance on the LFC Report is misaligned with the LFC Report's actual recommendations. Additionally, the LFC Report confirms clearly that statutory changes would be necessary to address the very issues WELC inappropriately attempts to address through this rulemaking.

i. The LFC Recommends a Lower Threshold for "Low-Producing Wells" Than Applicants Propose under the New Definition of "Marginal Well"

WELC proposes to add a definition of "marginal well" as "an oil or gas well that produced less than 180 days and less than 1,000 barrels of oil equivalent ("BOE") within a consecutive 12-month period." By my calculations, that would create a daily threshold of 2.7 BOE per day for a well to be deemed marginal or non-marginal, at least for purposes of financial assurance determinations.[1] But the LFC Report instead recommends "low-producing" wells be defined as

[1] As noted in my direct testimony, it is unclear what scope of applicability the newly defined terms, including "marginal" and beneficial," would have regarding and beyond the proposed marginal well financial assurance

371 "wells producing less than 750 BOE annually or ~ 2 BOE per day."[2] As explained in Part III.B.4.
372 below, if a definition must be adopted (which I do not advise for the reasons outlined in my direct
373 testimony), then the production threshold should align with and not exceed LFC's
374 recommendation.

375 WELC's higher threshold would capture many additional productive wells that the LFC
376 itself did not consider low-producing. This difference is not trivial. For example, a well producing
377 3 BOE per day would yield roughly 1,095 BOE annually. Under the LFC's recommended
378 definition, that well would not be considered low-producing. Yet under WELC's proposal, the
379 same well, producing significantly above the LFC's threshold, could be reclassified as marginal.
380 By moving the cutoff from 750 BOE/year to 1,000 BOE/year, Applicants would sweep in
381 thousands of additional wells that remain cash-flow positive, strategically important for lease
382 retention, or capable of being reactivated through recompletions, refractures, or artificial lift
383 improvements. In practice, this would mean reclassifying productive wells as "marginal" not
384 because they present abandonment risk, but because of an arbitrary policy choice. The result would
385 be inflated bonding requirements, premature plugging of viable assets, and reduced state
386 revenues—all contrary to the protection of correlative rights principles the Act charges this
387 Commission to uphold.

388 What is the result of such a high production threshold? Large operators who have never
389 been deemed to operate marginally producing wells ever, in any state, would suddenly be deemed
390 "marginal well" operators, and required to post large financial assurances, as explained in Part
391 III.D.4. below, from operators who already have robust and well-funded asset retirement obligation

requirements and presumptions of no beneficial use provision, respectively.

[2] LFC Report at 2, 21, 23.

strategies. Arbitrarily setting the marginal threshold will impair the resources such operators use to manage and retire wells responsibly, and provide another instance of how this rulemaking will artificially accelerate plugging of otherwise safely producing, viable wells. Applicants' rigid 12-month period also ignores that even marginal wells can be thoughtfully brought back to higher production through robust technical engineering, as explained in Part III.A.3. below.

The scale of this reclassification should not be underestimated. According to the U.S. Energy Information Administration's 2024 Well Distribution Report, more than half of New Mexico's oil wells and over 80 percent of its natural gas wells already meet commonly accepted definitions of marginal or stripper wells. Collectively, these wells contributed approximately 18 percent of the state's oil production and 10 percent of its gas production in 2023.[3] Imposing WELC's higher threshold risks pulling an even larger share of this production into an artificial "marginal" category, with the effect of triggering excessive bonding requirements, premature plugging of viable assets, and direct reductions in state revenues. That outcome would undermine both the conservation of resources and the correlative rights of mineral and royalty owners, contrary to the purposes of the Act.

ii. The LFC Report Acknowledges Need for Flexibility in Assessing the Future Potential of Wells

The LFC Report acknowledges that "[t]here is no specific threshold at which a well becomes economic, but production of less than 2 BOE a day may be an appropriate threshold for additional regulatory scrutiny."[4]

Determining the specific point when a well becomes uneconomic—i.e., when a

[3] U.S. Energy Information Administration (EIA). Well Distribution Report 2024. U.S. Department of Energy, Office of Petroleum and Natural Gas. Appendix B. Selected Summary Sheets. Published March 2024. https://www.eia.gov/petroleum/wells/xls/WDR2024_Appendix_B.xlsx.

[4] LFC Report at 21

> well's liability surpasses the value of its potential future production—is challenging for several reasons, but principally because of fluctuating prices for oil and gas. For example, a well producing 2 BOE per day might be profitable at $100 per barrel but uneconomic at $50 per barrel.[5]

Thus, the LFC acknowledges that there should be flexibility in assessing the future potential of wells.

WELC proposes rigid, one-size-fits-all thresholds that would strip both operators and the Division of the discretion to account for commodity price cycles, leasehold strategy, and technological advances. Such rigidity risks forcing premature plugging of wells that the LFC itself acknowledged may have future value, whether through continued production, recompletion, refracturing, or conversion to beneficial uses such as water supply, disposal, or carbon storage. In short, while WELC cites the LFC Report as justification for strict new definitions, the Report itself counsels flexibility, not rigidity. The Commission should follow the LFC's recommendation and reject arbitrary volumetric cutoffs in favor of a case-by-case assessment that accounts for market conditions, reservoir characteristics, and long-term field development strategies.

iii. The LFC Report Confirms Lack of Authority to Make Marginal Well Financial Assurance Category

The LFC Report recommends amending the Act's financial assurance enabling statutory provision at NMSA 1978 § 70-2-14 to "specify that wells producing below certain thresholds set in rule require additional financial assurance."[6] Accordingly, the OCC does not currently have the authority to make a category of financial assurance obligations based on the production levels of wells. Moreover, although the LFC Report levels numerous criticisms at the OCD, it does not criticize either the Division or the Commission for failing to establish new categories of financial

[5] LFC Report at 21

[6] LFC Report at 2, 36.

assurance. That silence is significant. If the LFC had understood this Commission to possess such authority absent legislative direction, one would expect the LFC Report to have said so.

Based on my experience with New Mexico's oil and gas framework, this absence of current authority is not accidental. New Mexico has long recognized the importance of marginal wells, including through targeted tax incentives designed to sustain smaller operators and independent producers who operate much of the state's low-volume well inventory. These policies reflect a deliberate legislative choice to protect marginal wells and the operators who run them as an important part of the state's oil and gas economy.

To now impose marginal well-specific financial assurance requirements by administrative rule would directly undercut that legislative policy choice, targeting precisely the smaller and independent operators the legislature has chosen to protect. This underscores why the LFC recommended that any such changes be reserved for the legislature, where the full economic and policy tradeoffs can be properly considered. Applicants' attempt to bypass that process and accomplish it here is therefore not only beyond OCC's statutory authority, but also contrary to the broader policy framework established by New Mexico law.

iv. The LFC Report Confirms Lack of Authority to Deny Well Transfers If Determined the Buyer is Unlikely to Fulfill Plugging, Abandonment, and Reclamation Obligations

The LFC Report recommends amending the Act "to clarify OCD's authority to review and disallow the transfer of wells should the division determine through processes outlined in the rule, the purchaser is unlikely to be able to fulfill its asset retirement obligations." This recommendation is telling. It confirms that under current law, the Division does not have the statutory authority to block transfers based on its assessment of a buyer's financial capacity.

Accordingly, there is no statutory foundation for the certification requirements that

Applicants propose under the operator registration and change-of-operator amendments addressed in Part III.E.2 of my rebuttal testimony. These proposals seek to create new powers that the legislature itself recognized would require amendment to the Act, not reinterpretation by regulation.

The LFC's recommendation further reflects a longstanding policy balance in New Mexico: ensuring that wells remain under active operatorship rather than deteriorating without an accountable party. Transfers are an important mechanism for moving wells into the hands of operators willing and able to invest in their continued operation. To deny such transfers based on speculative assessments of financial capability, without statutory authorization, would not only exceed OCC's jurisdiction but would also strand wells and increase the very orphan well risk that Applicants claim to address.

In short, the legislature has not conferred on OCD or OCC the authority to regulate acquisitions and transfers of oil and gas assets on this basis. The LFC Report underscores that only a legislative amendment could create such authority. Applicants' attempt to impose these requirements through administrative rulemaking is therefore both ultra vires and counterproductive to sound well management.

v. The LFC Report Recommends a Narrower Definition of "Orphan Well" Than Applied and Recommended by Applicants and Agency Witnesses

WELC's proposed amendments introduce numerous new definitions that have never existed in New Mexico's oil and gas regulations. Yet, notably, WELC declines to define "orphan well"—despite claiming that the so-called "orphan well problem" is the central justification for its proposals. In the absence of a uniform definition, Applicants and supporting agencies have each supplied their own varying descriptions in direct testimony.

The LFC Report recommends amending the Act to define "orphaned" and "abandoned"

wells as "wells for which the state has pursued and received plugging authority."[7]

OCD Supervisor of the Engineering Special Projects Group, John Garcia, states that for purposes of his direct testimony, the agency defines "orphan well" to mean "[a] well that OCD has deemed through various methods such as hearing order, ACOI, or other methods that no viable Operator exists to perform the necessary remediation and/or plugging."[8] Mr. Garcia goes on to distinguish "orphan wells" from "forced pluggings," which, based on the following, should not be included in statistics of orphaned wells in the state:

> In addition, I will discuss "Forced Plugging" wells which are wells that various regulatory agencies such as State Land Office ("SLO") or Bureau of Land Management ("BLM") have required a third-party Operator to plug a well of which they are not the Operator of record with OCD. It is important to note that Forced Plugging wells may have some overlap with Orphan Wells but since SLO and BLM each have different processes, they may have required a well to be plugged prior to OCD performing the necessary work to obtain an administrative plugging order. Lastly, I will discuss "Non-Orphan" wells, which is defined as a well which was plugged by the Operator of record with OCD or a known subsidiary of the Operator of record with OCD or by a known subsidiary of the Operator of record.[9]

But Applicants would include more than just wells for which the state has pursued and received plugging authority as "orphan wells."

In contrast, Applicants advance broader and more subjective formulations. WELC's technical and legal expert, Adam Peltz, defines an orphan well as any non-producing, unplugged well without a solvent responsible party, leaving the state to cover plugging and remediation

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[7] LFC Report at 2 ("The Legislature should consider: Amending statute to define 'orphaned' and 'abandoned' wells, aligning the definitions with their common use in the oil and gas industry, and clarifying that 'orphaned' wells are oil and gas wells for which the state has pursued and received plugging authority;").

[8] Direct Testimony of OCD Supervisor of the Engineer Special Projects, OCD Technical Expert, *In the Matter of Proposed Amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC*, No. 24683, OCC, Aug. 8, 2025, at 7:18-23 (hereinafter "**OCD's Garcia Direct Testimony**"), at 1:20-23.

[9] OCD's Garcia Direct Testimony at 1:23-2:8.

costs.[10] WELC's technical expert Dwayne Purvis defines an orphan well more simply as "a well for which the state has become responsible for decommissioning."[11] Both definitions extend far beyond wells where OCD has actually pursued and received plugging authority, capturing categories of wells that remain under operator responsibility or involve distinct regulatory circumstances.

vi. The LFC's Narrower Definition of 'Orphan Well' Undermines Applicants' Reliance on OCD's Master Orphan Well List, Which Captures Wells Beyond Those the State Has Pursued or Obtained Plugging Authority Fo

Applicants rely on the definitional ambiguity I discussed above to introduce data that applies to more than just "orphan wells," which requires operator default, such that the state has pursued and received plugging authority. In particular, I am concerned with all data presented that relies on OCD's Master Orphan Well List (as of July 2, 2025), attached as Exhibit 55 to WELC's prehearing statement ("MOSS"), as a basis for proposing statistics about orphan wells in New Mexico.

Both agency witnesses and Applicants' experts acknowledge that the MOSS includes wells that do not meet their own definitions of "orphan well." The LFC Report provides clearer guidance, noting that OCD has plugging authority for roughly 700 wells on state and private ("fee") lands.[12] Later, the LFC Report states, "OCD is currently responsible for plugging close to 1,000 orphaned wells, including roughly 700 on state or private land."[13] However, any federal wells are covered

[10] Direct Testimony of Dwayne Purvis, P.E., WELC Technical Expert, *In the Matter of Proposed Amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC*, No. 24683, OCC, Aug. 8, 2025 (hereinafter "**WELC's Purvis Direct Testimony**"), at 7:18-23.

[11] WELC's Purvis Direct Testimony at 8:1-6.

[12] LFC Report at 1.

[13] LFC Report at 15.

by financial assurance posted with the BLM.

Federal-land wells are not subject to OCD bonding or the state's reclamation program; rather, they are covered by federal financial assurance requirements administered by the BLM. Under 43 C.F.R. § 3104.1, BLM requires operators to post lease-specific or statewide bonds to ensure compliance with plugging, reclamation, and restoration obligations for wells located on public lands. Current regulations establish minimum bond amounts of $150,000 for a single lease and $500,000 for a statewide bond, with authority reserved to BLM to require higher amounts when necessary to cover anticipated reclamation costs. BLM also has the authority to adjust these bond levels by rulemaking to reflect inflation periodically or increased plugging and reclamation expenses.

Accordingly, the inclusion of federal wells in Applicants' presentations of the "orphan well problem" is misleading. These wells are already backed by BLM bonding and federal oversight, and thus do not present the same fiscal exposure to New Mexico taxpayers or the OCD's reclamation fund. By conflating state/fee wells with federal-land wells, Applicants overstate both the scope of the state's plugging obligation and the justification for sweeping financial assurance reforms.

The LFC Report also notes that "[i]n some contexts, OCD cites around 700 orphaned wells; in others, it references 1,700 or more than 3,000."[14]

Despite these acknowledged discrepancies, WELC's expert, Dwayne Purvis, relies heavily on the OCD's MOSS, which identifies 1,814 wells of mixed fee, state, and federal ownership, and treats them all as "orphan wells" for which OCD is responsible for plugging, abandoning, and

[14] LFC Report at 16.

reclaiming. This approach is fundamentally flawed. Financial assurance administered by the BLM covers wells on federal lands, which are not the responsibility of OCD or New Mexico taxpayers. Likewise, some fee wells remain under the legal responsibility of solvent operators or are subject to ongoing compliance actions. By lumping together fee, state, and federal wells, the MOSS inflates the scope of OCD's actual plugging liability and exaggerates the extent of New Mexico's orphan well problem. Applicants' other experts also rely on these skewed data sets based on OCD's MOSS and set forth by Mr. Purvis.

Mr. Purvis's approach overstates the scope of the problem. Based on my review, the MOSS includes wells that remain under operator responsibility, wells subject to forced plugging by other agencies, and other categories that do not meet even OCD's working definition of "orphan." Relying on this undifferentiated list creates misleading and incorrect data because it treats every well as an immediate state liability, when in reality many of these wells have not defaulted, are under active enforcement orders, or fall under the jurisdiction of another agency. For example, the Legislative Finance Committee has reported that only about 700 wells on state or private lands are currently within OCD's plugging authority, while the MOSS used by Mr. Purvis identifies 1,814 wells of mixed ownership. That means more than half of the wells cited by Applicants are not actually "orphan wells" in the sense of being subject to plugging by OCD.

There are also important technical reasons why not all wells on the MOSS should be classified as orphaned. Some wells are idle or temporarily abandoned but capable of being reactivated, recompleted, or converted for beneficial uses such as injection or monitoring. Others are already subject to financial assurance posted with the Bureau of Land Management or the State Land Office and thus present no liability to OCD or New Mexico taxpayers. In addition, a number of wells are still held by solvent operators in compliance proceedings, meaning the plugging

obligation remains with the operator unless and until OCD issues a final order transferring that responsibility.

In short, the MOSS is not a list of orphan wells; it is an administrative inventory of wells in a variety of statuses. Treating it as a definitive count of orphan wells, as Mr. Purvis has done, dramatically inflates the number of wells for which OCD is truly responsible and mischaracterizes the magnitude of the problem.

Counting non-orphan wells in the total distorts every downstream calculation, from ratios of orphaned to active wells to estimated plugging and reclamation costs. Any statistical analysis, demonstrative, or conclusion based on the MOSS as the total number of orphan wells in New Mexico is therefore unreliable and misleading.

Accordingly, I strongly recommend that all of Mr. Purvis's data, graphics, tables, and demonstratives that rely on the MOSS as the definitive count of orphan wells, and all other witnesses who rely on that data within their direct testimony, evidence, and exhibits, be revised to reflect only wells for which OCD has pursued and received plugging authority. At a minimum, the number should be corrected to the ~700 wells on state and fee lands for which the state is actually responsible, consistent with the LFC's findings.

2. Applicants Mischaracterize Marginal, Temporarily Abandoned, and Orphan Wells as High Risk and Difficult to Manage with No Future Benefit

i. Marginal and Inactive Wells are Low Risk and Can Be Managed Without Environmental Incident

Contrary to the Applicant expert Mr. Purvis's claim that there is a "likelihood" that marginal wells present a greater risk and thus warrant increased levels of financial assurance, in my experience, marginal wells are manageable and provide income and jobs for decades. IPANM experts' direct and rebuttal testimony offers examples of real New Mexico businesses that solely

593 or largely operate marginally producing wells safely and profitably, but would be unable to meet
594 the financial assurance requirements proposed.[15] In fact, many marginal and inactive wells have
595 been successfully reactivated or managed without environmental incident. Operators frequently
596 bring idle wells back online through recompletions, refracturing, or artificial lift upgrades,
597 allowing them to produce safely and economically for years. For example, recent studies of
598 refracturing in the Bakken and Permian show that older wells once considered marginal achieved
599 an average 26% uplift in cumulative production one year after refracturing, with some wells
600 realizing gains of more than 50%.[16,17]

601 Operator feedback in this proceeding likewise emphasized that temporarily inactive wells
602 are often planned for return to service or repurposed for monitoring and compliance uses and
603 should not be presumed to lack beneficial use. Others highlighted that wells may be shut in
604 temporarily due to market or pipeline constraints and would be wrongly reclassified as marginal
605 under the proposed definitions. These real-world examples demonstrate that so-called 'marginal'
606 or 'inactive' wells often retain significant operational and economic value if given the opportunity.

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[15] For example, IPANM fact witness Goerge Sharpe, Investment Manager at Merrion Oil & Gas ("Merrion"). a small, third-generation family-owned and operated business based in Farmington, New Mexico, operating and producing from over 400 wells in New Mexico for the past 40 years, shares in his direct testimony that most of Merrion's wells fall under the proposed marginal definition. Thus, the bonding amount would be "devastating." Merrion cannot meet the proposed bonding amounts. Merrion's financial assurance obligations would increase to $9.46 million under the proposed rule, requiring $945,000 annually out of pocket just to secure the bonds. Their current per-well bond average is $36,000. Sharpe at 4-5. IPANM fact witness Jeff Harvard, president of Harvard Petroleum Company, notes in his direct testimony that current wells are blanket bonded with surety bonds at 2% premium. But the proposed definitions and rules would require $27 million in additional bonding amounts, which is not feasible. His company, Harvard Petroleum, would not have purchased wells under the proposed rules. It would not be economical for them, nor for any other smaller company. Harvard at 4-5, 7.

[16] Sama Morsy, Chris Abbott, Mouin Almasoodi, Amanda Baldwin, Mohsen Babazadeh, Craig Cipolla, Kate Elliott, Agustin Garbino, John Lassek, Mike McKimmy, Chris Ponners, Mojtaba Shahri, Jose Zaghloul, and Mark McClure, *Blind Testing Simulator Predictions of Refracturing Performance in the Bakken and the Permian Basin*, URTeC Paper 4245581, presented at the Unconventional Resources Technology Conference, Houston, TX, June 9–11, 2025.

[17] Mark McClure, *Transformative Improvements in Hydraulic Fracture Design – Applications for Oil, Gas, and Geothermal*, University of Texas Energy Symposium, September 2, 2025.

ii. Temporarily Abandoned Wells Can Be Easily Reactivated and Lower Risk Than Active Producers if Properly Managed

I also have personal experience with the successful reactivations of idle wells. In my professional experience, temporarily abandoned wells often present *lower operational risk than actively producing wells* when managed according to regulatory and industry standards. NMOGA plugging and abandonment expert Harold McGowen reached that same conclusion in his direct testimony.[18] Once properly suspended—with cemented casing strings, pressure-tested wellheads, and isolation from fresh-water zones—these wells remain stable with minimal exposure to downhole or surface events.

Similarly, specialized reactivation technologies, such as the Airlift[19] artificial lift process has been deployed to bring idle wells back into production economically while maintaining mechanical integrity. These projects demonstrate that with proper practices and subsequent surveillance, idle wells can be restored to productive status safely and efficiently, offering operators a flexible asset without introducing heightened environmental risk.

iii. Marginal, Temporarily Abandoned, and Inactive Wells Present Future Benefits Beyond Production or Injection

As recognized by the LFC Report and explained in Part III.A.1.ii above, the construct of beneficial use must be flexible to assess the future potential of wells. Marginal, temporarily abandoned, and inactive wells also present future potential benefit due to industry innovation, which I describe immediately below.

3. Applicants' Proposals Ignore Oilfield Innovation

[18] McGowen Direct Testimony at 71-72.

[19] Airlift Technology Ltd., "234 Kingsway Road Case Study," accessed September 12, 2025, https://www.airlifttechnology.com/234-kingsway-road.

Recent history reflects major innovation in oil and gas production. The fracing revolution was a massive development that has led to over a decade of prolific output in the U.S., and especially in the Permian Basin. Applicants ignore many oilfield innovations that create new beneficial uses for marginal, temporarily abandoned, and/or inactive wells, which present value beyond just production and injection.

i. CO2 Huff-n-Puff Projects

Oak Ridge National Laboratory is conducting neutron-based research to enhance oil recovery from unconventional reservoirs using a process known as CO_2 huff-n-puff.[20] This method, injecting CO_2 into an existing well, allowing it to soak, and then producing the well, has been shown to significantly improve recovery compared to traditional EOR techniques.

Such innovation underscores how wells that might otherwise be classified as "inactive" or "marginal" can be valuable candidates for advanced recovery methods. Rather than representing stranded liabilities, these wells offer infrastructure access and geological entry points that can be repurposed for CO_2 EOR pilots, reducing surface impacts and capex compared to new drilling. Operators in the Permian and beyond are increasingly testing huff-n-puff techniques on legacy wells, achieving notable incremental production and operational synergy in cost-constrained environments.

The broader implication is critical: inactive or low-producing wells should not be prematurely plugged. In many cases, they can be reactivated through refracturing, recompletions, artificial lift, or CO_2 injection, thus extending their productive life and supporting both energy resource development and emission reduction strategies.

[20] Oak Ridge National Laboratory (ORNL). *Scientists use neutrons to study CO_2 injection for enhanced oil recovery.* U.S. Department of Energy, Oak Ridge National Laboratory, 2023. Available at: https://www.ornl.gov/news/scientists-use-neutrons-study-co2-injection-enhanced-oil-recovery.

649 *ii. Stimulating Existing Wells*

650 A number of emerging technologies demonstrate that existing, low-production, or inactive
651 wells can be re-stimulated economically, extending their useful life and avoiding premature
652 abandonment. This is highly relevant to the discussion of orphan wells. The proposed rule changes
653 risk classifying marginal wells as liabilities, yet industry innovation shows they can remain
654 productive assets with the right intervention.

655 Modern reservoir simulation platforms, such as Ridgeway Kite's *6X*[21] and OriGen.AI's
656 *PROTEUS*[22] system are capable of modeling stimulation and recompletion scenarios at speeds and
657 levels of detail previously unattainable. These tools allow operators to evaluate refracturing or
658 acidizing treatments with greater accuracy, ensuring that wells at risk of classification as
659 "marginal" are instead identified for low-cost interventions that preserve production.

660 Traditional but evolving well-stimulation methods, such as custom acidizing jobs
661 performed by Petroplex[23] in the Permian, continue to deliver production uplifts on the order of
662 tens of barrels per day. Likewise, nitrogen pumping and cryogenic services are provided by
663 Atlantic Nitrogen[24] offer non-hydraulic ways to restore or enhance well deliverability. These
664 technologies provide proven pathways for returning inactive wells to beneficial use, directly
665 reducing the probability of those wells slipping into orphan status.

666 Canadian developer Wavefront Technology Solutions[25] has advanced *Powerwave* and

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[21] Ridgeway Kite. *Services.* Ridgeway Kite, 2025. https://ridgewaykite.com/services.

[22] Microsoft. *OrigenAI Accelerates Reservoir Simulation Using Azure.* Microsoft Customers Story, 2025. https://www.microsoft.com/en/customers/story/16655114230019468 09-origen-partner-professional-services-azure.

[23] Petroplex Acidizing. *About Petroplex.* Petroplex Acidizing, 2025. https://petroplex.com/about.

[24] Atlantic Nitrogen Testing LLC. *Services Overview.* Atlantic Nitrogen, 2025. https://www.atlanticnitrogen.com.

[25] Wavefront Technology Solutions Inc. Official Website. Accessed September 5, 2025. https://onthewavefront.com/.

667 *Primawave* systems that use fluid pulses to mobilize trapped hydrocarbons, while RocketFrac
668 Cleantech has demonstrated EcoStim,[26] a propellant-based, waterless stimulation method. Both
669 approaches are particularly suited for older or marginal wells where conventional hydraulic
670 fracturing is not economic or environmentally acceptable. Their use illustrates that low-production
671 wells can be revitalized rather than abandoned.

672 Seismos' real-time acoustic sensing enables operators to evaluate stimulation effectiveness
673 and reservoir response without invasive intervention.[27] This reduces uncertainty and cost, allowing
674 more precise targeting of refrac or acidizing treatments. In practice, tools like this help operators
675 avoid writing off wells as uneconomic when production may be recoverable with minor, well-
676 designed stimulation.

677 Applicants' proposed framework presumes that marginal or inactive wells have no future
678 use and therefore require immediate and costly financial assurance or plugging. However, the
679 technologies above show that many such wells can be re-entered, recompleted, or stimulated to
680 generate new revenue and maintain lease obligations. By prematurely forcing operators to abandon
681 these assets, New Mexico would not only forgo production and tax revenues but also eliminate
682 opportunities to apply these emerging stimulation methods.

683 *iii. Carbon Capture and Sequestration*

684 Marginal wells also hold potential value as infrastructure for carbon capture and storage.
685 These wells can be converted to injection or monitoring use rather than being prematurely plugged.
686 When properly maintained, a marginal well can serve as a cost-effective entry point for CO_2

[26]RocketFrac Cleantech. Successful Deployment of EcoStim™ Waterless Well Stimulation Technology in Western Canada. Newswire, 2022. https://www.newswire.ca/news-releases/rocketfrac-cleantech-announces-successful-deployment-of-ecostim-tm-waterless-well-stimulation-technology-in-western-canada-826446770.html

[27] Seismos, Inc. Official Website. Accessed September 5, 2025. https://www.seismos.com/

storage, pressure management, or compliance monitoring.

Forcing abandonment through rigid production thresholds eliminates these opportunities. It strips away future utility, removes the ability to align with emerging carbon markets, and increases the number of true orphan wells. A risk-based approach preserves options and allows marginal wells to transition from small producers into assets that support emissions reduction and resource conservation.

The proposed rules overlook this reality. By treating marginal wells only as liabilities, they ignore their potential role in carbon management and orphan well prevention.

4. Overhaul of the Entire Financial Assurance Regime is Unwarranted and Targets Smaller Operators and Independents

As explained in Part III.D.1.i.-vii., Applicants' proposed overhaul of New Mexico's entire financial assurance framework is unnecessary, disproportionate, and targets smaller operators and independents. By treating financial assurance increases as a one-size-fits-all solution, Applicants ignore the collateral damage: loss of business opportunities, job displacement, reduced capital investment, and diminished tax revenue for New Mexico. Under Part III.D.10, below, I discuss financial assurance requirement alternatives that have been utilized in other jurisdictions, which the Commission should consider before imposing the one-size-fits-all, significantly increased individual well financial assurance requirements proposed by Applicants.

5. Specific Recommendations

Throughout this rebuttal testimony, I provide responsive recommendations tailored to each proposed amendment. In the sections that follow, I address the direct testimony concerning the proposed changes to 19.15.2.7, 19.15.5.9, 19.15.8, and 19.15.25 NMAC, and I conclude each with specific recommendations for the Commission's consideration.

B. Proposed Additions and Changes to the Definitions under 19.15.2.7 NMAC

The definitional amendments advanced by WELC and OCD are legally flawed, operationally unworkable, and, in several cases, impermissibly vague. Definitions are the foundation of regulatory clarity. If poorly constructed, they would invite inconsistent enforcement, legal disputes, and unintended consequences across Title 19 of the NMAC. I examine the key definitional changes in turn. Notably, "orphan well" is not one of the definitions proposed by Applicants or OCD, despite this rulemaking allegedly designed to address the purported "orphan well problem" as described by Applicants.

1. Adding "Temporary Abandonment" and "Temporarily Abandoned Status" to the Existing Definition of "Approved Temporary Abandonment" under Proposed 19.15.2.7.A(13)

WELC proposes adding "temporary abandonment" and "temporarily abandoned status" to be encompassed by the existing definition of "approved temporary abandonment" (i.e., "the status of a well that is inactive, has been approved in accordance with 19.15.25.13 NMAC and complies with 19.15.25.12 NMAC through 19.15.25.14 NMAC") under proposed 19.15.2.7.A(13) NMAC. By adding new terms into this definition, Applicants collapse distinct concepts and risk undermining the clarity the rules now provide.

i. OCD Official Comments on Proposed Change

In the slides attached as Exhibit 15 to OCD Deputy Director Brandon Powell's direct testimony filed August 8, 2025, the agency only notes that expanding this defined term to other terms purportedly "provides clarity where 'Temporary Abandonment' language is used."[28]

[28] *EMNRD OCD Overview of the Specific Rule Changes,* Exhibit 15 to Direct Testimony of OCD Deputy Director Brandon Powell, OCD Expert, In *the Matter of Proposed Amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC,* No. 24683, OCC, Aug. 8, 2025 (amending slides 17 and 35 subsequently) (hereinafter "**Exhibit 15 to OCD's Powell Direct Testimony**"), at slide 3.

OCD's commentary in Exhibit 15 frames the addition of "temporary abandonment" and "temporarily abandoned status" into the existing definition of "approved temporary abandonment" as a simple measure that "provides clarity where 'Temporary Abandonment' language is used." However, this justification does not address the substantive concerns raised by operators and experts. In practice, collapsing these terms risks eliminating the recognized regulatory space for wells that are inactive but not yet approved for temporarily abandoned status, thereby reclassifying such wells as out of compliance without a meaningful distinction.

As explained in Part III.G of this rebuttal, the proposed expansion of temporarily abandonment-related definitions under 19.15.25 NMAC would have direct consequences for plugging requirements. Specifically, by requiring that all wells either be placed into "approved temporary abandonment" or permanently plugged within shortened timeframes, the rule removes the flexibility currently available to operators to manage wells that are temporarily inactive for legitimate operational reasons (e.g., awaiting recompletion, infrastructure upgrades, or market conditions).

ii. Responsive Analysis and Recommendations

Expert testimony emphasizes that existing OCD rules already establish a rigorous approval process for "approved temporary abandonment," including demonstration of mechanical integrity, compliance with monitoring requirements, and defined renewal intervals.[29] The addition of overlapping or duplicative terms does not create clarity but instead introduces ambiguity about whether "temporary abandonment" refers to an informal status (i.e., inactive but compliant wells) or must always imply full approval. Operators consistently flagged this as a source of unnecessary

[29] NMOGA's McGowen Direct Testimony at 19-41, 64-65; Direct Testimony of Dan Arthur P.E., NMOGA Lead Technical Expert, *In the Matter of Proposed Amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC*, No. 24683, OCC, Aug. 8, 2025 (hereinafter "**NMOGA's Arthur Direct Testimony**"), at 15-22.

regulatory uncertainty.

