**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**

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# REBUTTAL TESTIMONY OF ANDREA FELIX

# ON BEHALF OF

# NEW MEXICO OIL AND GAS ASSOCIATION

**September 19, 2025**

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# REBUTTAL TESTIMONY OF ANDREA FELIX

## I. INTRODUCTION

My name is Andrea Felix, and I am the industry witness for the New Mexico Oil and Gas Association ("NMOGA") in this Oil Conservation Commission ("OCC" or "Commission") rulemaking proceeding, Case No. 24683, which concerns regulatory changes and compliance matters within the oil and gas industry. My education, background, qualifications, and prior experience are set forth in my direct testimony submitted to the Commission on August 8, 2025, offering my opinions as to the proposed rules on behalf of NMOGA, 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 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. I have also reviewed the direct and rebuttal testimony prepared by NMOGA's other witnesses in this proceeding, including

Daniel Arthur, Harold McGowen, Clayton Sporich, and Douglas Emerick. My testimony draws on my background in the oil and gas industry and addresses both the practical and policy consequences of the proposed rules.

The purpose of my rebuttal testimony is threefold:

1. To highlight operational and industry-wide consequences of the proposed amendments, particularly where OCD and WELC rely on incomplete or misleading data.
2. To provide an integrated industry perspective, aligning my views with the testimony of Messrs Arthur, McGowen, Sporich, and Emerick.
3. To recommend practical, enforceable alternatives that maintain environmental protection and financial responsibility without undermining New Mexico's oil and gas sector.

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.

Applicants and OCD treat production metrics as synonymous with risk of abandonment. This is a flawed premise. Many wells that produce at marginal levels continue to operate safely for decades, generating royalties, jobs, and tax revenue. By contrast, the actual risk drivers are well integrity, operator compliance history, and financial viability—not arbitrary thresholds of BOE per year.

Moreover, Applicants and OCD conflate plugging costs with full environmental

240 remediation costs. As Mr. Emerick[1] and Mr. Arthur[2] explain, industry plugging costs are
241 significantly lower than the inflated figures cited from OCD's procurement processes. Using these
242 inflated averages to justify $150,000 per-well bonding results in rules that are both unworkable
243 and beyond the scope of OCD's authority.[3] And as Mr. Sporich has explained, the statutory

[1] 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, Aug. 8, 2025 (hereinafter "**NMOGA's Emerick Rebuttal Testimony**"), at 20 ("I also found persuasive Mr. Arthur's analysis of Applicants' and OCD's reliance on the LFC Report's averages to justify their proposed increases, but those averages reflect OCD's procurement process, not industry reality."), 21 (The LFC itself acknowledges that: (i) OCD does not negotiate or develop internal price estimates but relies solely on vendor submissions, which inflates averages and undermines the credibility of using those figures to set financial assurance levels; and (ii) "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. These facts undermine the Applicants', and now the OCD's, reliance on LFC Report averages to justify higher bonding.") (citing Legislative Finance Committee's ("LFC") Spotlight on Orphan Wells ("LFC Report") at 28).

[2] Direct Testimony of Daniel 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**"); Rebuttal Testimony of Daniel 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, Sept. 19, 2025 (hereinafter, "**NMOGA's Arthur Rebuttal Testimony**"), at 57-58 ("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. 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 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. This system hurts the public because the 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. . . "), 59-60 ("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.' Further, cost overruns based 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.' 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.").

[3] NMOGA's Arthur Rebuttal Testimony at 58-59 ("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

authority for the Division to demand financial assurance only allows consideration of a well's plugging and abandonment costs, not reclamation.[4]

### 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"), attached as Exhibit 4 to WELC's Prehearing Statement and upon which WELC predicates much 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, the same report that they use to justify why the Commission should adopt the rules at issue in this proceeding. Yet industry was not afforded that same opportunity.[5]

Nonetheless, like NMOGA's other witnesses, I do not find that the LFC Report supports the conclusions Applicants claim it does. Rather, I read the LFC Report as underscoring that statutory changes—not rulemaking—are a necessary predicate to implement many of the measures

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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.").

[4] 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 2-3.

[5] Direct Testimony of Mark Murphy, 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, at 9:3-10 ("Q: Have you worked with Legislature on any other projects related to plugging or orphan wells? A: Yes, just this summer the Legislative Finance Committee drafted a Spotlight Report on orphan wells. I discussed the effort with a LFC staff member shortly before it was released. We mainly discussed the inefficiency and problems with the OCD's plugging program. I would say overall that industry had virtually no input in the research and drafting of that report, but it does highlight the inefficiencies in wells plugged by the OCD versus operators.").

Applicants now propose. Most notably, the LFC Report highlights that OCD's poor management of orphan wells and flawed procurement practices have driven significant cost overruns.[6] Yet instead of addressing those systemic issues, Applicants seize on these inflated costs as the baseline for their proposed financial assurance amendments. In doing so, they present thresholds that far exceed actual industry plugging and abandonment costs. Put simply, Applicants rely on incomplete and distorted data — data that reflects OCD's contracting inefficiencies, not real-world industry experience or that has been strategically calculated by Applicants' witnesses to produce desired results — and then seek to impose those inflated costs on operators under the guise of financial assurance reform.

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

The contrast between OCD's third-party service contracting record and industry practice is stark. The LFC Report itself acknowledges that OCD does not negotiate or develop internal cost estimates, but instead relies on contractor submissions and change orders—often after the work is complete—which the LFC characterized as "a poor procurement practice."[7] Not surprisingly, this has produced multimillion-dollar overruns in OCD-managed projects. By contrast, NMOGA's operational and surety witnesses—including Mr. Arthur and Mr. Emerick—testify from direct experience that industry routinely plugs and abandons wells for $40,000–$60,000 per well, less than half of the $150,000 figure Applicants now advance as the "baseline" for financial assurance. In other words, the inflated averages cited in the LFC Report are not a reflection of the inherent cost of plugging and reclamation in New Mexico, but of OCD's flawed oversight and procurement system. It is neither sound policy nor lawful under the Oil and Gas Act to impose those inflated,

[6] LFC Report at 28.

[7] LFC Report at 28.

agency-driven costs on the regulated community.

*i. Industry's Perspective on the LFC Recommendation for a Lower Threshold for "Low-Producing Wells" Than Applicants Propose under the New Definition of "Marginal Well"*

Like Mr. Arthur, I find that WELC's proposed "marginal well" definition reaches well beyond what the LFC Report itself recommended and risks serious unintended consequences. From an industry-wide perspective, moving the threshold from 750 BOE/year (~2 BOE/day), as LFC recommended, to 1,000 BOE/year (~2.7 BOE/day) would reclassify thousands of otherwise productive wells as "marginal." Many of those wells are not high-risk liabilities but viable assets that provide steady production, royalty payments, jobs, and tax revenues. In fact, industry data confirms that these wells often serve strategic roles—such as lease retention or maintaining field infrastructure—and remain candidates for recompletions or secondary recovery.

Mr. Sporich has already explained why the Act does not authorize the Commission to regulate based on production levels, and why this proposed definitional expansion is ultra vires. From the surety side, Mr. Emerick has shown how inflating the marginal well category directly drives bonding obligations into the realm of infeasibility.[8] Combining those perspectives, the Commission should view WELC's proposal not simply as a definitional change but as a de facto financial assurance expansion without statutory grounding.

I have prepared a chart comparing WELC's proposed definition with other marginal or low-producing well data:

| Source | Threshold | Daily Equivalent | Implications |
|---|---|---|---|
| WELC Proposed Definition | < 1,000 BOE/year and < 180 producing | ~ 2.7 BOE/day | Sweeps in thousands of otherwise |

[8] NMOGA's Emerick Rebuttal Testimony at 5-14; Direct 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, Aug. 8, 2025 (hereinafter "**NMOGA's Emerick Direct Testimony**"), at 2-5.

| | | | |
|---|---|---|---|
| | days | | productive wells; creates new mandatory $150,000 per-well bonding burdens. |
| LFC Report | < 750 BOE/year | ~ 2 BOE/day | Intended as "low-producing" definition; lower than WELC's. Still captures some marginal production but does not reach as far. |
| IRS "Marginal Well" Definition (26 U.S.C. § 613A(c)(6)) | < 15 bbl oil/day or < 90 MCF gas/day | Oil: 15 bbl = ~15 BOE/day;<br>Gas: 90 MCF ≈ ~15 BOE/day | Used for federal tax credits; far more generous than WELC or LFC definitions. |
| Industry / EIA 2024 Data[9] | Many wells produce 2–3 BOE/day for decades | 2–3 BOE/day | These wells remain viable for lease retention, steady royalty payments, recompletions, or secondary recovery; collectively provided ~18% of NM oil and 10% of NM gas production in 2023. |

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[9] EIA's annual "Distribution of U.S. Oil and Gas Wells by Production Rate" dataset (most recently updated in 2024). According to the EIA's U.S. Oil and Natural Gas Wells by Production Rate data, in 2023 there were ~918,068 producing wells nationally, of which 77% produced 15 BOE/day or less. https://www.eia.gov/petroleum/wells/.

From the broader industry vantage point, this definitional creep creates at least three systemic harms:

**1. Artificial Bonding Pressure**: Inflated thresholds will capture productive wells and unnecessarily trigger $150,000 per-well assurance obligations.

**2. Premature Plugging**: Operators unable to shoulder those assurance costs will be forced to abandon otherwise viable wells, resulting in waste of the resource.

**3. Revenue Loss**: By reclassifying a large swath of wells as marginal, WELC's proposal would erode severance and ad valorem tax bases, with downstream effects on local governments, schools, and landowners.

For these reasons, I concur with NMOGA's other witnesses that the Commission should reject Applicants' proposed definition. If the Commission determines a definition is needed at all, it should not exceed the LFC's lower threshold, and it must be applied in a way that respects both statutory authority and practical market realities.

*ii. Industry's Perspective on the LFC Report's Acknowledged Need for Flexibility in Assessing the Future Potential of Wells*

The LFC Report makes clear 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."[10]

> 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.[11]

[10] LFC Report at 21.

[11] LFC Report at 21

This is a critical recognition. The economics of oil and gas wells are highly dynamic, shaped not only by daily production rates but also by fluctuating commodity prices, operating costs, leasehold obligations, and infrastructure availability. For example, a well producing 2 BOE per day may be uneconomic at $50 oil but profitable at $100 oil, and may later regain value through recompletions, refracturing, or artificial lift.

From an industry perspective, the LFC Report affirms that regulatory oversight should remain flexible. WELC's proposal, however, seeks to impose rigid volumetric thresholds that deprive both operators and OCD of discretion to consider market cycles, reservoir characteristics, and technological advances. Such rigidity would force premature plugging of wells that the LFC itself recognized may have future value or alternative beneficial use.

NMOGA witness Sporich, in Section III.A.5 of his testimony has explained in his testimony that production-based definitions of "marginal" or "beneficial" wells are not supported by the Act. Imposing them through rulemaking would exceed the Commission's statutory authority.[12] NMOGA witness Emerick, in Section III.B.1, has also provided testimony demonstrating that reclassifying wells into a "marginal" category at WELC's proposed thresholds would drastically expand financial assurance obligations, driving collateral and premiums beyond what the surety market can realistically support.[13]

Therefore, adopting Applicants' cutoffs would misclassify thousands of productive, strategically valuable wells as marginal. Reclassifying even more wells would trigger excessive bonding requirements, lead to premature plugging, diminish state revenues, and weaken rural economies that depend on low-volume production. In short, while Applicants claim that the LFC

[12] NMOGA's Sporich Rebuttal Testimony at 10-11.