From a conservation perspective, prematurely forcing wells into permanent plugging or expensive temporary abandonment applications undermines the Division's statutory duty to prevent waste and protect correlative rights. Wells that may be reactivated for enhanced recovery, carbon capture–related monitoring, or refracturing projects (as shown in recent innovations in refracturing and EOR technologies) would instead be removed from service unnecessarily, foreclosing future beneficial use.

The Commission should reject OCD's assertion that the proposed definitional expansion "provides clarity." Instead, it should preserve the distinct recognition of "approved temporary abandonment" while clarifying, through harmonized rule language, the regulatory treatment of inactive wells. A redline harmonization of terms across 19.15.2.7 NMAC and 19.15.25 NMAC is the appropriate way to provide consistency, without collapsing distinct categories into one definition. This approach would maintain operational flexibility, align with conservation mandates, and avoid introducing duplicative or confusing terminology.

The Commission should reject the notion that the proposed expansion "provides clarity" and instead:

i. Keep "approved temporary abandonment" as the sole, defined TA status, and expressly preserve a separate, well-managed "inactive" condition.

ii. Tie any obligation to plug, or to move from inactive to approved temporary abandonment, to objective, risk-based criteria already embedded in Part 25 (mechanical integrity demonstrations, site-specific conditions, renewal intervals).

iii. Where "consistency" is needed across parts, harmonize references without importing new, outcome-determinative labels. If OCD believes additional oversight is needed for long-idle

wells, it can and should use existing tools: require an M.I.T. by date certain, impose monitoring/repairs as conditions of temporary abandonment renewal, or deny temporary abandonment extensions case-by-case where a concrete risk showing exists.

2. Adding Definition of "Expired Temporary Abandonment" and "Expired Temporary Abandonment Status" under Proposed 19.15.2.7.E(8) NMAC

WELC also proposes adding a new definition of "expired temporary abandonment" or "expired temporary abandonment status," under proposed 19.15.2.7.E(8) NMAC. This proposed definition would mean "the status of a well that is inactive and has been approved for temporary abandoned status in accordance with 19.15.25.13 NMAC, but that no longer complies with 19.15.25.12 NMAC through 19.15.25.14 NMAC."[30]

i. OCD Official Comments on Proposed Change

OCD notes that "[t]his provides a definition a [sic] commonly used well status for OCD once approved temporary abandonment status expires."[31]

ii. Responsive Analysis and Recommendations

While OCD suggests that this amendment merely codifies an administrative shorthand, the proposed definition introduces unnecessary ambiguity and regulatory risk. The phrase "no longer complies" is vague and could encompass anything from minor reporting delays to mechanical integrity questions. This would create an automatic reclassification of wells based on incidental or easily correctable issues, leading to arbitrary enforcement.

As explained in Part III.B.1 above, OCD already administers temporary abandonment through 19.15.25.12–.14 NMAC. Expiration of temporary abandonment is handled procedurally

[30] WELC Proposed Amendments (as of August 8, 2025), Exhibit 1-A to WELC Prehearing Statement, at 6.

[31] Exhibit 15 to OCD's Powell Direct Testimony at slide 6.

through those rules—principally via annual reporting and extension requests—not by automatic definitional triggers. Introducing a separate "expired" category risks duplicating or even contradicting the procedures already spelled out in 19.15.25.13 NMAC.

By tying expiration to broad "non-compliance," the definition would function as an overbroad definitional trigger: it would automatically force premature plugging of wells that remain mechanically sound and integral to long-term field development. This conflicts with the statutory mandate to prevent waste and protect correlative rights. As I explain in Part III.G below, plugging decisions must be tied to actual risk and operational feasibility—not definitional shortcuts. OCD already has the authority to review temporarily abandoned wells and deny extensions or require corrective action.

Creating a new definitional category adds no new oversight capability but increases confusion and litigation risk. In its slides, OCD characterizes the addition of "temporary abandonment" and "temporarily abandoned status" into the existing definition of "approved temporary abandonment" as merely "provid[ing] clarity where 'Temporary Abandonment' language is used."[32] But that framing omits the practical effect of collapsing distinct concepts into a single, defined status tethered to "compliance." As written, the definition would allow temporary abandonment "expiration" to be equated with broad "non-compliance," and then to cascade into plugging obligations for wells that remain mechanically sound and integral to pad-level and field development. That is not "clarity" so much as a definition-driven mandate that automatically converts routine compliance lapses into plugging obligations, contrary to the Act's conservation mandate on the Commission and the Division, which is a material regulatory consequence.

[32] Exhibit 15 to OCD's Powell Direct Testimony at slide 3.

OCD's own testimony underscores why a definition-driven trigger is the wrong tool here. Deputy Director Powell explains that OCD already reviews and oversees temporarily abandoned wells, can deny extensions, and has experience requiring corrective action where needed, especially for problem wells and wells long idle.[33] OCD, therefore, does not need a new definitional category to exercise oversight; it already has the levers (temporary abandonment approvals, renewals, conditions, and targeted enforcement) to manage risk. What the new definition does add is ambiguity: by importing "temporary abandonment" and "temporarily abandoned status" into the same definition as "approved temporary abandonment," the rule blurs whether a well is merely inactive (but lawfully managed) versus in a status that will, by definition, be treated as "expired" and "non-compliant" if any sub-requirement lapses, even briefly.

That ambiguity interacts poorly with the parallel timing changes addressed in Part III.G. As I explain there, shortening compliance windows and converting periods of inactivity into near-automatic plugging or formal temporary abandonment filings removes the operational flexibility needed to (i) sequence recompletions; (ii) coordinate gathering, compression, and facility work; (iii) await market or offtake constraints; or (iv) prepare pad-level refracturing or EOR projects. Plugging not tied to actual mechanical integrity or a well-specific risk showing a need to plug undermines the Oil and Gas Act's conservation mandate by foreclosing otherwise prudent, near-term reactivation paths and pad-level optimization (see Part III.G below regarding temporary and permanent plugging requirements under 19.15.25 NMAC). In short, definitional overreach in 19.15.2.7 NMAC sets up outcome-determinative triggers in 19.15.25 NMAC that promote waste.

OCD's slides also acknowledge that several definitional changes are being offered to create "consistency" across sections (e.g., revising "Inactive well" to key off 12 consecutive months and

[33] Exhibit 13 to OCD's Powell Direct Testimony.

"beneficial use" references).[34] Consistency is a legitimate drafting goal, but it does not justify collapsing definitional categories that currently keep important operational distinctions intact. A well can be (a) inactive, (b) mechanically sound, (c) under an operator's documented work plan or economic hold, and (d) on a near-term path to return to service. Conflating those cases with "expired TA"/"non-compliant" invites misclassification and unnecessary litigation over status labels rather than focusing on risk.

3. Adding Definition of "Barrel of Oil Equivalent" under Proposed 19.15.2.7.B(5) NMAC

Applicants propose to add a definition of "barrel of oil equivalent" ("BOE") as "determined by converting the volume of gas the well produced to barrels of oil by using a ratio of 6,000 cubic feet to one barrel of oil."[35] NMOGA does not oppose this proposed amendment. The 6:1 ratio is widely used across the industry, is consistent with standard engineering practice, and aligns with definitions adopted in other jurisdictions and by federal agencies.

i. OCD Official Comments on Proposed Change

OCD remarks: "This [BOE] ratio is consistent with other OCD uses in 19.15.6.7(M) NMAC for stripper wells. The stripper well ratio is also recognized in New Mexico's tax code-NMSA 1978, § 7-29-2 (P)."[36]

[34] Exhibit 15 to OCD's Powell Direct Testimony at slides 5-7.
[35] WELC Prehearing Statement Exhibit 1-A.

[36] Exhibit 15 to OCD's Powell Direct Testimony at slide 4.

863 Both 19.15.6.7.M NMAC[37] and NMSA 1978, § 7-29-2 (P)[38] define "stripper well
864 property."

865 NMSA 1978, 7-29-2 (P) applies to oil and gas severance taxes.[39]

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[37] "M. 'Stripper well property' means an oil or gas producing property that the taxation and revenue department assigns a single production unit number (PUN) and

(1) if an oil producing property, produced a daily average of less than 10 barrels of oil per eligible well per day for the preceding calendar year

(2) if a gas producing property, produced a daily average of less than 60,000 cubic feet of gas per eligible well per day during the preceding calendar year; or

(3) if a property with wells that produce both oil and gas, produced a daily average of less than 10 barrels of oil per eligible well per day for the preceding calendar year, as determined by converting the volume of gas the well produced to barrels of oil by using a ratio of 6000 cubic feet to one barrel of oil."

[38] "P. 'stripper well property' means a crude oil or natural gas producing property that is assigned a single production unit number by the department and is certified by the oil conservation division of the energy, minerals and natural resources department pursuant to the Natural Gas and Crude Oil Production Incentive Act to have produced in the preceding calendar year:

(1) if a crude oil producing property, an average daily production of less than ten barrels of oil per eligible well per day;

(2) if a natural gas producing property, an average daily production of less than sixty thousand cubic feet of natural gas per eligible well per day; or

(3) if a property with wells that produce both crude oil and natural gas, an average daily production of less than ten barrels of oil per eligible well per day, as determined by converting the volume of natural gas produced by the well to barrels of oil by using a ratio of six thousand cubic feet to one barrel of oil;"

[39] In my direct testimony, I discuss the funding provided by the oil and gas industry to the State of New Mexico through these taxes, and the major funding loss that will result if this financial assurance and risk rulemaking is adopted as proposed. NMOGA's Arthur Direct Testimony at 38-39 ("According to the U.S. Energy Information Administration's 2024 Well Distribution Report, marginal oil wells (producing ≤15 barrels per day) accounted for approximately 18% of New Mexico's oil production in 2023, while marginal gas wells (producing ≤90 Mcf/day) contributed 10% of the state's total gas output.27 773 If roughly 50% of marginal wells are prematurely plugged or shut-in due to these financial assurance burdens, New Mexico could face annual production losses of ~5.5 million barrels of oil and ~155 billion cubic feet (Bcf) of natural gas. **Based on an estimate of $70 per barrel of oil and $3.00 per Mcf of gas and New Mexico's severance tax rates (3.75% for oil and gas), this would result in a direct annual loss of approximately $14.4 million in severance tax revenue and $17.4 million in gas severance tax revenue, totaling almost $32 million in foregone tax revenue each year. (Oil severance taxes: $70/bbl × 5.5 million bbl × 3.75% = $14.4 million) (Gas severance taxes: $3.00/Mcf × 155 Bcf × 3.75% = $17.4 million) Total direct tax revenue loss: ~$39.75 million/year.**") (emphasis added) (citing NMSA 1978, § 7-29-4(A)(1)–(2)), 39:782-93 ("Moreover, my understanding is that the four forms of taxes on the value of severed oil and gas (Severance, Conservation, Emergency School, & Ad Valorem Production) total ~8.15% on oil and ~9% on gas (with the local taxing authority at the site of well having the ability to affect both figures slightly). **Once considered, this more than doubles the total direct tax revenue loss I anticipate would flow from implementing WELC's changes as proposed. These estimates do not include further fiscal impacts such as lost royalties from federal and state trust lands, reduced ad valorem property taxes collected by counties, diminished gross receipts tax collections**

Section 19.15.6.7(M) NMAC defines "stripper well property" for purposes of the 19.15.6 NMAC regulations establishing procedures for the certification of eligibility for the enhanced oil recovery project tax incentive, the production restoration project tax incentive, the well workover project tax incentive, and the stripper well tax incentive.[40] The eligibility requirements for the stripper well tax incentive qualification are outlined in 19.15.6.11 NMAC. "'Stripper well incentive tax rates' means the tax rates set for stripper well properties by NMSA 1978, §§7-29-4 and 7-31-4."

ii. Responsive Analysis and Recommendations

OCD's official comment highlights that the 6 Mcf to 1 BOE conversion ratio is consistent with both 19.15.6.7(M) NMAC and NMSA 1978, Section 7-29-2(P), which define "stripper well property" for purposes of tax and incentive programs. Although not cited by OCD, I believe this definition is also proposed to support the rigid production thresholds proposed under other new definitions of "Marginal Well" and "Beneficial Purposes/Use," each discussed below. While I see no issue with defining BOE, I take issue with using the metric to define marginally producing wells and when wells are no longer capable of beneficial use, for the reasons outlined in my direct testimony and responsive remarks and recommendations set forth below.

The statutory concept of stripper wells needs to remain separate from any marginal well definition. OCD's reliance on the stripper well ratio to define BOE also highlights a broader problem with how Applicants and their witnesses attempt to tie new definitions together. In

from service activity, or the broader economic ripple effects on employment and local businesses. In short, the proposed marginal well definition and related financial assurance thresholds risk removing tens of millions of dollars annually from the NM's general fund and communities, while offering little meaningful gain in environmental or operational accountability.") (emphasis added).

[40] 19.15.6 NMAC (2025).

testimony, Mr. Alexander cites Mr. Purvis's marginal well analysis in support of the proposed presumptions of no beneficial use.[41] Yet Purvis himself never analyzes or even addresses the presumption provision. That disconnect is telling. The Applicants' approach effectively uses marginal well classification as a proxy for non-beneficial status without providing any technical, economic, or operational basis for that linkage.

This is a misuse of the BOE metric. BOE may provide a convenient conversion ratio for tax reporting and incentive programs, but it is not a sound basis for collapsing marginal well status into presumptions of non-beneficial use. Treating marginal production levels as determinative of beneficial use disregards the operational and economic realities that make such wells valuable, including lease retention, reservoir management, and future recovery potential.

For this reason, the Commission should not read OCD's commentary on BOE as support for WELC's attempt to link marginal classification to beneficial use presumptions. That link is not grounded in Purvis's own analysis and was never substantiated with evidence. As I explain further in Part III.F.1 of this rebuttal, presumptions of non-beneficial use must be evaluated separately and cannot be imported wholesale from a marginal well framework built on rigid and inconsistent production thresholds.

4. Adding Definition of "Marginal Well" under Proposed 19.15.2.7.M(2) NMAC

WELC proposes to add a brand-new definition of "marginal well" as meaning "an oil or gas well that produced less than 180 days and less than 1,000 barrels of oil equivalent within a consecutive 12 month period."[42]

[41] WELC's Alexander Direct Testimony at 43 (citing Purvis Direct Testimony at 47-38 and WELC Exhibit 40).
[42] WELC Prehearing Statement Exhibit 1-A.

i. OCD Official Comments on Proposed Change

OCD notes, "this provides a definition of a well that is in the final stages of its productive life. A clear marginal well definition flags low producing, higher risk wells for increased scrutiny and ineligibility for blanket bonding."[43]

Notably, this agency commentary directly conflicts with my personal experience and that reported by IPANM witnesses that marginal wells can provide production, royalties, income, and jobs for decades.[44]

ii. LFC Report Recommendation

WELC's proposed definition of "marginal well" actually imposes a greater volumetric threshold than that recommended by the LFC for "low producing wells." The LFC Report recommends that OCC adopt a definition of "low producing" wells as "wells producing less than 750 BOE annually or ~2 BOE per day."[45] That recommendation is less than the IRS's tax definition of marginal wells (a well that produces less than 15 barrels of oil or equivalent, or less than 90,000 cubic feet (90 MCF) of natural gas per day) and WELC's proposed definition of "marginal well."

iii. Proposed Threshold for "Marginal Wells" Captures Productive or Strategically Important Wells

Based on my industry experience, the proposed definition of "marginal well" would capture productive and viable wells and misclassify them as marginal. WELC proposes, and OCD

[43] Exhibit 15 to OCD's Powell Direct Testimony at slide 8.

[44] IPANM's fact witness Kyle Armstrong is the president of a small, independent New Mexico operating company, Armstrong Energy Corporation ("Armstrong"), located in Roswell, New Mexico, founded by his father in 1976, and which currently operates 75 wells, and typically, all its wells are in southeastern New Mexico. In his direct testimony, Mr. Armstrong reports that Armstrong recently acquired existing vertical wells that are relatively low-volume producers and are later in their productive life, which larger operators usually sell as packages with other wells. However, Mr. Armstrong asserts these "wells can still be long-lived producers generating income and creating jobs for decades." IPANM's Armstrong Direct Testimony at 2-3.

[45] LFC Report at 2.

supports, defining a marginal well as one that produces less than 180 days and less than 1,000 BOE in the prior twelve-month period. These thresholds are arbitrary and do not reflect the operational realities of New Mexico's oil and gas industry.

Direct testimony filed in support of this proposal relies heavily on generalized cost assumptions and the assertion that wells below these thresholds are "at or near the end of their productive life." That statement is misleading. Many wells that fall below the proposed 1,000 BOE annual threshold remain viable, generate meaningful revenue, and serve critical operational roles. For example:

- **Lease-retention wells**: In fields with federal, state, or fee leases, operators often maintain low-producing wells specifically to preserve leasehold rights. A single well producing a few barrels per day may sustain an entire lease block, preventing the premature expiration of mineral rights and protecting correlative rights of adjoining owners.
- **Reservoir management wells**: Low-volume producers are often maintained to balance pressure across a reservoir or to support secondary recovery efforts. Misclassifying such wells as "marginal" and subjecting them to high bonding risks undermines sound reservoir engineering practices.
- **Future recompletion or refrac candidates**: Wells producing below 1,000 BOE annually may still be candidates for workovers, recompletions, or refracturing. Recent research confirms that refracs can increase cumulative production by 20 to 50 percent, with average uplifts around 26 percent after one year. Prematurely classifying these wells as marginal discourages operators from investing in proven recovery technologies.
- **Economic producers at modest prices**: Even wells producing 2–3 BOE per day can be profitable at $70 per barrel. A 3 BOE/day well generates more than $75,000 per year in

gross revenue, enough to support operating costs for many small independent operators and to provide royalties and tax revenue to the State of New Mexico.

By using rigid production and day-count thresholds, the proposed definition fails to distinguish between uneconomic wells and those that remain strategically or economically important. The result would be widespread misclassification, increased financial assurance costs, and unnecessary plugging of wells that could otherwise continue to provide value for years or even decades.

The Commission should reject the proposed definition of marginal well as unsupported by evidence and inconsistent with industry practice. If a definition is deemed necessary, it should instead reflect established criteria already recognized in tax law and regulatory frameworks for stripper wells (15 BOE/day or less for oil; 90 Mcf/day or less for gas). At minimum, any definition must account for operational context, including lease retention, reservoir management, and demonstrated recovery potential.

iv. Responsive Analysis and Recommendation

For the reasons outlined in my direct testimony, the term marginal well should not be defined due to the unforeseen and widespread consequences that modifying the term might have. But if a definition must be assigned, I believe the LFC Report's recommended threshold for "low producing wells" should be adopted, if deemed necessary. For the reasons outlined in my direct testimony, the term "marginal well" should not be defined at all, because doing so would create unforeseen and widespread consequences for the existing regulatory framework. The Commission has successfully managed inactive and low-producing wells for decades under the current framework, and there is no need to overlay a new statutory-like category that will inevitably be used as a trigger for higher financial assurance obligations.

If the Commission nonetheless determines that a definition must be assigned, the most appropriate option would be to adopt the Legislative Finance Committee's ("LFC") recommended threshold for "low-producing wells." The LFC Report suggests 750 BOE per year, or approximately 2 BOE per day, as the point at which additional regulatory scrutiny may be appropriate. That threshold is both lower and more flexible than the Applicants' proposed 1,000 BOE/180-day test, and it reflects the LFC's acknowledgment that there is no single economic cutoff at which a well becomes uneconomic.

If the Commission feels compelled to define "marginal well," the definition should be expressly limited to financial assurance determinations. Without such a limitation, the term could bleed into other parts of the NMAC, creating unintended consequences for plugging requirements, operator transfers, or beneficial use determinations. Narrowing the definition to financial assurance ensures consistency with the LFC's recommendation, avoids confusion with "stripper well" and tax incentive provisions already codified in state law, and preserves regulatory flexibility.

5. Adding Definition of "Beneficial Purposes" or "Beneficial Use" under Proposed 19.15.2.7.B(7) NMAC

Applicants propose adding a new definition of "beneficial purposes" or "beneficial use" as meaning "an oil or gas well that is being used in a productive or beneficial manner, such as production, injection, or monitoring, and does not include use of a well for speculative purposes."[46]

i. OCD Did Not Originally Support Inclusion of "Speculative"

Notably, in February 2025, OCD indicated under its unofficial proposed rules that it would not use "speculative" when defining beneficial and instead would define beneficial using the

[46] WELC Prehearing Statement Exhibit 1-A.

production thresholds WELC applies under its presumption of no beneficial use provision.[47] WELC's proposal to exclude uses it deems "speculative" should be stricken. The term is vague, undefined, and invites subjective enforcement. In practice, legitimate and beneficial activities—such as holding a well pending pipeline construction, deferring production during price downturns, using a well for pilot projects, reservoir monitoring, secondary recovery, or lease retention—could all be misclassified as "speculative." Introducing the term here adds ambiguity where clarity is required and extends the Commission's authority beyond its statutory mandate to prevent waste and protect correlative rights. The Commission should reject any definition that relies on the undefined concept of "speculative" use.

ii. OCD Official Comments on Proposed Change

OCD states that a definition of beneficial purpose is necessary for enforcement under 19.15.25 NMAC.[48]

iii. Proposed Threshold for "No Beneficial Use" Captures Productive or Strategically Important Wells

Based on my industry experience, the proposed definition of "beneficial purposes/use" would capture productive and viable wells, which would be misclassified as non-beneficial. WELC's and OCD's proposed definitions tie beneficial use to short production and injection thresholds (90 days and 90 BOE for producing wells, 90 days and 100 barrels for injection wells). These thresholds are arbitrary and do not account for the many operational scenarios in which wells provide continuing value despite lower or intermittent volumes.

For example, several categories of wells would be misclassified under the proposed

[47] *OCD Redline Draft,* Exhibit 5, WELC Prehearing Statement.

[48] Exhibit 15 to OCD's Powell Direct Testimony at slide 5.

definition:

- **Lease preservation wells**: A single low-producing well may be all that is required to hold an entire lease or unit. Even if the well only produces a few barrels per day, its function is to preserve correlative rights and prevent waste.
- **Unitized or communitized wells**: Production accounting is often handled at the unit or communitized lease level. A single well producing below the threshold may nonetheless be contributing to the economic and operational viability of the entire unit.
- **Wells awaiting infrastructure**: Production may be temporarily curtailed while gathering, compression, or pipeline facilities are constructed or repaired. Under the proposed definition, these wells could be deemed non-beneficial despite being slated for full return to service once infrastructure is in place.
- **Recompletion or workover candidates**: Many wells fall below the proposed thresholds temporarily while awaiting a scheduled recompletion, stimulation, or workover. Prematurely classifying these wells as non-beneficial would discourage prudent reinvestment and lead to unnecessary plugging.
- **Monitoring and compliance wells**: Certain wells serve essential monitoring, pressure maintenance, or regulatory compliance functions. These wells may not produce significant volumes, but they are indisputably beneficial for safe and responsible field management.

Direct testimony from OCD suggests the definition is needed to "provide structure" and "clarity," yet it does not address these common operational realities. The rigid volumetric criteria advanced in WELC's and OCD's proposals would override operator planning and eliminate regulatory discretion, leading to unnecessary abandonment of wells that continue to serve important conservation, economic, and safety purposes.

The Commission should reject the proposed thresholds as overbroad and unworkable. If a definition of beneficial use is deemed necessary, it must expressly recognize lease preservation, unitization, recompletions, infrastructure delays, and monitoring functions as valid forms of beneficial use. Without these carve-outs, the rule will promote waste, impair correlative rights, and erode the value of assets that continue to serve New Mexico's oil and gas industry and its royalty and tax base.

iv. Responsive Analysis and Recommendation

OCD's rationale that a definition is "necessary for enforcement" is not persuasive. The Division already has tools to evaluate whether wells are being properly maintained or whether they should be plugged, including but not limited to: annual mechanical integrity testing, Form C-145 reporting, and hearings to address noncompliance. Introducing a definition tied to arbitrary thresholds does not add meaningful enforcement capability. Instead, it introduces ambiguity and risk of inconsistent application, particularly when wells serve regulatory or strategic purposes that do not translate into 90 days of production or 90 BOE per year.

The Commission should decline to adopt OCD's proposed definition of "beneficial purpose/use." At a minimum, any definition must account for the broader spectrum of recognized beneficial functions—including lease maintenance, unit compliance, monitoring, and planned future development—and not reduce enforcement to a numerical trigger. Otherwise, productive or strategically important wells risk premature classification as non-beneficial, with significant consequences for operators, royalty owners, and the state.

As NMOGA's surety expert Doug Emerick explains, misclassifying wells as non-beneficial could unnecessarily trigger new financial assurance obligations.[49] If wells are prematurely deemed

[49] Direct Testimony of Douglas Emerick, IPANM Technical Expert, *In the Matter of Proposed Amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC*, No. 24683, OCC, Aug. 8, 2025 ("NMOGA's Emerick Direct

non-beneficial, operators would face immediate bonding requirements—often at $150,000 per well—that do not correspond to actual environmental or economic risk. This would destabilize underwriting practices, require costly re-underwriting of existing bonds, and potentially lead to bond calls. For smaller and mid-sized operators, the collateral required to support such bonds (often 25% or more of the obligation) would tie up working capital, dissuade investment, and paradoxically increase the risk of orphan wells rather than reduce it.

6. OCD Proposal to Modify the Definition of "Inactive Well" under 19.15.2.7.I(5) NMAC to Align with the New Beneficial Definition

Applicants also propose to modify the definition of "inactive well" by adding new grounds. Currently, a well is inactive if it "is not being used for beneficial purposes such as production, injection, or monitoring and that is not being drilled, completed, repaired, or worked over." 19.15.2.7.I(5) NMAC. Applicants did not propose to amend this definition.

OCD now proposes to insert production or injection requirements, as they propose for beneficial, such that a well would be inactive if "a well had no production or injection for 12 consecutive months."[50] OCD would allow any rolling 12-month period to be used to determine whether a well is inactive.

i. OCD Official Comments on Proposed Change

OCD commented that "[t]his change provides consistency with the changes to the inactive and beneficial use provisions in 19.15.25.8 and 19.15.25.9." Section 19.15.25.8 NMAC contains the existing financial assurance requirements that Applicants propose to overhaul, while 19.15.25.9 NMAC would contain Applicants' proposed presumptions of no beneficial use

Testimony"), at 18.

[50] Exhibit 15 to OCD's Powell Direct Testimony at slide 7.

provision.

ii. Responsive Analysis and Recommendation

While OCD frames this change as a matter of "consistency," in reality, it needlessly expands the reach of the definition. The current definition already captures inactivity by referencing "not being used for beneficial purposes." By tying inactivity to a hard 12-month production or injection threshold, OCD eliminates the discretion that currently allows operators to demonstrate beneficial use through lease maintenance, monitoring, regulatory compliance, or planned development. This change can have other far-reaching effects because of the financial assurance regimes' distinction between active versus inactive well requirements under proposed 19.15.8.9(C) and (E) NMAC, respectively, as I discuss in Part III.D. below.

OCD's direct testimony asserts that these definitional revisions "provide structure" around low-producing and temporarily abandoned wells, and that they will help ensure wells are either returned to production or plugged in a more expedited fashion. That rationale assumes that inactivity is synonymous with lack of beneficial use. In practice, that assumption is wrong. Many wells produce intermittently, are temporarily shut in for facility or market reasons, or are maintained specifically to hold leases or provide monitoring data. Under the current rule, the Division can evaluate those cases individually. Under the proposed amendment, such wells would be automatically classified as inactive and out of compliance after 12 months, regardless of the operator's demonstrated plan or the well's ongoing utility.

This rigidity has broader consequences because of how the financial assurance framework distinguishes between active and inactive wells under proposed 19.15.8.9(C) and (E) NMAC. Wells deemed "inactive" by this expanded definition would trigger higher financial assurance requirements, even if they are mechanically sound and strategically necessary. As explained in Part

III.D below, the effect would be to inflate bonding obligations across large segments of the state's well inventory without any risk-based justification.

The Commission should reject OCD's claim that this definitional change is about "consistency." Consistency can be achieved by harmonizing cross-references without hardwiring a 12-month threshold that strips discretion from the Division and misclassifies productive wells. If any change is adopted, it should expressly preserve the ability of operators to demonstrate beneficial use through lease preservation, monitoring, regulatory compliance, or planned development, so that the classification of wells remains tied to actual risk and operational context.

As both McGowen and I emphasize, wells may legitimately be shut-in for longer than 12 months due to infrastructure delays, commodity price cycles, recompletion planning, or reservoir management strategies. Such wells remain strategically important and should not be prematurely classified as inactive. A rolling 12-month trigger ignores operational realities and could force premature plugging and abandonment or unnecessary bonding.[51]

Emerick's testimony highlights the knock-on effects: once a well is reclassified as "inactive" under this new test, heightened financial assurance requirements under 19.15.8.9(C) and (E) NMAC are automatically triggered. Misclassification would therefore compound bonding burdens, requiring operators—especially small and mid-sized independents—to post new sureties they cannot readily secure. This creates systemic risk of increasing orphan wells, the very outcome that Applicants claim to avoid.

OCD's justification that this change "provides consistency" is insufficient. Regulatory consistency is not a standalone value; rules must also be workable, enforceable, and aligned with statutory authority under the Act. Importing the flawed "beneficial use" thresholds into the

[51] NMOGA's McGowen Direct Testimony at 46, 57-61; NMOGA's Arthur Direct Testimony at 12-13, 14-15, 23-24.

definition of "inactive well" carries all the same problems of vagueness, rigidity, and unintended consequences.

The Commission should reject OCD's proposed amendment to the definition of "inactive well." If the Commission wishes to align definitions, it should do so by reaffirming the current flexible framework that allows operators to demonstrate beneficial use through operational, regulatory, and strategic functions, not by importing arbitrary 12-month volumetric thresholds. At a minimum, any modification should preserve case-by-case discretion and ensure that misclassification does not automatically trigger costly financial assurance obligations.

C. Proposed Changes to Enforcement and Compliance Requirements under 19.15.5.9 NMAC

1. Proposal to Require Compliance with Plugging and Abandonment and Flaring and Venting Requirements for Approvals of Operator Registrations and Changes and Release of Financial Assurance

WELC's proposed amendments under 19.15.5.9(A)(4)-(5) NMAC would require compliance with 19.15.25.8 NMAC and 19.15.27.8(A) NMAC, respectively, for operators to be in compliance for purposes of 19.15.5.9(A) NMAC.

i. Amending Subsection 19.15.5.9(A)(4) NMAC

Applicants would remove the existing content in 19.15.5.9(A)(4) NMAC, which currently places limits on the number of wells that can be out of compliance with 19.15.25.8 NMAC that are not subject to an agreed compliance or final order setting a schedule for bringing the wells into compliance.[52]

The current version of 19.15.25.8(A) NMAC ("Wells to Be Properly Abandoned") currently applies to operators of wells drilled for oil, gas, or service purposes (including seismic,

[52] WELC Prehearing Statement Exhibit 1-B at 16.

core, exploration, or injection wells), whether the wells are cased or uncased. Subsection (B) requires that such wells must either be properly plugged within 90 days (which WELC proposes to reduce to 30 days), or placed in approved temporarily abandoned status within the compliance window (which WELC would change to require only be applied for during that timeframe), if any one of the following triggering events occurs: sixty (60) days after drilling operations are suspended; determination that the well is no longer usable for beneficial purposes; or one year of continuous inactivity (which WELC proposes to remove the word "continuous" from as I explain in Part III.G.2. below).