[13] NMOGA's Emerick Rebuttal Testimony at 17-18.

Report supports rigid definitions, the LFC Report itself counsels the opposite. It urges flexibility, acknowledging that well economics cannot be reduced to an arbitrary number. The Commission should follow the LFC's guidance and reject Applicants' cutoffs in favor of case-by-case assessments that account for commodity prices, operational realities, and long-term field development strategies.

*iii. Industry Perspective on the LFC Report's Confirmation of Lack of Authority to Create a Marginal Well Financial Assurance Category*

The LFC Report makes clear that the Commission does not currently have statutory authority to create a financial assurance category based on production levels. The Report explicitly recommends amending the Act's enabling provision, NMSA 1978, § 70-2-14, to "specify that wells producing below certain thresholds set in rule require additional financial assurance."[14] That recommendation alone is telling: if the statute had already conferred such authority, no amendment would be necessary. Applicants and OCD have ignored or at least downplayed the LFC recommendation for legislative amendment in this rulemaking proceeding.

Furthermore, as noted by Mr. Arthur, although the LFC Report levels numerous criticisms at OCD, it does not criticize either the Division or the Commission for failing to establish new categories of financial 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.[15]

From an industry perspective, this statutory gap is not an accident. For decades, New Mexico has deliberately structured its oil and gas policy to recognize the economic and social

[14] LFC Report at 2, 36.

[15] NMOGA's Arthur Rebuttal Testimony at 13.

value of marginal wells. Through targeted tax incentives, exemptions, and other policies, the legislature has chosen to sustain marginal production as a critical part of the state's energy mix and a backbone for independent operators who form the majority of the state's producers.[16] These deliberate policy choices acknowledge that marginal wells—while low-volume—contribute meaningfully to employment, local tax bases, lease preservation, and long-term resource recovery.

To now impose marginal well-specific bonding obligations by administrative rule would not only exceed the OCC's statutory authority, but would also directly conflict with the legislature's longstanding policy framework. Applicants' approach risks singling out precisely the operators and wells that state law has sought to protect, thereby undermining both economic stability and resource conservation.

This reading is consistent with the testimony of NMOGA's other witnesses. Mr. Sporich explains why the Act's bonding provisions are tied to risk factors like well depth, not production volumes. His statutory analysis confirms that production-based bonding thresholds are ultra vires.[17] Mr. Arthur and Mr. Emerick highlight that WELC's proposed definition of "marginal well" would capture many wells that remain productive and strategically valuable, contrary to the

[16] NMOGA's Arthur Direct Testimony at 28 ("Additionally, WELC's proposed new marginal well assurance provision 19.15.8.9(D)(1)-(2) NMAC would compound the required financial assurance by requiring operators to provide single-well financing of $150,000 for each marginal well (subject to the proposed amended definition described above) beginning in January 2028, and as of the effective date of the proposed rule, for every marginal well that is the subject of a transaction."), 28 ("These per well financial assurance requirements for marginal wells will exponentially increase the bonding amounts required under the rule because stripper wells (a subset of marginal) wells represent 54% of oil wells and 81% of gas wells in New Mexico, and in 2023 alone, these wells produced approximately 18% of the state's total oil output and 10% of its total gas production, according to the U.S. Energy Information Administration's 2024 Well Distribution Report.").

[17] NMOGA's Sporich Rebuttal Testimony at 10-11 ("The Legislature has never authorized the Commission to impose additional financial assurance based solely on production levels. NMSA 1978, Section 70-2-14(A) sets out the categories of financial assurance and expressly caps the amounts. Any new categories—such as WELC's proposed "marginal well" requirement—would require legislative amendment before they could lawfully be adopted by regulation.").

legislature's intent to protect these assets.[18] And Mr. Emerick's testimony further shows how creating a marginal-well category would exacerbate financial assurance burdens in a way that the private surety market cannot support, effectively squeezing smaller operators out of the market.[19]

Taken together, the LFC Report, the statutory framework, and the testimony of NMOGA's experts all point to the same conclusion: Applicants' marginal-well bonding proposal cannot lawfully or prudently be implemented through this rulemaking. The Commission should defer to the legislature on this issue, where the full policy and economic tradeoffs can be weighed transparently. The Commission must not allow Applicants to end-run the Legislature and should instead require them to obtain authorization for their proposals through the legislative process.

*iv. Industry Perspective on the LFC Report's Confirmation of Lack of Authority to Deny Well Transfers If Determined the Buyer is Unlikely to Fulfill Plugging, Abandonment, and Reclamation Obligations*

The LFC Report's recommendation that the Act be amended "to clarify OCD's authority to review and disallow the transfer of wells should the division determine … the purchaser is unlikely to be able to fulfill its asset retirement obligations" is telling.[20] It confirms what industry has long understood: under current law, OCD does not have statutory authority to deny well transfers based on its assessment of a buyer's financial capacity. If the legislature itself recognizes that an amendment would be necessary, then it follows that Applicants' proposals to create such authority by rule are ultra vires and inappropriate for this proceeding.

From the industry's perspective, this limitation is not accidental. Transfers are often the mechanism that ensures wells remain under active operatorship, moving assets into the hands of

[18] NMOGA's Arthur Rebuttal Testimony at 38-40; NMOGA's Emerick Rebuttal Testimony at 17.

[19] NMOGA's Emerick Rebuttal Testimony at 5-14; NMOGA's Emerick Direct Testimony at 2-5.

[20] LFC Report at 37.

companies willing and able to continue their productive life. Denying transfers on the basis of speculative financial assessments would strand wells, discourage stronger operators from assuming liabilities, and perversely increase the orphan well risk that Applicants claim to address. As Mr. Sporich's testimony explains, nothing in NMSA 1978, § 70-2-14 authorizes the Commission or Division to regulate acquisitions or transfers of oil and gas assets, and attempts to do so would invite legal challenge.[21]

Moreover, the practical impacts of the Applicants' proposals would be severe. As Mr. Emerick explains, small and mid-sized operators are already disproportionately strained by the proposed financial assurance framework. Adding the threat of denied transfers would compound that strain, shutting the door on routine transactions that often provide a path for responsible operators to assume assets and prevent orphaning. These consequences are contrary to sound resource management and inconsistent with the Act's purposes of preventing waste and protecting correlative rights.

Finally, as Mr. Arthur underscores, any expansion of transfer-blocking authority is a policy decision for the legislature, not a reinterpretation by regulation.[22] The LFC Report itself confirms that statutory amendment—not administrative action—is required. The Commission should therefore reject these proposals and instead encourage refinement of existing tools, such as targeted bonding requirements and Agreed Compliance Orders, which allow the Division to manage risk while keeping wells in productive hands.

*v. Industry's Perspective on the LFC Report's Recommendation for a Narrower Definition of "Orphan Well" Than Applied and Recommended by Applicants and Agency Witnesses*

[21] NMOGA's Sporich Direct Testimony at 26-33.

[22] NMOGA's Arthur Rebuttal Testimony at 14.

From an industry perspective, the absence of a clear, consistent definition of "orphan well" is not a technical oversight but a fundamental weakness in the Applicants' case. If the "orphan well problem" is the central justification for these sweeping amendments, then it is telling that WELC never defines the term in its proposed rule language. Instead, Applicants and supporting agencies advance varying, inconsistent, and overly broad definitions that sweep far beyond the LFC's recommended scope.

The LFC Report expressly recommends amending the Act to define orphaned and abandoned wells as "wells for which the state has pursued and received plugging authority."[23] That language is deliberate. It draws a clear boundary around the subset of wells where OCD has formally assumed responsibility because no viable operator remains. It excludes wells still under operator responsibility, as well as "forced plugging" cases initiated by the SLO or BLM under separate authorities.

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."[24]

By contrast, WELC's experts rely on expansive and subjective definitions. For example, Mr. Peltz characterizes an orphan well as any "non-producing, unplugged well without a solvent responsible party," while Mr. Purvis reduces the concept to "a well for which the state has become responsible for decommissioning."[25] Applicants then exploit the absence of a clear definition and the inconsistent scope of witness testimony by invoking the OCD's Master Orphan Well

[23] LFC Report at 2.

[24] Id.

[25] WELC's Peltz Direct Testimony at 7: 6-7; Direct Testimony of Dwayne Purvis, 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 Testimony**"), at 7:20-21.

Spreadsheet ("MOSS")—submitted as Exhibit 55 to WELC's Prehearing Statement and Exhibit 4 to OCD's—to claim a total of more than 1,800 wells. But that figure sweeps in wells across federal, fee, and state lands, many of which are not the responsibility of OCD or New Mexico taxpayers, despite Applicants' broad assertions. The Legislative Finance Committee Report, by contrast, places the number at roughly 700.[26] Even OCD has acknowledged that the MOSS must be filtered before being used to identify orphan wells.[27]

OCD witness John Garcia likewise introduces confusion by distinguishing "orphan wells" from "forced pluggings" and "non-orphans," while at the same time supporting broader statistical counts that include all of these categories.[28] The effect of this sprawl is to inflate the scale of the problem, portraying a systemic industry failure where, in reality, the majority of wells are either responsibly managed by operators or subject to separate regulatory processes.

NMOGA's witnesses highlight why this matters. Mr. Sporich explains that the Commission lacks statutory authority to expand financial assurance categories based on such vague and overbroad concepts, absent legislative amendment.[29] Mr. Emerick underscores how inflated orphan well counts are then used to justify unrealistic financial assurance thresholds, ignoring market realities and disproportionately burdening smaller operators.[30] From the industry's

[26] NMOGA's Arthur Rebuttal Testimony at 17.

[27] OCD Exhibit 3 at slide 2 ("Purpose of the MOSS was to combine multiple sources of information into a working document to facilitate OCD plugging and tracking. Available to demonstrate the use and **filtering of the MOSS for OCD's purposes**.") (emphasis added).

[28] OCD's Direct Testimony of John Garcia, OCD Engineering Special Projects Supervisor, *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 "**OCD's Garcia Direct Testimony**"), at 2:20-23; 3:1-6.

[29] NMOGA's Sporich Rebuttal Testimony at 10-11.

[30] NMOGA's Emerick Rebuttal Testimony at 14-16.

perspective, these tactics distort the record, manufacture a sense of urgency, and provide cover for amendments that exceed statutory authority and practical feasibility.

The policy implications are equally significant. Broad, subjective definitions risk penalizing responsible operators by treating viable, low-producing, or temporarily idle wells as "orphans," thereby inflating bonding requirements and accelerating premature plugging. That outcome not only wastes resources but also undermines New Mexico's legislative policy of protecting marginal wells as a vital part of the state's oil and gas economy. The LFC Report's narrow definition reflects that policy balance: focus state resources on true orphan wells—those where the state has assumed plugging authority—without conflating them with wells that remain under operator stewardship.[31]

For these reasons, the Commission should reject the Applicants' attempt to impose a definition for orphan wells through this rulemaking, which is not what has been proposed. If a statutory change is warranted, that authority lies with the legislature, not with this Commission. Until then, regulatory frameworks should adhere to the LFC's recommended definition, ensuring both clarity and credibility while targeting solutions to the actual problem set.

### *2. Industry's Perspective on Applicants' Mischaracterization of Marginal, Temporarily Abandoned, and Orphan Wells as High Risk and Difficult to Manage with No Future Benefit*

#### *i. Industry Believes that Marginal and Inactive Wells are Low Risk and Can Be Managed without Environmental Incident*

From the industry's perspective, Applicants' characterization of marginal, inactive, and temporarily abandoned wells as inherently high-risk and lacking future value is inaccurate and unsupported by the broader record in this case. WELC's technical witness, Mr. Purvis, suggests

[31] LFC Report at 16.

that marginal wells present a greater likelihood of environmental harm and should therefore be subject to heightened financial assurance.[32] Yet the experience of operators across New Mexico tells a very different story.

As both NMOGA and IPANM witnesses demonstrate, marginal wells are not synonymous with "at-risk" wells. Many small and independent New Mexico operators rely almost exclusively on marginally producing wells to support jobs, generate royalties, and provide stable income to local communities. IPANM's technical experts have described specific examples of operators who manage marginal wells safely and profitably for decades—businesses that would be forced out of the market if the Applicants' proposed bonding requirements were adopted. These examples directly rebut the claim that marginal wells, by definition, are too risky to remain in operation.

Industry experience also shows that marginal and inactive wells frequently retain significant economic and operational potential. They can be reactivated through recompletions, refracturing, or artificial lift upgrades—techniques that have yielded material production uplifts in mature basins such as the Permian. These are not speculative uses; they represent proven engineering practices that extend the productive life of wells otherwise deemed "marginal."

For example, IPANM technical expert John Nabors explains how Spur Energy Partners LLC's ("Spur") Electra 22 well used as an example by OCD Supervisor of the Engineering Special Projects John Garcia in his direct testimony as a "marginal well" under Applicants' proposed definition,[33] merely due to a period of inactivity due to tubing failure followed by increased area-wide gathering-line pressure such that repairs are not currently economical (estimated a cost of

[32] WELC's Purvis Direct Testimony at 6:17-23.

[33] Rebuttal Testimony of John Nabors, 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, Sept. 19, 2025 (hereinafter "**IPANM's Nabors Rebuttal Testimony**"), at 2-3; OCD's Garcia Direct Testimony at 4-5 (citing OCD Exhibit 3 at slides 5-6).

503 $65,000), but could be as soon as the fourth quarter of this year when Spur expects to have
504 increased compression and processing capacity; accordingly, Spur – acting as a prudent operator
505 – opted to produce the well through the casing annulus, which, coupled with the curtailments,
506 resulted in the decreased production that Mr. Garcia testifies regarding; but Spur attests that Electra
507 22 may still have several productive years left once tubing is repaired and midstream takeaway
508 capacity is increased by lower pressure.[34] Applicants' proposals—and the Division's approach—
509 would penalize Spur for acting prudently and adapting to circumstances out of its control by
510 deeming Electra 22 a "marginal well" and requiring increased levels of financial assurance despite
511 operator evidence to the contrary.[35]

512 Importantly, OCD's own witnesses acknowledge circumstances where inactive wells may
513 be brought back into production or repurposed. For example, OCD Deputy Director Brandon
514 Powell highlighted that inactive or low-producing wells often remain tied to broader field
515 development or operational strategies.[36] Yet the rules proposed by WELC would effectively strip
516 both operators and OCD of discretion, treating every such well as a liability rather than a resource.
517 This rigidity contradicts the LFC's recognition that there is no single threshold at which a well
518 becomes uneconomic, and that future potential depends on commodity prices, lease strategies, and
519 reservoir conditions.

520 NMOGA's surety expert, Mr. Emerick, further cautions that sweeping large numbers of
521 marginal and temporarily abandoned wells into new financial assurance categories would create

[34] IPANM's Nabors Rebuttal Testimony at 3-4.

[35] IPANM's Nabors Rebuttal Testimony at 4-6 (citing OCD's Garcia Direct Testimony at 4-5).

[36] OCD's Direct Testimony of Brandon Powell, OCD Deputy Director, *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 "**OCD's Powell Direct Testimony**").

unworkable market demands for non-cancelable bonds, further destabilizing the surety market and forcing premature plugging of otherwise viable wells.[37] And NMOGA legal expert, Mr. Sporich, explains why this approach also exceeds statutory authority, as the Act does not authorize financial assurance categories tied to production thresholds.[38]

Taken together, the testimony demonstrates that the Applicants' claims are both overstated and legally unsupported. From an industry perspective, marginal and temporarily inactive wells often provide ongoing value, pose manageable risks, and support vital economic activity. The Commission should therefore reject the Applicants' attempt to reclassify these wells as categorically high risk and instead preserve the discretion to assess them case by case, as both the statute and longstanding New Mexico policy require.

### *3. Industry Believes that Applicants' Proposals Ignore Oilfield Innovation*

Applicants' proposals are premised on the view that marginal, inactive, and temporarily abandoned wells offer no meaningful future benefit. That premise is inconsistent with industry experience. Oil and gas innovation has repeatedly transformed the economic potential of wells once written off as uneconomic—from horizontal drilling to hydraulic fracturing to advanced re-stimulation techniques.

Rigid thresholds and presumptions advanced by Applicants would effectively lock New Mexico into today's technology and market conditions, rather than allowing for the continued evolution of practices that could extend well life, enhance recovery, or convert wells to beneficial uses such as monitoring or carbon storage.

As Mr. Arthur demonstrates from an operational perspective, and as Mr. Emerick and Mr.

[37] NMOGA's Emerick Rebuttal Testimony 5-14.

[38] NMOGA's Sporich Rebuttal Testimony at 10-11.

Sporich show from the financial assurance and statutory authority angles, Applicants' proposals rest on flawed premises. From a broader industry perspective, the deeper concern is that these proposals would stymie innovation and prevent New Mexico from realizing future production, revenues, and jobs.

Prematurely plugging otherwise viable wells eliminates opportunities for resource recovery, damages the royalty and tax base that supports New Mexico citizens, and removes infrastructure that could be repurposed to support emission reduction and energy transition goals. In short, what Applicants frame as risk management is in reality a recipe for lost opportunity and diminished benefits for New Mexico.

### *4. Industry Can Demonstrate that the Overhaul of the Entire Financial Assurance Regime is Unwarranted and Targets Smaller Operators and Independents*

From an industry-wide perspective, the Applicants' proposal to fundamentally overhaul New Mexico's financial assurance framework is both unnecessary and counterproductive. While framed as a solution to the "orphan well problem," the amendments go far beyond addressing specific risks and instead impose sweeping, one-size-fits-all obligations on every operator in the state.

This approach ignores the diversity of New Mexico's oil and gas sector. Independent producers and small operators, who are responsible for a substantial portion of the state's marginal and low-volume wells, would bear the brunt of these new requirements. Unlike larger integrated companies, smaller operators lack the same access to capital markets or bonding capacity, making it disproportionately difficult for them to comply. The predictable results would be forced divestment, reduced competition, and, in many cases, outright business failure.

The collateral consequences of such an outcome are significant:

- **Economic displacement** – job losses in rural and tribal communities where small

operators are often the primary source of employment.

- **Reduced capital investment** – a chilling effect on reinvestment in existing fields, as operators shift capital to jurisdictions with more balanced regulatory regimes.
- **Diminished tax revenue** – premature plugging and divestment would reduce production and, in turn, the royalties and severance taxes that fund New Mexico's schools and public programs.

From the broader industry perspective, what New Mexico needs is not wholesale revision of its financial assurance system, but measured adjustments informed by risk, market feasibility, and practical enforceability. As the Commission evaluates these proposals, it should recognize that the Applicants' framework risks undermining the very goals of conservation and correlative rights by pushing viable wells and capable operators out of the marketplace, while doing little to improve actual environmental or financial outcomes.

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

### *1. Introduction*

From my two decades of experience in New Mexico's oil and gas industry, I know that definitions are not just words on a page. They dictate how operators make decisions, how investments are allocated, and ultimately how wells are managed. The definitional changes proposed in this rulemaking are not clarifications; they are substantive shifts that would misclassify wells, burden small and mid-sized operators, and create uncertainty for investors and regulators alike.

My testimony here is not meant to duplicate the technical and legal detail already provided by Mr. Arthur, Mr. Sporich, and Mr. Emerick. Instead, I want to give the Commission the broader perspective: what these definitional changes will mean in practice for operators, employees, mineral owners, and New Mexico communities. My overarching industry perspective is simply this: if adopted, these changes will discourage investment, reduce jobs, and cut state revenues — all while increasing, not decreasing, the risk of orphan wells.

### *2. Flexibility versus Rigidity*

Several of the Applicants' proposed changes — including new concepts of "temporary abandonment," "expired temporary abandonment,"[39] and a new definition of "inactive well" is now proposed by OCD[40] — would tie compliance to rigid timelines and production thresholds.

As Mr. Arthur explained, collapsing distinct categories in this way risks forcing wells into either expensive temporary abandonment applications or premature plugging, even when those wells are mechanically sound and strategically important.[41] From the industry's perspective, this is not conservation — it is waste. It strips value from operators, royalty owners, and the state at the very moment when market cycles or infrastructure upgrades could return these wells to productive use.

### *3. Economic Impacts of Misclassification*

Applicants' proposed definitions of "marginal well"[42] and "beneficial use"[43] would reclassify thousands of viable wells as liabilities. Mr. Sporich testified about the critical role that such wells play in lease retention, reservoir management, and future recompletions.[44] Mr. Emerick described how misclassification would immediately trigger new bonding obligations, with surety underwriters requiring collateral far out of proportion to actual risk.[45]

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[39] WELC's Alexander Direct Testimony at 21-23.

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

[41] NMOGA's Arthur Rebuttal Testimony at 67-69.

[42] WELC's Morgan Direct Testimony at 8-10; WELC's Purvis Direct Testimony at 31-33; WELC's Peltz Direct Testimony at 34-37.

[43] WELC's Alexander Direct Testimony at 24-25.

[44] NMOGA's Sporich Direct Testimony at 8-9.

[45] NMOGA's Emerick Rebuttal Testimony at 16-18.

For small and mid-sized operators, these requirements would tie up capital that should be going to jobs, reinvestment, and new development. The likely outcome is not fewer orphan wells but more, as operators unable to post collateral walk away from assets.

### *4. Consistency and Selectivity*

Industry depends on consistent rules because investment decisions, bonding, and field-level planning often span years or even decades. When the Commission changes definitions, it signals to operators and investors whether New Mexico is a place where the rules are reliable — or where they shift unpredictably.

Applicants and OCD have not been consistent in how they treat definitions in this proceeding. On the one hand, they support a 6:1 gas-to-oil conversion ratio for "barrel of oil equivalent"[46] by relying on New Mexico's stripper well tax framework.[47] That reference is sound — the 6:1 ratio is a long-standing, widely accepted industry standard. But at the very same time, when defining "marginal wells," they disregard the stripper well framework entirely and instead adopt thresholds that are inconsistent with both state law and federal practice.

If Applicants want to ground new definitions in existing frameworks, then those frameworks must be applied consistently. That means recognizing stripper well thresholds not just for BOE conversion but also when determining what counts as "marginal." Anything less signals selective use of definitions to justify a predetermined outcome — which undercuts confidence in the rulemaking process and the Commission's role as a neutral regulator that should insist on definitional consistency. Where existing statutory or regulatory thresholds already exist — such as those governing stripper wells — they should serve as the benchmark. Where Applicants seek to

[46] WELC's Alexander Direct Testimony at 23-24.

[47] NMOGA's Arthur Rebuttal Testimony at 33-37.

depart from those standards, the Commission should decline to adopt inconsistent definitions that create uncertainty and disproportionate impacts. When definitions are applied selectively, as Applicants propose, the result is not clarity but confusion — and confusion leads to waste.

***5. Consequences of Vagueness***

Applicants' proposed addition of "speculative use" to the definition of "beneficial use"[48] introduces vagueness where clarity is required. From my experience, wells may be shut in while waiting for pipeline construction, or held to preserve lease rights, or used for monitoring. These are legitimate, beneficial purposes. If regulators are left to decide whether such uses are "speculative," enforcement will become unpredictable and investment will suffer. Mr. Arthur[49] and Mr. Emerick[50] confirm in their direct and rebuttal testimonies that they anticipate the addition of "beneficial purposes/use" will result in misclassifying viable and productive wells and erroneous financial assurance determinations by OCD.