By removing the compliance schedule flexibility, WELC would effectively eliminate the Division's discretion to manage compliance on a case-by-case basis. This would be particularly problematic for large operators with extensive portfolios or for newly acquired assets where integration and remediation are staged over time.

ii. Adding a New Subsection 19.15.5.9(A)(5) NMAC

Applicants propose adding a new subsection 19.15.5.9(A)(5) NMAC, requiring compliance with 19.15.27(A)(8) NMAC.[53] The current version of 19.15.27(A)(8) NMAC makes clear that venting or flaring that constitutes waste as defined in 19.15.2 NMAC is prohibited. The provision requires operators to maximize natural gas recovery and minimize waste, and confirms that flaring is preferred over venting, unless flaring is technically infeasible or poses a safety risk. Authorized venting and flaring during drilling, completion, or recompletion, and production are then addressed in the following subsections 19.15.27.8(B)-(D) NMAC, respectively, and performance standards are outlined in subsection 19.15.27.8(E) NMAC.

[53] WELC Prehearing Statement Exhibit 1-B at 16.

While operators are already required to comply with these provisions, WELC's proposal elevates any potential violation—no matter how minor or temporary—into a determinative factor for operator registration, change-of-operator applications, or release of financial assurance.

iii. OCD Official Comments on Proposed Change

OCD comments that the change to subparagraph (A)(4) would remove the operator's ability to have a number of inactive wells for an unlimited time without testing, and the addition of (A)(5) would clarify requirements for natural gas waste.[54]

However, OCD does not explain what threshold of noncompliance would be sufficient to deny an operator's registration, change of operator, or release of financial assurance. This silence leaves unanswered questions: Is a single minor infraction sufficient to deem an operator out of compliance? What about violations under appeal? Without clear criteria this amendment would give OCD unchecked discretion, creating uncertainty for operators and investors.

Operator feedback to the WELC and OCD proposals confirms this concern. For example, one operator noted that it is "unrealistic to expect an operator to be in 100% compliance at all times, particularly in light of the number of acquisitions occurring in the industry." Another emphasized that operators already face compliance obligations under each individual rule and questioned why duplicative cross-compliance was being added to registration requirements. These comments reflect the operational reality that minor or temporary noncompliance—such as delays in returning a well to service after acquisition—does not equate to systemic risk or neglect, and should not trigger severe regulatory penalties.

In my opinion, if the Commission intends to link registration or financial assurance

[54] Exhibit 15 to OCD's Powell Direct Testimony at slides 11-12.

determinations to compliance history, then the rule must specify objective criteria. Other states that have adopted "good actor" provisions generally allow for a defined number or percentage of wells to be out of compliance before more serious consequences attach. For example, Texas and North Dakota both apply thresholds tied to an operator's well count rather than treating any infraction as determinative. New Mexico should adopt a similar proportional standard, such as allowing a small percentage of wells to be temporarily out of compliance, or clarifying that only "material violations" not under appeal or compliance order will disqualify an operator.

The Commission should not adopt the amendments to 19.15.5.9(A)(4) and (5) NMAC as drafted. At a minimum, the rule must articulate clear, objective criteria for what constitutes disqualifying noncompliance, such as: (1) limiting the provision to final, unappealable violations; (2) defining a minimum number or percentage of wells that may be out of compliance without consequence; and (3) expressly excluding wells already under agreed compliance schedules. Without these safeguards, the rule creates more regulatory risk than clarity and undermines the Commission's and Division's duty to administer consistent and predictable oversight.

iv. Responsive Analysis and Recommendation

According to Applicant expert Thomas Alexander, 19.15.5.9(A) NMAC lists criteria for multiple types of OCD compliance determination, including the release of financial assurances under 19.15.8.12 NMAC; approval or denial of an application for operator registration under 19.15.9.8(B) NMAC, and approval or denial of an application for change of operator under 19.15.9.9(C) NMAC.[55] Mr. Alexander makes clear he is in full support of requiring compliance with plugging and abandonment regulations at 19.15.25.8 NMAC and venting and flaring

[55] Direct Testimony of Thomas Alexander, WELC Technical Expert, *In the Matter of Proposed Amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC*, No. 24683, OCC, Aug. 8, 2025 (hereinafter "**WELC's Alexander Direct Testimony**"), at 11:22-24.

requirements at 19.15.27.8(A) NMAC as part of the compliance criteria for OCD determinations regarding operator registration, change of operator, and release of financial assurance.[56]

Applicants' proposals to tie compliance status to 19.15.25.8 and 19.15.27.8(A) NMAC would have sweeping consequences:

Elimination of Flexibility: Removing the ability to operate under compliance schedules strips OCD of a key regulatory tool and ignores the realities of large-scale field management and acquisitions. McGowen's testimony illustrates that bringing dozens or hundreds of wells into compliance cannot realistically be accomplished in 30 days.

Arbitrary Enforcement: operational events such as pipeline outages, equipment failures, or force majeure can result in temporary noncompliance with venting and flaring rules. Elevating these events into grounds to deny operator registration or financial assurance release would create arbitrary and disproportionate consequences.

The Commission should reject WELC's proposed amendments to 19.15.5.9(A)(4) and (5) NMAC. At a minimum, any changes must: 1. Preserve OCD's discretion to manage compliance through schedules and orders; 2. Clearly define thresholds for noncompliance, e.g., final orders versus allegation and material violations as compared to administrative oversights; 3. Avoid tying routine venting and flaring to operations, registration, and financial assurance determination.

As drafted, these amendments would effectively require absolute compliance with plugging and abandonment and with venting and flaring requirements as a condition for OCD to approve operator registrations, changes of operator, and releases of financial assurance. This is not how the regulatory framework has historically functioned. Operators already remain subject to

[56] WELC's Alexander Direct Testimony at 11:2-9.

enforcement for violations of plugging or flaring rules, but those violations are handled through compliance orders, stipulated schedules, or hearings, not by conditioning core regulatory functions such as the ability to register or transfer wells.

By embedding these compliance requirements directly into 19.15.5.9(A) NMAC, WELC's proposal transforms every potential deviation—no matter how minor—into a determinative factor for core regulatory approvals. For example, a routine venting report submitted a few days late, or a short-term shut-in pending a workover, could theoretically bar an operator from changing ownership or releasing financial assurance. That outcome creates disproportionate consequences untethered from actual risk. It also undermines OCD's ability to prioritize cases by severity, because the rule as written would treat clerical oversights and minor reporting infractions the same as systemic plugging failures.

Operators have repeatedly pointed out in feedback that it is not realistic to expect perfect compliance at all times across a large inventory of wells. The Division already has ample tools to address substantive violations through agreed compliance schedules, administrative orders, or penalties. The proposed amendments remove that discretion, replacing it with an inflexible "bright line" that risks penalizing good actors for minor or alleged noncompliance, including cases still under appeal.

The Commission should reject WELC's proposed amendments to 19.15.5.9(A)(4) and (5) NMAC because they improperly conflate compliance enforcement with unrelated regulatory approvals. By making routine administrative functions—such as operator registration, change of operator, and financial assurance release—contingent on absolute compliance with plugging, abandonment, and venting requirements, WELC's proposal introduces disproportionate and arbitrary consequences untethered from actual risk.

The Division already possesses robust tools to address substantive violations, including compliance orders, stipulated schedules, penalties, and hearings. Those mechanisms allow OCD to tailor enforcement to the severity of the violation, preserve regulatory flexibility, and maintain predictability for operators. By contrast, WELC's amendments would impose bright-line disqualifications that punish minor oversights on par with systemic failures, undermining both fairness and the statutory mandate to prevent waste.

A more balanced approach, if any revision is to be considered, would: (i) Limit disqualifying violations to material, final violations; (ii) Preserve eligibility where wells are under agreed compliance schedules or orders; and (iii) Maintain venting and flaring enforcement under existing compliance tools, not as automatic bars to unrelated regulatory approvals.. This more balanced approach would maintain environmental protections while ensuring that regulatory approvals remain predictable and tied to actual risk, rather than to administrative oversights.

For example, under WELC's proposed rules:

- Plugging approvals could be delayed if a company had a pending but unresolved paperwork violation unrelated to well integrity. This would undermine the very objective of getting problem wells plugged more quickly.
- Permit renewals or transfer requests could be denied solely because of a past venting incident that had already been addressed under an agreed compliance order, creating uncertainty for otherwise compliant operators.
- Temporary abandonment status might be withheld from a well even where the operator had already negotiated and was complying with a remediation plan—leaving the well in limbo and potentially increasing environmental risk.

2. Proposed Amendments to 19.15.5.9.B(1) NMAC to Support Proposed Presumptions of No Beneficial Use Provision

OCD proposes to amend 19.15.5.9.B(1) NMAC,[57] to align with the Applicants' proposed changes to 19.15.25.9 NMAC.[58] While the detailed analysis of those presumptions is set forth in Part III.F of this testimony, I emphasize here that cross-linking 19.15.5.9(B)(1) NMAC to 19.15.25.9 NMAC would embed the same flawed "90-day criteria" and rebuttal framework directly into OCD's enforcement provisions. This effectively multiplies the consequences of an arbitrary presumption, extending it beyond plugging decisions to operator compliance determinations more broadly. The Commission should resist embedding presumption-based triggers in multiple regulatory sections. If the presumption framework is rejected or substantially revised, corresponding amendments to 19.15.5.9(B)(1) NMAC must also be rejected to preserve consistency and avoid unintended regulatory spillover.

3. Proposed Amendments to 19.15.5.9.B(2) NMAC to Support Proposed Changes to When a Well Must Be Properly Abandoned

WELC also proposes to amend 19.15.5.9.B(2) NMAC[59] to align with their proposed changes to 19.15.25.8 NMAC,[60] which govern when wells must be properly abandoned. As discussed in Part III.G.2.-.3, WELC's proposal would shorten compliance windows, impose rigid deadlines, and create vague triggers such as "administrative presumptions" of non-usability. By linking 19.15.5.9(B)(2) NMAC to those provisions, Applicants would effectively allow plugging/abandonment deadlines to drive compliance status determinations under 19.15.5.9

[57] WELC Prehearing Statement Exhibit 1-B.

[58] *See* Exhibit 15 to OCD's Powell Direct Testimony at slide 13.

[59] WELC Prehearing Statement Exhibit 1-B.

[60] *See* Exhibit 15 to OCD's Powell Direct Testimony at slide 14.

NMAC, magnifying the risks of misclassification and premature abandonment. The Commission should ensure that 19.15.5.9(B)(2) NMAC is not amended in a way that imports the flaws of 19.15.25.8 NMAC, and at a minimum, any cross-reference should be limited to clearly defined and objectively verifiable triggers, rather than ambiguous or accelerated deadlines.

D. Proposed Changes to Financial Assurance Requirements under 19.15.8. NMAC

Applicants propose numerous changes to New Mexico's oil and gas financial assurance framework.[61] I conclude this section with my recommended changes and alternatives to the rigid and inflexible major financial assurance changes proposed by the Applicants. My recommendations honor the spirit of the Applicants' proposals while adequately considering and addressing the industry's interests and concerns regarding implementation and disparate effects on smaller and independent operators.

But first, I will analyze the flaws in Applicants' and now OCD's position that current financial assurance requirements are inadequate as described in their direct testimony submissions, and the facts and factors their proposed witnesses and experts ignored.

Then, I will analyze the direct testimony supporting each proposed increase and change to New Mexico's financial assurance framework. As explained by NMOGA legal expert Clayton Sporich and noted below under each relevant section, many of the Applicants' proposals require legislative action, and the use of this rulemaking proceeding cannot circumvent that requirement.[62]

[61] WELC Prehearing Statement Exhibit 1-C.

[62] Rebuttal Testimony of Clayton Sporich, NMOGA Technical Expert, *In the Matter of Proposed Amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC*, No. 24683, OCC, Aug. 8, 2025 (hereinafter "**NMOGA's Sporich Rebuttal Testimony**"), at 2-14; Direct Testimony of Clayton Sporich, NMOGA Legal Expert, *In the Matter of Proposed Amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC*, No. 24683, OCC, Aug. 8, 2025 (hereinafter "**NMOGA's Sporich Direct Testimony**"), at 2-37.

1. Flaws in Applicants' and Now OCD's Position That Current Financial Assurance Requirements are Inadequate and Factors Ignored in Supportive Direct Testimony

I noted the following flaws and factors that were ignored in the Applicants' and OCD's direct testimony submissions concerning the adequacy of current financial assurance requirements.

i. Blanket Bonds Function as Intended

Applicants' proposal would effectively eliminate blanket bonds by requiring that each well covered carry $150,000 of assurance, functionally the same as requiring per-well bonding. In my experience, blanket bonds have served their intended purpose: providing adequate coverage while offering operators and the Division flexibility to manage changing well inventories. Eliminating them would not only increase costs for operators, particularly independents, but also create unnecessary administrative burdens for OCD, which would be tasked with processing and tracking hundreds or even thousands of additional financial instruments. The Applicants' proposal adds cost and complexity without a corresponding benefit. I have reviewed the rebuttal testimony of NMOGA surety expert Douglas Emerick where he concurs with my analysis on how blanket bonds function as intended and should not be reduced or eliminated.[63]

Blanket bonds are particularly important in New Mexico, where many operators maintain diverse portfolios of wells at different stages of the production lifecycle. Requiring per-well bonding would force operators to post financial assurance amounts that vastly exceed the realistic plugging liability for their portfolios. For example, a small operator with 100 marginal or low-volume wells could face a $15 million bonding obligation under the Applicants' proposal, even though the actual aggregate plugging cost may be a fraction of that amount, especially where many

[63] Rebuttal Testimony of Douglas Emerick, NMOGA Technical Expert, *In the Matter of Proposed Amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC*, No. 24683, OCC, Sept. 19, 2025 (hereinafter "**NMOGA's Emerick Rebuttal Testimony**"), at 20-21.

wells are shallow or mechanically simple. By contrast, a $250,000 blanket bond provides OCD with assurance coverage while allowing the operator to continue managing its wells responsibly and investing in new development.

In my professional practice, I have seen blanket bonding work effectively as an alternative to individual well bonds in multiple jurisdictions. For example, in Texas and Wyoming, blanket bonds are widely used and accepted because they strike the right balance between risk management and administrative efficiency. When I worked with operators on financial assurance packages, blanket bonds often provided the only feasible path for independents to acquire or maintain assets, especially during downturns when capital for additional surety instruments was scarce. Without the blanket bond option, those operators would likely have been forced to plug wells prematurely or exit the market altogether.

The administrative efficiency of blanket bonds should not be overlooked. If blanket bonding is eliminated, OCD would be tasked with processing and tracking hundreds or even thousands of additional financial instruments. Each transfer, partial release, or renewal would require time and resources of Division staff. That level of administrative burden is not offset by any measurable improvement in environmental protection or financial assurance coverage.

The existing blanket bonding system works as intended. The Commission should reject Applicants' proposal to eliminate it. At a minimum, the Commission should retain a blanket bond option that is calibrated to operator well counts and risk categories. This approach continues to provide the Division with the ability to secure plugging obligations while avoiding unnecessary costs for operators and unnecessary administrative burdens for OCD.

ii. Industry Can Plug, Abandon, and Remediate Wells Faster and Cheaper Than OCD, Undermining Applicants' and the Agency's Reliance on LFC Averages

Applicants and OCD rely heavily on the LFC Report's averages to justify their proposed increases. Yet those averages reflect OCD's procurement process, not industry reality. In my direct experience, I have overseen wells plugged and abandoned for $40,000–$60,000—less than half the $150,000 figure Applicants would require for every inactive, temporarily abandoned, marginal, or even active well. The LFC acknowledges that OCD does not negotiate or develop internal price estimates but relies solely on vendor submissions.[64] This inflates averages and undermines the credibility of using those figures to set financial assurance levels.

The LFC Report also confirms that "OCD does not negotiate or develop its own internal price estimates for plugging and remediation work but instead relies on the approved vendors to submit estimates." This fact undermines the Applicants' and the agency's reliance on LFC Report averages to justify higher bonding. Contractors bidding for state-funded work often factor in contingencies, administrative overhead, and risk premiums not borne by operators managing their own assets. Those factors drive reported averages upward in ways that are not representative of industry practice.

Industry costs are routinely lower. Operators maintain direct relationships with service companies, negotiate rates based on scope and volume, and manage logistics efficiently through existing field staff. In contrast, OCD must procure services through a government contract process that reduces flexibility, lengthens timelines, and increases cost. The result is a gap between what OCD spends and what operators actually pay—but this is not accounted for in Applicants' proposals. This system hurts the public because they end up paying more due to OCD's procurement process and it also stands to harm operators, especially small business owners, because if WELC's proposals are adopted, it will drive up their costs of compliance.

[64] LFC Report at 28.

Relying on OCD's inflated averages to set universal bonding requirements is therefore unsound. It ignores the significant difference between state-funded plugging and industry-led plugging, and it penalizes operators who can and do complete this work more efficiently. A flat $150,000 per-well requirement bears no relation to the actual risk of the State having to step in. As I explained in my direct testimony, only a small fraction of wells ever become orphaned, and even among those, the majority can be plugged for far less than $150,000.

The Commission should reject reliance on LFC averages as the basis for increased bonding requirements. Instead, financial assurance levels should be risk-based and reflect actual plugging costs as documented by industry practice, not procurement-driven outliers. Doing so would align bonding obligations with real-world conditions and avoid imposing unnecessary costs on operators while preserving the State's protection against true liabilities.

iii. Operators Should Not Be Held to a Standard or Accountable to the Public for Cost Overruns Until the OCD Procurement System is Remedied, and the Commission Should Not Pass These Seemingly Elevated Costs on to the Entire Industry

The LFC found that "[p]lugging costs frequently exceed estimates, with 236 recently plugged wells costing $10.4 million more than originally budgeted."[65] Importantly, OCD issues multiple change orders exceeding $1M to adjust the total authorized purchase order to accommodate alterations in scope, timeline, or cost.[66] In many cases, the Division also issues change orders after receiving invoices for total amounts higher than the initial purchase order, which the LFC notes "is considered a poor procurement practice."[67] Further, cost overruns based

[65] LFC Report at 28.

[66] LFC Report at 28.

[67] LFC Report at 28.

on a small group of wells called "O'Brien" and "Barkneht" led the LFC to state that "while downhole conditions do vary across wells, differences of the magnitude observed in this small group of wells suggest OCD has inadequate financial and quality controls."[68]

Accordingly, contractors should not be held to a standard or accountable to the public for these cost overruns until this system is remedied, a framework for determining actual costs can be identified and established, and the Commission should not pass these seemingly elevated costs on to the entire industry.

iv. Analysis of Reclamation Cost Claims and Existing SLO Lease Surface Improvement Damage Bond Requirements

Applicants and OCD also reference reclamation costs as justification for substantially increasing financial assurance levels. In my opinion, this conflates two separate obligations. Plugging and abandonment addresses downhole and wellbore integrity, while surface reclamation obligations are already secured through other mechanisms, including lease terms, contractual obligations, and, in many cases, state or federal requirements outside of OCD's jurisdiction.

The leases vesting operators and lessees with the right to drill the wells being applied for with OCD are either issued by the SLO if on state lands, BLM if on federal lands, or landowners if on private land. If a state or federal government issues the subject lease, the state or federal government as lessor will have its own bonding requirements.

Federal jurisdictions handle bonding differently than the State of New Mexico and secure plugging and abandonment and reclamation of entire lease(s), right-of-way(s) ("ROWs"), or right-of-use or easement(s) ("RUEs"). For example, the Bureau of Ocean Energy Management ("BOEM"), which administers the U.S. Department of Interior's ("U.S. DOI") federal offshore oil

[68] LFC Report at 29-30.

and gas leasing program, requires bonding by lease, ROW, RUE, or even area-wide blanket financial assurance covering entire outer continental shelf regions (Alaska, Atlantic, Gulf of America, or Pacific. 30 C.F.R. § 556.900. And as mentioned above in Part III.A.1.vi., the BLM, which administers the U.S. DOI's federal onshore oil and gas leasing program, requires $150,000 in financial assurance per lease, which could have numerous wells on it, or state-wide blanket assurance of $500,000 for an entire state, which could have even more wells. 43 C.F.R. § 3104.1.

The same is not true in New Mexico, where OCD is only allowed to demand financial assurance for the plugging and abandonment and reclamation of a specific well and its well pad being permitted by the Division. *See* 19.15.8.13 NMAC (predicating release of financial assurance instruments on file with OCD on all wells drilled or acquired under that financial assurance have been plugged and abandoned, restored and remediated, and released pursuant to New Mexico's plugging and abandonment regulations in 19.15.25.9-.11 NMAC, or have replacement coverage by another assurance instrument OCD has approved). This fact is made clear by the express grant of limited statutory authority under the Act, as shown by Mr. Sporich in Part III.A. of his testimony, which only authorizes OCD demand security for a specific "well" or "wells" – not a broader area or site like the federal government's bonding requirements which cover entire leases, ROWs, or RUEs do – and that well's plugging and abandonment. Reclamation is not mentioned therein at all, and the reference to reclamation in 19.15.8.13 NMAC governing release of financial assurance is limited by the preceding subject being the "well" secured, as well as the statutory authority that implementing regulation under which it was promulgated.

The SLO requires bonds for the state leases it issues, separate and apart from the OCD bonding requirements; specifically: $10,000 for single lease surface damage bond, $20,000 for multi-lease surface damage blanket bond, or $25,000 mega blanket bond, making no mention of

plugging costs. NMSA 1978, § 19-10-26; 19.2.100.23 NMAC.[69]

This explains why the Act limits the financial assurance the Division demands to cover plugging and abandonment costs of the specific well that is being secured, as detailed by Mr. Sporich, excluding reclamation costs, which are not enumerated in the statute.[70] To allow the Division to demand financial assurance to cover reclamation would often require double-bonding of at least state land reclamation obligations.

Testimony suggesting that reclamation costs should be rolled into per-well financial assurance ignores this distinction. It also risks overstating the necessary financial security. Reclamation costs vary widely depending on surface conditions, landowner agreements, and lease stipulations. In practice, many reclamation projects consist of minor grading, removal of tanks, or revegetation, with costs often in the range of $5,000–$20,000 per site. These figures do not justify inflating per-well assurance requirements to $150,000.

Moreover, testimony in the record has not provided a clear or consistent dataset on reclamation costs. Mr. Purvis relies on cherry-picked estimates and does not distinguish between reclamation costs for wells in highly developed areas versus those in low-cost rural settings. Without this granularity, reclamation claims cannot serve as a credible basis for resetting bonding levels.

Furthermore, since the Act limits the financial assurance the Division can demand to cover

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[69] SLO, Oil, Gas, and Minerals Division, *Levels of bonding and Instructions for filing a Surface Improvement Damage Bond*, https://www.nmstatelands.org/wp-content/uploads/2019/08/Bond_Instructions__Law_and_Rule_NMSLO.pdf (accessed Sept. 17, 2025); SLO, *What kind of bonds does the Land Office require from lessees?,* https://www.nmstatelands.org/resources/resources-faqs/ (accessed Sept. 17, 2025); SLO, Bonding Requirements and Abandoned Wells, https://www.nmlegis.gov/handouts/WNR%20090320%20Item%203%20SLO%20Bonding%20Requirements%20and%20Abandoned%20Wells.pdf (accessed Sept. 17, 2025) (estimating $28,000 to plug and abandon one well).

[70] NMOGA's Sporich Rebuttal Testimony at ¶ 6.

a well's plugging and abandonment costs, with no mention to reclamation, at most, the assurance on file with OCD can only secure the well site, i.e., well pad – not the entire lease or unit the wells are located on.

The Commission should decline to fold reclamation costs into the justification for per-well bonding increases. Plugging costs are already variable and should be addressed accordingly. Reclamation is either covered elsewhere or, where it remains OCD's responsibility, represents a small and manageable cost component that does not warrant universal escalation of financial assurance obligations.

v. Reclamation Fund is Ignored

Applicants' testimony and proposals ignore the statutory purpose and current role of the Oil and Gas Reclamation Fund (the "Fund"). Established in 1977, the Fund exists to ensure plugging and reclamation of abandoned wells where no viable operator exists.[71] It is financed through a conservation tax, which increases as oil prices rise. Historically, the Fund has been used primarily for plugging and reclamation of wells and associated infrastructure without a locatable or financially viable operator.[72]Any serious assessment of financial assurance adequacy must account for the Fund's role and revenue stream.

The Reclamation Fund receives 10.5 percent of conservation tax proceeds when the price of West Texas Intermediate crude oil is less than $70 and 19.7 percent when it is above $70. This structure ensures that Fund revenues rise in periods of higher commodity prices, when operators are also financially strongest. It is my understanding that the Fund has been consistently financed through these dedicated revenues, which are designed to cover the relatively small number of wells

[71] LFC Report at 11.

[72] LFC Report at 11.

that ultimately require state intervention. Applicants' proposals, by substantially raising per-well bonding requirements, would not only duplicate the purpose of the Fund but could also destabilize its financing. If operators are forced to prematurely plug marginal wells rather than maintain them under existing bonding levels, production subject to the conservation tax will fall. Reduced production volumes mean reduced conservation tax collections, directly eroding the Fund's revenue stream. In other words, the proposals risk weakening the very backstop that New Mexico has relied upon for nearly five decades to address orphaned wells.

The Commission should not ignore the Reclamation Fund when assessing financial assurance adequacy. The Fund is a statutorily established mechanism, designed to complement operator bonding to prevent inequitably visiting the past upon the present by imposing yesterday's debts upon today's operators. Any changes to the bonding regime should be evaluated in tandem with the Fund's current and projected revenue, rather than in isolation. Otherwise, the rulemaking could perversely increase the State's orphan well liability by driving down production and conservation tax revenue while simultaneously discouraging responsible operation of marginal wells. The result of WELC's proposal is that responsible operators are saddled twice—once with inflated bonding and again with a shrinking Fund available to address legacy wells that were never theirs to begin with.

vi. Multiple Statewide Economic and Policy Consequences Will Flow from Proposed Changes

Applicants' one-size-fits-all bonding proposal would trigger a cascade of negative consequences: reduced well transfers, premature plugging of viable wells, weakened local economies, and diminished state revenues from severance and ad valorem taxes. The impacts fall hardest on small and independent operators, but even larger operators would face significant strains on capital allocation and drilling schedules. I found persuasive the testimony of IPANM experts,

who confirm that smaller operators face existential threats under these rules. Bonding requirements must account for economic consequences, not impose blunt thresholds that harm both operators and the State of New Mexico. A flat $150,000 per-well requirement, combined with mandatory reclassification of marginal and inactive wells, would effectively shut down many small businesses that operate safely and responsibly on slim margins. These operators provide critical local employment and tax contributions in rural counties, and their forced exit from the market would have ripple effects on service companies, schools, and local governments that rely on oil and gas revenues.

The Legislative Finance Committee's averages do not capture these broader economic and policy effects. The LFC Report was narrowly focused on plugging liabilities and OCD's procurement practices, not on the fiscal or employment impacts of imposing unprecedented financial assurance requirements on thousands of wells statewide. Any serious assessment of these rules must grapple with those wider impacts.

The Commission should not proceed with rules that impose uniform per-well bonding requirements without first assessing the statewide economic and policy implications. Until credible data on fiscal and employment impacts is considered, the Applicants' proposal cannot be said to rest on a complete or balanced record.

The $150,000 per-well bonding for individually secured active wells under proposed 19.15.8.9(C)(1) NMAC, all marginal, temporarily abandoned, and inactive wells under proposed 19.15.8.9(D)(1)-(2),(E)(2) NMAC, and for all wells if an operator's portfolio is comprised of 15% or more marginal or inactive wells under 19.15.8.9(D)(3) NMAC, would affect operators' capital and ability to invest in new production, particularly for smaller members.

Quantitatively, even a relatively small operator with 50 wells—of which 20 percent fall

below the proposed marginal threshold—would be required to post $7.5 million in bonding. For an operator of this size, that level of financial assurance obligation would exceed the typical asset base and working capital available to comparable oil and gas businesses. By contrast, larger independents would face requirements that escalate into the tens or even hundreds of millions of dollars, effectively halting reinvestment in the state.

I found NMOGA surety expert Douglas Emerick's direct testimony helpful for understanding how the current surety market is unprepared to handle the influx of private assurance demands that would result from the implementation of the proposed financial assurance changes.

Additionally, larger operators also face significant financial and operational burdens that have the potential to affect drilling schedules, capital allocation, and long-term investment. Even for publicly traded companies with diversified asset bases, the proposed per-well bonding requirements would reallocate substantial capital away from development budgets and into financial assurance instruments that provide no return. A $150,000 requirement applied across hundreds or thousands of wells translates into hundreds of millions of dollars of idle capital. That is money that would otherwise be directed to drilling new wells, recompleting existing wells, expanding gathering systems, or investing in emissions-reduction technologies.

Industry investment decisions are highly sensitive to capital costs. When bonding obligations increase dramatically, operators reprioritize projects. New Mexico would become comparatively less attractive for capital relative to other basins with more predictable and proportionate financial assurance frameworks, such as Texas, North Dakota, or Utah. The effect will be fewer rigs deployed, deferred drilling programs, and reduced reinvestment in long-term projects such as secondary recovery or carbon management. For example, the number of rigs in

the Niobrara Basin underlying Colorado and Wyoming has steadily declined following the 2022 Colorado Oil and Gas Conservation Commission ("COGCC") financial assurance rulemaking went into effect, which increased individual well assurance requirements for Colorado state permitted wells to $150,000 per well, just like the Applicants propose here.[73]

Different scales of impact, same fundamental problem. Smaller independents face existential threats, while larger operators must cut or delay investment. The common outcome is the same: fewer wells drilled, less production, reduced state revenues from severance and ad valorem taxes, and a chilling effect on long-term investment in New Mexico's oil and gas sector. Accordingly, the proposals will economically harm the entire industry, not just smaller companies and independents.

The Commission should conceptualize what Applicants' are proposing by grounding it in financial assurances that most people are familiar with in their course of life. Requiring $150,000 per well is like requiring a homeowner to pay $100,000 in annual insurance premiums on a $250,000 house, even though most repair or maintenance costs that trigger insurance claims are only a fraction of that amount. If this level of financial assurance was required of homeowners, families couldn't afford to keep their homes, not because the risk is unmanageable, but because the financial requirements are completely disproportionate to actual costs of maintaining the financial assurance necessary to actually live in the home.

The Commission should reject the Applicants' one-size-fits-all bonding framework, as it penalizes all operators regardless of size or compliance history. Financial assurance reform, if

[73] U.S. Energy Information Administration ("U.S. EIA"), Drilling Productivity Report, For key tight oil and shale gas regions (May 2024), https://www.eia.gov/petroleum/drilling/pdf/dpr-full.pdf, at 8. "The monthly average rig count used in this report is calculated from weekly data on total oil and gas rigs reported by Baker Hughes." Id. at 10. "EIA has observed that the best predictor of the number of new wells beginning production in a given month is the count of rigs in operation two months earlier." Id.

warranted, should be risk-based and designed to preserve capital for reinvestment in New Mexico rather than locking it into instruments that neither improve environmental outcomes nor reflect actual plugging risk.

To that end, I reviewed the direct and rebuttal testimony of NMOGA surety expert Douglas Emerick and found his commentary persuasive; he anticipates not only large amounts of collateral being required for newly applied-for financial assurance, but also to maintain existing bonds.[74] These financial increased assurance requirements and resulting compliance costs will likely lead to premature plugging, reduced competition, and loss of economic activity in and funding to the State of New Mexico.

vii. Changes Actually Create Risk of Premature Plugging

As stressed in both my and NMOGA plugging and abandonment expert Harold McGowen's direct testimony, the cumulative effect of the proposed increased financial assurance requirements discussed below will result in operators who cannot afford to remain in business electing to prematurely plug their wells to avoid the assurance amounts required to stay in business.[75] IPANM's direct testimony confirms that premature plugging presents a very real risk for independents and small operators, who operate on thin margins and lack access to large credit facilities.

Premature plugging would not occur in isolation. Several other catalysts in this rulemaking combine to increase the likelihood:

- **Expanded definitions of marginal and inactive wells**: By misclassifying productive or

[74] NMOGA's Emerick Rebuttal Testimony at 7, 9-15, 22, 26, 27.