## C. Industry Perspective - Proposed Changes to Enforcement and Compliance Requirements under 19.15.5.9 NMAC

Based on my experience, the oil and gas industry in New Mexico already operates under a detailed framework of compliance obligations, and operators understand that enforcement is part of responsible operations. What is being proposed in this section of the rule, however, goes far

[48] WELC's Alexander Direct Testimony 24-25.

[49] NMOGA's Arthur Rebuttal Testimony at 68 ("Expanded definitions of marginal and inactive wells: By misclassifying productive or strategically important wells as "marginal" or "non-beneficial," the rule creates new triggers that force wells into higher assurance categories or into plugging requirements, regardless of their actual utility.".

[50] NMOGA's Emerick Rebuttal Testimony at 16-17 ("Based on my industry experience, the proposed definition of "beneficial purposes/use" would capture productive and viable wells, some of which would likely be misclassified as non-beneficial. This would lead to improper bond amounts. I have reviewed the direct testimony filed by NMOGA lead technical expert Dan Arthur who concurs with me on this point . . . Sureties would take action by either asking to be replaced on the bond or demanding collateral. Both actions place pressure on the operators and could impact drilling operations. assurance categories or into plugging requirements, regardless of their actual utility."); Arthur at

beyond improving accountability. By tying routine regulatory approvals — such as operator registration, change of operator, or release of financial assurance — to absolute compliance with plugging and abandonment or venting and flaring rules, the proposal creates disproportionate consequences that do not reflect how field operations work in practice.

***1. Unrealistic Standard of "Perfect Compliance"***

No operator can be in perfect compliance across every well, every day. With thousands of wells in the state, minor reporting delays, equipment malfunctions, or temporary shut-ins are inevitable. The existing rules already provide the Division with tools to address these situations: compliance schedules, stipulated orders, penalties, and hearings. These mechanisms allow the Division to focus on significant risks while giving operators a chance to bring wells back into compliance. Replacing that system with an "all-or-nothing" test would penalize good actors alongside bad, and it does not make the public any safer.

***2. Consequences for Investment and Orphan Wells***

If the Applicants' proposed rule amendments are adopted, even small infractions could disqualify an operator from registering or transferring wells, and buyers will be far less willing to acquire assets in New Mexico. That creates two risks:

*i. Reduced investment and jobs*

Companies will think twice before bringing capital into the state if the regulatory bar is unpredictable.

*ii. Stranded and orphan wells*

If transfers become too risky, existing operators may simply walk away from marginal properties instead of selling them to companies willing to operate them safely. That leaves the state with more orphan wells, the opposite of what these rules are intended to address.

***3. Lack of Clear Standards***

Neither WELC's proposal nor OCD's comments explain what kind of noncompliance would trigger these severe consequences. Would a late venting report be treated the same as a systemic plugging violation? Without clear, objective standards, the Division would have broad discretion to deny critical approvals based on minor or alleged issues, even those still under appeal. That kind of uncertainty chills investment and undermines confidence in New Mexico's regulatory system.

***4. A Balanced Approach is Already in Place***

The industry is not asking to avoid accountability. What we are asking for is balance. The Commission should continue to rely on the tools it already has: orders, schedules, penalties, and case-by-case discretion. Those mechanisms make sure that real risks are addressed while allowing everyday operations to continue. Bright-line disqualifiers, as proposed by Applicants, remove that balance and create far-reaching consequences untethered from actual risk.

In short, these proposed amendments to 19.15.5.9 NMAC do not improve compliance — they create rigidity, uncertainty, and investment risk. They would punish minor oversights on the same level as major violations, and they would discourage the very well transfers that keep properties in active operatorship. No operator can be in 100% compliance every single day across every well. The Division already has strong tools to address real violations. But the Applicants' proposal would turn even small paperwork delays into grounds to block well transfers or registrations. That doesn't make the public safer — it makes investment riskier, and it risks leaving more wells orphaned instead of operated. A balanced approach means addressing serious issues without punishing good operators for minor oversights. For New Mexico to continue benefiting from jobs, royalties, and tax revenues, the Commission should reject these amendments and preserve the balanced enforcement framework that already works.

### D. Industry Perspective - Proposed Changes to Financial Assurance Requirements under 19.15.8. NMAC

It is my opinion that the Applicants' financial-assurance overhaul is overbroad, seeks to impose a one-size-fits-all system, and is out of step with how wells are actually operated and managed. If adopted by the Commission, the Applicants' proposal would result in pulling scarce capital out of productive activity, slow responsible transfers, and—ironically—increase the risk of orphan outcomes by squeezing smaller and mid-sized operators who do most of the day-to-day stewardship of low-volume wells. This also means fewer rigs running in New Mexico, less severance and ad valorem tax revenue for schools and counties, and reduced competitiveness compared to Texas or North Dakota, where assurance frameworks are more proportionate and predictable.

On the technical and market mechanics, I defer to NMOGA's experts and incorporate their conclusions:

- **Surety market feasibility & collateral shock**: Mr. Emerick explains that large, immediate increases—especially tied to New Mexico's non-cancelable bond forms—would drive premiums up, push collateral demands across the board, and, in some cases, make coverage unobtainable for compliant operators. If surety paper becomes unavailable or unaffordable, responsible operators may exit the state, leaving fewer viable parties to acquire and manage mature wells—ironically creating more orphan risk.[51]
- **Legal authority & statutory limits**: Mr. Sporich addresses where the Act authorizes risk-based assurance (e.g., depth) and where it does not (e.g., production-based "marginal" categories; CPI auto-indexing; pre-acquisition vetoes). I rely on his analysis rather than offer opinions of my own. From an industry standpoint, adopting provisions that exceed statutory authority also injects legal risk and uncertainty, which itself chills investment and discourages long-term planning in New Mexico.[52]
- **Actual plugging costs vs. LFC averages**: Mr. Arthur and Mr. Emerick show that industry-executed plugs routinely come in well below the $150,000 per-well level, and that the LFC's averages are inflated by procurement practices and non-

[51] NMOGA's Emerick Rebuttal Testimony at 5-14.

[52] NMOGA's Sporich Rebuttal Testimony at 5-7, 10-11.

representative outliers.[53]

My testimony here will address the practical effects that Applicants' proposals will have on New Mexico's oil and gas sector, workforce, and tax base as follows:

### *1. Industry's Perspective on Applying the Same High Bond to Active, "Marginal," Inactive, and TA Wells (19.15.8.9(C)–(F)) NMAC*

Applicants propose to replace New Mexico's current tiered, risk-based financial assurance system with a flat requirement of $150,000 per well across nearly all well categories: active wells, wells classified as "marginal," inactive wells, and those in temporary abandonment status. They further propose a uniform $250,000 blanket bond regardless of portfolio size or well type. This one-size-fits-all approach disregards the operational, economic, and geological differences among these wells, eliminating the flexibility that has long allowed operators to responsibly manage diverse portfolios while maintaining adequate financial assurance. Smaller independents operating on thin margins would face existential threats: even portfolios of a few dozen wells could translate into multimillion-dollar obligations. My view is that this will result in fewer transfers of mature properties to operators who specialize in running them; more capital tied up; fewer field crews working, and more "defensive" plugging of otherwise viable wells. The downstream effect is reduced severance and ad valorem tax flows to counties, school districts, and the State, with ripple impacts on rural economies that depend heavily on oil and gas revenue.

#### *i. Statutory and Structural Concerns*

As NMOGA legal expert Clayton Sporich and surety expert Douglas Emerick explained, the Applicants' proposal sidesteps the statutory framework. Current law authorizes risk-based bonding tiers, with caps on blanket bonds, to reflect well depth, type, and operator scale. By imposing identical obligations across categories, Applicants effectively nullify these distinctions

[53] NMOGA's Arthur Rebuttal Testimony at 58-61; NMOGA's Emerick Rebuttal Testimony at 20-21.

and create de facto per-well bonding in excess of statutory limits. The Commission risks adopting a regime that is ultra vires, untethered from legislative intent, and unworkable in practice.

*ii. Risk of Premature Plugging and Waste*

Perhaps most concerning, flat per-well obligations will create strong incentives for premature plugging. Wells that remain mechanically sound, hold strategic lease value, or could benefit from technological innovation (such as refracs or $CO_2$ EOR) will instead be written off because the financial assurance burden is disproportionate to their actual risk. This outcome promotes waste, diminishes royalty and tax revenues, and runs counter to the Act's conservation mandate. It also undermines innovation, since operators will have less ability to pilot projects—such as $CO_2$ reuse or refracs—if they are forced to plug otherwise serviceable wells. The Commission should reject these proposals in favor of preserving the tiered, risk-based framework or adopting phased adjustments that reflect real plugging costs and market realities.

***2. Production-Based Triggers and Portfolio Penalties (19.15.8.9(D)) NMAC***

Labeling wells "marginal" by rigid BOE/day and days-produced cutoffs—and then using that label to ratchet up assurance for every well once a portfolio crosses 15%—is not a risk screen; it is a blunt production screen. As Mr. Arthur notes, production level ≠ mechanical risk, and the LFC itself, pointed to a lower, more flexible threshold if any definition is used at all.[54] This will result in reclassification of lease-holding and recompletion candidates as "high risk," capital diverted from workovers to bonding, and premature plugging that wastes resource potential and reduces royalties and taxes. It also penalizes operators who specialize in running low-volume, mature wells safely and profitably, even though these companies are the very ones preventing orphan outcomes today.

[54] NMOGA's Arthur Rebuttal Testimony at 10-12.

769 ***3. Extending Per-Well Bonding to TA Statuses (19.15.8.9(E)) NMAC***

770 Pulling pending/approved/expired TA into the per-well $150,000 regime treats
771 administrative status as if it were a corrosion log. Temporary abandonment is already managed
772 through integrity tests and conditions in Part 25.[55] This will impact wells awaiting infrastructure,
773 permits, or scheduled recompletions are forced into costly bonds or early P&A—again trading
774 near-term compliance optics for long-term waste. By forcing operators to plug wells awaiting
775 infrastructure or recompletion approvals, the Commission would effectively stifle reinvestment
776 and innovation in New Mexico.

777 ***4. CPI auto-escalator (19.15.8.9(G)) NMAC***

778 Indexing bond amounts to CPI sounds like housekeeping, but it outsources Commission
779 judgment to a consumer price series that has little to do with plugging cost drivers (depth, integrity,
780 access, service availability). It also injects annual uncertainty into capital plans. Mr. Sporich
781 explains why that mechanism goes beyond the Act; I rely on his legal analysis.[56] The practical
782 effect of this proposal by Applicants will result in moving targets for operators and sureties, higher
783 collateral calls, and less budget certainty for real risk reduction. If the Commission believes
784 adjustments are needed, a better model would be periodic, evidence-based reviews—every 2–3
785 years—so costs can be tied to actual plugging experience in New Mexico rather than a national
786 consumer index.

787 ***5. Surety qualifications & market capacity (19.15.8.10(A)) NMAC***

788 Requiring Treasury Circular 570 sureties is not controversial by itself; the issue is supply.

[55] NMOGA's Arthur Direct Testimony at 17-22; 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 20-23.

[56] NMOGA's Sporich Direct Testimony at 25-26.

As Mr. Emerick explains, layering this filter on top of non-cancelable forms and quadruple-scale demand shrinks available paper and drives up collateral and premiums even for strong credits.[57] The practical result of this proposal from Applicants is that good actors will face tightened terms; some simply cannot place the paper and will exit assets rather than invest. That outcome reduces the pool of responsible operators able to acquire, manage, and eventually plug wells—again heightening, not reducing, orphan risk.

### *6. Industry Proposes Practical Alternatives That Work in the Field*

Without repeating Mr. Arthur's operational detail or Mr. Emerick's market mechanics, NMOGA proposes practical alternatives that recognize operational and regulatory realities:

#### *i. Blanket Bonds Should be Retained*

As Mr. Arthur explains, the Commission should retain tiered blanket options scaled to well counts and depth, with the ability for OCD to supplement on a risk-based basis when specific wells warrant it. Other producing states, such as Texas and Wyoming, continue to rely on tiered blanket bonds successfully, striking a balance between adequate assurance and manageable compliance.

#### *ii. The Commission Should Target the Risk, Not the Volume of Production*

As NMOGA witnesses Arthur and McGowen explain, the Commission should tie any increases to depth, integrity findings, and documented non-compliance, not to BOE/day labels or portfolio percentages.

#### *iii. Higher Levels of Financial Assurance Must be Phased-in*

As NMOGA surety expert witness Emerick explains, if higher financial assurance levels are adopted, they should be phased in over several years with clear milestones so capital plans can adapt and the surety market can absorb demand. Colorado and Wyoming have implemented phased

[57] NMOGA's Emerick Rebuttal Testimony at 5-14.

compliance schedules with success—giving operators predictability while still strengthening assurance.

*iv. Agreed Compliance Orders are Most Effective*

As explained by NMOGA witnesses Arthur and McGown, the Commission should refine Agreed Compliance Orders to prioritize the highest-risk wells first, with dated integrity checks and enforceable schedules—don't discard them.

*v. Enhanced Idle Well Certifications*

As NMOGA witness Mr. Arthur explains, the Commission should consider requiring annual, light-touch certifications for inactive wells: mechanical integrity status, near-term planning (plug, recomplete, hold by lease), and responsible contact. This gives OCD a live risk map without taxing every well at $150,000. This could build on existing Form C-145 idle well reports, meaning it would enhance tools already in use rather than impose an entirely new compliance burden.

*vi. The Commission Should Utilize the Reclamation Fund as intended*

NMOGA witness Dan Arthur and IPANM provide substantive testimony concerning the Reclamation fund and how it exists to backstop the small subset of wells that truly orphan out. Bonding changes should be evaluated alongside the Fund's revenue mechanics so we don't starve the very safety net we rely on. If production is driven down by excessive bonding, conservation tax revenues fall, weakening the Fund at the very moment it is needed most.

*vii. The Commission should expand the availability of financial assurance instruments*

As explained by NMOGA surety witness Doug Emerick, where authorized, consider structured tools that actually hold cash (e.g., trust accounts with scheduled funding) for specific, higher-risk wells—paired with milestones—rather than blunt, universal surety increases.

*viii. The Commission Should establish periodic, evidence-based reviews, not automatic CPI adjustments*

Instead of automatically adjusting financial assurance requirements as proposed by Applicants, the Commission should instead implement a thoughtful biennial or triennial review process to review financial assurance levels using current plugging and abandonment outcomes based on industry experience and feedback as well as service pricing instead of an automatic CPI escalator. Any escalator should be tied to prices in New Mexico and not to a national index that does not reflect what is happening in New Mexico.

#### *7. Conclusion*

New Mexico needs more precision, not more volume in financial assurance. The record from NMOGA's witnesses shows: (1) the surety market cannot safely absorb blunt, universal increases (Emerick); (2) statutory authority limits how far production-based categories and CPI indexing can go (Sporich); and (3) industry plugging costs and outcomes do not support a $150,000, per-well baseline (Arthur; McGowen). If the Commission wants better coverage and fewer orphans, the path is risk-based, phased, and targeted—not a universal tax on wells that are being responsibly managed today. Otherwise, the unintended consequences will be premature plugging, stranded resources, fewer transfers to responsible operators, and shrinking tax revenues—outcomes that hurt both the industry and New Mexico citizens.

### E. Industry Perspective - Proposed Changes to Well Operator Requirements under 19.15.9. NMAC

#### *1. "Risk at transfer" is already addressed by bonding—don't double-stack gatekeeping*

Applicants frame new operator requirements as necessary to "assess risk at transfer." From an industry operations standpoint, that's duplicative. The (already-expanded) financial assurance proposals under 19.15.8 NMAC are the primary risk screen. Adding new pre-transfer hurdles on top of higher assurance would slow responsible acquisitions, strand mature assets with weaker

owners, and increase orphan risk—the opposite of the stated goal.

I defer to NMOGA legal expert Clayton Sporich on the authority limits of the Commission and Division; he concludes several of these transfer powers would require legislation. I also rely on NMOGA surety expert Douglas Emerick regarding market capacity—layering transfer hurdles on top of higher bonding will tighten surety terms, raise collateral, and, in some cases, make coverage unobtainable. NMOGA operational witnesses Arthur and McGowen further explain that layering duplicative gatekeeping requirements would delay transactions that often bring in stronger operators with resources to remediate existing problems.

The Commission should prioritize risk-based bonding and targeted compliance tools already available (agreed compliance orders, supplemental bonds at transfer) rather than creating a second, discretionary "gate" at transfer.

Accordingly, NMOGA recommends that the Commission allow the Division to utilize the bonding review at transfer (which OCD already conducts) plus ACOIs for specific problems. Avoiding new, discretionary pre-transfer veto powers will encourage responsible acquisitions while still ensuring accountability.

### *2. Registration Requirements Tied to Multistate Disclosures are Overbroad under Proposed 19.15.9.8(B) NMAC*

Applicants would require multi-state compliance certifications and broad affiliate/ownership disclosures (25%+ interests) by current and former principals. From the field perspective, this is not an accountability gap; it's an administrative drag net that will delay routine registrations without improving New Mexico outcomes.

While the Division can and should police New Mexico operations, turning OCD into a nationwide compliance auditor is both impractical and outside the scope of its statutory mandate. If the Commission wants more transparency, it should be tailored to: (i) disclosure of material New

884 Mexico enforcement actions; (ii) focus on current officers/directors with operational authority; (iii)
885 recognize agreed compliance orders as evidence of active remediation.

886 ***3. Industry Perspective on Registration Requirements Tied to "Each State"***
887 ***Compliance and Secretary of State Standing - 19.15.9.8(C) NMAC***

888 NMOGA's position on this proposed change by Applicants is that Conditioning New
889 Mexico registration on being "in compliance" in every other state is impractical and beyond OCD's
890 remit. "Good standing" with the Secretary of State is a corporate filing status, not an environmental
891 performance proxy.

892 NMOGA urges that Commission to limit denial grounds to (a) material, final New Mexico
893 violations and (b) failure to meet New Mexico bonding requirements. The Commission and
894 Division might coordinate with other states when there's a documented, material record—but the
895 Commission should not convert OCD into a national compliance tribunal because it lacks the
896 resources to adequately gather and process this type of data. The Commission should limit OCD's
897 review to operators' record in New Mexico, only.

898 ***4. Industry's Perspective on Annual Re-certification of Multi-state Compliance for***
899 ***Current and Past Principals Under Proposed 19.15.9.8(E) NMAC***

900 Annual certifications covering current and past officers/directors/partners and 25%+
901 owners—across "each state"—create perpetual re-underwriting of corporate organizational charts
902 with little safety gain. If the Commission decides to amend this rule, narrow annual certifications
903 to (i) the operator's New Mexico compliance; and (ii) current officers/directors with direct
904 operational control, limited to material, final New Mexico actions would be more practical. The
905 Commission can continue to use existing tools (C-145 idle well reporting, ACOIs, supplemental
906 bonding) for risk—not sweeping corporate attestations.

907 ***5. Industry's Perspective on Change of Operator and Well Transfer Requirements***
908 ***under Proposed 19.15.9.9(B) NMAC, Including New Plugging and***

***Abandonment Plan Requirement***

Applicants would require a certified P&A plan and corporate financial disclosures (credit ratings, liabilities, reserves/economics) with every transfer. In practice, that would delay or deter acquisitions of distressed assets—the very deals that reduce orphan risk. Part 25 already governs integrity, temporary abandonment, and plugging, and OCD already verifies bonding at transfer.

On legal authority, I defer to NMOGA's legal expert, Mr. Sporich. I note however that the LFC recommended the Legislature consider clarifying authority if the state intends to disallow transfers based on asset-retirement obligations.

Operationally, the workable approach is straightforward: at transfer, verify bonding; where the facts warrant, require supplemental, well-specific assurance; and use Agreed Compliance Orders with dated milestones that travel with the assets. Pre-transfer finance dossiers and blanket P&A plans are unnecessary to protect the state and will strand assets that capable operators could remediate.

### *6. Industry Perspective on Change of Operator and Well Transfer Requirements under Proposed 19.15.9.9(C) NMAC, Including New Certification Requirements*

Applicants propose adding additional grounds to deny change of operator applications. alternatives. NMOGA considers these provisions to be (i) overbroad (multi-state compliance, prior affiliations of 25% owners), (ii) only tangentially related to field risk (SoS standing), and (iii) vague ("substantial risk" of not meeting P&A). My opinion is that this would invite inconsistent outcomes and litigation, and chill responsible buyers from acquiring assets.

If the Commission wants a "good-actor" screen, it should tie it to: (a) material, final New Mexico violations; (b) demonstrated failure to meet New Mexico bonding; and (c) specific well integrity findings. Anything broader should be legislative, per the LFC Report and the testimony

from NMOGA legal witness Clayton Sporich. The Commission should also adopt the recommendations from NMOGA witnesses Emerick and Arthur and support the more surgical tools: supplemental bonds and ACOIs.

### *7. Industry Perspective on Change of Operator and 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.[58] NMOGA believes that removing the small, long-standing buffer for temporarily inactive wells ignores real scheduling constraints (workovers, facility hookups, recompletion windows). OCD already has authority to require tests or action when risk indicators exist.

Instead of eliminating the buffer, the Commission should retain a narrow allowance with notice and pair it with targeted triggers—for example, if a well exceeds a set number of months pending workover, require an MIT by date certain or move to temporary abandonment. This approach balances flexibility with protection.

### *8. Industry Perspective on Change of Operator and 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,[59] 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

[58] WELC Prehearing Statement Exhibit 1-D.

[59] 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.

division.[60]

NMOGA's position is that prohibiting transfers of noncompliant sites until cure by the seller strands distressed assets with the party least able to fix them. The practical fix is the one OCD already uses: allow transfer with an OCD-approved ACOI that travels with the asset, plus targeted supplemental bonding. Instead, the Commission should consider replacing the hard pre-transfer bar with: (i) mandatory, transfer-specific ACOIs; (ii) supplemental bonds tied to the issues being assumed; and (iii) clear milestones. That speeds remediation and reduces orphan risk.

### *9. Industry Perspective on Additional Requirements for Release of Financial Assurance under Proposed 19.15.8.12(B) NMAC*

Applicants seek to amend 19.15.8.12(B) NMAC so that, beyond meeting financial assurance obligations, an operator must also demonstrate compliance with 19.15.5.9 and 19.15.9.9 NMAC before transferring a well.[61] NMOGA believes that adding broad cross-references to bond release makes a straightforward process discretionary and uncertain (e.g., could a minor paperwork dispute hold a bond indefinitely?). OCD already conditions transfer approvals and can hold the outgoing operator to specific duties.