[75] NMOGA's McGowen Direct Testimony at 6, 7, 8, 10, 13-14, 15, 17-18, 44, 53-54, 57, 60, 97, 98-99, 118-19, 125-27; NMOGA's Arthur Direct Testimony at 3, 4, 11, 13-15, 23, 33-34, 35-36, 38, 40, 43, 49.

strategically important wells as "marginal" or "non-beneficial," the rule creates new triggers that force wells into higher financial assurance categories or into plugging requirements, regardless of their actual utility.[76]

- **Shortened compliance windows under 19.15.25 NMAC**: Reducing the compliance period from 90 to 30 days after 12 months of inactivity removes operational flexibility. Operators will be forced to plug wells quickly if they cannot immediately complete recompletions, infrastructure upgrades, or secure approvals for temporary abandonment.
- **Linking compliance to registration and financial assurance approvals**: As proposed under 19.15.5.9 NMAC, operators who fall even temporarily out of compliance with plugging or flaring requirements could be barred from registering or transferring wells or from releasing assurance. Faced with such uncertainty, many operators will choose to plug wells rather than risk regulatory deadlock.
- **Elimination of blanket bonding**: Forcing operators into per-well bonding at $150,000 per well will create unsustainable financial burdens, especially for portfolios with higher percentages of marginal wells. Many operators will view plugging as the only viable alternative to posting millions in new assurance.
- **Market realities of the surety industry**: As NMOGA surety expert Douglas Emerick testified, the private surety market does not have the capacity to issue the volume of instruments these rules would require. Even operators willing to post additional assurance may find coverage unavailable, leaving premature plugging as the default option.

These catalysts, taken together, would lead to widespread and unnecessary plugging of

[76] NMOGA surety expert Douglas Emerick reached same conclusion of miscategorizing financial assurance required. NMOGA's Emerick Rebuttal Testimony at 19-20.

wells that remain mechanically sound, economically viable under certain price conditions, or strategically valuable for lease retention, reservoir management, or future recovery projects. This outcome would promote waste, diminish royalty and tax revenues to the State of New Mexico, and contradict the Act's conservation mandate.

The Commission should recognize premature plugging as a foreseeable and unavoidable consequence of the proposed amendments. To avoid this outcome, any revisions to financial assurance requirements must be risk-based, phased, and coordinated with existing tools such as the Reclamation Fund. Otherwise, the rules will accelerate plugging of wells that should remain available for beneficial use, harming both operators and the State.

Taken together, the proposed increases create perverse incentives: operators who cannot meet the financial assurance requirements will have no option but to plug otherwise viable wells. Premature plugging represents a direct waste of New Mexico's natural resources and contradicts the Commission's statutory purpose to prevent waste and protect correlative rights. I concur with NMOGA's plugging and abandonment expert, Harold McGowen, and IPANM's technical witnesses that this is not a hypothetical risk—it is a foreseeable and inevitable outcome if these proposals are adopted.

2. Ultra Vires Acquisition Authority under Proposed 19.15.8.9(A) NMAC

Applicants propose to add the following statement at the very end of 19.15.8.9(A) NMAC: "The division shall not approve, and the operator shall not proceed with any proposed drilling or acquisition until the operator has furnished the required financial assurance."[77]

i. OCD Official Comments on Proposed Change

OCD comments that "[t]his change clarifies that an operator cannot drill or acquire new

[77] WELC Prehearing Statement Exhibit 1-C.

wells if they are out of compliance with financial assurance."[78]

ii. Section-Specific Responsive Analysis and Recommendations

I have carefully reviewed the direct and rebuttal testimony of NMOGA legal expert Clayton Sporich. His analysis makes clear that the Commission's and Division's authority derives solely from the Act, which provides no statutory basis for regulating the acquisition or transfer of oil and gas assets.[79] I found Mr. Sporich's testimony persuasive. Mr. Sporich's legal analysis aligns with my personal experience with the Commission and Division's historical application of their limited regulatory authority. The OCC and OCD's role has been limited to reviewing change-of-operator filings for recordkeeping and ensuring that bonding is in place for existing operations—not to condition the consummation of an acquisition itself. To now inject a new pre-acquisition approval power would be ultra vires, invite legal challenge, and chill routine transactions that are essential for asset development and resource recovery.

Requiring OCD approval before acquisitions could also create bottlenecks and unintended consequences, such as discouraging financially stronger companies from acquiring and assuming liability for distressed assets, thereby increasing the risk of wells eventually becoming orphaned. The Commission should reject this amendment as beyond OCD's statutory authority. If concerns exist about ensuring coverage during transfers, those should be addressed through existing mechanisms—such as targeted change-of-operator bonding requirements—not through an unlawful expansion of jurisdiction into asset acquisitions.

Applicants' expert argues for broadening OCD's authority to preemptively capture financial risk in acquisitions. However, he does not reconcile this recommendation with the

[78] Exhibit 15 to OCD's Powell Direct Testimony at slide 16.

[79] NMOGA's Sporich Direct Testimony at ¶¶ 69, 91-106.

absence of statutory authority under the Act. Nor does he address the practical effect of deterring transactions in which stronger companies step in to backstop liabilities. As Mr. Sporich makes clear, statutory amendments would be required for OCD to wield the kind of pre-acquisition authority that Mr. Purvis envisions, and those amendments cannot be achieved by rulemaking alone.

The Commission should reject this amendment as beyond OCD's statutory authority. If concerns exist about ensuring adequate bonding during transfers, they should be addressed through existing mechanisms such as targeted change-of-operator bonding requirements, review of operator compliance history, and reliance on the Reclamation Fund, not through an unlawful expansion of jurisdiction into asset acquisitions. I will return to these alternatives in Section III.D.10, where I present recommendations and alternatives for financial assurance reform that align with the statute and avoid the legal and policy problems presented here.

3. Changes to Active Well Assurance Requirements under Proposed 19.15.8.9(C) NMAC

Applicants propose to amend 19.15.8.9(C) NMAC to: remove the risk-based individual well bonding and instead require $150,000 worth of financial assurance for each active well that is secured individually; and to remove the tiered blanket bonding based on the number of wells secured, and instead require $250,000 of financial assurance if alternative blanket bonding is used, regardless of the number of active wells secured.[80]

i. OCD Official Comments on Proposed Change

OCD comments that "[t]his change increases single well financial assurance for closer alignment with actual OCD plugging costs. This change also establishes a single blanket financial

[80] WELC Prehearing Statement Exhibit 1-C.

assurance category."[81]

ii. Section-Specific Responsive Analysis and Recommendations

OCD's statement assumes that its procurement-driven plugging averages represent a reliable benchmark for setting statewide assurance requirements. As explained earlier in this testimony, those averages are inflated by OCD's reliance on contractor estimates, limited competition, and the inclusion of outlier projects with extraordinary outcomes based on specific circumstances. Using these numbers to reset baseline assurance levels creates an exaggerated and unrepresentative picture of typical plugging costs.

Applicants' experts repeat this same reliance. Mr. Purvis's direct testimony presents data built from OCD's MOSS and vendor estimates,[82] but his own direct testimony concedes that the portfolio is not a random or representative sample, and that it is skewed toward more complex and expensive wells. Applicant witnesses, Mr. Morgan[83] and Mr. Peltz[84] adopt similar assumptions in their direct testimony, emphasizing headline averages without analyzing median costs, trimmed means, or stratification by depth and well type. My analysis of Applicant's witnesses' direct testimony and data indicates that removing even the top 10 percent of cost outliers drops the average far below the $150,000 figure that Applicants cite.

In practice, many New Mexico wells can be and are plugged for far less. My own experience includes plugging programs completed safely and compliantly for $40,000–$60,000

[81] Exhibit 15 to OCD's Powell Direct Testimony at slide 18.

[82] WELC's Purvis Direct Testimony at 38–47, 47–69.

[83] WELC's Morgan Direct Testimony at 40–49.

[84] Direct Testimony of Adam Peltz, JD, WELC Technical Expert, *In the Matter of Proposed Amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC*, No. 24683, OCC, Aug. 8, 2025 (hereinafter "**WELC's Peltz Direct Testimony**"), at 37–52.

per well. IPANM's witnesses similarly confirm that small independents routinely plug wells at costs far below OCD's averages.

Moreover, the creation of a single blanket financial assurance category removes the flexibility that operators and OCD both currently rely on. Under today's framework, blanket bonds are scaled to the size of an operator's portfolio, which allows assurance to be proportional to risk. Collapsing this into a single category would punish small operators with disproportionately high requirements and leave no room for risk-based calibration.

The Commission must not and cannot rely on OCD's inflated cost averages and the Applicants' expert testimony that repeats them without context. Financial assurance should be tied to realistic plugging costs as experienced by industry, not distorted procurement data. As I discuss further in Section III.D.10 below, alternatives such as phased or risk-based assurance, retention of tiered blanket bonds, and recognition of the Reclamation Fund offer more legally sound and economically rational approaches.

4. Changes to Marginal and Inactive Well Assurance Requirements under Proposed 19.15.8.9(D) NMAC

Applicants propose three new financial assurance requirements for marginal wells under proposed 19.15.8.9(D) NMAC. Specifically, operators would be required to provide $150,000 in financial assurance for: 1. Marginal wells subject to a transfer; 2. All marginal wells, regardless of transfer status, beginning January 1, 2028; and 3. Every well in an operator's portfolio—regardless of whether the well is marginal— if marginal and inactive wells together account for 15% or more of the operator's total wells.[85] Although not expressly stated, the proposed definition of "marginal well," analyzed above in Part III.B.4, appears to establish the threshold that would trigger these

[85] WELC Prehearing Statement Exhibit 1-C.

requirements.

i. OCD Official Comments on Proposed Change

OCD comments that "[b]onding requirements for marginal and inactive wells proactively addresses high-risk wells. The single well bonding requirement for operators with 15% of their wells in marginal status addresses operators who present a higher risk of abandoning wells for state plugging. The proposed OCD modification allows operators and the OCD to review marginal well inventories on a yearly basis."[86]

OCD only proposes changing the start date when all marginal wells must be individually secured with $150,000 of financial assurance to begin May 1, 2028, and to require that assurance be updated annually by May 1 of each year.[87]

ii. LFC Recommendation

The LFC Report expressly recommends amending NMSA 1978, § 70-2-14 to "specify that wells producing below certain thresholds set in rule require additional financial assurance." In my view—though I am not an attorney—this recommendation implicitly recognizes the accuracy of Mr. Sporich's statutory interpretation: the current statute does not authorize financial assurance requirements tied to production levels. Rather, it only permits financial assurance to be calibrated to risk-based factors such as well depth.

This distinction matters. Marginal production is not synonymous with elevated risk. As I explained above in Part III.A.2.i., based on my own field experience, marginal wells are often low-risk and can be safely managed without incident. Equating low production with high risk not only misreads the statute, it also mischaracterizes how wells actually perform in practice.

[86] Exhibit 15 to OCD's Powell Direct Testimony at slide 17.

[87] Exhibit 15 to OCD's Powell Direct Testimony at slide 17.

iii. Section-Specific Responsive Analysis and Recommendations

The new marginal well bonding category is an unlawful expansion of OCD's financial assurance authority, which conflicts with my personal experience with New Mexico oil and gas well bonding categories. I have reviewed the direct and rebuttal testimony filed by NMOGA legal expert Clayton Sporich explaining why the Commission and Division's enabling statute, the New Mexico Oil and Gas Act, does not authorize separate financial assurance categories based on production levels and is silent on assuring marginally producing wells. And the amounts will quickly add up to exceed the legislative cap. For example:

- For an operator with 1,000 wells, including 150 "marginal" wells, currently covered under an existing $250,000 bond, the required financial assurance increases to $150,000,000—a 60,000% increase and 600 times the existing legislative maximum.

- For an operator with five (5) wells, including one (1) "marginal" well, their current $50,000 bond under WELC's proposal becomes $750,000—an increase by a multiple of 15 (1,500%) and three (3) times the legislatively set maximum.

The Commission should reject the proposed amendment to 19.15.8.9(C) NMAC. If changes to active well bonding are considered, they should preserve a tiered and risk-based approach that reflects actual well characteristics and operational realities. At minimum, any adjustments must be tied to statutory authority and should not be pegged to inflated cost averages derived from OCD's contracting inefficiencies.

5. Changes to Financial Assurance Requirements for Inactive Wells and Wells in Pending, Approved, or Expired Temporarily Abandoned Status under Proposed 19.15.8.9(E) NMAC

Applicants propose significant modifications to the financial assurance framework under 19.15.8.9(E) NMAC. Specifically, their proposal would: 1. Extend financial assurance requirements beyond inactive wells to also include wells in pending, approved, or expired temporarily abandoned status; 2. Replace the current risk-based approach to individual well

bonding with a flat requirement of $150,000 in financial assurance for each inactive or temporarily abandoned well; and 3. Abolish the existing tiered blanket bonding structure, which calibrates the assurance amount to the number of wells covered, and instead impose a uniform $250,000 blanket bond regardless of the number of inactive or temporarily abandoned wells included.[88]

These changes, taken together, would impose a one-size-fits-all regime that disregards well-specific risks and operational realities, while also creating the potential for blanket bonding obligations to exceed the statutory cap.

i. OCD Official Comments on Proposed Change

OCD comments that "[t]his change removes blanket inactive well bonding and replaces it with single well bonding. This change more accurately assesses the bonding for wells with higher risk."[89]

ii. Section-Specific Responsive Analysis and Recommendations

The direct and rebuttal testimony filed by NMOGA legal expert Clayton Sporich also explains how the Act, (i) prohibits the proposed blanket financial assurance for inactive and pending, approved, and expired temporarily abandoned wells totaling to an average of $150,000 for every well secured will quickly exceed the hard cap of $250,000 on blanket assurance imposed by the statute, and (ii) is actually silent on specific assurance for temporarily abandoned wells. By requiring $150,000 in coverage for each inactive or temporarily abandoned well, the proposed rule would immediately exceed this cap in almost every case. Even a modest operator with just three inactive wells would be forced above the statutory ceiling, and larger operators would face tens of millions in obligations, an outcome flatly inconsistent with the statute.

[88] WELC Prehearing Statement Exhibit 1-C.

[89] Exhibit 15 to OCD's Powell Direct Testimony at slide 19.

Second, the Act is silent on specific financial assurance for temporarily abandoned wells. Historically, OCD has required demonstration of mechanical integrity and compliance with temporary abandonment provisions under Part 25 of the NMAC, but has not imposed separate bonding requirements for temporarily abandoned wells. The proposed amendment attempts to create an entirely new category of financial assurance by rule, despite the Legislature never granting such authority. As explained by Mr. Sporich, this is an unlawful expansion of jurisdiction.

Applicants' experts—Purvis,[90] Morgan,[91] and Peltz[92]—support this expansion by pointing to alleged risks associated with idle and temporarily abandoned wells. Yet their testimony relies on overstated averages and on conflating inactive wells with true orphan wells. They do not address the statutory cap or the absence of legislative authority to create new categories of assurance.

In my experience, blanket financial assurance has served its purpose well, ensuring coverage across portfolios without forcing operators to post excessive amounts unrelated to actual risk. Removing blanket options in favor of per-well bonding will not improve environmental protection but will accelerate premature plugging, reduce investment, and ultimately shrink the conservation tax base that funds the Reclamation Fund.

The Commission should reject the proposed amendment as inconsistent with statutory authority. If concerns exist about specific inactive or temporarily abandoned wells, they should be addressed through targeted case-by-case enforcement tools, mechanical integrity demonstrations, agreed compliance schedules, or supplemental bonding requirements under existing authority, not through a blanket mandate that exceeds statutory caps and creates unauthorized categories of

[90] WELC's Purvis Direct Testimony at 47–69.

[91] WELC's Morgan Direct Testimony at 43–49

[92] WELC's Peltz Direct Testimony at 40–52

assurance. I return to this issue in Section III.D.10, where I outline lawful, risk-based alternatives that preserve the purpose of blanket bonding while ensuring OCD retains discretion to address true problem wells.

6. Changes to Incomplete Blanket Assurance Requirements under Proposed 19.15.8.9(F) NMAC

Applicants propose to amend the incomplete blanket financial assurance requirements under 19.15.8.9(F) NMAC to require $150,000 of individual well financial assurance for every well that is not covered by existing blanket bonds, "in an amount as determined by Section 19.15.8.9 NMAC, subject to any limitations in Section 70-2-14 NMSA 1978."[93]

i. OCD Official Comments on Proposed Change

OCD comments that "[t]his section adds clarity on one well bonding vs blanket bonding requirements."[94]

ii. Section-Specific Responsive Analysis and Recommendations

While OCD describes this amendment as a clarification, the actual effect is a major shift. The proposed change would require $150,000 of individual financial assurance for every well not covered by an existing blanket bond, effectively eliminating the flexibility that incomplete blanket financial assurance was designed to provide. The proposed language also references Section 70-2-14 but does not reconcile the conflict between that statutory provision—which caps blanket bonding at $250,000, and the new requirement that every uncovered well be bonded at $150,000.

Applicants' experts attempt to justify this expansion. Mr. Purvis asserts that incomplete blanket coverage creates gaps in financial assurance and argues that requiring per-well coverage

[93] WELC Prehearing Statement Exhibit 1-C.

[94] Exhibit 15 to OCD's Powell Direct Testimony at slide 20.

"closes the loophole."[95] Mr. Morgan[96] and Mr. Peltz[97] make similar points, suggesting that the Act allows OCD discretion to increase coverage where blanket bonds are insufficient. But their testimony does not acknowledge that the Act expressly limits the total blanket amount to $250,000, and that imposing $150,000 on every uncovered well would quickly exceed the statutory ceiling. Nor do they engage with the purpose of incomplete blanket assurance, to provide proportional coverage while recognizing that wells differ in risk and cost.

The Commission should reject the proposed amendment to 19.15.8.9(F) NMAC. Incomplete blanket assurance serves an important role and should be preserved. If OCD seeks additional clarity, it should revise the rule to confirm that incomplete blanket bonds may be supplemented by individual well assurance in proportion to risk, but not to mandate across-the-board $150,000 coverage. As I discuss further in Section III.D.10, alternatives such as risk-based supplementation, phased increases, and reliance on the Reclamation Fund would provide true clarity while staying within statutory authority.

7. Ultra Vires Annual Inflation Adjustment under Proposed 19.15.8.9(G) NMAC

Applicants propose to add a requirement that all financial assurance amounts must be annually increased to reflect inflation, as determined by the U.S. Department of Labor's Consumer Price Index, under 19.15.8.9(G) NMAC.[98]

i. OCD Official Comments on Proposed Change

OCD comments that this "ensures bonding values retain real-world financial adequacy over

[95] WELC's Purvis Direct Testimony at 70–71.

[96] WELC's Morgan Direct Testimony at 59-60.

[97] WELC's Peltz Direct Testimony at 60 and on.

[98] WELC Prehearing Statement Exhibit 1-C.

time and don't become stagnant."[99]

ii. Section-Specific Responsive Analysis and Recommendations

Several witnesses for WELC portray the CPI escalator as a routine or "housekeeping" measure that merely preserves the value of existing bonding levels. That characterization is incomplete. As IPANM and other industry witnesses noted, bonding is already calibrated to specific well types, depths, and risk factors established by statute. Mr. Purvis, for example, testified that inflation adjustments are necessary to "avoid erosion of coverage," but his approach overlooks the Commission's statutory duty to consider well-specific characteristics and actual plugging costs in setting financial assurance requirements. By treating bonding as a fungible dollar amount, automatically indexed to CPI, WELC's proposal sidesteps those statutory factors.

Moreover, testimony from operators and trade associations underscores that plugging costs are not driven by general consumer price trends. They depend on technical conditions, such as casing size, depth, surface equipment, and access, that vary significantly from well to well. Applying a CPI escalator to every bond without reference to these factors risks producing obligations that diverge substantially from real plugging costs, particularly for marginal wells. As Mr. Emerick observed in his rebuttal, automatic escalators also raise disclosure and financial risk concerns, since they introduce annual uncertainty into operators' liability profiles without a corresponding review of plugging outcomes or costs.[100]

In short, an automatic CPI escalator is not a neutral housekeeping measure—it is a legally

[99] Exhibit 15 to OCD's Powell Direct Testimony at slide 21.

[100] NMOGA's Emerick Rebuttal Testimony at 2 ("Based on my own experience in the surety sector and observations of how similar rulemakings have unfolded in other jurisdictions, I anticipate that these proposals would strain private bonding capacity, escalate collateral demands, and ultimately destabilize operators across the board. In short, what Applicants characterize as a solution to the orphan well problem risks creating broader systemic problems that undermine the very goals of responsible regulation."); NMOGA's Emerick Direct Testimony at 12 ("As bonding limits increase, fewer surety providers will be willing to issue non-cancelable bonds. In many cases, issuing such bonds will require internal escalation and approval within the surety company, introducing additional delays and uncertainty.")

dubious shortcut that strips the Commission of its discretion, ignores statutorily required well-specific factors, and risks imposing costs untethered from actual plugging realities. The Commission already has the authority, and the obligation, to revisit financial assurance requirements through transparent rulemaking based on current data and stakeholder input. If adjustments are needed, they should utilize that deliberate process, not impose a rigid inflationary formula that compounds unpredictably year after year. A periodic review mechanism, grounded in evidence and public participation, would preserve both the Commission's statutory authority and the industry's ability to plan responsibly.

8. Additional Requirements for Cash and Surety Bonds under Proposed 19.15.8.10(A) NMAC

Applicants propose to amend the additional requirements for cash and surety bonds under 19.15.8.10 NMAC to require that any surety used must be listed in the U.S. Department of Labor's Treasury Circular 570, in addition to the existing requirements.[101]

i. OCD Official Comments on Proposed Change

OCD comments that "[r]equiring surety bond issuers to be on Treasury Circular 570 enhances financial reliability of guarantees."[102]

ii. Section-Specific Responsive Analysis and Recommendations

Although framed as a matter of maintaining financial adequacy, this proposal is not authorized by the Act. The statute sets fixed ceilings for blanket assurance amounts and prescribes how financial assurance must be provided. Nowhere does the Act authorize the Commission or Division to impose automatic annual adjustments tied to inflation. As NMOGA legal expert

[101] WELC Prehearing Statement Exhibit 1-C.

[102] Exhibit 15 to OCD's Powell Direct Testimony at slide 22.

Clayton Sporich explains, such an adjustment mechanism would constitute an ultra vires expansion of authority, effectively creating a new category of financial assurance obligations without legislative approval.

Applicants' experts attempt to justify this measure by citing the need for assurance amounts to keep pace with costs. Mr. Purvis[103] suggests that without inflation indexing, assurance levels will erode in value and eventually become insufficient. Mr. Morgan[104] makes a similar point, claiming that periodic Commission rulemakings are insufficient to keep bonding aligned with cost escalation. But these arguments sidestep the statutory framework. The Legislature set specific dollar figures in the Act and did not delegate authority to OCD to index those amounts. If inflation adjustments are to be adopted, they must come through legislative amendment, not agency rulemaking.

From a policy standpoint, automatic indexing also creates significant unpredictability for operators. Capital planning depends on knowing assurance obligations with certainty. Tying bonding levels to the Consumer Price Index introduces variability that is beyond operator control and unmoored from actual plugging costs, which are influenced far more by market conditions, service availability, and well characteristics than by general consumer prices. In my experience, industry costs have fluctuated in both directions depending on rig availability, oil prices, and service market conditions—factors not captured by the CPI.

The Commission should reject the proposed amendment to 19.15.8.9(G) NMAC as ultra vires and unnecessary. The statutory framework does not permit automatic inflation indexing, and plugging costs are better addressed through targeted adjustments based on actual data considered

[103] WELC's Purvis Direct Testimony at 71-73.

[104] WELC's Purvis Direct Testimony at 60-62.

in periodic rulemakings. I return to this point in Section III.D.10, where I recommend lawful and risk-based alternatives for updating assurance requirements if and when cost data demonstrates a genuine need.

9. Additional Requirements for Release of Financial Assurance under Proposed 19.15.8.12(B) NMAC

Applicants also propose to amend 19.15.8.12(B) NMAC,[105] but the proposed amendment speaks to well transfers between operators. Accordingly, my analysis of this proposed amendment is discussed with the proposed changes to well operator requirements below in Part III.E.

10. Responsive Financial Assurance Recommendations and Alternatives

Considering my analysis above and in response to the direct testimony filed by Applicants and OCD, and the proposals contained therein, I recommend the following balanced alternatives that honor the spirit of Applicants' rulemaking proceeding while adequately considering and addressing industry's interests and concerns regarding implementation.

i. Phased or Risk-Based Assurance Increases

I suggest phased or risk-based bonding increases rather than immediate one-size-fits-all requirements that apply the: (a) same $150,000 level of individual well financial assurance to inactive wells under proposed 19.15.8.9(E) NMAC, "marginal well" under proposed 19.15.8.9(D) NMAC, and active wells under proposed 19.15.8.9(C) NMAC; and (b) the same $250,000 blanket financial assurance amount to any number of both inactive or active wells.

Applicants' proposal would eliminate the risk-based individual well and tiered blanket bonding requirements already in place under the existing regulations. These tiers were carefully designed to account for differences in well risk, depth, and operator scale. Removing them in favor

[105] WELC Prehearing Statement Exhibit 1-C.

of a flat per-well requirement ignores both statutory limits and practical realities.

In my experience, phased approaches work. For example, Wyoming and Colorado have adopted systems where higher bonding amounts are phased in over several years or calibrated to well count, depth, or inactivity status. This provides operators time to adjust capital budgets, while still strengthening financial assurance coverage. A similar phased or risk-adjusted approach in New Mexico would achieve the goals of this rulemaking without destabilizing the surety market or forcing premature plugging.

As explained above, applicants would eliminate the risk-based individual well and tiered blanket binding requirements already in place under the existing regulations.

ii. Flexibility Tied to Well Risk and Operator Compliance History

In addition to phased or risk-based bonding increases, any changes should also add flexibility in financial assurance compliance options, which could be tied to operator compliance history and well risk. Operators with proven compliance records and strong safety performance should be able to qualify for reduced bonding or blanket bond options. This concept is consistent with the testimony of Applicant witness, Mr. Morgan[106] who acknowledged that financial assurance systems can be designed to incorporate compliance incentives, though he favored stricter baselines.

Flexibility could also extend to recognition of well-specific conditions. For example, a shallow gas well with full mechanical integrity presents a very different plugging risk than a deep, sour oil well with known casing issues. Treating them identically under a rigid per-well requirement makes little sense. Allowing OCD to adjust bonding requirements based on compliance history, well condition, and depth ensures that assurance levels remain proportional to

[106] WELC's Morgan Direct Testimony at 64-65.

actual risk, rather than simply reflecting inflated averages.

The Commission should reject the one-size-fits-all approach advocated by Applicants and OCD and instead adopt phased and risk-based assurance adjustments that preserve flexibility for good actors and account for actual well risk. This would harmonize New Mexico's framework with other producing states, maintain incentives for responsible operators, and avoid premature plugging while still enhancing the Division's ability to address true problem wells.

iii. Refining Targeted Enforcement Mechanisms Like ACOIs Instead of Discarding Tools

I recommend broader use of Agreed Compliance Orders (ACOIs) to manage plugging obligations over time, and to allow entities to address plugging obligations in order of priority of completion, as indicated by the agency. To that end, I recommend collaborative industry–OCD prioritization of wells for plugging based on environmental risk, not just production metrics. As explained in my direct testimony and in Part III.A.2.iii.-3. above and Part III.F. below, wells can present beneficial use beyond just production and injection. Based on my experience in the field, I support targeted enforcement mechanisms like ACOIs and further urge OCC and OCD to refine rather than discard these tools. ACOIs allow regulators to direct operator resources to the highest-risk wells first, while recognizing that not all wells require immediate plugging. For example, an operator may have a dozen idle wells, but only one with a known casing leak. Under an ACOI, OCD could require that the well be plugged immediately while setting a schedule for the others. This prioritization approach is far more effective and protective of the environment than imposing across-the-board deadlines or blanket financial assurance triggers that make no distinction between low-risk and high-risk wells.

Applicants' proposal to replace ACOIs with rigid thresholds eliminates flexibility and undermines the Division's ability to target its oversight where it matters most. In my opinion, this

is a step backward. The testimony of Applicants' experts (Purvis, pp. 47–69; Morgan, pp. 43–49; Peltz, pp. 40–52) repeatedly conflates inactive wells with problem wells, but as both my experience and IPANM's testimony confirm, many inactive wells remain mechanically sound, hold leases, or serve strategic purposes. They should not be forced into premature plugging simply because they do not meet a volumetric production test.

The Commission should not discard enforcement tools like ACOIs. Instead, it should expand their use and refine their criteria to ensure that plugging orders are based on environmental risk and well integrity. This approach aligns with the Act's mandate to prevent waste, protect correlative rights, and ensure conservation of resources, while avoiding the unnecessary economic harm that rigid one-size-fits-all rules would cause.

iv. Enhanced Reporting or Certification for Inactive Wells Only

I suggest enhanced reporting or certification for inactive wells as a more efficient regulatory tool than increased bonding and paperwork. Targeted reporting would give OCD the information it needs to evaluate well condition and operator management without imposing unnecessary financial burdens on all wells. For example, operators could be required to submit an annual certification for each inactive well confirming its mechanical integrity, lease or unit status, and future development or plugging plans. This reporting could be supported by simple documentation, such as Form C-145 idle well reports, pressure test results, or maintenance logs already kept in the ordinary course of business.

Applicants propose variable bonding that only increases paperwork and administrative processes for operators and OCD Staff. OCD is already inundated with documentation. We recommend shifting the focus from additional bonding burdens to certification and enhanced reporting, which would alleviate unnecessary financial assurance filings and OCD resources for

staff review. Enhanced reporting would allow OCD to focus on the relatively small subset of wells that truly pose a risk of becoming orphaned, while ensuring that operators remain accountable for demonstrating that inactive wells are being responsibly maintained. This approach is far more consistent with the conservation mandate than imposing a $150,000 per-well bonding requirement on every inactive, marginal, or temporarily abandoned well, regardless of risk.

Applicants' experts, particularly Mr. Morgan[107] argue that across-the-board financial assurance is necessary to ensure coverage. In my experience, this conclusion overlooks the fact that most inactive wells are monitored, mechanically sound, and capable of future return to production. Enhanced certification provides the same oversight benefit without diverting capital away from development and plugging programs that directly reduce risk.

The Commission should adopt enhanced reporting or certification for inactive wells as an alternative to across-the-board bonding. This would give OCD the tools it needs to track well condition, ensure accountability, and target enforcement actions, while avoiding unnecessary costs that would lead to premature plugging and reduced investment in New Mexico.

v. Using the Reclamation Fund as Designed

As noted above, the Reclamation Fund is just one of many factors that Applicants ignore – like the fact that industry plugging costs are typically lower than OCD's, undermining Applicants' reliance on LFC Averages. Any serious assessment of financial assurance must take account of the Fund's role. The Fund was created in 1977 specifically to ensure that orphan wells and associated surface facilities are plugged and remediated when no viable operator exists. It is supported by a conservation tax that increases as commodity prices rise, meaning the Fund is designed to grow strongest during the very periods when orphan well risk is greatest.

[107] WELC's Morgan Testimony at 64–65.

I have also reviewed the testimony of IPANM technical witness Mark Murphy, who emphasizes that the Reclamation Fund is being overlooked in this rulemaking record. Mr. Murphy points out that the Fund is financially robust, with revenue streams directly tied to conservation tax receipts, and that it provides an important measure of protection against orphan well risk without imposing new, duplicative financial burdens on operators. His testimony makes clear that the Fund is already doing the job that Applicants claim is unmet.

Applicants' experts, such as Mr. Morgan, argue that higher assurance levels are needed because the Reclamation Fund balance is insufficient compared to worst-case orphan well estimates.[108] In my opinion, that conclusion overstates the risk and undervalues the Fund's structural design. It also ignores the fact that most plugging costs are borne by operators, not the State. The Fund exists as a safety net, not as the primary means of financing plugging and abandonment across New Mexico. Expanding bonding obligations as if the Fund did not exist is duplicative, unnecessary, and economically harmful.

The Commission should recognize the Reclamation Fund as a critical part of the financial assurance system and reject Applicants' attempt to disregard it. Bonding requirements must be considered alongside the Fund's revenue stream and statutory purpose. As Mr. Murphy testified, the Fund should be used as designed—targeted to true orphan wells—while operator bonding remains calibrated to risk. Overlapping the two systems through across-the-board $150,000 per-well requirements will weaken, not strengthen, New Mexico's overall conservation framework by discouraging responsible operators, reducing production, and eroding the conservation tax revenues that sustain the Fund itself. As of fiscal year 2024, the Oil and Gas Reclamation Fund Report notes another year of $0 in OCD bond forfeitures. The Oil and Gas Reclamation Fund

[108] WELC's Morgan Testimony at 65–68.

FY2024 Report is attached hereto as Appendix A.

vi. Bipartisan Support Has Been Shown for Relying on the Proven Value of Reserves or Current Interest Holder's or Holders' Creditworthiness to Qualify for Exemption from Supplemental Financial Assurance to Cover Federal Offshore Decommissioning Obligations

I have reviewed the rebuttal testimony of surety expert Douglas Emerick and wanted to note why his discussion of and recommendation that the federal offshore oil and gas financial assurance regime's consideration of the current interest holder's or current co-holders' credit worthiness or the proven value of the reserves is especially instructive and has been shown to have bipartisan support. In 2024, the Biden Administration updated the federal government's oil and gas financial assurance regulations for onshore leasing pursuant to the Mineral Leasing Act and offshore leasing pursuant to the Outer Continental Shelf Lands Act.

But the 2024 final offshore rulemaking actually finalized a proposal from 2020 under the second Trump Administration. 85 Fed. Reg. 65904 (prop. Oct. 16, 2020). Notably, when Biden's DOI its final rule in 2024, it retained exceptions under the Trump DOI's 2020 proposed rule, exempting operators from providing supplemental financial assurance to BOE to cover offshore decommission obligations in excess of the base level of bonding they currently have on file if either the operator or a current co-interest holder in the lease, ROW, or RUE had investment grade credit rating or for leases if the proven reserves had a 3:1 ratio to the estimated decommissioning costs. *Risk Management and Financial Assurance for OCS Lease and Grant Obligations*, 89 Fed. Reg. 31544 (Apr. 24, 2024). Mr. Emerick explains these exemptions in his rebuttal testimony.[109]

This shows that those exemption mechanisms have bipartisan support. Contrast that with the proposal under the 2020 proposed rule to consider predecessor interest holders (who exited the

[109] NMOGA's Emerick Rebuttal Testimony at 24-25.

lease, ROW, or RUE but are still in the chain of title) creditworthiness, which was proposed by Trump's DOI but abandoned by Biden's DOI under the final rule. Although the second Trump Administration intends to repeal some parts of the 2024 final rule, portions originally proposed in 2020 (i.e., the creditworthiness and proven reserve exemptions) will likely be retained.[110]

Currently, the DOI is even further along in its proposed repeal of the increases to onshore BLM financial assurance, discussed above in Parts III.A.1.vi. and III.D.1.iv., which were also finalized in 2024. But because BLM's assurance requirements had not been updated for several decades, the federal onshore oil and gas financial assurance regime does not give as much insight into what assurance mechanisms have support on both sides of the political aisle.

E. Proposed Changes to Well Operator Requirements under 19.15.9. NMAC

1. Assessing Applicants' Position on Assessing Risk at Transfer and Why Proposed Changes are Necessary

Applicants claim that additional operator requirements under 19.15.9 NMAC are necessary to "assess risk at transfer," over and above the sweeping financial assurance changes proposed under 19.15.8 NMAC. For example, Mr. Alexander argues that without stricter operator transfer provisions, the Division cannot adequately manage the risk of wells being transferred to undercapitalized operators.[111] Similarly, Mr. Morgan,[112] Mr. Purvis,[113] and Mr. Peltz[114] endorse

[110] Jana Grauberger & Kathleen L. Doody, *DOI to Overhaul BOEM's 2024 Risk Management and Financial Assurance Regulations for Offshore Leases and Grants*, Energy L. Blog (May 5, 2025), https://www.theenergylawblog.com/2025/05/articles/uncategorized/doi-to-overhaul-boems-2024-risk-management-and-financial-assurance-regulations-for-offshore-leases-and-grants/ (noting credit worthiness and proven reserves exemptions likely to be retained).

[111] WELC's Alexander Direct Testimony at 28-29.

[112] WELC's Morgan Direct Testimony at 68–69, 74–83.

[113] WELC's Purvis Direct Testimony at 73–75.

[114] WELC's Peltz Direct Testimony at 60-63.

layering transfer restrictions on top of new bonding obligations, suggesting that financial assurance reforms alone do not go far enough.

In my view, this position is unsupported and duplicative. The financial assurance reforms already proposed by Applicants, if adopted, would dramatically increase bonding obligations for all categories of wells. That system alone would address the stated concern by ensuring that operators, regardless of size, must secure significant financial assurance coverage before acquiring wells. Adding new operator transfer restrictions on top of those increases would not provide incremental environmental protection but would create bottlenecks, regulatory delays, and unnecessary uncertainty for routine transactions.

In practice, OCD already has tools to address transfer risk. The Division reviews change-of-operator filings, verifies that appropriate bonding is in place, and has the authority to issue compliance orders or require corrective action if deficiencies exist. Strengthening financial assurance requirements, even in a risk-adjusted manner, further bolsters this review. Creating an additional layer of pre-transfer discretion, without statutory authorization, invites inconsistent application and litigation risk.

Applicants' experts also fail to address the unintended consequences of their approach. By raising barriers to well transfers, the proposed amendments would discourage financially stronger companies from acquiring and remediating distressed assets. That outcome would increase, rather than decrease, the risk of wells eventually becoming orphaned. It also conflicts with the conservation mandate, since asset transfers often extend the productive life of wells and facilitate responsible development.

The Commission should reject the Applicants' claim that new operator transfer restrictions are "necessary" in addition to financial assurance changes. To the extent transfer risk requires

additional oversight, it should be addressed through existing statutory tools: verification of bonding at transfer, targeted compliance reviews, and use of agreed compliance orders where needed. Expanding OCD's authority into pre-transfer approval of acquisitions or imposing duplicative requirements would be ultra vires and counterproductive.

2. Changes to Operator Registration Requirements under Proposed 19.15.9.8(B) NMAC

Applicants propose amending 19.15.9.8(B) NMAC to read as follows:

> Prior to commencing operations, an operator shall provide to the division a certification by an officer, director, or partner that the new operator is in compliance with federal and state oil and gas laws and regulations in each state in which the new operator does business.
>
> a disclosure of any officer, director, partner in the new operator or person with an interest in the new operator exceeding 25 percent, who is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC;
>
> and a disclosure whether the new operator is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC.[115]

Cross referenced 19.15.5.9(A) NMAC requires: compliance with all financial assurance requirements under 19.15.8 NMAC; no OCC or OCD orders issued after notice and a hearing that find violation of an order requiring corrective action; and no penalty assessments unpaid for more than 30 days after issuance of the order assessing the penalty; but which currently allows a certain number of wells be out of compliance with 19.15.25(8) NMAC but Applicants propose to remove this provision to require all wells registered comply with 19.15.25.8 NMAC requiring permanent or temporary plugging and abandonment of wells if one of three triggering events is met.

i. OCD Official Comments on Proposed Changes

[115] WELC Prehearing Statement Exhibit 1-D.

OCD notes that "requiring detailed disclosures and compliance status prevents individuals from evading liabilities by operating different companies."[116]

ii. Responsive Analysis and Recommendations

While preventing evasion of liabilities is a legitimate regulatory goal, the proposed amendments to 19.15.9.8(B) NMAC go well beyond what is necessary to achieve that purpose. The new requirements would obligate operators to provide detailed disclosures of ownership interests, corporate affiliations, and compliance histories across multiple states for any person with more than a 25 percent interest in the operator. In practice, this is duplicative, overly burdensome, and inconsistent with the limited purpose of operator registration.

First, OCD already has authority under existing rules to enforce compliance against operators of record. The Division can require supplemental bonding, initiate enforcement hearings, and issue compliance orders if a registered operator is in violation. Adding a requirement that every affiliated entity in every jurisdiction be disclosed and vetted is administratively unworkable and far exceeds what is needed to ensure accountability in New Mexico.

Second, the proposed cross-reference to 19.15.5.9(A) NMAC eliminates the current allowance for a limited number of wells to be out of compliance under 19.15.25.8 NMAC. This effectively requires perfect compliance at all times as a condition of registration. As I explained in Part III.D, such a standard is unrealistic. Even well-run operators may have a handful of wells temporarily out of compliance due to workover schedules, infrastructure delays, or pending appeals. To tie registration to absolute compliance, without recognition of agreed compliance orders or temporary circumstances, creates uncertainty and risk that will discourage investment

[116] Exhibit 15 to OCD's Powell Direct Testimony at slide 25.

and delay ordinary business transactions.

Applicants' expert Mr. Morgan argues that more stringent disclosure and registration requirements are necessary to prevent "bad actors" from re-entering the market under new entities.[117] However, this concern can be addressed through narrower means. For example, OCD could require disclosure of compliance history in New Mexico only, or limit additional disclosures to principals with documented enforcement actions rather than every officer, director, or 25 percent shareholder across all states. These more targeted measures would prevent evasion while avoiding unnecessary burdens on responsible operators.

The Commission should reject the proposed changes to 19.15.9.8(B) NMAC as drafted. If any revisions are considered, they should be narrowly tailored to the legitimate objective of preventing evasion of liability. A more balanced approach would be to (1) require disclosure of prior enforcement actions in New Mexico only, (2) limit disclosures to principals with direct management or control over operations, and (3) recognize agreed compliance orders as evidence that an operator is actively addressing obligations. This approach preserves accountability without imposing excessive or duplicative requirements on all operators.

3. Changes to Operator Registration Requirements under Proposed 19.15.9.8(C) NMAC

Under 19.15.9.8(C) NMAC, Applicants would add grounds for OCD to deny operator registration if "the applicant is out of compliance with federal and state oil and gas laws and regulations in each state in which the applicant does business" or "is not in good standing with the New Mexico Secretary of State."[118]

[117] WELC's Morgan Direct Testimony at 69–72.

[118] WELC Prehearing Statement Exhibit 1-D.

i. OCD Official Comments on Proposed Changes

OCD notes these changes would "allows the state to review compliance history to adequately provide protection from companies that have a track record of being out of compliance."[119]

ii. Responsive Analysis and Recommendations

Although the goal of screening for repeat violators is understandable, the proposed amendment to 19.15.9.8(C) NMAC is overbroad and impractical. By conditioning registration on compliance with federal and state oil and gas laws "in each state in which the applicant does business," the proposal effectively requires OCD to review and evaluate regulatory compliance records nationwide. This far exceeds the scope of the Division's statutory authority, which is limited to oil and gas operations in New Mexico.

Applicants' expert Mr. Morgan argues that without this provision, companies with poor compliance histories in other states could re-enter New Mexico under new entities and perpetuate the same problems.[120] While that concern has merit, it can be addressed through narrower and more administrable means. For example, OCD can require disclosure of prior enforcement actions in New Mexico and consider those actions in assessing registration or transfer requests. It may also coordinate with other state regulators on a case-specific basis where a material enforcement history is known. But requiring proof of compliance "in each state" is both unenforceable and legally dubious, as it implies OCD would sit in judgment of other states' regulatory records and enforcement decisions.

Similarly, conditioning registration on being "in good standing with the New Mexico

[119] Exhibit 15 to OCD's Powell Direct Testimony at slide 26.

[120] WELC's Morgan Direct Testimony at 72–73.

Secretary of State" conflates corporate filing status with regulatory compliance. An entity may fall temporarily out of good standing for administrative reasons such as late annual report filings or processing delays, none of which indicate a failure to meet plugging, financial assurance, or environmental obligations. Denying operator registration on that basis would be arbitrary and could impede routine business operations.

The Commission should reject the proposed amendment to 19.15.9.8(C) NMAC as drafted. If the goal is to prevent known bad actors from registering, a more narrowly tailored provision should require disclosure of material enforcement actions in New Mexico and allow OCD to consider those in evaluating applications. Broader nationwide compliance reviews and corporate standing checks would add little protection while creating substantial administrative burdens and potential legal challenges.

4. Changes to Operator Registration Requirements under Proposed 19.15.9.8(E) NMAC

Applicants would amend 19.15.9.8(E) NMAC to require that an operator annually certify that its current and past officers, directors, and partners, and its current and past ownership interest in other operators, are in compliance consistent with:

- Proposed 19.15.9.8(C)(2) NMAC, requiring an operator applying for registration to be in compliance with federal and state oil and gas laws and regulations in each state in which the applicant does business; and

- Renumbered 19.15.9.8(C)(3) NMAC, requiring an applying operator cannot have an officer, director, partner, or 25% or more interest holder who is or was within the past five years an officer, director, partner or 25% or more interest holder in another entity that is not currently in compliance with 19.15.5.9(A) NMAC.[121,122]

[121] WELC Prehearing Statement Exhibit 1-D.

[122] As previously stated in Part III.E.2. above, 19.15.5.9(A) NMAC requires: compliance with all financial assurance requirements under 19.15.8 NMAC; no OCC or OCD orders issued after notice and a hearing that find violation of an order requiring corrective action; and no penalty assessments unpaid for more than 30 days after issuance of the order assessing the penalty; but which currently allows a certain number of wells be out of compliance with 19.15.25.8 but

i. OCD Official Comments on Proposed Changes

OCD notes "[r]equiring detailed disclosures of affiliated business entities and compliance status prevents circumvention by 'bad actors.'"[123]

ii. Responsive Analysis and Recommendations

While the stated goal of preventing circumvention is understandable, the proposed changes to 19.15.9.8(E) NMAC are unreasonably broad, duplicative, and would impose ongoing burdens that go well beyond what is necessary to achieve accountability. The amendment would require operators to annually certify that not only the operator itself, but also its current and past officers, directors, partners, and any 25 percent or greater ownership interest in other operators, are in compliance with state and federal oil and gas laws in each jurisdiction where they do business.

Applicants' expert Mr. Morgan supports this approach by arguing that it ensures transparency and prevents operators with poor compliance histories from re-entering the market under different names.[124] However, this logic overreaches. First, OCD's statutory authority extends to operations in New Mexico, not to policing compliance in every other state. Requiring annual certifications about compliance "in each state" effectively imposes on OCD the role of auditor of nationwide compliance records, an obligation it does not have the resources or jurisdiction to fulfill.

Second, extending the requirement to "current and past" officers, directors, and partners over a five-year period creates administrative complexity and uncertainty. Corporate management structures change frequently. Tying operator registration to the compliance status of former officers

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Applicants propose to remove to require all wells registered comply with 19.15.25.8 NMAC requiring permanent or temporary plugging and abandonment of wells if one of three triggering events is met.

[123] Exhibit 15 to OCD's Powell Direct Testimony at slide 27.

[124] WELC's Morgan Direct Testimony at 73–74.

or minority interest holders, many of whom may have had little or no operational control, imposes an unfair burden on current operators and will likely discourage investment in New Mexico.

Third, annual certifications of this scope are unnecessary given the existing tools OCD already has at its disposal. The Division can review New Mexico compliance history directly, verify that financial assurance is in place, and enforce violations through hearings, compliance orders, or agreed compliance schedules. If the concern is truly with "bad actors," OCD could narrowly require disclosure of enforcement actions against principals who exercised direct control over operations in New Mexico, without sweeping in former affiliates and distant business relationships.

The Commission should reject the proposed amendment to 19.15.9.8(E) NMAC as drafted. If any revision is considered, it should be narrowed to require annual disclosure of (1) the operator's own compliance history in New Mexico, and (2) material enforcement actions against current officers or directors with direct management authority. Expanding beyond these limits will not materially improve accountability, but it will create uncertainty and administrative burdens that harm responsible operators and deter investment in the state. I also have concerns as to how other states might use this certification as evidence of bad faith or something akin in their own permitting adjudications or enforcement proceedings.

5. Changes to Change of Operator and Thus Well Transfer Requirements under Proposed 19.15.9.9(B) NMAC, Including New Plugging and Abandonment Plan Requirement

Applicants propose adding the following two new segments of text to 19.15.9.9(B) NMAC governing changes of operator and thus well transfers specifically, an existing operator's application to change operators would need to include:

> . . . a certification by an officer, director, or partner of the new operator that the new operator is in compliance with federal and state oil and gas laws and regulations in

each state in which the new operator does business; **a plugging and abandonment plan**; a disclosure of any officer, director, partner in the new operator or person with an interest in the new operator exceeding 25 percent, who is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC; and a disclosure whether the new operator is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC.

* * *

The **plugging and abandonment plan** shall be certified by an officer, director, or partner of the new operator and shall demonstrate that the new operator has and will have the financial ability to meet the plugging and abandonment requirements of 19.15.25 NMAC for the well or wells to be transferred in light of all the operator's assets and liabilities. The division may request the operator to provide additional information including corporate credit rating, corporate financial statements, long-term liabilities, reserves and economics report, records of the operator's historical costs for decommissioning activities, estimate of the operator's decommissioning obligations, and history of inactive wells and returning wells to production.[125]

i. OCD Official Comments on Proposed Changes

OCD notes these changes provide similar protections to the changes Applicants propose to the operator registration requirements under 19.15.9.8 NMAC, against 'bad actors.'[126] Further noting "[t]he plugging and abandonment plan ensures the new operator understands their obligations."[127]

ii. LFC Report Recommendation

The LFC Report recommends the legislature consider "amending [the enabling] statute to clarify OCD's authority to review and disallow the transfer of wells should the division determine through processes outlined in rule, the purchaser is unlikely to be able to fulfill its asset retirement

[125] WELC Prehearing Statement Exhibit 1-D.

[126] Exhibit 15 to OCD's Powell Direct Testimony at slide 28.

[127] Exhibit 15 to OCD's Powell Direct Testimony at slide 28.

obligations."[128] This recommendation acknowledges that OCD does not currently have clear statutory authority to disallow transfers on these grounds, and that legislative action would be required to create it.

iii. Responsive Analysis and Recommendations

The proposed amendment to 19.15.9.9(B) NMAC would substantially expand OCD's authority in ways not permitted under the Oil and Gas Act. The Act authorizes OCD to regulate well operations in New Mexico, including bonding and financial assurance requirements, but it does not grant OCD authority to approve or deny the consummation of private well transfers or acquisitions. Historically, OCD's role in a change-of-operator context has been limited to recordkeeping and ensuring that adequate bonding is in place before the new operator assumes responsibility.

Applicants' experts, Mr. Purvis,[129] Mr. Morgan,[130] and Mr. Peltz[131] argue that the proposed amendments are necessary to ensure that acquiring operators are financially capable of meeting plugging obligations. While that concern is legitimate, their testimony overlooks the absence of statutory authority. The very fact that the LFC recommended legislative amendments to clarify OCD's authority underscores that such power cannot be created by rulemaking alone. Attempting to do so here is ultra vires and would likely invite legal challenge.

From a policy standpoint, these changes would also produce harmful unintended consequences. Requiring every acquiring operator to prepare a detailed plugging and abandonment

[128] LFC Report at 2, 37.

[129] WELC's Purvis Direct Testimony at 75–86.

[130] WELC's Morgan Direct Testimony at 83–86.

[131] WELC's Peltz Direct Testimony at 63–64.

plan, certified at the corporate officer level and supported by sensitive financial data (credit ratings, liabilities, reserves, economics reports), will deter acquisitions of distressed wells. This is precisely the type of transaction that should be encouraged, since it allows financially stronger companies to take responsibility for assets otherwise at risk of orphaning. Burdening or discouraging these transactions risks leaving weaker operators in place longer, increasing the chance of default and orphan well liability.

Moreover, plugging and abandonment planning is already addressed under existing rules. Under Part 25 of the NMAC, operators must comply with mechanical integrity testing, temporary abandonment provisions, and approved plugging procedures. Forcing operators to forecast and disclose future plugging obligations at every transfer adds paperwork without improving oversight, since OCD already has the authority to require financial assurance coverage before approving a change of operator.

The Commission should reject the proposed amendments to 19.15.9.9(B) NMAC as beyond OCD's statutory authority. If concerns exist about ensuring adequate financial assurance during transfers, they should be addressed through existing mechanisms, such as requiring supplemental bonding as a condition of approving a change of operator. To the extent further authority is deemed necessary, it must come from the Legislature, as the LFC itself has recognized—not from rulemaking.

6. Changes to Change of Operator and Thus Well Transfer Requirements under Proposed 19.15.9.9(C) NMAC, Including New Certification Requirements

Applicants propose to add the following five new grounds for OCD to deny a change of operator application:

> (2) the new operator is out of compliance with federal and state oil and gas laws and regulations in each state in which the new operator does business;

> (3) any officer, director, partner in the new operator or person with an interest in the new operator exceeding 25 percent, who is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC;
>
> (4) the new operator is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC;
>
> (5) the applicant is a corporation, limited liability company, or limited partnership and is not registered or is not in good standing with the New Mexico secretary of state to do business in New Mexico; or
>
> (6) the certification or disclosure requirements set forth in Subsection B of this Section disclose a substantial risk that the new operator would be unable to satisfy the plugging and abandonment requirements of 19.15.25 NMAC for the well or wells the new operator intends to take over."[132]

i. OCD Official Comments on Proposed Changes

OCD states that these additional certifications would "[r]educe the chance of site abandonment post-transfer due to 'bad actors' or fiscally under capitalized companies for the liabilities they are acquiring."[133]

ii. Responsive Analysis and Recommendations

While the stated objective is to prevent abandonment, the proposed amendments to 19.15.9.9(C) NMAC are overly broad, duplicative of existing tools, and exceed the statutory authority granted to OCD under the Act.

Applicants' experts, including Mr. Purvis[134] and Mr. Morgan[135] argue that these new certification requirements are necessary to ensure that acquiring operators are financially sound

[132] WELC Prehearing Statement Exhibit 1-D.

[133] Exhibit 15 to OCD's Powell Direct Testimony at slide 29.

[134] WELC's Purvis Direct Testimony at 86.

[135] WELC's Morgan Direct Testimony at 86–89.

and not linked to poor compliance histories. Yet neither addresses the threshold problem: the Act authorizes OCD to require bonding and financial assurance for wells in New Mexico, but it does not empower OCD to deny private asset transfers on the basis of compliance in other states, corporate standing before the Secretary of State, or past affiliations of minority shareholders. As noted in the LFC Report, any expansion of this authority would require legislative amendment, not rulemaking.

The proposed additions would also create unintended consequences. For example:

- **Out-of-state compliance**: Conditioning New Mexico transfers on compliance with federal and state laws "in each state" where the operator does business is both unworkable and ultra vires. OCD lacks jurisdiction to interpret or enforce other states' oil and gas rules, and doing so would inject uncertainty into every transfer involving multi-state operators.
- **Past affiliations of officers or investors**: Requiring disclosure of any officer, director, or 25 percent interest holder who was affiliated with another entity out of compliance within the past five years sweeps in individuals with little or no operational control. This would discourage investment in New Mexico and penalize operators for circumstances unrelated to their current business practices.
- **Secretary of State standing**: Tying transfer approval to corporate standing conflates administrative filing requirements with regulatory compliance. Companies can temporarily fall out of good standing for reasons that have nothing to do with plugging obligations or environmental performance.
- **Plugging and abandonment certification**: Applicants propose that OCD deny transfers if it determines there is a "substantial risk" the new operator cannot meet plugging obligations. This language is subjective and undefined, giving OCD unchecked discretion

without statutory authority to block transactions. Existing bonding requirements already ensure that the Division has financial security in place.

In my experience, the most effective way to manage transfer risk is through targeted bonding reviews and agreed compliance schedules, not sweeping certification requirements that overreach into corporate governance and multi-state compliance. If these rules are adopted, stronger companies will be deterred from acquiring distressed assets, leaving weaker operators in place longer and increasing the risk of orphan wells, the exact opposite of OCD's stated intent.

The Commission should reject the proposed amendments to 19.15.9.9(C) NMAC. OCD already has sufficient tools to ensure that acquiring operators meet bonding requirements and to enforce compliance in New Mexico. If additional authority is truly needed to evaluate transfers, it must come from legislative action, not through rulemaking. Targeted measures, such as requiring supplemental bonding at transfer or using Agreed Compliance Orders to manage plugging obligations, are far more effective and legally sound alternatives.

7. Changes to Change of Operator and Thus Well Transfer Requirements under Proposed 19.15.9.9(D) NMAC

Applicants would strike the two instances of the clause "more than the allowed number of" under 19.15.9.9(D) NMAC.[136]

i. OCD Official Comments on Proposed Changes

OCD states "[t]his change removes the ability for operators to carry a determined number or inactive wells that are not tested or placed in Temporary abandonment status. This is crucial as these wells could have undiagnosed casing failures."[137]

[136] WELC Prehearing Statement Exhibit 1-D.

[137] Exhibit 15 to OCD's Powell Direct Testimony at slide 30.

ii. Responsive Analysis and Recommendations

While OCD emphasizes the possibility of undiagnosed casing failures, the proposed amendment to strike "more than the allowed number of" from 19.15.9.9(D) NMAC goes too far. This language has historically provided operators with a limited buffer to account for wells that may be temporarily inactive or awaiting workover, recompletion, or infrastructure connection. Eliminating it entirely would force operators into absolute compliance with no allowance for routine operational realities.

Applicants' expert Mr. Morgan[138] argues that allowing any inactive wells without testing or temporarily abandoned status creates systemic risk and should not be tolerated. In practice, however, this overstates the problem. Inactive wells are already subject to OCD's oversight through Form C-145 idle well reporting, periodic mechanical integrity testing, and compliance reviews. Where risks are suspected, such as potential casing failure, OCD has the authority to require testing or order corrective action. Removing the allowance for a small number of inactive wells ignores this existing enforcement framework and instead imposes a blanket standard that treats minor administrative oversights the same as material violations.

From my experience in the field, operators often have a handful of wells in transition: a workover rig may be scheduled, facilities may be under construction, or wells may be awaiting recompletion. Forcing those wells into immediate temporarily abandoned status or plugging under the proposed change would be costly and unnecessary, especially when the wells remain mechanically sound and part of an active development plan.

The Commission should reject the proposed amendment to 19.15.9.9(D) NMAC. Retaining a limited allowance for inactive wells without temporarily abandoned status provides needed

[138] WELC's Morgan Direct Testimony at 89-90.

operational flexibility while still allowing OCD to target enforcement where risk is real. If the Commission wishes to tighten standards, it should do so by clarifying the size of the allowance or requiring operators to provide notice of wells held in this status, rather than eliminating the allowance altogether. This approach preserves both environmental protection and operational feasibility.

8. Changes to Change of Operator and Thus Well Transfer Requirements under Proposed 19.15.9.9(E) NMAC

Applicants propose adding a new subsection 19.15.9.9(E) NMAC stating:

> No well, facility or site that is out of compliance with Subsection A of 19.15.5.9 NMAC,[139] 19.15.29 NMAC, or 19.15.30 NMAC shall be transferred unless, prior to transfer, the current operator brings the associated well, facility or site into compliance or the new operator submits a schedule of compliance approved by the division.[140]

i. OCD Official Comments on Proposed Changes

OCD states this change "[r]educes the chance of transferring liabilities to 'bad actors' or companies that can't absorb the financial obligations these sites require. This section does not cover open incidents (remediation/ abatement) that are not out of compliance with 19.15.29 NMAC or 19.15.30 NMAC (i.e. ongoing remediations that comply with the rules)."[141]

ii. Responsive Analysis and Recommendations

Although OCD frames this as a safeguard against liability dumping, the proposed

[139] As previously stated in Part III.E.2. above, 19.15.5.9(A) NMAC requires: compliance with all financial assurance requirements under 19.15.8 NMAC; no OCC or OCD orders issued after notice and a hearing that find violation of an order requiring corrective action; and no penalty assessments unpaid for more than 30 days after issuance of the order assessing the penalty; but which currently allows a certain number of wells be out of compliance with 19.15.25.8 but Applicants propose to remove to require all wells registered comply with 19.15.25.8 NMAC requiring permanent or temporary plugging and abandonment of wells if one of three triggering events is met.

[140] WELC Prehearing Statement Exhibit 1-D.

[141] Exhibit 15 to OCD's Powell Direct Testimony at slide 31.

amendment to 19.15.9.9(E) NMAC would have unintended and counterproductive effects. By prohibiting transfers of wells, facilities, or sites with any outstanding noncompliance unless fully corrected or backed by an OCD-approved schedule, the rule could delay or deter transactions that would otherwise bring stronger, more capable operators into ownership of problem assets.

Applicants' expert Mr. Morgan supports this approach, suggesting it ensures that only compliant assets are transferred.[142] In practice, however, it ignores how the industry manages assets during their lifecycle. Many distressed wells or facilities are transferred precisely because the incoming operator is better capitalized or has the technical expertise to remediate them. Prohibiting transfers until full compliance is achieved by the outgoing operator, who may lack the resources to do so, risks leaving those assets stranded, increasing the likelihood that they become orphaned.

The current system already provides OCD with tools to manage this risk. The Division may condition approval of a change of operator on the posting of additional financial assurance, or it may issue compliance schedules that travel with the asset. This ensures accountability without freezing transfers. Forcing all compliance to be resolved pre-transfer undercuts these tools and creates bottlenecks that discourage responsible acquisitions.

The Commission should reject the proposed addition of 19.15.9.9(E) NMAC as drafted. If the goal is to ensure liabilities are not transferred irresponsibly, OCD should instead emphasize use of agreed compliance orders and tailored bonding at transfer. This targeted approach ensures that obligations are addressed without chilling acquisitions that bring distressed wells and facilities into the hands of operators best positioned to manage them.

[142] WELC's Morgan Direct Testimony at 64–65.

9. Additional Requirements for Release of Financial Assurance under Proposed 19.15.8.12(B)

Applicants propose to add to the end of 19.15.8.12.B NMAC a clause requiring that an operator be in compliance with 19.15.5.9 NMAC and 19.15.9.9 NMAC, in addition to the existing requirement that financial assurance must be met, before a well can be transferred to a different operator.[143]

i. OCD Official Comments on Proposed Change

OCD comments that "[t]his change ensures new operators comply with the added rules prior to the release of the financial assurance of the well."[144]

ii. Responsive Analysis and Recommendations

While the intent of ensuring accountability at transfer is reasonable, the proposed amendment to 19.15.8.12(B) NMAC adds duplicative and unnecessary conditions that could create confusion and delay. Under existing rules, OCD already requires that financial assurance obligations be satisfied before a transfer is approved and before the outgoing operator's bond can be released. The proposed change would add additional compliance with 19.15.5.9 and 19.15.9.9 NMAC as prerequisites to bond release, which risks layering vague and subjective standards onto what should be a straightforward process.

Applicants' expert Mr. Morgan[145] suggests that tying bond release to broader compliance ensures that bad actors cannot escape liabilities by transferring wells. In practice, however, the Division already retains authority to condition approval of transfers on supplemental bonding, agreed compliance orders, or enforcement actions against the outgoing operator. Adding

[143] WELC Prehearing Statement Exhibit 1-C.

[144] Exhibit 15 to OCD's Powell Direct Testimony at slide 23.

[145] WELC's Morgan Direct Testimony at 64–65.

compliance with two entire additional parts of the NMAC as a prerequisite to bond release invites regulatory uncertainty. For example, would a minor paperwork violation under 19.15.5.9 NMAC or a pending dispute under 19.15.9.9 NMAC delay or bar bond release? Without clear thresholds, OCD would have unchecked discretion to hold financial assurance indefinitely, which creates uncertainty for operators and their sureties.