Instead, the Commission should limit the prerequisite to (a) meeting financial assurance for the receiving operator; and (b) resolving any final New Mexico compliance orders for the transferred assets and avoid open-ended cross-references that deter responsible exits and clog the market.

### *10. Conclusion*

From an industry standpoint—and consistent with the record developed by NMOGA's

[60] WELC Prehearing Statement Exhibit 1-D.

[61] WELC Prehearing Statement Exhibit 1-C.

witnesses—NMOGA recommends that the Commission focus transfer oversight on risk, not on layers of new paperwork. I rely on Mr. Sporich for the statutory limits on OCC/OCD authority, Mr. Emerick for surety-market capacity and collateral effects, and Messrs. Arthur and McGowen for operational implications in the field.

First, at transfer, OCD should continue to verify that adequate bonding is in place, require supplemental, well-specific financial assurance where the facts so warrant, and use Agreed Compliance Orders (ACOI) that travel with the assets so corrective work is completed under clear milestones.

Second, for repeat-violation screening, any "good-actor" test should be tethered to material, final New Mexico violations and demonstrable failures to meet New Mexico bonding—not to multi-state compliance audits or past minority affiliations that bear no direct relationship to the wells being transferred.

Third, for inactive wells, the rules should retain a narrow, transparent buffer that acknowledges routine operational sequencing (workovers, hookups, recompletions) and pair that flexibility with targeted integrity triggers—for example, a dated mechanical-integrity test or a move to TA if a defined threshold is exceeded.

Taken together, this risk-based approach moves assets to capable operators faster, keeps field crews working, reduces true orphan risk, and stays within the statutory framework the Commission is charged to administer.

## F. Industry Perspective - Proposed Presumptions of No Beneficial Use under a New 19.15.25.9 NMAC

### *1. NMOGA's Explanation for Why volumetric presumptions don't equal "beneficial use"*

Applicants propose to establish presumptions of no beneficial use in a new 19.15.25.9

NMAC, triggered by production and injection thresholds. Applicants propose rebuttable presumptions of "no beneficial use" based on two simple screens: minimum production days/BOE and minimum injection days/volumes. On paper, that looks like clarity; in practice, it bakes in a false equivalence—low recent volumes = no beneficial value.

From NMOGA's standpoint, wells contribute value in several ways that a 90-day/90-BOE or 90-day/100-barrel test cannot account for: lease preservation, unit/communization compliance, reservoir pressure management, planned recompletions or refractures, midstream/infrastructure timing, and compliance/monitoring roles. This is exactly the kind of flexibility that the Act's conservation mandate was designed to preserve. As NMOGA witnesses Mr. Arthur and Mr. McGowen explain, New Mexico already has workable tools to sort the true problems from the routine: mechanical-integrity testing, C-145 idle-well reporting, ACOIs, and case-specific hearings. A new volumetric presumption isn't needed to find risk—and will routinely mislabel non-risk wells.

Applicants' legal witness, Mr. Alexander (pp. 41–42), suggests presumptions create an enforcement "standard." But as NMOGA legal witness Mr. Sporich makes clear, OCD already has authority to enforce plugging obligations without new presumptions. From the field perspective, these presumptions create a shortcut that overwhelms context and shifts the burden onto operators to undo assumptions the Division can already evaluate directly with existing tools.

*i. Industry's Perspective on the 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.[62] However, pairing that definition with numeric presumptions effectively replaces a flexible, context-based concept with a rigid metric. If the Commission believes a definition is necessary, it should stand on its own and preserve case-by-case evaluation—lease status, unit obligations, approved workover plan, integrity status—not be "back-doored" by volumetric screens.

*ii. Industry's Perspective on that 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."[63] 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."[64]

Thus, the LFC's own language acknowledges no single economic threshold and suggests "less than ~2 BOE/day may be an appropriate threshold for additional scrutiny," not a presumption of no benefit. As Mr. Arthur points out, scrutiny is not the same as a regulatory presumption that triggers plugging or higher bonding, and Applicants' reliance on Mr. Purvis's marginal-well analysis is misplaced since he never evaluated presumptions. As Mr. Arthur notes, Applicants also cite Mr. Purvis's "marginal" analysis to support presumptions even though that analysis does not evaluate presumptions at all. That gap matters. Scrutiny is not the same as a regulatory presumption

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

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

[64] 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 triggers plugging or heightened bonding. Therefore, the Commission should keep flexibility consistent with the LFC's framing. The Commission should treat volume of production as one input to OCD's existing risk tools—not as a legal presumption of non-benefit.

### *2. Industry's Perspective on the 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 produced at least 90 barrels of oil equivalent."[65] The 90-days/90-BOE trigger would misclassify many wells that are (a) intentionally shut-in for market or midstream reasons, (b) queued for a recompletion/workover, or (c) holding lease or unit rights.

As NMOGA witness Mr. McGowen details, those are common, planned states—not red flags. For example, a shallow Delaware Basin well awaiting a new pipeline connection could sit idle for months while remaining mechanically sound and economically viable. OCD already has authority to require integrity checks or corrective action where there's evidence of degradation. A volumetric proxy isn't a safety screen; it's an administrative shortcut that promotes waste.

Therefore, NMOGA recommends that the Commission reject the production presumption. If retained, it should be tied to a risk flag (e.g., failed MIT) and provide clear safe harbors for lease-hold wells, scheduled workovers, and documented infrastructure delays.

### *3. Industry's Perspective on 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 salt water 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

[65] WELC Prehearing Statement Exhibit 1-E.

at least 100 barrels of fluid."[66] NMOGA notes that injection can be cyclic by design: reservoir needs, produced-water variability, facility outages, or deliberate "reserve capacity" for peak periods.

As NMOGA witness Dan Arthur notes, Class II wells already face integrity testing and permit oversight that directly evaluates safety and function. For example, a disposal well may be deliberately kept idle in reserve until production ramps up, and yet it remains essential for water management. Applying a 90-day/100-barrels screen will mislabel mechanically sound wells that are strategically maintained for water management.

Therefore, NMOGA urges the Commission to reject the injection presumption proposed by Applicants. If additional oversight is desired, the Commission might require periodic justification for non-use (e.g., integrity status + operational rationale) rather than a strictly numeric presumption, which does not capture or account for the complexity and myriad uses of actual operations.

### *4. Industry's Perspective on 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."[67]

NMOGA's position is that the 18-month carve-outs for drilled-but-uncompleted or newly completed wells are too narrow. Real-world timing (unitization/communitization approvals, midstream build-outs, recompletion windows, price-cycle shut-ins) often exceeds 18 months despite sound stewardship. McGowen's testimony underscores that field sequencing alone can

[66] WELC Prehearing Statement Exhibit 1-E.

[67] WELC Prehearing Statement Exhibit 1-E.

extend this timeline.

Instead, the Commission should expand the exemptions and/or create explicit safe harbors for circumstances that include but are not limited to: 1. Documented infrastructure or regulatory delays; 2. Approved workovers or recompletion or refract plans; 3. Monitoring/compliance wells; and 4. Unitization or communization processes. This approach would facilitate case-specific extensions that can be adjusted to specific circumstances, which cannot possibly be captured completely through rule.

### *5. Industry's Perspective on the "30-day" Rebuttable 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.[68]

NMOGA's position is that requiring operators to overturn a presumption in 30 days—with projections of paying quantities, corporate capitalization, and even a P&A plan—turns due process

[68] WELC Prehearing Statement Exhibit 1-E.

into a paperwork test. Smaller independents, in particular, cannot assemble engineering, economics, and corporate attestations on that timeline. By contrast, existing compliance orders and agreed schedules often provide 90–120 days, which is a workable and familiar standard. And asking for a P&A plan to prove "beneficial use" is internally contradictory; it presumes failure rather than evaluating ongoing value.

NMOGA recommends that the Commission adopt at minimum 1. A 90-120 day window to respond; 2. Limit to well-specific operational showings (integrity status, lease terms, approved workover/work plan, infrastructure schedule); 3. Removal of company-wide financial capability and P&A-plan requirements (those belong to bonding, not "beneficial use"). NMOGA maintains that this approach would keep the focus on the actual risk and avoid redundant, intrusive financial reviews the statute reserves for bonding purposes.

### *6. Industry Perspective on 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*

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.[69] OCD reports the "change is needed to be consistent with the changes proposed under 19.15.25.9 NMAC."[70]

As NMOGA witness Dan Arthur more thoroughly explains, cross-wiring the "inactive well list" to any final "no beneficial use" determination multiplies the harm of a blunt presumption: once listed, higher bonding and accelerated timelines cascade—even where the well is mechanically sound and awaiting an approved plan. NMOGA surety expert witness Doug Emerick

[69] WELC Prehearing Statement Exhibit 1-B.

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

further notes that such automatic listing could trigger higher collateral calls from sureties, compounding financial pressure on operators without reducing actual risk.

NMOGA recommends that the Commission decline to auto-list based on volumetric presumptions. If a list is maintained, add wells only after a case-specific risk finding (e.g., integrity failure) or where an operator declines to submit/execute an approved plan. The Commission should also preserve discretion to exclude lease-holding, unitized, or scheduled-workover wells from "inactive" status.

### *7. Conclusion*

In conclusion, NMOGA believes that the workable path is straightforward and grounded in the record: keep risk where it belongs—measured by mechanical-integrity tests, site inspections, and C-145 reporting—and use ACOIs to drive corrective actions on a schedule; recognize clear safe harbors as "beneficial use," including lease retention, unit/comm status, approved workovers or recompletions, documented infrastructure delays, and designated monitoring wells; replace blanket presumptions with targeted reporting for low-volume wells (a brief annual certification of integrity status, current role, and a 12-month plan); and, if any presumption is adopted, limit it to true risk indicators such as an integrity failure or environmental non-compliance, not days or BOE alone.

I rely on Mr. Arthur and Mr. McGowen for operational details, Mr. Emerick for the collateral and surety implications, and Mr. Sporich for statutory limits that caution against importing new authorities by rule. The bottom line is: volume-based presumptions are a poor proxy for risk. New Mexico already has the tools that measure what matters—integrity and compliance—without forcing premature plugging, impairing correlative rights, or shrinking the State's tax base.

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

### *1. NMOGA Supports Preserving Temporary Abandonment to Avoid Waste and Premature Plugging as Opposed to Applicants' Support of Permanent Plugging*

Applicants' legal expert, Thomas Alexander (pp. 29–40, 46:10–47:10), argues for stricter limits on temporary abandonment on the theory that indefinite temporarily abandoned status is inconsistent with statutory conservation objectives. From an industry perspective, that approach narrows temporary abandonment to the point that permanent plugging becomes the default. NMOGA believes that Applicants' approach would narrow or burden temporary abandonment to

the point that permanent plugging becomes the default. From an industry operations standpoint, that outcome is counterproductive. Where wells remain mechanically sound, temporary abandonment is the tool that preserves future options—recompletions, refractures, facility tie-ins, secondary/tertiary projects—and avoids redrilling new wellbores later at far greater expense.

As NMOGA witnesses Mr. Arthur and Mr. McGowen explain, temporary abandonment already comes with integrity testing and renewal requirements that give OCD oversight without sacrificing future recovery. If temporary abandonment is unduly constrained, the result will be more premature P&A, higher total well counts to replace lost opportunity, and reduced ultimate recovery—outcomes directly at odds with the Act's conservation mandate.

### *2. Industry's Perspective on 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).[71]

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

[71] WELC Prehearing Statement Exhibit 1-E.