Moreover, this provision could chill well transfers by making it more difficult for operators to exit responsibly. Outgoing operators already must demonstrate that bonding obligations are met and that the incoming operator has adequate financial assurance. Requiring compliance with broad additional provisions risks discouraging sales or assignments that bring wells into the hands of stronger operators who are better able to manage them. This would increase the risk of orphan wells, the opposite of what Applicants claim to achieve.

The Commission should reject the proposed amendment to 19.15.8.12(B) NMAC as drafted. Existing bonding rules and transfer provisions already protect against liability evasion. If additional protections are deemed necessary, they should be narrowly tailored, such as requiring that wells subject to a final compliance order cannot be transferred without OCD approval. Broad cross-references to entire rule parts should not be used to condition the release of financial assurance, as this undermines predictability and deters responsible well transfers.

F. Proposed Presumptions of No Beneficial Use under a New 19.15.25.9 NMAC

1. Implications and Considerations for Defining Beneficial Use by Production and Injection Thresholds

Applicants propose to establish presumptions of no beneficial use in a new 19.15.25.9 NMAC, triggered by production and injection thresholds. On their face, these provisions appear designed to provide clarity. In reality, they create blunt presumptions that disregard the many ways in which wells provide ongoing value beyond meeting an arbitrary volume test.

As I explained above in Parts III.B.4–.5, the new definitions of "marginal well" and "beneficial purposes/use," respectively, already risk misclassifying wells that are viable or strategically important. Layering on presumptions of no beneficial use compounds the problem, because it hardwires into regulation the assumption that low production equates to no benefit. That is not consistent with industry practice, reservoir engineering, or the statutory mandate to prevent waste and protect correlative rights.

Applicants' legal expert Mr. Alexander frames these presumptions as necessary to give OCD a clear enforcement standard.[146] But his testimony does not address the fact that OCD already has ample tools—mechanical integrity testing, reporting, and case-specific compliance hearings—to evaluate whether wells remain beneficial. By creating automatic presumptions, the proposed rule shifts the burden to operators to overcome regulatory assumptions that may not reflect operational reality.

Similarly, Applicants' technical witness Mr. Peltz endorses production and injection thresholds as proxies for beneficial use.[147] In my opinion, that conclusion is misplaced. Production rates vary with commodity prices, infrastructure availability, and operator scheduling. Injection may be paused for facility upgrades or reservoir management decisions. Under the proposed presumptions, wells in any of these common situations could be deemed non-beneficial, even when they remain mechanically sound, compliant, and strategically necessary for lease retention or field development.

The Commission should reject the use of rigid production and injection thresholds as presumptions of beneficial use. These presumptions are unnecessary given OCD's existing tools,

[146] WELC's Alexander Direct Testimony at 41-42.

[147] WELC's Peltz Direct Testimony at 65-67.

and they risk forcing premature plugging of wells that serve important roles in lease management, reservoir balancing, or future recovery. If any presumption is considered, it must be narrowly drawn, rebuttable, and expressly conditioned on objective risk factors such as mechanical integrity or documented environmental concerns, not on arbitrary volumetric metrics.

i. Interplay with Proposed Definition of "Beneficial Purposes/Use" Which Is Absent Thresholds, But OCD Indicates is Necessary for Enforcement under 19.15.25 NMAC

OCD remarks that the definition of beneficial purpose is necessary for enforcement under 19.15.25 NMAC.[148] However, the way this interacts with the proposed presumptions of no beneficial use creates significant confusion. The definition of "beneficial purposes/use" itself does not contain thresholds, but the proposed 19.15.25.9 NMAC would effectively graft volumetric thresholds onto the concept by creating rebuttable presumptions that wells falling below certain production or injection levels lack beneficial use.

This interplay is problematic for two reasons. First, it converts what should be a flexible, case-by-case standard into a rigid metric. Under the existing framework, OCD can and does evaluate beneficial use by considering operational context, including lease preservation, reservoir management, compliance monitoring, or pending workovers. The new approach would reverse that discretion, forcing operators to overcome presumptions that low-volume wells are non-beneficial even when those wells are strategically important.

Second, it undermines the rationale offered by OCD for adopting the definition in the first place. If the definition of "beneficial purposes/use" is truly necessary for enforcement, then that definition should stand on its own. Adding volumetric presumptions on top of it suggests that the

[148] Exhibit 15 to OCD's Powell Direct Testimony at slide 7.

definition is not sufficient for enforcement after all, raising the question of why the definition is being introduced in the first place. In my opinion, OCD already has sufficient enforcement tools—mechanical integrity testing, C-145 reporting, and compliance hearings—without needing either a new definition or production thresholds.

The Commission should reject the presumption approach and clarify that "beneficial purposes/use" should be determined based on the operational and environmental context of the well, not rigid production or injection numbers. If a definition is adopted, it should remain flexible and should not be paired with volumetric presumptions that distort the analysis and create regulatory confusion.

ii. Interplay with Proposed Definition of "Marginal Well" and LFC Report Recommendation and Recognition Flexibility is Necessary When Assessing Future Use

WELC technical expert Thomas Alexander states, " LFC deemed wells at or below 2 BOE per day problematic and observed that with this level of production, the average well is plugged and abandoned."[149] But the LFC Report actually states, "[t]here is no specific threshold at which a well becomes economic, but production of less than 2 BOE a day may be an appropriate threshold for additional regulatory scrutiny."[150] As I read it, this language acknowledges that there should be flexibility in assessing the future potential of wells.

By ignoring that nuance, Applicants transform a reference point for possible scrutiny into a binding presumption of non-beneficial status. That approach risks premature plugging of wells

[149] WELC's Alexander Direct Testimony at 43:5-7 (citing LFC Report at 4, 21).

[150] LFC Report at 21 ("Determining the specific point when a well becomes uneconomic—i.e., when a well's liability surpasses the value of its potential future production—is challenging for several reasons, but principally because of fluctuating prices for oil and gas. For example, a well producing 2 BOE per day might be profitable at $100 per barrel but uneconomic at $50 per barrel.").

that may have legitimate beneficial use, such as lease preservation, reservoir management, or candidacy for recompletion or refractures.

The testimony of Mr. Alexander also cites Mr. Purvis's marginal well analysis[151] as support for linking marginal status with presumptions of no beneficial use.[152] Yet Purvis never addresses presumptions of beneficial use in his testimony or exhibit. His analysis focuses only on production thresholds for marginal wells and on plugging cost assumptions. This analytical gap is important: **Applicants are using Purvis's marginal well analysis to support a presumption provision that he himself does not evaluate.**

In my opinion, this disconnect demonstrates why rigid thresholds should not be adopted. Even the LFC recognizes the need for flexibility and further evaluation, and the Applicants' own technical testimony does not provide an analysis of the presumption provision itself. Wells producing at or below 2 BOE per day may, in some cases, warrant scrutiny, but they cannot be categorically presumed to lack beneficial use.

The Commission should reject the Applicants' attempt to conflate marginal well definitions with presumptions of non-beneficial status. Instead, consistent with the LFC Report, the Commission should preserve flexibility by allowing OCD to evaluate wells on a case-by-case basis, using production levels as one factor but not as a determinative cutoff.

2. Production Threshold under Proposed 19.15.25.9(A) NMAC When Presumption of No Beneficial Use is Triggered

Applicants propose that an oil and gas well be presumed not capable of beneficial use "if, in a consecutive 12-month period, the well has not produced for at least 90 days and has not

[151] WELC's Alexander Direct Testimony at 47-48 (citing WELC Exhibit 40).

[152] WELC's Alexander Direct Testimony at 43.

produced at least 90 barrels of oil equivalent."[153]

i. OCD Official Comments on Proposed Change

OCD remarks that:

> This section sets a minimum standard on both production activities and production volume on what an inactive wells may be considered. Currently in the FY24 production report there are thousands of wells that are would fall into this low threshold. Wells at these low thresholds could indicate adverse downhole conditions (possible casing failures) leading to their low production capacity or an operator that does not want to plug the well due to financial constraints allowing the well to sit mostly idle and continue to degrade. Under the current rule if a well produces 1 day it is considered active and requires no action or testing. This section closes that loophole from continued abuse.[154]

OCD's commentary assumes that wells falling below the 90-day and 90-BOE threshold are either degrading mechanically or being intentionally left idle to avoid plugging obligations. That assumption is overly broad and not supported by evidence. Many wells fall below these thresholds for legitimate operational and economic reasons, including market conditions, infrastructure delays, seasonal shut-ins, and planned workovers. In my experience, these wells can and do return to productive service when conditions improve or when recompletions and refracs are scheduled.

Applicants' legal expert Mr. Alexander suggests that clear thresholds are necessary to close perceived loopholes in current rules.[155] However, his testimony overlooks the fact that OCD already has robust enforcement tools to address abuse. The Division requires Form C-145 for idle well reporting, mechanical integrity testing, and has authority to issue compliance orders or deny temporary abandonment extensions. These tools allow OCD to identify problem wells without creating an automatic presumption that sweeps in thousands of viable wells.

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[153] WELC Prehearing Statement Exhibit 1-E.

[154] Exhibit 15 to OCD's Powell Direct Testimony at slide 34.

[155] WELC's Alexander Direct Testimony at 42-44.

Applicants' technical witness Mr. Peltz also endorses this presumption, arguing that low production indicates a well is no longer beneficial.[156] In reality, production volumes alone do not reflect a well's utility. For example, a single low-volume well may preserve leasehold rights across a large acreage position, protect correlative rights within a unit, or serve as a candidate for future recovery projects. Treating such wells as presumptively non-beneficial ignores these broader operational roles and directly conflicts with the Act's mandate to prevent waste.

ii. Responsive Analysis and Recommendation

The Commission should reject the proposed production threshold in 19.15.25.9(A) NMAC. OCD already has tools to ensure that idle wells are monitored and addressed when mechanical issues are suspected. If a presumption is considered, it should be narrowly tailored, rebuttable, and tied to specific risk indicators such as failed mechanical integrity tests, rather than arbitrary production volumes. Wells that fall below volumetric thresholds but continue to provide strategic or operational value should not be forced into premature plugging.

3. Injection and Salt Water Disposal Threshold under Proposed 19.15.25.9(B) NMAC When Presumption of No Beneficial Use is Triggered

Applicants propose that injection or saltwater disposal wells be presumed incapable of beneficial use "if, in a consecutive 12 month period, the well has not injected at least 90 days and at least 100 barrels of fluid."[157]

i. OCD Official Comments on Proposed Change

OCD remarks that:

> Similar to production volumes this section sets a minimum standard on both injection activities and injection volumes on what an inactive well may be considered. Currently in the FY24 production report there are approximately 600 injection wells. ~500 had no injection and ~100 had minimal injection. Wells at

[156] WELC's Peltz Direct Testimony at 67–68.
[157] WELC Prehearing Statement Exhibit 1-E.

> these low thresholds could indicate adverse downhole conditions (possible casing failures) leading to their low activity or an operator that does not want to plug the well due to financial constraints allowing the well to sit mostly idle and continue to degrade. Under the current rule if a well injects 1 day it is considered active and requires no action or testing. This section closes that loophole from continued abuse.[158]

OCD's commentary assumes that low injection volumes necessarily indicate casing damage or neglect. In my experience, that is not the case. Injection wells are frequently cycled on and off based on reservoir management needs, pipeline capacity, or seasonal water production patterns. Some wells are maintained in mechanical integrity but not actively injecting because disposal volumes fluctuate with production schedules. Under the proposed presumption, these wells would be misclassified as non-beneficial, even though they remain essential for future field development and produced water management.

Applicants' legal expert Mr. Alexander argues that firm thresholds are needed to prevent operators from keeping wells "idle on paper" while avoiding plugging obligations.[159] Yet this argument ignores that OCD already has tools to identify and address problem injection wells. The Division requires mechanical integrity tests for Class II injection wells, annual Form C-108 reporting, and retains authority to suspend or revoke permits when wells are not operated properly. These tools directly evaluate whether a well is safe and fit for use—something volumetric thresholds cannot do.

Applicants' technical expert Mr. Peltz further suggests that low or no injection is evidence of adverse downhole conditions.[160] In my experience, many of these wells have passed mechanical integrity testing and are simply waiting for operational need. For example, an operator may

[158] Exhibit 15 to OCD's Powell Direct Testimony at slide 35.

[159] WELC's Alexander Direct Testimony at 44-45.

[160] WELC's Peltz Direct Testimony at 68.

maintain an idle disposal well in reserve capacity for periods of peak production or during infrastructure outages. These wells are strategically valuable, even when not used regularly, and should not be deemed presumptively non-beneficial.

ii. Responsive Analysis and Recommendation

The Commission should reject the proposed injection threshold in 19.15.25.9(B) NMAC. Wells that are mechanically sound and properly permitted should remain classified as beneficial regardless of annual injection volumes. If OCD seeks greater oversight, it should require enhanced reporting or periodic justification for non-use, rather than imposing arbitrary volumetric presumptions. This would protect against true problem wells without discouraging the maintenance of reserve disposal capacity that is critical to responsible oil and gas development.

4. Exemptions under Proposed 19.15.25.9(C) NMAC

Applicants would exempt two categories of wells from the production and other thresholds described above: "wells that have been drilled but not completed for less than 18 months and wells that have been completed but have not produced for less than 18 months."[161]

i. OCD Official Comments on Proposed Change

OCD believes that this language is sufficient to ensure that new wells are not inadvertently considered inactive.[162]

ii. Responsive Analysis and Recommendation

While the exemptions are a step in the right direction, they are too narrow and fail to account for common operational circumstances that extend well beyond the 18-month period. Wells may remain temporarily idle for legitimate reasons that have nothing to do with adverse

[161] WELC Prehearing Statement Exhibit 1-E.

[162] Exhibit 15 to OCD's Powell Direct Testimony at slide 36.

mechanical conditions. These include:

- **Infrastructure delays**: Gathering or processing facilities may not be available, requiring operators to defer production.
- **Market-driven shut-ins**: Operators may intentionally delay production due to low commodity prices, preserving reserves until conditions improve.
- **Unitization and communitization**: Wells may remain inactive during the pendency of unit negotiations or communitization approvals, which often take longer than 18 months.
- **Recompletion or refrac planning**: Wells awaiting recompletion or refracture treatment may remain idle for extended periods before capital is deployed.
- **Monitoring and compliance wells**: Wells may serve monitoring or data-gathering purposes even when not producing.

Applicants' legal expert Mr. Alexander[163] and technical expert Mr. Peltz[164] endorse the 18-month exemption as sufficient. In my opinion, this conclusion underestimates the complexity of modern operations. A rigid 18-month cutoff does not provide the flexibility needed for responsible asset management.

The Commission should broaden the exemptions under 19.15.25.9(C) NMAC to at minimum expressly include:

1. Wells shut in due to market, infrastructure, or regulatory delays;
2. Wells awaiting recompletion, refrac, or facility upgrades;
3. Wells serving monitoring or compliance purposes; and
4. Wells subject to unitization or communitization processes.

[163] WELC's Alexander Direct Testimony at 45.

[164] WELC's Peltz Direct Testimony at 68.

At minimum, the exemption period should be extended beyond 18 months, or the rule should allow operators to demonstrate that inactivity is temporary and consistent with a development plan. Without these broader carve-outs, the rule risks misclassifying strategically important wells as non-beneficial, leading to premature plugging and waste.

5. Procedure under Proposed 19.15.25.9(D) NMAC

Applicants propose the following procedure under 19.15.25.9(D) NMAC:

> D. Within 30 calendar days after notice of a preliminary determination from the division that a well or wells are not being used for beneficial purposes, a well operator may submit an application for administrative review of such determination through the division's electronic permitting portal. The division shall issue a final determination based on the application and information available in division records. The final determination may be appealed pursuant to 19.15.4 NMAC. Applications to demonstrate beneficial use of a well or wells shall include:
>
> (1) Documentation demonstrating that the well is reasonably projected to produce in paying quantities; and
>
> (2) Documentation demonstrating that the operator maintains adequate capitalization or reasonably projected revenue sufficient to meet all reasonably anticipated plugging and environmental liabilities of the well or wells and associated production facilities, not inclusive of any financial assurance associated with the well or wells; and
>
> (3) Other relevant information requested by the division including a plugging and abandonment plan as described in 19.15.9.9.B NMAC.[165]

i. OCD Official Comments on Proposed Change

OCD believes the proposed procedure is sufficient to allow an operator to show how the low production or injection wells identified above are still being used for a beneficial purpose.[166]

ii. Responsive Analysis and Recommendation

While OCD views this as providing operators a fair opportunity to demonstrate beneficial

[165] WELC Prehearing Statement Exhibit 1-E.

[166] Exhibit 15 to OCD's Powell Direct Testimony at slide 37.

use, in reality, the procedure is unworkable and overly burdensome. Requiring an operator to respond within 30 days to a preliminary determination, with detailed documentation of projected paying quantities, financial capability, and even a plugging and abandonment plan, imposes unrealistic demands on operators—particularly smaller independents with limited resources, not to mention the timing realities of scheduling the requisite work associated with providing such information within 30 days.

Applicants' legal expert Mr. Alexander[167] supports this framework, suggesting it creates due process. However, due process must be meaningful, not illusory. A 30-day window is too short to compile engineering analyses, economic forecasts, and corporate financial data. Operators may be forced to accept adverse determinations simply because they lack time to prepare the required documentation.

Applicants' technical expert Mr. Peltz[168] further argues that such documentation is necessary to prove beneficial use. This presumes that financial capitalization and plugging plans are appropriate proxies for whether a well has ongoing value. In my opinion, they are not. Beneficial use should be assessed based on well-specific operational factors, such as lease preservation, reservoir management, or pending recompletions, not on company-wide financial reports. Requiring a plugging plan as part of a beneficial use showing is internally contradictory—it presumes failure rather than evaluating continued value.

The Commission should reject the proposed procedure in 19.15.25.9(D) NMAC as drafted. If a review process is deemed necessary, it should:

- Provide operators with a reasonable response window (90–120 days).
- Limit required documentation to well-specific operational evidence, such as recent

[167] WELC's Alexander Direct Testimony at 45-46.

[168] WELC's Peltz Direct Testimony at 68-69.

production records, approved workover plans, or lease terms.

- Eliminate requirements for financial capability statements and plugging plans, which are duplicative of financial assurance provisions and irrelevant to demonstrating beneficial use.
- This more balanced approach would ensure that due process rights are preserved without imposing unworkable burdens that lead to unnecessary plugging.

6. OCD Proposed Amendment to 19.15.5.9.B(1) NMAC to Require Agency List Well on Its Inactive Well List After a Final Determination of No Beneficial Use

Relatedly, OCD proposes to amend 19.15.5.9.B(1) NMAC to require OCD to add to its "inactive well list" any well that had a final determination of no beneficial use under 19.15.25.9 NMAC.[169]

i. OCD Official Comments on Proposed Change

OCD reports the "change is needed to be consistent with the changes proposed under 19.15.25.9 NMAC."[170] This explanation highlights the core problem. By tying 19.15.5.9.B(1) NMAC directly to the new presumptions of no beneficial use under 19.15.25.9 NMAC, OCD is effectively hard-wiring flawed thresholds and procedural determinations into the inactive well framework. Consistency in rulemaking is important, but consistency with an arbitrary or overbroad standard magnifies the underlying issues rather than solving them.

ii. Responsive Analysis and Recommendation

OCD's explanation—that the amendment is needed for "consistency"—underscores the central problem. By tying 19.15.5.9(B)(1) NMAC directly to the presumptions of no beneficial use under 19.15.25.9 NMAC, the proposal would embed those flawed thresholds into the inactive well framework. Consistency is not inherently a virtue if it multiplies the consequences of a rule that is itself arbitrary and overbroad.

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[169] WELC Prehearing Statement Exhibit 1-B.

[170] *See* Exhibit 15 to OCD's Powell Direct Testimony at slide 13.

Applicants' experts argue that this "inactive well list" mechanism will simplify enforcement and provide clarity. But as explained above, the thresholds proposed in 19.15.25.9 NMAC are blunt instruments that misclassify viable wells. Once those misclassifications are locked into the "inactive well list," operators have little recourse other than to incur higher bonding costs or plug wells prematurely.

For example, imagine an operator with a shallow well that is mechanically sound but shut-in temporarily while awaiting a new pipeline connection scheduled for the next quarter. Under WELC's proposal, if production falls below the "beneficial use" threshold for 12 months, OCD would issue a preliminary determination of no beneficial use. If the operator cannot compile and submit all required documentation within 30 days—or if OCD simply applies the rule mechanically—that well would automatically be placed on the "inactive well list." This mechanistic approach undermines OCD's ability to exercise discretion based on case-specific factors such as lease preservation, reservoir management, or pending development plans.

The Commission should reject the proposed amendment to 19.15.5.9.B(1) NMAC as drafted. If an inactive well list is to be maintained, wells should be added only after case-by-case evaluation of risk and beneficial use, not as an automatic consequence of failing arbitrary production or injection thresholds. At a minimum, the rule should allow operators to demonstrate beneficial use beyond production volumes and should preserve OCD's discretion to exclude wells that serve legitimate operational purposes.

G. Other Proposed Changes to Requirements for the Temporary and Permanent Plugging and Abandonment of Wells under 19.15.25 NMAC

1. Applicants Favor and Would Force Permanent Plugging When Temporary Abandonment Preserves Wells for Future Use

As I highlight below, the heavily academic focus of the Applicants' experts' direct

testimony does not adequately address the operational realities of the changes the Applicants propose. Beyond just the feasibility of some proposals, the result of mass premature plugging is a major concern to me. If a well is prematurely and permanently plugged to the level required in New Mexico, instead of being temporarily abandoned so it can be reworked in the future, then the cost to redrill that permanently plugged well is more expensive than drilling a whole new well, which will actually promote the drilling of more new wells. This outcome does not conserve resources—it incentivizes additional new drilling instead of maximizing recovery from existing wellbores.

Applicants' legal expert Thomas Alexander endorses stricter limits on temporary abandonment by arguing that indefinite temporarily abandoned status is inconsistent with statutory conservation objectives.[171] In my opinion, that analysis overlooks the very purpose of temporary abandonment: to preserve wells that are not currently producing but that retain long-term value. These wells may be waiting on infrastructure, market conditions, or scheduled recompletions. They may also be candidates for refracturing or enhanced recovery projects. Forcing these wells into premature permanent plugging sacrifices this future potential and conflicts with the Act's conservation mandate.

The Commission should reject proposals that constrain or eliminate the ability to manage wells through temporary abandonment. OCD already has the tools to ensure temporarily abandoned wells remain safe and properly monitored, including mechanical integrity testing, renewal requirements, and enforcement authority. These safeguards preserve the option of future beneficial use without forcing unnecessary plugging. A balanced approach preserves wells for potential future recovery while still protecting the environment and ensuring compliance.

[171] WELC's Alexander Direct Testimony at 29–40, 46:10–47:10.

In 2024, BLM updated its definition of "temporarily abandoned well" to mean "a nonoperational well that is not physically or mechanically capable of production or injection without additional equipment or without servicing the well, but that may have future beneficial use." 43 C.F.R. § 3160.0-5 ("Temporarily abandoned well"). BLM noted this change aligns with the federal requirement that a well will not expire if it contains a well capable of producing oil or gas in paying quantities, because while temporarily abandoned wells are not currently capable of production, they could be in the future.[172]

2. Changes to When Wells Must Be Temporarily or Permanently Plugged and Abandoned under Proposed 19.15.25.8 NMAC

The current version of 19.15.25.8(A) NMAC ("Wells to Be Properly Abandoned") currently applies to operators of wells drilled for oil, gas, or service purposes (including seismic, core, exploration, or injection wells), whether the wells are cased or uncased. Subsection (B) requires that such wells must either be properly plugged within 90 days (which WELC proposes to reduce to 30 days), or placed in approved temporarily abandoned status within the compliance window (which WELC would change to require only be applied for during that timeframe), if any one of the following triggering events occurs:

i. Sixty (60) days after drilling operations are suspended;
ii. Determination that the well is no longer usable for beneficial purposes; or
iii. One year of continuous inactivity (which WELC proposes to remove the word "continuous" from as I explain in Part III.G.2. below).[173]

i. OCD Official Comments to Proposed Changes Only Address Reducing the Proposal to Reduce the Compliance Window from 90 Days to 30 Days

OCD comments that "[r]educing the time from 90 to 30 days compels operator to review

[172] 89 Fed. Reg. 30950-51 (Apr. 23, 2024) (rejecting comment that BLM should defer to definitions and analysis from State regulatory bodies for what constitutes temporarily abandoned and shut-in wells).

[173] WELC Prehearing Statement Exhibit 1-E.

their operations while still being in compliance with the rules instead of allowing an operator 3 months of non-compliance prior to needing to take action."[174]

ii. Reducing Compliance Window to 30 Days Would Mean After 13 Months Without Production (12 Months Idle Plus 30-Day Reduced Compliance Period), the Well Must Either Be Permanently Abandoned or Officially Transitioned to TA Status to Remain Legally Idle

I have reviewed NMOGA plugging and abandonment expert Harold McGowen's direct testimony and agree that, because 19.15.25.8 NMAC sets forth when a well must be permanently or temporarily abandoned, this change would mean **that after 13 months of inactivity – 12 months idle plus a 30-day reduced compliance period – a well would be presumed to need to be properly plugged and abandoned or temporarily abandoned**.[175] I agree with Mr. McGowen that this change risks "wells awaiting repairs, workover equipment, or shut-in due to pipeline issues or commercial reasons could automatically be classified for abandonment based on arbitrary timing rather than engineering judgment."[176]

Applicants' legal expert Mr. Alexander endorses the shorter window as necessary for consistency and enforcement,[177] and Mr. Peltz argues that stricter timing prevents wells from degrading while idle.[178] In practice, these arguments ignore how operations function. Shortening the compliance window to 30 days removes critical flexibility needed for operators to address

[174] Exhibit 15 to OCD's Powell Direct Testimony at slide 33.

[175] Direct Testimony of Harold McGowen, P.E., NMOGA Technical Expert, *In the Matter of Proposed Amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC*, No. 24683, OCC, Aug. 8, 2025 (hereinafter "NMOGA's McGowen Direct Testimony"), at 7:136-139 (". . . after 13 months without production (12 months idle plus a 30-day reduced compliance period), a well must either be permanently abandoned or officially transitioned to TA status to remain legally idle."), 57-59.

[176] NMOGA's McGowen Direct Testimony at 7:139-143, 57-59.

[177] WELC's Alexander Direct Testimony at 40-41.

[178] WELC's Peltz Direct Testimony at 64-65.

infrastructure constraints, market conditions, or scheduling. It also risks creating administrative backlogs, as OCD would be required to process far more temporary abandonment applications on compressed timelines.

By contrast, federal regulators have moved in the opposite direction. The Bureau of Land Management's April 2024 final rule on fluid mineral leasing (43 C.F.R. § 3160.0-5) retained broader flexibility in defining idle and abandoned wells, allowing for case-by-case determinations rather than rigid deadlines. *BLM Fluid Mineral Leases and Leasing Process*, 89 Fed. Reg. 30916 (Apr. 23, 2024). The earlier July 2023 proposed rule also recognized the need for balance between environmental protection and operational realities. 88 Fed. Reg. 47562 (prop. Jul. 24, 2023). WELC's proposal would make New Mexico an outlier, imposing harsher deadlines than even BLM requires on federal leases.

The Commission should reject WELC's proposal to shorten the compliance window from 90 days to 30 days. The current 90-day period provides necessary flexibility for operators to address operational, infrastructure, or economic factors while still preserving OCD's ability to require timely plugging when risk exists. Any revisions should align with federal practice and maintain a risk-based, case-specific approach rather than an arbitrary deadline.

Accordingly, reducing the compliance window from 90 days to 30 days presents a major issue for industry and inactivity time, which is inevitable when assets are being properly maintained and managed.

iii. 30-Day Compliance Window Is Also Insufficient for Necessary Action to Be Taken

Additionally, based on my industry experience, 30 days is not sufficient for necessary action to be taken. More than 30 days are needed to prepare and submit a complete application for temporary abandonment. Properly plugging and abandoning a well in 30 days is unreasonable

and virtually impossible. A compliance window this short is unworkable for several reasons.

First, preparing and submitting a complete application for temporary abandonment requires time to gather well records, update casing and cement information, conduct or schedule mechanical integrity testing, and develop the necessary documentation for OCD review. Even under ideal conditions, coordinating field staff, regulatory teams, and service contractors cannot realistically be accomplished in less than 30 days.

Second, properly plugging and abandoning a well within 30 days is unreasonable and virtually impossible. Mobilizing a plugging contractor, securing equipment such as rigs and cementing units, and obtaining necessary materials like cement, bridge plugs, or wireline tools require more than a month in most circumstances. In rural or logistically constrained areas of New Mexico, scheduling delays are common, and operators often wait weeks for rig availability. A 30-day deadline would force operators into noncompliance through no fault of their own.

Third, shortening the compliance period undermines the opportunity to evaluate alternatives such as recompletion, workovers, or infrastructure upgrades. Many wells idle for brief periods can be returned to productive use if given sufficient planning time. A 30-day clock creates unnecessary pressure to default to plugging rather than exploring options that conserve resources and extend the productive life of existing wells.

The Commission should reject the proposed reduction of the compliance window from 90 days to 30 days. The existing 90-day timeframe provides a workable balance, sufficiently short to compel timely action, but long enough for operators to responsibly evaluate options, prepare regulatory filings, and mobilize resources. Cutting the window to 30 days would not improve oversight but would instead result in forced noncompliance and premature plugging.

Moreover, I agree with Mr. McGowen that such accelerated timeframes will also lead to

safety issues and injury to people and property.[179]

Accordingly, I recommend that the 90-day compliance window be retained or extended.

iv. Applicants' Recommend "Continuous" Requirement Should Be Retained as a Modifier for 12-Month Inactivity Trigger; Otherwise, Any Non-Continuous Periods Totaling 12 Months Would Qualify

Applicants also propose the removal of the "continuous" requirement from the 12 months of inactivity triggering event, which would allow any non-continuous periods totaling twelve months to justify the agency forcing an operator to plug and abandon a well prematurely. I agree with Mr. McGowen that this change actually discourages responsible stewardship of marginally producing but still viable and potentially profitable wells,[180] and could inadvertently trigger abandonment requirements based on seasonal curtailment, periods of maintenance, or shut-in strategy alone.[181] For example, an operator may cycle production during periods of low commodity prices, or temporarily shut in wells while awaiting infrastructure upgrades. Those periods of inactivity are not evidence of neglect or non-beneficial use, but under the proposed change they could add up to 12 months over time and trigger premature plugging.

Applicants' expert Thomas Alexander frames this change as closing a loophole, suggesting that operators can manipulate production to avoid classification as inactive.[182] In reality, this framing ignores operational realities. Intermittent production is common in marginal fields, especially where reservoir performance is variable or where wells are used strategically for lease retention. Removing "continuous" would penalize operators who responsibly manage wells in

[179] WELC's Peltz Direct Testimony at 65:10-17.

[180] NMOGA's McGowen Direct Testimony at 59-60.

[181] NMOGA's McGowen Direct Testimony at 60-61.

[182] WELC's Alexander Direct Testimony at 40-41.

response to market or field conditions.

From my field experience, continuous inactivity is the appropriate standard. A well that has been idle for a full uninterrupted year without any beneficial use may indeed warrant closer scrutiny. But allowing non-continuous downtime to accumulate toward the trigger would create unnecessary regulatory risk, discourage prudent operational management, and lead to premature plugging of wells that still have long-term value.

The Commission should retain the word "continuous" as a modifier to the 12-month inactivity trigger in 19.15.25.8(B) NMAC. This strikes the proper balance between ensuring that long-idle wells are addressed and preserving operator flexibility to manage wells responsibly. Removing "continuous" would create arbitrary abandonment triggers disconnected from risk and contrary to the Act's conservation mandate.

But in support of this change, Applicants' expert Adam Peltz claims:

> The deletion of "continuously" from Paragraph (3) is designed to address those operators who "game the system" to avoid plugging or the well being placed into TA status by producing a de minimis amount of hydrocarbons once a year, which is contrary to good public policy because it obscures the true financial risk these wells pose to the public. This change is also consistent with Applicants' proposal in the next section – 19.15.25.9 NMAC – Presumptions of Beneficial Use – which assesses whether low producing wells operating less than 90 days per year have beneficial use.[183]

I disagree. Mr. Peltz's analysis assumes that any production below arbitrary thresholds is inherently an abuse of the system, when in practice intermittent or low-volume production often serves important conservation and economic purposes. Wells may cycle in and out of production due to market prices, infrastructure constraints, reservoir management decisions, or seasonal conditions. Producing intermittently—even at low volumes—can preserve lease rights, protect correlative

[183] WELC's Peltz Direct Testimony at 65.

interests, and keep the wellbore available for recompletion or refracturing. None of these uses constitute "gaming the system." They represent responsible stewardship of assets consistent with the Act's mandate to prevent waste.

Further, Peltz's claim that removing "continuous" aligns with the presumptions of no beneficial use provision in proposed 19.15.25.9 NMAC only compounds the problem. As I explained in Part III.F above, those presumptions already risk misclassifying marginal or strategically important wells as non-beneficial. Linking the abandonment trigger in 19.15.25.8 NMAC directly to those presumptions creates a self-reinforcing cycle: a well producing less than 90 days per year could both be presumed to lack beneficial use under 19.15.25.9 NMAC and simultaneously trigger abandonment obligations under 19.15.25.8 NMAC. This regulatory layering would all but eliminate the discretion OCD currently exercises to account for context and actual risk.

The Commission should reject Peltz's framing and retain the "continuous" requirement. A well that produces at least intermittently demonstrates ongoing beneficial use unless proven otherwise. Retaining "continuous" ensures that only wells idle for an uninterrupted twelve months trigger abandonment, while preserving OCD's discretion to evaluate suspected abuses on a case-by-case basis. Removing "continuous" and tying the provision to presumptions of no beneficial use would transform isolated policy concerns into a rigid mandate that promotes premature plugging and resource waste.

3. Parallel Proposed Amendment to 19.15.5.9.B(2) NMAC to Reduce Inactive Well Time Resulting in Presumption Out of Compliance with 19.15.25.8 NMAC from 15 Months to 13 Months of Inactivity

WELC proposes a parallel amendment 19.15.5.9.B(2) NMAC to reduce the current 15-month timeframe for well inactivity, after which time a rebuttable presumption is created that the

well is out of compliance with 19.15.25.8 NMAC, to 13 months of inactivity.[184]

i. OCD Official Comments on Proposed Change

OCD supports the proposal and states "this change [sic] reflects the time period change under 19.15.25.8 (B) NMAC."[185]

ii. Reducing to 13 Months Will Lead to Premature Plugging and Counteracts Broader Resource Conservation Goals

For the same reasons I set forth above under Part III.G.2., in my analysis of the same time period change under 19.15.25.8 NMAC, I anticipate the changes as proposed will lead to premature plugging and abandonment, counteracting broader resource conservation goals. Shortening the compliance timeframe from 15 months to 13 months further erodes the operational flexibility operators need to manage wells responsibly. Many wells are temporarily inactive for legitimate reasons such as workovers, infrastructure constraints, or market-driven shut-ins. These periods do not mean the wells lack beneficial use or pose elevated risk.

Accordingly, I recommend the current 15-month timeframe be retained or extended, but not reduced. Additionally, or alternatively, further specification needs to be added explaining what an operator does if the inactivity rebuttal presumption is triggered.

4. Proposed Requirement to Demonstrate Well Will Be Returned to Beneficial Use During Temporary Abandonment Status Period under Proposed 19.15.25.13(A) NMAC

Applicants propose to amend 19.15.25.13(A) NMAC on "Approved Temporary Abandonment" to read as follows:

> The division may place a well in approved temporary abandonment for a period of up to five years upon a demonstration from the operator that the well will be used for beneficial use within the approved period of temporary abandonment. The

[184] WELC Prehearing Statement Exhibit 1-B.

[185] *See* Exhibit 15 to OCD's Powell Direct Testimony at slide 14.

> operator's demonstration shall include an explanation why the well should be placed in temporary abandonment, how the well will be put to beneficial use in the future including supporting technical and economic data, a plan that describes the ultimate disposition of the well, the time frame for that disposition, and any other information the division determines appropriate, including a current and complete well bore diagram; geological evidence; geophysical data; well casing information; waste removal and disposition; production engineering; geophysical logs, e.g., cement bond logs, caliper logs, and casing inspection logs; and health, safety, and environmental information. If the division denies a request, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.[186]

i. OCD Official Comments on Proposed Change

OCD states that "[t]his section requires expanded documentation requirements for TA (temporary abandonment), this is to ensure the operator is truly considering a plan to keep this well for a beneficial use and not to just delay the financial commitments of not plugging it."[187]

ii. Responsive Analysis and Recommendation

While OCD frames this change as a way to ensure temporarily abandoned wells are not used to delay plugging, the proposed amendment is unreasonably burdensome and risks making temporary abandonment impractical. Operators would be required to submit technical and economic data, geologic and geophysical evidence, multiple types of casing and logging records, waste disposal plans, and health, safety, and environmental information—essentially a full permitting package—for every temporary abandonment request. This would significantly increase compliance costs and processing delays, with little improvement to oversight.

Applicants' legal expert Thomas Alexander argues that expanded documentation ensures temporarily abandoned wells are retained only when they have legitimate future potential.[188]

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[186] WELC Prehearing Statement Exhibit 1-E.

[187] Exhibit 15 to OCD's Powell Direct Testimony at slide 38.

[188] WELC's Alexander Direct Testimony at 47-48.

Applicants' technical expert Adam Peltz[189] similarly claims this documentation is necessary to prove beneficial use. In my view, both positions misunderstand the purpose of temporary abandonment. Temporary abandonment is a regulatory mechanism to preserve wells for potential future use while ensuring they remain safe and mechanically sound. The critical elements are ongoing demonstration of mechanical integrity, idle well reporting, and OCD oversight—not exhaustive technical and economic forecasting.

Wells are frequently placed in temporary abandonment while awaiting market improvements, infrastructure buildouts, or recompletion opportunities. Requiring operators to predict future economics or submit unnecessary geophysical data is not feasible and will discourage use of temporary abandonment status altogether. This risks forcing premature plugging of wells that otherwise could return to service, increasing costs to operators and lost tax and royalty revenues to the State of New Mexico.

The Commission should reject the expanded documentation requirements in 19.15.25.13(A) NMAC. If additional information is warranted, it should be limited to wellbore diagrams, mechanical integrity test results, and a basic statement of future plans. Requiring full technical, economic, and environmental packages is disproportionate, unworkable, and inconsistent with how temporary abandonment has functioned effectively for decades. The current temporary abandonment process, supported by mechanical integrity testing and renewal requirements, already provides adequate oversight without imposing duplicative and excessive burdens.

5. Conditions for Extending a Well's Temporary Abandonment Status under Proposed 19.15.25.13(B) NMAC

[189] WELC's Peltz Direct Testimony at 69-70.

Applicants propose to amend 19.15.25.13(B) NMAC on "Approved Temporary Abandonment" to read as follows:

> B. Prior to the expiration of an approved temporary abandonment, the operator shall return the well to beneficial use under a plan the division approves, permanently plug and abandon the well and restore and remediate the location, or apply ~~for a new approval to temporarily abandon the well~~ to the division to extend temporary abandonment status pursuant to the procedures for adjudicatory proceedings in 19.15.4 NMAC, except that in any such adjudicatory proceeding any interested person may intervene under 19.15.4.11.A NMAC. To continue in temporary abandonment, the operator must demonstrate to the division that the well will be returned to beneficial use within the requested period of temporary abandonment. The request shall include documentation demonstrating why the well should remain in temporary abandonment; documentation demonstrating why the well was not brought back to beneficial use or plugged and abandoned during the period of temporary abandonment; documentation demonstrating how the well will be put to beneficial use in the future and supporting technical and economic data; a plan that describes the ultimate disposition of the well, the time frame for that disposition; and a health and safety plan demonstrating the well's casing and cementing meet the requirements of Subsections B and C of Section 19.15.25.13 NMAC and the operator has adequate monitoring procedures in place to ensure such requirements will be met. An extended term shall not exceed two additional years, upon which time the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.[190]

i. OCD Official Comments on Proposed Change

OCD states, "[t]his section ensures the operator truly has a plan to bring this well back to a beneficial use."[191]

ii. Responsive Analysis and Recommendation

While ensuring that temporarily abandoned wells are eventually returned to service is a legitimate goal, the proposed amendment is unnecessarily burdensome, procedurally inefficient,

[190] WELC Prehearing Statement Exhibit 1-E.

[191] Exhibit 15 to OCD's Powell Direct Testimony at slide 39 (citing slide 38 "This section requires expanded documentation requirements for TA (temporary abandonment) this is to ensure the operator is truly considering a plan to keep this well for a beneficial use and not to just delay the financial commitments of not plugging it.").

and risks undermining the very purpose of temporarily abandoned status.

First, requiring extensions of temporary abandonment to proceed through adjudicatory hearings, with full intervention rights under 19.15.4.11(A) NMAC, will turn routine administrative extensions into contested proceedings. This will significantly increase costs, delay timelines, and consume OCD staff resources. In practice, operators often need temporary abandonment extensions due to circumstances outside their control, such as commodity price cycles, infrastructure constraints, or capital availability. Turning these routine requests into adversarial hearings will discourage use of temporary abandonment and drive premature plugging.

Second, the documentation requirements mirror those criticized under 19.15.25.13(A) NMAC. Requiring operators to provide economic projections, ultimate disposition plans, and health and safety plans for every temporary abandonment extension is duplicative and unworkable.

Applicants' legal expert Thomas Alexander supports this framework by arguing that temporary abandonment has historically been abused as indefinite storage for uneconomic wells.[192] Applicants' technical expert Adam Peltz echoes that point, asserting that requiring detailed plans and limiting extensions to two years ensures wells do not sit idle indefinitely.[193] In my opinion, both arguments overlook the reality that wells often remain in temporary abandonment for reasons consistent with conservation policy, including lease preservation, reservoir balancing, or planned recompletions. Arbitrary procedural hurdles and a rigid two-year extension cap will undermine responsible asset management.

The Commission should reject the proposed amendment to 19.15.25.13(B) NMAC. If temporary abandonment extensions require more oversight, OCD could instead require a simple

[192] WELC's Alexander Direct Testimony at 48-51.

[193] WELC's Peltz Direct Testimony at 70-73.

certification of ongoing mechanical integrity, supported by C-145 idle well reporting, and a short statement of intent to return the well to use. Extensions should remain administrative, not adjudicatory, and should be granted for periods long enough to reflect operational realities. Forcing adversarial hearings and extensive documentation for every extension will create delays, discourage temporary abandonment, and lead to premature plugging contrary to the Act's conservation mandate.

6. Implementation Schedules under Proposed 19.15.25.13(D) NMAC

Applicants propose to add a new implementation schedule under proposed 19.15.25.13(D) on "Approved Temporary Abandonment" to read as follows:

D. Implementation schedule for existing wells.

> (1) Inactive wells. Wells that have been inactive for less than three years are eligible for temporary abandonment status. Wells that have been inactive for three or more years are not eligible for temporary abandonment status.
>
> (2) Wells in approved temporary abandoned status. Any operator of a well in temporary abandoned status as of [effective date of amendments] shall apply to the division to extend temporary abandonment status in accordance with Subsection B of this Section prior to the date temporary abandonment status terminates. Unless an operator of a well has renewed a temporary abandonment in accordance with this Paragraph, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.
>
> (3) Wells in expired temporary abandoned status. Any operator of a well in expired temporary abandoned status as of [effective date of amendments] shall apply to the division to extend temporary abandonment status in accordance with Subsection B of this Section. Unless an operator of a well has renewed a temporary abandonment in accordance with this Paragraph, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.[194]

[194] WELC Prehearing Statement Exhibit 1-E.

i. OCD Official Comments on Proposed Change

OCD states, "[t]his section sets standards for temporary abandonment eligibility and subsequent requirements. The eligibility section is important because there have been times operators have abused the temporary abandonment status to delay plugging long-term inactive wells when they have no intention of returning them to a beneficial use."[195]

ii. Responsive Analysis and Recommendation

While OCD frames this change as preventing abuse, the proposed eligibility cutoff of three years for temporary abandonment is arbitrary and counterproductive. It ignores the operational and economic realities of well management in New Mexico. Many wells may remain inactive for longer than three years for legitimate reasons—such as pending infrastructure construction, unitization or communitization proceedings, or capital planning for recompletions or enhanced recovery projects. Barring these wells from temporary abandonment status would force premature plugging of assets that could otherwise return to service.

Applicants' legal expert Thomas Alexander argues that strict eligibility limits are necessary to prevent indefinite temporary abandonment.[196] Applicants' technical expert Adam Peltz similarly claims that long-term temporary abandonment is evidence of operator neglect. In my experience, these assumptions are misplaced.[197] I have seen numerous wells idle for extended periods before being successfully reactivated, including refractured horizontal wells and recompleted legacy wells. Denying temporary abandonment eligibility after three years would eliminate these opportunities, reduce ultimate recovery, and undermine the Act's mandate to

[195] Exhibit 15 to OCD's Powell Direct Testimony at slide 40.

[196] WELC's Alexander Direct Testimony at 51-53.

[197] WELC's Alexander Direct Testimony at 74-75.

prevent waste and protect correlative rights.

Further, the transition provisions in subsections (2) and (3) impose immediate burdens on operators with existing temporarily abandoned or expired temporarily abandoned wells. Requiring all such wells to undergo adjudicatory temporary abandonment extension proceedings or face plugging obligations will overwhelm both operators and OCD staff, creating bottlenecks and administrative backlogs without improving oversight.

The Commission should reject the proposed amendment to 19.15.25.13(D) NMAC. If eligibility limits are to be considered, they should be flexible and risk-based rather than tied to an arbitrary three-year cutoff. At minimum, operators should be permitted to justify continued temporary abandonment status with evidence of mechanical integrity, lease or unit status, or a specific development plan. Transition provisions should be phased and administrative, not immediate and adjudicatory. A balanced approach will preserve the utility of temporary abandonment while ensuring OCD retains authority to address problem wells.

7. Proposed 19.15.25.13(E) NMAC Requiring Implementation Consistent with Any Applicable BLM Requirements

Applicants would also add a new 19.15.25.13(E) NMAC, making clear that "timeframes Subsections A and B in this Section shall be implemented consistent with any applicable federal requirements."[198]

i. OCD Official Comments on Proposed Change

OCD indicates this addition will ensure there are no conflicts between OCD's requirements and federal (i.e., BLM) requirements regarding temporary abandonment timelines.[199]

[198] WELC Prehearing Statement Exhibit 1-E.

[199] Exhibit 15 to OCD's Powell Direct Testimony at slide 41.

ii. Responsive Analysis and Recommendation

On its face, aligning with federal requirements seems harmless, but in reality this provision introduces confusion and undermines regulatory certainty. BLM's April 2024 final rule on fluid mineral leasing (43 C.F.R. § 3160.0-5) expressly retained flexibility and case-specific discretion for idle wells, allowing the agency to grant extensions based on engineering judgment and risk factors rather than rigid deadlines. 89 Fed. Reg. 30916 (Apr. 23, 2024). By contrast, the Applicants' proposals impose hard time limits and heavy documentation burdens. Simply requiring "consistency" without defining which federal standards apply risks importing stricter obligations by default and making New Mexico's rules more onerous than even BLM's.

Applicants' legal expert Thomas Alexander argues that this amendment is necessary to prevent operators from exploiting differences between OCD and BLM frameworks.[200] He asserts that dual-jurisdiction wells could otherwise be managed under more lenient timelines, undermining accountability. I disagree. Operators subject to both OCD and BLM oversight must comply with both sets of requirements today, and there is no evidence that differences in temporary abandonment timelines have led to avoidance or abuse. Each agency already retains authority to enforce its own rules.

In practice, this cross-reference will create a moving target. Federal requirements change through rulemaking, as illustrated by BLM's July 2023 proposed rule and the revised April 2024 final rule. If OCD's rule is tied to "any applicable" federal standard, New Mexico's regulatory obligations would shift automatically with each federal amendment, creating uncertainty for operators and leaving the Commission's discretion subordinated to BLM. The Act requires the

[200] WELC's Alexander Direct Testimony at 53-55.

Commission to adopt rules that reflect New Mexico's unique conditions, not to outsource that responsibility to a separate agency.

The Commission should reject proposed 19.15.25.13(E) NMAC. Coordination with BLM is important, but it should be handled through interagency agreements or guidance documents that clarify how operators can comply with both sets of requirements for dual-jurisdiction wells. Wholesale incorporation of undefined federal requirements into OCD rules risks confusion, inconsistency, and unintended consequences, including premature plugging of wells that federal regulators would otherwise allow to remain in TA.

8. Changes to Requests for Approval and Permit for Approved Temporary Abandonment under Proposed 19.15.25.14(A) NMAC

Applicants propose amending the requirements under proposed 19.15.25.14(A) NMAC to require applications to temporarily abandon wells must include the demonstration required under new 19.15.25.12 NMAC.[201] It appears that this proposed change is referring to the existing 19.15.25.12 NMAC, which will be renumbered to section 19.15.25.13 NAMC as I assessed immediately above in Part III.G.4.-7, and which Applicants would amend to require a demonstration that the well will be used for beneficial use within the period of temporary abandonment.

i. OCD Official Comments on Proposed Change

OCD comments that this change provides regulatory clarity with the other changes it proposes to 19.15.25.[202] which I analyze in this Part III.G.

ii. Responsive Analysis and Recommendation

[201] WELC Prehearing Statement Exhibit 1-E.

[202] Exhibit 15 to OCD's Powell Direct Testimony at slide 42.

While OCD frames this amendment as a matter of clarity, in practice, it compounds the same problems I have already identified with the proposed amendments to 19.15.25.13 NMAC. By requiring operators to demonstrate beneficial use up front for every temporary abandonment application, the rule imposes burdensome documentation obligations—technical and economic data, disposition plans, casing and cement logs, and health and safety plans—that are unnecessary to ensure well integrity.

Applicants' legal expert Thomas Alexander supports this amendment, asserting that requiring detailed demonstrations up front prevents operators from using temporary abandonment as a way to indefinitely defer plugging costs.[203] But this reasoning overstates the risk and overlooks the safeguards already in place. OCD currently requires operators to demonstrate mechanical integrity, renew temporary abandonment status periodically, and comply with C-145 idle well reporting. These requirements ensure oversight without forcing operators to submit speculative economic forecasts or unnecessary geophysical data as part of every temporary abandonment request.

From my experience, many temporarily abandoned wells are temporarily idle due to infrastructure delays, market conditions, or pending recompletions. For these wells, predicting detailed future economics or ultimate disposition is not feasible at the time of application. Imposing such requirements will discourage operators from using temporary abandonment, leading instead to premature plugging of wells that could otherwise be returned to service, contrary to the Act's conservation mandate.

The Commission should reject the proposed amendment to 19.15.25.14(A) NMAC as

[203] WELC's Alexander Direct Testimony at 50-51, 55-56.

drafted. If greater clarity is desired, the rule should be revised to require only that temporary abandonment applications include (1) a current wellbore diagram, (2) evidence of mechanical integrity, and (3) a general statement of future plans. Additional data requests should be reserved for wells where OCD has specific concerns, not made mandatory for all temporary abandonment applications. This approach balances oversight with operational feasibility and preserves temporary abandonment as a vital conservation tool.

9. Proposed Changes to Demonstrating Mechanical Integrity Requirements During Temporary Abandonment under Proposed 19.15.25.14(B) NMAC

Applicants propose adding to the requirements under proposed 19.15.25.14(B)(2) NMAC to require operators to furnish evidence demonstrating the well's casing and cementing are mechanically and physically sound and in such condition to prevent "non-containment of well bore fluids to the atmosphere" in addition to migration of hydrocarbons or water, as well as a demonstration of the existing mechanical integrity requirements under 19.15.25.14(B)(2) NMAC.[204]

i. OCD Official Comments on Proposed Change

OCD comments that this "reinforces the requirement that a well in temporary abandonment cannot leak while in this status."[205]

ii. Responsive Analysis and Recommendation

Preventing leaks during temporary abandonment is already the cornerstone of OCD's existing mechanical integrity requirements. Current rules require operators to demonstrate that wells do not allow migration of fluids behind casing or uncontrolled releases through wellbore

[204] WELC Prehearing Statement Exhibit 1-E.

[205] Exhibit 15 to OCD's Powell Direct Testimony at slide 43.

components. Expanding the language to include "non-containment of well-bore fluids to the atmosphere" adds no substantive protection and instead creates regulatory ambiguity. It is unclear what additional tests or documentation OCD would require to satisfy this standard.

Applicants' legal expert Thomas Alexander[206] and technical expert Adam Peltz[207] argue that the additional language is necessary to ensure that temporarily abandoned wells are not venting gas or other fluids. I disagree. This concern is already addressed through required pressure testing, annular monitoring, and compliance with OCD's natural gas waste rules. Reiterating the same concept with different wording risks creating inconsistent interpretations or duplicative testing requirements, which will increase costs without providing new environmental benefits.

Temporarily abandoned wells that pass standard mechanical integrity tests and annular pressure monitoring requirements do not pose a risk of uncontrolled venting or leakage. The existing regulatory framework provides OCD with full authority to address suspected problems on a case-by-case basis, including requiring remedial work or denying temporary abandonment status if a well is not mechanically sound. Adding vague and duplicative language only creates uncertainty for operators and could result in inconsistent enforcement.

The Commission should reject the proposed amendment to 19.15.25.14(B) NMAC. The existing MIT and casing/cement integrity provisions already ensure that temporarily abandoned wells do not leak. If OCD believes additional oversight is needed, it should clarify testing protocols under current rules rather than expanding statutory language in ways that invite confusion. Preserving a clear, consistent standard is critical to maintaining compliance and avoiding unnecessary disputes.

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[206] WELC's Alexander Direct Testimony at 50-51, 55-56.

[207] WELC's Peltz Direct Testimony at 75.

10. Proposed Changes to Demonstrating Mechanical Integrity During Temporary Abandonment Under Proposed 19.15.25.15(A)(4)-(5) NMAC

Applicants propose adding two requirements to the mechanical integrity requirements under proposed 19.15.25.15(A)(4)-(5) NMAC to require: any isolation device used to test mechanical integrity pursuant to 19.15.25.15(A) NMAC must remain in place for the duration of the temporary abandonment, and the operator must perform a caliper log and casing integrity log.[208]

i. OCD Official Comments on Proposed Change

OCD states:

> The isolation device required to stay in the well is consistent with federal requirements. It adds a protective mechanical layer to the well for extended inactive durations. The caliper log and casing integrity logs serve two purposes. The first being to ensure there isn't an imminent threat of corrosion compromising the well's integrity. The second is that, if any additional extensions are requested, they serve as a baseline for comparison to future logs to evaluate if there is an ongoing corrosion concern.[209]

ii. Responsive Analysis and Recommendation

While OCD presents these requirements as consistent with federal practice, in reality, they exceed what most federal and state regulators mandate and would impose unnecessary costs with limited benefit.

- **Isolation devices**: Federal rules, such as BLM's 2024 final rule, do not require that a test isolation device remain in place indefinitely. Instead, BLM requires operators to demonstrate mechanical integrity through pressure testing or annular monitoring, with corrective action taken if problems are identified. Leaving an isolation device in place for

[208] WELC Prehearing Statement Exhibit 1-E.

[209] Exhibit 15 to OCD's Powell Direct Testimony at slide 44.

the entire temporarily abandoned period raises practical concerns. Bridge plugs, packers, and other isolation devices are not designed for indefinite service. Over time, they themselves may degrade, creating new risks rather than reducing them.

- **Caliper and casing integrity logs**: While caliper logs and casing inspection tools can provide useful data, they are not a routine requirement for temporarily abandoned wells in Texas, Wyoming, or North Dakota. Those jurisdictions use pressure tests and annular monitoring as the standard MIT, reserving casing logs for situations where a problem is suspected. Requiring every operator to run expensive casing logs, even when no issues are indicated, is unnecessary and inconsistent with industry practice.

Applicants' legal expert Thomas Alexander endorses these additional requirements, arguing they will prevent wells from degrading unnoticed.[210] In my opinion, his position overstates the problem and underestimates the costs. From my experience, casing logs are costly, technically difficult to run in older wells with restricted access, and may not yield reliable data without preparatory cleanouts. Requiring them across the board risks creating false positives and forcing unnecessary remedial work or plugging.

The Commission should reject the proposed amendments to 19.15.25.15(A)(4)–(5) NMAC. Existing MIT standards already ensure that temporarily abandoned wells remain mechanically sound. Isolation devices should not be mandated to remain in place indefinitely, and casing logs should be required only where specific evidence of corrosion or other risk exists. Imposing these requirements across the board would add cost and complexity without proportional environmental benefit, and would likely accelerate premature plugging of wells that could otherwise be returned to productive use.

[210] WELC's Alexander Direct Testimony at 50–51, 56–58.

I have also reviewed the direct testimony of Mr. McGowen and agree with his findings and conclusion that "the proposed changes to mechanical integrity testing are unnecessary, costly, impractical, and inconsistent with broader regulatory norms."[211] The current rules already provide OCD with the authority and tools to request further testing when needed, without burdening every operator with excessive and unjustified requirements.[212]

IV. CONCLUSION

For the reasons set forth above, the Applicants' proposals should be rejected or significantly modified. While framed as measures to enhance clarity and accountability, many of the proposed amendments exceed the statutory authority granted under the Act, duplicate oversight tools OCD already possesses, or impose burdens that will accelerate premature plugging of wells that remain mechanically sound and capable of beneficial use.

Applicants' experts rely heavily on inflated cost averages, rigid production and injection thresholds, and assumptions about operator behavior that are not supported by data or industry practice. In contrast, the testimony of NMOGA, IPANM, and other industry experts demonstrates that responsible operators can and do manage marginal, idle, and temporarily abandoned wells safely, economically, and in full compliance with existing rules.

If implemented as proposed, these rules would threaten the economic viability of small and independent operators, discourage acquisitions by financially stronger companies, and undermine the conservation goals of New Mexico's regulatory framework by promoting premature plugging and unnecessary new drilling. The ripple effects would harm local economies, reduce state revenue, and weaken the conservation tax base that supports the Oil and Gas Reclamation Fund.

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[211] NMOGA's McGowen Direct Testimony at 30-40.

[212] NMOGA's McGowen Direct Testimony at 40.

Balanced alternatives exist. As outlined in Section III.D.10, phased or risk-based financial assurance adjustments, enhanced reporting for inactive wells, targeted use of Agreed Compliance Orders, and continued reliance on the Reclamation Fund can strengthen oversight without creating unintended economic and legal consequences. These alternatives reflect both statutory limits and practical realities of oil and gas operations in New Mexico.

Accordingly, I respectfully recommend that the Commission reject the Applicants' proposed amendments in their current form and instead adopt modifications consistent with the industry's responsive testimony. Such an approach will protect the environment, ensure responsible oversight, and preserve the economic and conservation interests of the State of New Mexico.

V. RECOMMENDATIONS

1. **Reject Proposals That Exceed Statutory Authority**. Amendments that attempt to create new categories of financial assurance (such as marginal well bonding), impose automatic inflation adjustments, or condition well transfers and acquisitions on compliance beyond New Mexico's jurisdiction should be rejected as ultra vires.
2. **Preserve Risk-Based and Tiered Bonding Structures**. Rather than adopting across-the-board $150,000 per-well requirements, the Commission should retain a tiered blanket and individual well bonding system that reflects actual plugging risk, operator compliance history, and statutory caps.
3. **Retain Flexibility in Temporary Abandonment**. The Commission should preserve temporary abandonment as a viable tool by rejecting arbitrary time limits and excessive documentation burdens. Oversight should focus on mechanical integrity, not speculative economic projections.

4. **Maintain "Continuous" Standard for Inactivity**. Wells should only trigger abandonment requirements after 12 months of continuous inactivity. Removing "continuous" would penalize prudent operational strategies such as seasonal curtailment or planned workovers.
5. **Reject Presumptions of No Beneficial Use**. Production or injection thresholds should not be used to define beneficial use. Instead, the Division should continue to evaluate wells on a case-by-case basis, recognizing beneficial purposes such as lease preservation, reservoir management, and future development potential.
6. **Expand Use of Targeted Enforcement Tools**. Rather than discarding Agreed Compliance Orders, OCD should make greater use of them to prioritize wells for plugging based on environmental risk, while allowing operators to manage lower-risk wells in a phased manner.
7. **Recognize and Utilize the Reclamation Fund**. The Reclamation Fund remains an essential part of New Mexico's plugging and reclamation framework. It should not be disregarded in assessing financial assurance needs, particularly since it is funded by conservation taxes that grow during high-price cycles.
8. **Adopt Balanced Alternatives**. As detailed in Section III.D.10, alternatives such as phased or risk-based assurance increases, enhanced certification for inactive wells, and flexible compliance tied to operator history offer lawful and workable paths forward without harming responsible operators or undermining conservation goals.

That concludes my rebuttal testimony on behalf of the New Mexico Oil and Gas Association.

SIGNATURE PAGE

I hereby affirm that the statements, analyses, and opinions contained in this report are true and accurate to the best of my knowledge and belief. This report has been prepared in a manner consistent with generally accepted professional and engineering standards.

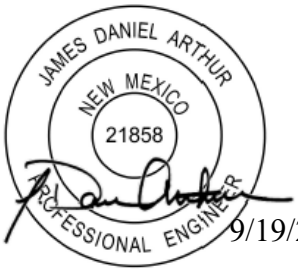
Prepared by:

Signature: _____ **Date:** September 19, 2025

Name: J. Daniel Arthur, PE No. 21858

Title: President/Chief Engineer

Company: ALL Consulting, LLC



9/19/2025

Dated this 19th day of September, 2025.

Respectfully submitted,

By:_____

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served to counsel of record via the EMNRD CentreStack Platform this 19th day of September 2025, as follows:

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Rachael Ketchledge

APPENDIX A

State of New Mexico
Energy, Minerals and Natural Resources Department

Albert Chang
Division Director
Oil Conservation Division

July 1, 2025

Governor Michele Lujan Grisham
State Capitol
Santa Fe, NM 87503

Representative Nathan Small
Chair, House Appropriations and Finance Committee
PO Box 697
Dona Aña, NM 88032

Senator George Muñoz
Chair, Senate Finance Committee
Box 2679
Gallup, NM 87305

Cabinet Secretary Melanie Kenderdine
Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, NM 87505

Re: FY 2024 Annual Report on Use of the Oil Reclamation Fund

Attached is the Oil and Gas Reclamation Fund Report for Fiscal Year 2024. If you have any questions or desire additional information, please feel free to contact me via email at *albert.chang@emnrd.nm.gov*.

Respectfully,

Albert Chang
Director, Oil Conservation Division

attachment

cc: Charles Sallee, Director, Legislative Finance Committee
Wayne Propst, Cabinet Secretary, Department of Finance and Administration

OIL AND GAS RECLAMATION REPORT FOR FISCAL YEAR 2024

(July 1, 2023 - June 30, 2024)

The Oil and gas Act requires the Director of the New Mexico Oil Conservation Division (OCD) to make an annual report to the Secretary of the Energy, Minerals and Natural Resources Department, the Governor and the Legislature on the use of the Oil and Gas Reclamation Fund. The OCD Director makes this report for the fiscal year 2024, ending the preceding June 30.