OCD comments that "[r]educing the time from 90 to 30 days compels operator to review 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."[72]

A 30-day window—after a 12-month inactivity clock—would force "abandon or TA" decisions at roughly 13 months. Like NMOGA witness Dan Arthur, 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. Based on field sequencing described by Mr. McGowen, 30 days is not enough to: schedule and complete MITs, assemble TA paperwork, mobilize rigs, or evaluate recompletion/workover alternatives. In practice, operators will default to P&A to avoid timing risk, even where a well is a viable candidate for return to service. I recommend retaining the 90-day window (or, at minimum, not reducing it), which still compels timely action while allowing genuine compliance and conservation choices.

Additionally, intermittent inactivity is common and often prudent: market shut-ins, facility outages, seasonal conditions, lease-retention strategy, or planned recompletions. As Mr. McGowen notes, counting non-continuous downtime toward a 12-month trigger penalizes responsible portfolio management and invites premature plugging. Retaining "continuous" targets the truly idle while preserving flexibility for wells that remain strategically important.

*ii. NMOGA's Perspective on Reducing the Compliance Window to 30 Days Would Mean After 13 Months Without Production (12 Months Idle Plus 30-Day Reduced Compliance Period), Well Must Either Be Permanently*

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

*Abandoned or Officially Transitioned to TA Status to Remain Legally Idle*

NMOGA's position is that a 30-day window—after a 12-month inactivity clock—would force "abandon or TA" decisions at roughly 13 months. Like NMOGA witness Dan Arthur, 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**.[73]

Additionally, intermittent inactivity is common and often prudent: market shut-ins, facility outages, seasonal conditions, lease-retention strategy, or planned recompletions. As Mr. McGowen notes, counting non-continuous downtime toward a 12-month trigger penalizes responsible portfolio management and invites premature plugging.[74] There is a simple solution to this issue: retaining "continuous" in 19.15.25.8 NMAC targets the truly idle wells while preserving flexibility for wells that remain strategically important.

### *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.[75]

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[73] 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.").

[74] NMOGA's McGowen Direct Testimony at 57-59.

[75] WELC Prehearing Statement Exhibit 1-B.

*i. OCD Official Comments on Proposed Change*

OCD supports the proposal and states "this changes [sic] reflects the time period change under 19.15.25.8 (B) NMAC."[76]

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

NMOGA's position is that tying the Part 5 presumption to a shortened Part 25 window compounds the same problem: earlier presumptions, less operational flexibility, and more defensive P&A. For the same operational reasons outlined above, I recommend retaining the longer period and, if a presumption remains, clarifying what well-specific showings rebut it (e.g., integrity status, approved workover plan, infrastructure schedule). 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 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

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

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.[77]

*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."[78]

*ii. NMOGA's Position on Applicants' Proposed Requirements for Placing a Well in Temporary Abandonment Status under Proposed 19.15.25.13(A)*

Applicants would require extensive technical, economic, geologic, and HSE packages to obtain TA—effectively turning routine TA requests into mini-permits. In my experience, that burden is unnecessary to ensure well safety and would deter the use of TA altogether. Consistent with Mr. Arthur's testimony, a practical TA filing should center on (i) current wellbore diagram, (ii) mechanical-integrity evidence, and (iii) a concise statement of planned future use. OCD already can request more where risk indicators exist; making the full package mandatory for every TA well adds cost and delay without better outcomes. Accordingly, NMOGA urges the Commission to reject the expanded documentation requirements in 19.15.25.13(A) NMAC. The current temporary abandonment process, supported by mechanical integrity testing and renewal requirements, already provides adequate oversight without imposing duplicative and excessive burdens.

***5. NMOGA Perspective on Applicant's Proposed Conditions for Extending a Well's Temporary Abandonment Status under 19.15.25.13(B) NMAC***

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

[77] WELC Prehearing Statement Exhibit 1-E.

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

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.[79]

*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."[80]

*ii. NMOGA's Position and Recommendation*

Routing routine temporary abandonment extensions through adjudicatory proceedings—with broad intervention and exhaustive documentation—will clog dockets and push operators toward P&A rather than wait for hearings. A more workable approach, aligned with how fields are actually managed, is administrative extensions based on: (i) current integrity status, (ii) C-145 idle-

[79] WELC Prehearing Statement Exhibit 1-E.

[80] 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.").

well reporting, and (iii) a short, updated plan and milestone(s). This preserves accountability without turning extensions into litigation. Imposing a rigid two-year cap likewise risks unnecessary P&A for wells that are being actively managed and remain sound.

### *6. NMOGA's Perspective on Applicant's Proposal for 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.[81]

#### *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

[81] WELC Prehearing Statement Exhibit 1-E.

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."[82]

*ii. NMOGA's 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. A flat ineligibility line at three years of inactivity is arbitrary relative to real project timelines (unit/comm approvals, midstream build-outs, capital cycles, refracture windows). From an industry standpoint—and consistent with Mr. McGowen's field sequencing—the better screen is risk-based: mechanical integrity, lease/unit status, and an executable plan. Transition provisions should be phased and administrative so operators and OCD can work through inventories without overwhelming staff or stranding wells.

### *7. NMOGA's Perspective on 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."[83]

*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.[84]

*ii. NMOGA's Position and Recommendation*

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

[83] WELC Prehearing Statement Exhibit 1-E.

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

While alignment with federal practice is sensible, a moving cross-reference risks importing federal changes wholesale and creating uncertainty for New Mexico-only wells. Coordination can be handled through guidance and interagency practice; New Mexico's rules should directly state the state standard and preserve Commission discretion to account for local conditions.

### *8. NMOGA's Perspective on 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.[85] 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 NMAC.

#### *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.[86]

#### *ii. NMOGA's Position and Recommendation*

NMOGA maintains that cross-linking temporary abandonment applications to the proposed, expanded "beneficial use" demonstrations repeats the over-documentation problem. In my view, the right core is: wellbore diagram + MIT + short plan. Where OCD spots risk, it can ask for more on a case-by-case basis, rather than making every TA submittal a full technical/economic dossier. While OCD frames this amendment as a matter of clarity, in practice, it compounds the same problems by requiring operators to demonstrate beneficial use up front for every temporary abandonment application, the rule imposes burdensome documentation obligations—technical and

[85] WELC Prehearing Statement Exhibit 1-E.

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

economic data, disposition plans, casing and cement logs, and health and safety plans—that are unnecessary to ensure well integrity. Accordingly, NMOGA urges the Commission to reject the proposed amendment to 19.15.25.14(A) NMAC.

### *9. NMOGA's Perspective on 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.[87] Based on feedback from NMOGA members, it is NMOGA's position that preventing leaks is already embedded in MIT standards, annulus monitoring, and natural-gas-waste rules. Adding new, open-ended phrases invites inconsistent interpretations and duplicate testing. If OCD wants added clarity, specifying accepted MIT protocols within the existing framework is preferable to broadening the statutory text.

### *10. NMOGA's Perspective on 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.[88]

[87] WELC Prehearing Statement Exhibit 1-E.

[88] WELC Prehearing Statement Exhibit 1-E.

*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.[89]

*ii. NMOGA's Perspective 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. Leaving a test isolation device in place for the entire TA period and requiring caliper/casing logs across the board will materially increase costs without corresponding risk reduction. As Mr. Arthur and Mr. McGowen describe, isolation devices themselves can degrade; casing logs are valuable when indicated, but they are not the routine standard in peer jurisdictions and can be technically impractical in older completions without pre-work. A risk-based trigger—run logs where MIT/pressure data or other indicators suggest a problem—achieves safety without making every TA well carry the most expensive diagnostic suite.

***11. Conclusion:***

New Mexico can strengthen oversight without sacrificing conservation if it keeps temporary abandonment viable and risk-based. First, the Commission must preserve temporary abandonment as a conservation tool centered on mechanical integrity and periodic renewal; this is what avoids redrilling and unnecessary, premature P&A. Second, the Commission must retain the 90-day compliance window and keep the word "continuous" in the 12-month inactivity trigger—

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

both are essential cushions for real-world scheduling and infrastructure constraints. Third, rely on risk screens that actually measure risk: MITs, site inspections, and C-145 reporting, backed by ACOIs with clear milestones where corrections are needed, rather than hard, short clocks that force defensive plugging. Fourth, the Commission must right-size temporary abandonment filings and extensions so they remain administrative (not adjudicatory): a current wellbore diagram, MIT evidence, and a concise future plan, with additional documentation only when specific indicators warrant it. Fifth, the Commission should allow OCD to use targeted diagnostics instead of universal logging—require caliper/casing tools when MIT or pressure data point to potential casing issues, not across the board. Finally, the Commission should avoid moving cross-references that outsource New Mexico standards; coordinate with BLM through guidance, not automatic incorporation.

I rely on Mr. Arthur and Mr. McGowen for the operational specifics on integrity testing, idle-well management, and field sequencing, and on Mr. Emerick for the surety and collateral impacts if expanded presumptions or auto-listing trigger higher bonding. On questions of statutory authority, I defer to NMOGA's legal expert. My testimony is intentionally limited to operational feasibility, conservation outcomes, and market effects.

At bottom, as drafted, the proposals make permanent plugging the path of least resistance—even for mechanically sound wells with clear future utility. New Mexico already has the right tools—integrity testing, targeted reporting, and enforceable schedules—to manage genuine risk without accelerating waste. The Commission should preserve temporary abandonment as a workable, risk-managed option and avoid rigid timelines and universal testing mandates that drive premature P&A.

## H. WELC's "Consultation" with Applicants on Rulemaking

WELC claims that it conferred with NMOGA on the application for rulemaking that it submitted to OCD. Specifically, WELC witness, Thomas Alexander, states in his direct testimony that "it is regrettable that the other industry parties did not sit down with OCD staff and applicants' counsel to seriously discuss the proposals on the table"[90] NMOGA respectfully submits that WELC's characterization of this alleged consultation is misleading.

On Saturday June 15, 2024, WELC's counsel emailed NMOGA President and CEO Missi Currier advising of the rulemaking to be filed on June 24 and offer to meet to discuss. On Monday June 17, 2024, Ms. Currier accepted that invitation via email. On Wednesday June 19, 2024, WELC offered to meet on Friday June 21, 2024, which Ms. Currier accepted on June 20, 2024. The virtual meeting was held on June 21, 2024, where WELC advised of their plans and schedule advised they had been working with the division and verbally gave an overview of what they are proposing but were not ready to provide proposal in writing. That Monday, June 24, 2025, WELC filed its rulemaking petition; the filings were not provided prior to filing for meaningful feedback or a good faith effort to obtain the same.

From NMOGA's perspective, what is truly "regrettable" is not the lack of post-filing meetings, but WELC's deliberate decision to bypass the industry altogether in developing its proposals. WELC had every opportunity to engage with NMOGA and its members in advance, to exchange data, and to collaborate on potential improvements to the rules. Instead, WELC chose to draft its own package of amendments after conferring with Division staff, and only belatedly extended an invitation to NMOGA once the application was already locked in for the Commission's consideration.

[90] Alexander Direct Testimony: 20: 17-19.

That approach does not reflect good-faith consultation or meaningful collaboration. Rather, it reflects WELC's conviction that it knows best for an industry in which its witnesses have no operational role or practical experience. NMOGA remains open to working with any stakeholder on regulatory proposals that are grounded in operational realities and that recognize the technical, economic, and environmental complexities of oil and gas development. But proposals must be built on expertise and collaboration before—not after—an application is filed.

Because WELC's proposed amendments were developed without meaningful engagement with the operators who must live under them, they are disconnected from field practice and lack the balance required by the Commission's statutory mandate. NMOGA therefore urges the Commission to reject WELC's proposals and ensure that any rulemaking proceeds with genuine consultation, operational grounding, and industry expertise.