The OCD is authorized by the Oil and Gas Act to plug and abandon oil and gas wells to prevent the migration of fluids, gases and other contaminants to other strata or to fresh water, and to restore and remediate abandoned well sites and associated production facilities.

See NMSA 1978 Section 70-2-12.B. (1) and (18) and 70-2-38.

That same authority allows OCD to require oil and gas operators to post plugging bonds conditioned upon performance of their plugging obligations. A well operator may furnish a single-well bond for each of its wells or a blanket bond covering all wells.

Additional single-well bonds are required for wells on state and private land that have been inactive for two years or more. Bonds for other production facilities range from $25,000 to$250,000. If a bond covers a well, site or facility that the OCD has plugged or remediated, the OCD forecloses on the bond and places the proceeds in the Oil and Gas Reclamation Fund.

NMSA 1978, Sections 70-2-37 and 70-2-38 create the Oil and Gas Reclamation Fund ("Fund") and provide for administration of the Fund. Expenditures may be used to plug abandoned wells and to restore and remediate abandoned well sites and associated production facilities. In addition, up to $150,000 of the Fund may be spent annually to promote energy education in the State. The Fund is supported principally by the oil and gas conservation tax.

Effective on July 1, 2011, NMSA 1978 Section 7-1-6.21, as amended, provides for monthly distribution of proceeds of the Oil and Gas Conservation Tax to the Fund, as follows:

A. With respect to any period for which the rate of the tax imposed by Section 7-30-4 NMSA 1978 is nineteen-hundredths percent, a distribution pursuant to Section 7-1-6.20 NMSA 1978 shall be made to the oil and gas reclamation fund in an amount equal to two-nineteenths of the net receipts attributable to the tax imposed under the Oil and Gas Conservation Tax Act [Chapter 7, Article 30 NMSA 1978].

B. With respect to any period for which the total rate of the tax imposed on oil by Section 7-30-4 NMSA 1978 is twenty-four hundredths percent, a distribution pursuant to Section 7-1-6.20 NMSA 1978 shall be made to the oil and gas reclamation fund in an amount equal to nineteen and seven-tenths percent of the net receipts attributable to the tax imposed under the Oil and Gas Conservation Tax Act.

During all of FY 2024, the higher conservation tax applied, such that the monthly distribution to the Fund was computed pursuant to Subsection B of Section 7-1-6.21.

The OCD employs independent contractors to perform the plugging, restoration and remediation work. The contracts are Purchase Orders pursuant to the Procurement Code. Contractors awarded contracts are oil field service companies specializing in plugging oil and gas wells or firms specializing in environmental cleanups.

WELL PLUGGING, SITE REMEDIATION, PRE- AND POST METHANE EMISSIONS TESTING, BOND REQUIREMENTS

The following pages provide details on the Oil and Gas Reclamation fund and its uses. These details include an FY 24 balance sheet for the fund and information on the procurement of well plugging, emergency services and site remediation during the year.

The Oil Conservation Division used Reclamation funds in FY 2024 to plug 46 wells, conduct eight (8) site assessments followed by remediation and reclamation work, continues to monitor one (1) project, conducted 257 pre- and post-plug methane tests on wells, and reimbursed contractors for performance bonds. For continued funding from the Bipartisan Infrastructure Law, the Federal Phase One Formula Grant, requires States to provide on-site research information regarding the Federal Endangered Species Act of 1973 (ESA) and the National Historic Preservation Act of 1966 (NHPA). Two consultants were hired to conduct on site research, compile the data and prepare the reports covering areas in southeast New Mexico. Once the reports are approved by the appropriate Federal agency, OCD can begin working on plugging wells using the Federal Grant funds.

OCD staff and contractors were challenged with remediation and reclamation efforts on four sites found to be highly contaminated. While most of the sites have been approved for reseeding, one site, the Cano San Andres #6 Tank Battery, requires further remediation work.

Regarding the former I&W Brine well in Carlsbad, surface subsidence and cavern pressure monitoring including an early warning system along with indirect geophysical characterization continued to progress through the fiscal year.

The division did not use funds to pay the OCD staff salaries and benefits.

The OCD entered into a settlement agreement with Ridgeway Arizona Oil Corporation on December 13, 2023. The agreement contemplates OCD plugging 299 of Ridgeway's 337 wells. OCD entered the settlement after review of financial disclosures indicating that Ridgeway was incapable of plugging the wells. In consideration of OCD plugging activity, Ridgeway was required to perform site assessments for all inactive wells and to make monthly reimbursement payments to the state at the rate of $2.00 per gross barrel of oil sold or $30,000 per month, whichever is greater. Ridgeway is prohibited from transferring wells without OCD approval and may not continue operating within New Mexico if it fails to make any necessary reimbursement payment.

OIL RECLAMATION FUND

Beginning Cash Balance @ July 1, 2023	**$50,898,058.05**
Oil & Gas Conservation Tax Revenue	**$25,986,480.04**
Bond Forfeitures, Salvage and Reimbursement Recoveries	**$ 0.00**
Total Revenues:	**$25,986,480.04**
Balance:	**$64,401,673.23**
Subtotal expenditures for plugging, remediation, and reclamation, methane testing, bond reimbursement, and Endangered Species Act reports:	**($11,349,842.82)**
Subtotal Other Expenses:	**($922,105.16)**
TOTAL EXPENSES FY 2024	**(12,330,131.66)**
Ending Cash Balance June 30, 2024	**$52,071,541.57**

FY24 EXPENDITURE AND USAGE DETAIL

PLUGGED ORPHANED WELLS SERVICES (46)

1. Elks #1, well owned by the Office of the State Engineer, in Chavez County.
   Paid $127,495.16, Contractor: JA Drake Well Service Inc, Invoice #21804.
2. Lansford #002, operator Energy Acumen, in Lea County.
   Paid $89,429.66. Contractor: JA Drake Well Service, Inc, Invoice #22169.
3. Alves #004, operator Energy Acumen, in Lea County.
   Paid $144,820.79. Contractor JA Drake Well Service, Inc, Invoice #22122.
4. Alves #002, operator Energy Acumen, in Lea County.
   Paid $194,690.23, Contractor: JA Drake Well Service, Inc, Invoice #22121.
5. Mike #002, operator Energy Acumen LLC, Lea County.
   Paid $92,623.43, Contractor: A-Plus P&A Holdings LLC, Invoice #1983.
6. Double L Queen #001Y, operator Canyon E&P Company, Chaves County.
   Paid $11,703.83, Contractor: A-Plus P&A Holdings LLC, Invoice #1882 (remainder of invoice paid using federal funds).
7. Double L Queen #001H, operator Canyon E&P Company, Chaves County.
   Paid $8,792.46, Contractor: A-Plus P&A Holdings LLC, Invoice #1858 (remainder of invoice paid using federal funds).
8. Lansford #001, operator Energy Acumen LLC, Lea County.
   Paid $145,075.74, Contractor: JA Drake Well Service, Inc, Invoice #22157.
9. Lansford #004, operator Energy Acumen LLC, Lea County.
   Paid: $122,744.92, Contractor: JA Drake Well Service, Inc, Invoice #22181.
10. Pruitt #001, operator Energy Acumen LLC, Lea County.
    Paid: $137,015.56, Contractor: JA Drake Well Service, Inc, Invoice #22245.
11. GW Shahan #002, operator Unified Operating, LLC, Lea County.
    Paid: $31,456.46, Contractor: JA Drake Well Service, Inc., Invoice #22198.
12. Mike #004, operator Energy Acumen LLC, Lea County.
    Paid $128,328.19, A-Plus P&A Holdings, LLC, Invoice #1989.
13. Lansford #003, operator Energy Acumen LLC, Lea County.
    Paid $135,115.27, JA Drake Well Service Inc, Invoice #22180.
14. Alves #003, Operator Energy Acumen LLC, Lea County.
    Paid $214,185.83, JA Drake Well Service Inc, Invoice #22197.
15. Lansford #005, Operator Energy Acumen LLC, Lea County.
    Paid $197,772.25, JA Drake Well Service Inc, Invoice #22199.
16. Lansford #006, Operator Energy Acumen LLC, Lea County.
    Paid $166,599.96, JA Drake Well Service Inc, Invoice #22223.
17. Double L Queen #003, Operator Canyon E & P Company, Chaves County.
    Paid $69,279.31, A-Plus P&A Holdings LLC., Invoice #1860.
18. Double L Queen #003G, Operator Canyon E & P Company, Chaves County.
    Paid $69,148.62, A-Plus P&A Holdings LLC, Invoice #1862.
19. Double L Queen #003Q, Operator Canyon E & P Company, Chaves County.
    Paid $90,128.62, A-Plus P&A Holdings LLC, Invoice #1865.
20. Mike #001, operator Energy Acumen LLC, Lea County.
    Paid $86,416.72, A-Plus P&A Holdings LLC, Invoice #1962.
21. Miller Comm #001, operator Energy Acumen LLC, Lea County.
    Paid $204,077.39, A-Plus P&A Holdings LLC, Invoice #1972.
22. Mike #003, operator Energy Acumen LLC, Lea County.
    Paid $147,724.34, A-Plus P&A Holdings LLC, Invoice #1955.
23. Schwalbe #001, operator Robinson Oil Inc., Lea County.
    Paid $336,762.47, JA Drake Well Service, Invoice #21755.
24. Bagley #002, operator Lease Holders Acquisitions, Inc., Lea County.
    Paid $523,725.26, JA Drake Well Service, Invoice #22090.
25. Buckskin Federal #002, operator Energy Acumen, LLC., Lea County.
    Paid $49,579.19, JA Drake Well Service, Invoice #22260.
26. JP Collier #001, operator Lease Holders Acquisitions, Inc., Lea County.
    Paid $476,334.72, JA Drake Well Service, Invoice #22107.

PLUGGED ORPHANED WELL SERVICES, continued (46)

27. Alves A #001, operator Energy Acumen, LLC., Lea County.
    Paid $454,014.69, JA Drake Well Service, Invoice #22226.
28. Robert #001, operator Energy Acumen, LLC., Lea County.
    Paid $183,222.16, JA Drake Well Service, Invoice #22243.
29. Seanna #002 cut off, operator Canyon E & P Company, Chaves County.
    Union Happy #001 cut off, operator Canyon E & P Company, Chaves County.
    Union Happy #002 cut off, operator Canyon E & P Company, Chaves County.
    Paid $5,481.66, JA Drake Well Service, Invoice #22167.
30. Robert #002, operator Energy Acumen, LLC., Lea County.
    Paid $143,401.02, JA Drake Well Service, Invoice #22244.
31. Twin Lakes San Andres #109, operator Blue Sky NM, Inc., Chaves County.
    Paid $12,744.93, JA Drake Well Service Inc., Invoice #21510.
32. Twin Lakes San Andres #065, operator Blue Sky NM, Inc., Chaves County.
    Paid $5,480.93, JA Drake Well Service Inc, Invoice #21265.
33. Miller Comm #001, operator Energy Acumen LLC, Lea County.
    Paid $76,382.70, A-Plus P&A Holdings LLC, Invoice #2227.
34. Miller Comm #001, operator Energy Acumen LLC, Lea County.
    Paid $149,142.11, A-Plus P&A Holdings LLC, Invoice #2226.
35. Brown 93 #001, operator Ridgeway Arizona Oil Corporation, Lea County.
    Paid $189,275.69, JA Drake Well Service LLC, Invoice #22586.
36. Double L Queen #001R, operator Canyon E & P Company, Chaves County.
    Paid $115,772.09, A-Plus P&A Holdings, LLC., Invoice #1884.
37. Na Dzis Pah #002, operator Biya Operators Inc., Sandoval County.
    Paid $121,722.05, Aztec Well Servicing Co., Invoice #2024-00865
38. Na Dzis Pah #001, operator Biya Operators Inc., Sandoval County.
    Paid $104,801.86, Aztec Well Servicing Co, Invoice #2024-00866.
39. State Senate #002, operator Biya Operators Inc., Sandoval County.
    Paid $72,572.08, Aztec Well Servicing Co, Invoice #2024-00867.
40. Indian #002, operator Biya Operators Inc., Sandoval County.
    Paid $107,681.62, Aztec Well Servicing Co, Invoice #2024-00868.
41. Chaveroo San Andres Unit #004, operator Ridgeway Arizona Oil Corporation, Roosevelt County.
    Paid $161,592.64, A-Plus P&A Holdings LLC, Invoice #2414.
42. Chaveroo San Andres Unit #004, operator Ridgeway Arizona Oil Corporation, Roosevelt County.
    Paid $14,852.07, A-Plus P&A Holdings LLC, Invoice #DR-02815.
43. Chaveroo San Andres Unit #006, operator Ridgeway Arizona Oil Corporation, Roosevelt County.
    Paid $159,524.24, A-Plus P&A Holdings LLC, Invoice #2284
44. Chaveroo San Andres Unit #003, operator Ridgeway Arizona Oil Corp, Roosevelt County.
    Paid $168,526.06, A-Plus P&A Holdings LLC, Invoice #2426.
45. Brown 84 #002, Lea County, Arizona Ridgeway Oil Corporation, Lea County.
    Paid $274,383.81, JA Drake Well Service Inc, Invoice #22516.
46. Brown 84 #001, operator Arizona Ridgeway Oil Corporation, Lea County.
    Paid $276,444.71, JA Drake Well Service Inc, Invoice #22597.

Subtotal $6,798,045.50

SALVAGE, REMEDIATION, RECLAMATION AND REVEGETATION SERVICES (8)

1. Canyon E & P Double L Queen Tank Battery #006, operator Canyon E & P Company, Chaves County
   Paid: $337,068.19, Contractor: Young Environmental Services, dba Envirotech, Invoice #63351.
2. Canyon E & P Double L Queen Tank Battery #006, operator Canyon E & P Company, Chaves County.
   Paid: $418,495.10, Contractor: Young Environmental Services, dba Envirotech, Invoice #63245.
3. Reed Estate #001, operator Hal J. Rasmussen Oper Inc., Lea County.
   Paid $19,519.28, Intera Incorporated, Invoice #03-24-01.
4. Reed Estate #001, operator Hal J. Rasmussen Oper Inc., Lea County.
   Paid $40,675.41, Intera Incorporated, Invoice #03-24-18.
5. Canyon E & P Double L Queen Tank Battery #006, operator Canyon E & P Company, Chaves County
   Paid: $298,678.93, Contractor: Young Environmental Services, dba Envirotech, Invoice #63564.
6. Canyon E & P Double L Queen Tank Battery #006, operator Canyon E & P Company, Chaves County
   Paid: $87,001.78, Contractor: Young Environmental Services, dba Envirotech, Invoice #63697.
7. Reed Estate #001, operator Hal J. Rasmussen Oper Inc., Lea County.
   Paid $65,852.09, Unlimited Construction 2 LLC, Invoice #5328.
8. Reed Estate #001, operator Hal J. Rasmussen Oper Inc., Lea County.
   Paid $127,657.73, Unlimited Construction 2 LLC, Invoice #5317.
9. Cano San Andres Unit Tank Battery #006, operator Cano Petro of New Mexico Inc.
   Paid $66,682.27, Ensolum LLC, Invoice #28774.
10. Reed Estate #001, operator Hal J. Rasmussen Oper Inc., Lea County.
    Paid $32,881.03, Intera Incorporated, Invoice #03-24-101 REV.
11. Canyon E & P Double L Queen Tank Battery #006, operator Canyon E & P Company, Chaves County.
    Paid: $42,082.08, Contractor: Young Environmental Services, dba Envirotech, Invoice #63840.
12. Reed Estate #001, operator Hal J. Rasmussen Oper Inc., Lea County.
    Paid $425,216.13, Unlimited Construction 2 LLC, Invoice #5342.
13. Reed Estate #001, operator Hal J. Rasmussen Oper Inc., Lea County.
    Paid $69,900.74, Intera Incorporated, Invoice #5346.
14. Reed Estate #001, operator Hal J. Rasmussen Oper Inc., Lea County.
    Paid $47,682.91, Intera Incorporated, Invoice #04-24-01.
15. Artesia Metex Unit #005, operator Cannon E & P Company., Eddy County.
    Paid $11,073.47, Miller Engineers, Inc, Invoice #5E3179601Revise.
16. Artesia Metex Unit #006, operator Cannon E & P Company., Eddy County.
    Paid $9,541.80, Miller Engineers, Inc. , Invoice #5E3179602
17. Artesia Metex Unit #017, operator Cannon E & P Company., Eddy County.
    Paid $9,333.62, Miller Engineers, Inc, Invoice #5E3179603.
18. Artesia Metex Unit #017, operator Cannon E & P Company., Eddy County.
    Paid $27,362.95, Miller Engineers, Inc, Invoice #5E3179608.
19. Artesia Metex Unit #017, operator Cannon E & P Company., Eddy County.
    Paid $27,662.07, Miller Engineers, Inc, Invoice #5E3179609
20. Artesia Metex Unit #017, operator Cannon E & P Company., Eddy County.
    Paid $26,080.90, Miller Engineers, Inc, Invoice #5E3179610.
21. Artesia Metex Unit #017, operator Cannon E & P Company., Eddy County.
    Paid $11,880.73, Miller Engineers, Inc, Invoice #5E3179611.
22. Artesia Metex Unit #017, operator Cannon E & P Company., Eddy County.
    Paid $12,174.60, Miller Engineers, Inc, Invoice #5E3179612.
23. Canyon E & P Double L Queen Tank Battery #006, operator Canyon E & P Company, Chaves County.
    Paid: $4,613.22, Contractor: Young Environmental Services, dba Envirotech, Invoice #64599.
24. Reed Estate #001, operator Hal J. Rasmussen Oper Inc., Lea County.
    Paid $60,327.99, Intera Incorporated, Invoice #05-24-68.
25. Artesia Metex Unit #018, operator Cannon E & P Company., Eddy County.
    Paid $10,929.29, Miller Engineers, Inc, Invoice #5E31779604.

26. Artesia Metex Unit #019, operator Cannon E & P Company., Eddy County.
    Paid $6,623.47, Miller Engineers, Inc, Invoice #5E3179605.
27. Artesia Metex Unit #019, operator Cannon E & P Company., Eddy County.
    Paid $42,760.42, Miller Engineers, Inc, Invoice #5E3179606.
28. Canyon E & P Double L Queen Tank Battery #006, operator Canyon E & P Company, Chaves County.
    Paid: $5,932.04, Contractor: Young Environmental Services, dba Envirotech, Invoice #64191.
29. Reed Estate #001, operator Hal J. Rasmussen Oper Inc., Lea County.
    Paid $407,412.23, Unlimited Construction 2 LLC, Invoice #5374.
30. Reed Estate #001, operator Hal J. Rasmussen Oper Inc., Lea County.
    Paid $45,657.67, Intera Incorporated, Invoice #04-24-21.
31. Reed Estate #001, operator Hal J. Rasmussen Oper Inc., Lea County.
    Paid $609,716.93, Unlimited Construction 2 LLC, Invoice #5358.
32. Reed Estate #001, operator Hal J. Rasmussen Oper Inc., Lea County.
    Paid $60,327.99, Intera Incorporated, Invoice #05-24-68.
33. Artesia Metex Unit #005, operator Cannon E & P Company., Eddy County.
    Paid $26,027.45, Miller Engineers, Inc, Invoice #5E3179607.
34. Reed Estate #001, operator Hal J. Rasmussen Oper Inc., Lea County.
    Paid $94,890.63, Intera Incorporated, Invoice #05-24-70 Rev.
35. Reed Estate #001, operator Hal J. Rasmussen Oper Inc., Lea County.
    Paid $31,736.13, Intera Incorporated, Invoice #06-24-02.
36. Reed Estate #001, operator Hal J. Rasmussen Oper Inc., Lea County.
    Paid $425,035.29, Unlimited Construction 2 LLC, Invoice #5380.
37. Canyon E & P Double L Queen Tank Battery #006, operator Canyon E & P Company, Chaves County.
    Paid $17,458.49, Young Environmental Services, dba Envirotech, Invoice #64482.

Subtotal $4,003,625.06

PRE- AND POST-PLUG METHANE TESTING (257 Sites):

1. Double L Queen Unit #s 001D, 001H, 001K, 001P, 001Q, 001R, 001Y, 002, 002G, 002P, 002Q, 002X, 002Z, 003, 003G, 003L, 003Q, 003Y, 004, 004G, 004Q, 005, 005Q, 006, 007, operator Canyon E & P Company, in Chaves County.
   Paid: $51,173.00. Contractor: Well Done New Mexico, LLC, Invoice #1081.
2. INBE 12 #001, INBE 13 #001, Bagley #002, J P Collier #001, JP Collier #004Y, operator Lease Holders Acquisitions, Inc. and Schwalbe #001, #002, operator, Robinson Oil Inc., Chaves County.
   Paid: $16,911.28, Well Done New Mexico, LLC, Invoice #1090.
3. Cato San Andres Units #097, #098, #100, #119, #127, #515, #517, #518, #520, #531, #532, #533, #535, #544, #558, #559, #560, #561, #573. #574, #586, #587, #588, #822, #827, operator Cano Petro of New Mexico, Inc., Chaves County
   Paid $63,455.54, Well Done New Mexico LLC, Invoice #1083.
4. Barkeht #001, Elizabeth #001, #002, #003, #004, Elizabeth C #005, Graves #001, Lewis Neff #003, McDermott #001, Nancy #001, Seanna #001, #002, #003, Union Happy #001, #002, operator Canyon E & P Company, Chaves County.
   Paid $31,680.00, Well Done New Mexico LL, Invoice #1089.
5. EF King #003, operator Roca Production Inc, Lea County.
   Paid $2,085.82, Well Done New Mexico LLC, Invoice #1088.
6. Twin Lakes San Andres #081, operator Blue Sky NM, Inc., Chaves County.
   Paid $1,474.10 Well Done New Mexico LLC, Invoice #1079.
7. Twin Lakes San Andres #078, operator Blue Sky NM, Inc., Chaves County.
   Paid $1,474.10 Well Done New Mexico LLC, Invoice #1078.
8. Twin Lakes San Andres #065, operator Blue Sky NM, Inc., Chaves County.
   Paid $1,474.10 Well Done New Mexico LLC, Invoice #1077.

9. Cato San Andres #545, 557Y, #558, #559, #560, #561, #573, #574, #586, #587, #588, Chaves County, Cano Petro of New Mexico, Inc., and South Lucky Lake Queen #001, #002, operator Bar V Barb LLC, Chaves County.
   Paid $27,662.91 A-Plus P&A LLC for subcontractor, Well Done New Mexico, LLC, Invoice #1441.
10. Elizabeth #001, #002, #003, #004, operator Canyon E & P Company, Chaves County.
    Paid $8,511.66 A-Plus P&A LLC for subcontractor, Well Done New Mexico, LLC, Invoice #1440.
11. Alves A #001, Alves #002, #004, Lansford #001, Lansford #002, Lansford #003, Lansford #004, Lansford #005, Lansford #006, Mike #001, Mike #002, Mike #003, Mike #004, Millller Com #001, Pruitt #001, Robert #001, Robert #002, operator Energy Acumen LLC, Lea County.
    Paid $62,594.14, Well Done New Mexico, LLC, Invoice #1093.
12. Chaveroo San Andres Unit #003, #004, #005, #006, #007, Farrell Federal #002, Haley Chaveroo SA Unit #010, Jennifer Chaveroo SA Unit #028, Roosevelt County, KM Chaveroo SA Unit #012, #016, #018, #021, #032, #035, #049, #110, #111, #112, #113, KMS,#001, #002, #003, #004, #005, Levic 1 State #001, operator Ridgeway Arizona County, Chaves County
    Paid $25,391.28, Well Done New Mexico LLC, Invoice #1105.
13. Indian #003, State Senate #002, Na Dzis Pah #001, #002, Natani #014, #017, #018, #032, #033, #034, operator M &M Production & Operation, San Juan County.
    Paid $21,159.36, Well Done New Mexico LLC, Invoice #1106.
14. Allied 93 #004, Bilbrey 23 #004, #005, Bilbrey 51 #002, #003, Brown 84 #001, #002, Brown 93 #001, Lea County, operator Ridgeway Arizona Oil Corp., Lea County.
    Paid $16,748.97, Well Done New Mexico LLC, Invoice #1094.
15. Anderson State #005, operator Ridgeway Arizona Oil Corp., Roosevelt County.
    Paid $2,117.93, Well Done New Mexico LLC, Invoice #1095.
16. Chaveroo San Andres Unit #003, #004, #005, #006, KMS #001, operator Ridgeway Arizona Oil Corp, Roosevelt County
    Paid $10,589.63, Well Done New Mexico LLC, Invoice #1096.
17. Humble Tucker #001, #003, #004, James McFarland A #001, #002, #003, #004, James McFarland #001, #002, #003, #004, operator Ridgeway Arizona Oil Corp, Roosevelt County.
    Paid $17,552.28, TS Nano, Invoice #10029OCD.

Subtotal $362,056.10

PERFORMANCE BOND REIMBURSEMENT:

1. Elks #001, operator, Wayne J. Spears, in Lea County.
   Paid $2,987.06 Contractor: JA Drake Well Service Inc, Invoice #21775.
2. Alves #002, #003, #004, Alves A #001, Lansford #001, #002, #003, #004, #005, #006, Pruitt #001, Robert #001, Robert #002, operator, Energy Acumen Wells, Lea County.
   Paid $64,683.14, Contractor: JA Drake Well Service Inc, Invoice #22088.
3. Cano San Andre's Unit Tank Battery #006, operator Cano Petro of New Mexico, Inc., Chaves County.
   Paid $2,924.00, Contractor: Ensolum LLC, Invoice #Performance.
4. Reed Estate #001, operator Hal J. Rasmussen Operator, Inc., Lea County.
   Paid $8,099.90, Contractor: Intera Incorporated, Invoice #02-24-03.
5. Chaveroo San Andres Unit #003, #004, #005, #006, #007, Farrell Federal #002, Haley Chaveroo SA Unit #010, Jennifer Chaveroo SA Unit #028, KM Chaveroo SA Unit #012, #016, #018, #021, #032, #035, #049, #110, #111, #112, #113, KMS #001, #002, #003, #004, #005, Levick 1 State #001, Chavaroo A State #001, #002, Chaveroo B #001, #002, Chaveroo San Andres Unit #001, #002, former operator Ridgeway Arizona Oil Corp, Roosevelt County.
   Paid $1,441.16, Well Done New Mexico, LLC, Invoice #1092.
6. Allie Partin Et Al #001, #002, Allied 93 #004, Anderson State #001, #002, #003, #004, #005, #007, #008, #009, Bilbrey 23 #003, #004, #005, Bilbrey 51 #002, #003, Brown 84 #001, #002, Brown 93 #001, Lea County, Chavaroo A State #001, #002, Chaveroo B #001, #002, Chaveroo San Andres Unit #001, #002, operator Ridgeway Arizona Oil Corp., Roosevelt County.
   Paid $2,882.32, Well Done New Mexico LLC, Invoice #1091.

7. Barkneht #001, Elizabeth #001, #002, #003, #004, Elizabeth C #005, Graves #001, Lewis Neff #003, McDermott #001, Nancy #001, Seanna #001, #002, #003, Union Happy #001, #002, operator Canyon E & P Company, Chaves County.
   Paid $965.02, Well Done New Mexico LLC, Invoice #1099.
8. Mike #001, # 002, #003, #004 and Miller Com #001, operator Energy Acumen LLC, Lea County.
   Paid $22,175.12, A-Plus P&A Holdings LLC, Invoice #2421.
9. Brown 84 #001, operator Arizona Ridgeway Oil Corporation, Lea County.
   Paid $14,182.30, JA Drake Well Service Inc, Invoice #22524.
10. Double L Queen Units #001D, #001H, #001K, #001P, #001Q, #001R, #001Y, #002, #002G, #002P, #002Q, #002X, #002Z, #003, #003G, #003L, #003Q, #003Y, #004, #004G, #004Q, #005, #005Q, #006, #007, operator Canyon E & P Company, Chaves County
    Paid $3,188.40, Well Done New Mexico LLC, Invoice #1097.
11. Cato San Andres Unit #097, #098, #100, #119, #127, #516, #517, #518, #520, #531, #532, #533, #535, #544, #545, #558, #559, #560, #561, #573, #574, #586, #587, #588, #822, #827, Cano Petro of New Mexico LLC, Chaves County.
    Paid $3,315.94, Well Done New Mexico LLC, Invoice #1098.
12. INBE 12 #001, INBE 13 #001, Bagley #002, JP Collier #001, JP Collier #004Y, operator Lease Holders Acquisitions, Inc., Schwalbe #001, #002, operator Robinson Oil Inc. Cano Petro of New Mexico LLC, Lea County.
    Paid $59,271.80, JA Drake Well Service Inc, Invoice #22635.

Subtotal: $186,116.16

Endangered Species Act (ESA) and National Historic Preservation Act (NHPA) Reports

The payments made below are partial payments. During the fiscal year 2024, no NHPA progress reports were received.

1. ESA services located in Lea, Chaves, and Eddy counties in Southeastern New Mexico. The services include biological surveys, biological assessments and evaluations and finally consultation.
   Paid $16,518.82, Daniel B Stephens & Associates, Invoice #268961R.
2. ESA services located in Lea, Chaves, and Eddy counties in Southeastern New Mexico. The services include biological surveys, biological assessments and evaluations and finally consultation.
   Paid $7,154.91, Daniel B Stephens & Associates, Invoice #0270194.
3. ESA services located in Lea, Chaves, and Eddy counties in Southeastern New Mexico. The services include biological surveys, biological assessments and evaluations and finally consultation.
   Paid $34,509.95, Daniel B Stephens & Associates, Invoice #269765R.

Subtotal: $58,183.68

OTHER EXPENSES:

Below are categories with vendors associated and cumulative charges by category.

1. **Vehicle Maintenance and Replacement:**
   - O&S Quik Change Inc. ($2,448.89)
   - Wex Bank ($34,834.93)
   - Chalmers Ford Inc. ($408,660.00)
   - Farmington Tire ($10,380.29)
   - Advantage Dodge CPJ ($1,394.82)
   - Forrest Tire Company Inc. ($3,732.00)
   - Bob Turners Ford Country Inc. ($40,498.00)
   - Jose Alvarez ($533.35)
   - Mesa Tire ($1,180.00)
   - Ziems Ford Corners ($150.00)

   Subtotal: $503,812.28

2. **OCD Field Technician Work Clothing**
   - Boot Barn Inc. ($11,930.87)
   - The Graphic Designer LLC ($235.01)

Subtotal $12,165.88

3. **OCD Staff Training**
   - National Environmental Management Academy LLC. ($5,000.00)
   - Leigh Barr, OCD Staff Travel ($494.92)
   - Bank of America NA: Lodging for OCD Staff ($1,879.70)
   - Rosa Romero, OCD Staff Travel ($184.30)
   - Michael Buchanan, OCD Staff Travel ($120.41)
   - Brittany Hall, OCD Staff Travel ($116.74)

Subtotal $7,796.07

4. **Legal Services (OCD Hearings)**
   - Pfeifer Hanson Mullins & Baker PA

Subtotal $105,020.60

5. **Professional Memberships**
   - State Bar of New Mexico ($925.00)
   - Ground Water Protection Council ($12,000.00)

Subtotal $12,925.00

6. **EMNRD IT Division (Software and Hardware)**
   - Carahsoft Technology Corporation ($7,974.33)
   - SHI International Corporation ($613.11)
   - Advanced Network Management ($42,350.68)
   - PC Specialist Inc. ($49,342.98)
   - ABBA Technologies Inc. ($58,456.13)
   - APIC Solutions Inc. ($77,378.47)

Subtotal $236,115.60

7. **Expert Investigator (Critical, technical data and experts regarding seismicity)**
   - New Mexico Institute of Mining and Technology

Subtotal $36,620.13

8. **Carlsbad Brine Well Project (continued monitoring)**
   - WSP USA Environment & Infrastructure

Subtotal $7,649.60

Subtotal: $922,105.16