## I. OCD's Use of Guidance Documents and Forms to Impose Unauthorized Requirements

It has come to NMOGA's attention that, since 2017, the Division has relied on language embedded in guidance documents and in Form C-145 to impose requirements never adopted by Commission rule. Nearly verbatim, functionally identical language now appears in WELC's proposed amendments to 19.15.9.8 NMAC, governing operator registration, requiring disclosure of any officer, director, partner, or person with an interest exceeding 25%, or was within the last 5 years, was an officer, director, partner or person with a 25% or greater interest, in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC when registering, and 19.15.5.9 NMAC, governing operator transfers and well acquisitions, prohibiting the transfer of operatorship where the transferee operator satisfied that same criteria.

This is concerning for numerous reasons. First, the Division has been making law through guidance and forms, not through regulations approved by the Commission. As NMOGA's legal

witness Clayton Sporich explains, this is a textbook example of agency overreach. Second, it suggests there may be other instances where OCD has imposed "rules" on industry without the Commission's approval. That kind of shadow rulemaking undermines transparency and accountability. Third, the Division's support of this rulemaking proceeding is ostensibly an effort to codify in the NMAC a practice that it has carried out for almost a decade without a regulation to support its practice. Fourth, and most important, the Division and Applicants cannot have it both ways. If this unauthorized practice has truly been effective all these years, then there is no need for a new rule. If, on the other hand, Applicants are correct that harmful transfers are still occurring despite OCD's enforcement of this practice, then codifying the same language will not solve the problem. Either way, the proposed amendment is unnecessary and ineffective.

This contradiction highlights the core issue: the Division has spent nearly eight years enforcing language it never had authority to impose, and yet the Applicants now argue a new rule is "necessary." That is an untenable position. It undermines the credibility of Applicants' proposals and illustrates the risks of regulatory shortcuts.

NMOGA respectfully urges the Commission to reject this attempt to legitimize an *ultra-vires* practice. Moreover, the Commission should direct a review of OCD's guidance and forms to ensure no other unauthorized requirements are being imposed outside the rulemaking process. NMOGA provides the Division's Notice and Operator Facility Transfer Form C-145 as Appendices A and B attached hereto this rebuttal testimony.

## IV. FINAL CONCLUSIONS

To Applicants, the only "good" well is a plugged well—even if plugging would cause waste and undermine the correlative rights this Commission is duty-bound to protect. For the reasons set forth in this testimony, the Applicants' proposed amendments should be rejected or substantially

revised. While framed as enhancing oversight, the proposals rely on inflated cost estimates, rigid volumetric presumptions, and assumptions about operator behavior that are not borne out by the record. Many exceed statutory authority, duplicate tools OCD already uses, or would create perverse incentives that accelerate premature plugging of mechanically sound wells.

From an industry perspective, the common flaw is that the proposals substitute administrative shortcuts (flat bonds, volume cutoffs, short clocks) for the risk-based oversight New Mexico already employs. By erasing flexibility, the rules would reduce responsible transfers, discourage capital investment, and increase the likelihood that marginal but viable wells are plugged prematurely—resulting in waste, lost tax and royalty revenues, and new drilling that could have been avoided.

The record shows that responsible operators already manage idle, marginal, and temporarily abandoned wells safely under the current framework. NMOGA witnesses have explained that:

- Douglas Emerick demonstrates how blunt, across-the-board bonding would destabilize the surety market and raise collateral demands across the board.
- Clayton Sporich shows where Applicants' proposals exceed the Oil and Gas Act and attempt to create new categories of assurance or transfer powers that only the Legislature can authorize.
- Dan Arthur and Harold McGowen detail how mechanical integrity testing, C-145 reporting, and agreed compliance orders already give OCD the tools to identify and address risk without forcing blanket presumptions or premature plugging.

If adopted as drafted, these proposals would disproportionately harm small and independent operators, chill acquisitions by stronger companies, and undercut the Oil and Gas Act's conservation mandate. Balanced, workable alternatives exist: phased or risk-based assurance adjustments, enhanced certifications for idle wells, targeted ACOIs, and continued reliance on the Reclamation Fund. These tools align oversight with actual risk while preserving the economic and conservation interests of the State.

Accordingly, NMOGA respectfully recommends that the Commission reject the Applicants' proposed amendments in their current form and instead adopt modifications consistent with the industry's responsive testimony.

## V. RECOMMENDATIONS

1. **Reject Proposals That Exceed Statutory Authority**. The Commission should decline amendments that create new bonding categories (e.g., marginal-well bonds), impose CPI auto-escalators, or condition transfers on multi-state compliance. These provisions are ultra vires and belong in the Legislature, not agency rulemaking.
2. **Preserve Risk-Based and Tiered Bonding Structures**. Retain a system of tiered blanket and individual well bonds, tied to depth and risk factors, rather than flat $150,000 per-well requirements. This structure reflects real plugging costs and statutory caps while maintaining flexibility.
3. **Retain Flexibility in Temporary Abandonment**. Temporary Abandonment should remain a conservation tool, with oversight focused on integrity and renewal. Reject arbitrary time cutoffs, burdensome adjudicatory extensions, or documentation demands that make TA unworkable.
4. **Maintain "Continuous" Standard for Inactivity**. Wells should only trigger abandonment after 12 months of continuous inactivity. Removing "continuous" would penalize seasonal curtailments, infrastructure delays, and market-driven shut-ins that are consistent with responsible stewardship.
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 ACOIs, OCD should refine and expand them to prioritize highest-risk wells with enforceable milestones, while allowing operators to manage lower-risk wells under phased schedules.
7. **Recognize and Utilize the Reclamation Fund**. The Reclamation Fund is a critical backstop funded by conservation taxes. It should remain central to New Mexico's plugging framework and be considered alongside any bonding changes.
8. **Adopt Balanced Alternatives**. If adjustments are needed, adopt phased-in, risk-based assurance increases, require light-touch certifications for idle wells, and maintain periodic evidence-based reviews instead of automatic CPI escalators.

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:** Andrea Felix **Date:** September 19, 2025

**Name:** Andrea Felix

**Title:** Vice President of Regulatory Affairs

**Company:** New Mexico Oil and Gas Association

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 EMNRD's 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



# Public Announcement August 2025
# Addition of Operator Facility Transfer Form.

The New Mexico Oil Conservation Division (OCD) pursuant to 19.15.2.10 NMAC is introducing a new form to facilitate the transfer of Facilities between Operators in OCD Permitting.

The need for a new form is largely attributed to the 2021 Methane Waste Rule which requires Operators to report Venting and Flaring events. The number of registered facilities, such as Upstream Compressor Stations, Tank Batteries, and Flare stacks, continues to grow in OCD permitting as Operators use these facilities to report venting/flaring events at surface comingling locations often not directly associated with a single well.

In conjunction with a C-145 (If also transferring wells) Operators must complete the new Facility Transfer Form which will be located on the forms web page on the OCD Website. To facilitate Operators in a timely manner the new form will function like previous OCD paper forms with the exception that Operators will complete the form and the associated excel spreadsheet. The complete form and attachments will be emailed to ocd.enviromental@emnrd.nm.gov.

Digital form submission through OCD permitting will be evaluated and scheduled during a later digital development period.

OCD encourages all Operators to carefully review the new form to ensure a smooth transition of facilities between Operators. Additional questions can be sent to the Environmental Bureau email ocd.environmental@emnrd.nm.gov.

# APPENDIX B

Facility Transfer Form
Revised August , 2025

**State of New Mexico**
**Energy, Minerals and Natural Resources**
**Oil Conservation Division**
**1220 S. St Francis Dr.**
**Santa Fe, NM 87505**
**(505) 476-3440**

# Change of Facility Operator

**Previous Operator Information** **New Operator Information**
Effective Date: _____

OGRID: _____ OGRID: _____

Name: _____ Name: _____

I hereby certify that the rules of the Oil Conservation Division ("OCD") have been complied with and that the information on this form and the certified list of Facilities is true to the best of my knowledge and belief.

Additionally, by signing below, _____ certifies that it has read and understands the following synopsis of applicable rules.

PREVIOUS OPERATOR certifies that all below-grade tanks constructed and installed prior to June 16, 2008 associated with the selected Facilities being transferred are either (1) in compliance with 19.15.17 NMAC, (2) have been closed pursuant to 19.15.17.13 NMAC or (3) have been retrofitted to comply with Paragraphs 1 through 4 of 19.15.17.11(I) NMAC. Certifies that all monthly venting/flaring reports pursuant to 19.15.27 and 19.15.28 NMAC associated with the selected facilities have been submitted and accepted by the OCD prior to submitting a Change of Operator request.

## As the new Operator _____ understands that the OCD's approval of this operator change:

1. constitutes approval of the transfer of the permit for any permitted pit, below-grade tank or recycling facility associated with the selected facilities; and
2. constitutes approval of the transfer of any below-grade tanks constructed and installed prior to June 16, 2008 associated with the selected facilities, regardless of whether the transferor has disclosed the existence of those below-grade tanks to the transferee or to the OCD, and regardless of whether the below-grade tanks are in compliance with 19.15.17 NMAC.

**As the new Operator of record of facilities in New Mexico, _____ _____ agrees to the following statements:**

1. I am responsible for ensuring that the facilities and related equipment comply with applicable statutes and rules and am responsible for all regulatory filings with the OCD. I am responsible for knowing all applicable statutes and rules, not just the rules referenced in this list. I understand that the official publication of all rules are available at the New Mexico Administrative Code Titles - State Records Center & Archives.,
2. I understand that if I acquire facilities from another operator, the OCD must approve the operator change before I begin operating those facilities. I understand that if I acquire facilities subject to a compliance order, I am responsible for complying with all terms of the order. I understand that if I acquire facilities with unresolved environmental incidents, I am responsible for complying with all remediation requirements and that before the OCD will approve the operator change it may require me to enter into an enforceable agreement to return those facilities to compliance. See 19.15.9.9(C)(2) NMAC.
3. I must file a monthly C-115B report showing venting/flaring for each required facility. See 19.15.27 NMAC and 19.15.28 NMAC.
4. I am responsible for reporting releases as defined by 19.15.29 NMAC. I understand the OCD will look to me as the operator of record to take corrective action for releases at my facilities and related equipment, including releases that occurred before I became operator of record.
5. I am responsible for providing the OCD with my current address to record and emergency contact information, and I am responsible for updating that information when it changes. See 19.15.9.8(C) NMAC. I understand that I can update that information on the OCD's website under "Electronic Permitting."
6. If I transfer facility operations to another operator, the OCD must approve the change before the new operator can begin operations. See 19.15.9.9(B) NMAC. I remain responsible for the facilities and related equipment and all related regulatory filings until the OCD approves the operator change. I understand that the transfer will not relieve me of responsibility or liability for any act or omission which occurred while I operated the wells and related facilities.
7. No person with an interest exceeding 25% in the undersigned company is, or was within the last 5 years, an officer, director, partner or person with a 25% or greater interest in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC.
8. OCD Rule Subsection E and F of 19.15.16.8 NMAC: An operator shall have 90 days from the effective date of an operator name change to change the operator name on the well/facilities sign unless the division grants an extension time, for good cause shown, along with a schedule for making the changes. Each sign shall show the (1) well number, (2) property name, (3) operator's name, (4) location by footage, quarter-quarter section, township and range (or unit letter can be substituted for the quarter-quarter section), and (5) API number

| **Previous Operator** | **New Operator** |
| --- | --- |
| Signature: _____ | Signature: _____ |
| Printed Name: _____ | Printed Name: _____ |
| Title: _____ | Title: _____ |
| Date: _____Phone:_____ | Date: _____Phone:_____ |