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

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

CASE NO. 24683

SELF-AFFIRMED STATEMENT OF CLAYTON SPORICH

1. My name is Clayton Sporich, and I am the legal witness for the New Mexico Oil and Gas Association ("NMOGA") in this Oil Conservation Commission ("OCC" or "Commission") rulemaking proceeding, Case No. 24683, specializing in regulatory, legal, and compliance within the oil and gas industry. My education, background, qualifications, and prior expert experience are set forth in my direct testimony submitted to the Commission on August 8, 2025, offering my legal opinion as to the proposed rules on behalf of NMOGA, with my curriculum vitae attached as Appendix A thereto.

2. 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.

3. 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.

4. Based on my review, there are still many portions of Applicants' proposed rules that exceed statutory authority, propose regulatory overreach on the part of OCD, or are otherwise unlawful. This Rebuttal Testimony provides my legal opinion as to the changes that must occur to the currently proposed rules to ensure they do not fly in the face of OCD's statutory mandates and constraints.

5. In response, through this Rebuttal Testimony, I will begin by addressing how Applicants' proposed changes to New Mexico's existing oil and gas financial assurance regime actually conflict with the statutory text and purpose of this Commission and the Division's enabling act, the New Mexico Oil and Gas Act (the "Act"), NMSA 1978, Section 70-2-14(A) (the "Act"). During my review of the proposed amendments, I identified numerous independent violations of the Act's limited financial assurance authority in Applicants' proposed amendments to 19.15.8.9 NMAC. Finally, I will address OCD's lack of jurisdiction to require that operators certify that they are in compliance with the laws of *other states*, as currently proposed under Applicants' updates to 19.15.9.8(B), (C), and (E) NMAC, governing operator registrations, and 19.15.9.9(B) and (C) NMAC, governing transfer of operatorship.

A. The Proposed Changes to Financial Assurance Requirements under 19.15.8 NMAC Exceed and/or Conflict with the Commission and Division's Enabling Statute, the New Mexico Oil and Gas Act

6. Applicants and their experts ignore a threshold issue: the proposed changes to the financial assurance framework exceed or conflict with the Act, which vests the Division with limited statutory authority to demand certain types and amounts of financial assurance limited to secure reasonable plugging and abandonment costs, with no authorization for the costs being secured to include reclamation expenses:

> Each person, firm, corporation or association who operates any oil, gas or service well within the state shall, as a condition precedent to drilling or producing the well, furnish financial assurance in the form of an irrevocable letter of credit or a cash or surety bond or a well-specific plugging insurance policy pursuant to the provisions of this section to the oil conservation division of the energy, minerals and natural resources department running to the benefit of the state and **conditioned that the well be plugged and abandoned in compliance with the rules of the oil conservation division**. The oil conservation **division shall establish categories of financial assurance after notice and hearing. Such categories shall include a blanket plugging financial assurance, which shall be set by rule in an amount not to exceed two hundred fifty thousand dollars ($250,000), a blanket plugging financial assurance for temporarily abandoned status wells, which shall be set by rule at amounts greater than fifty thousand dollars ($50,000), and one-well plugging financial assurance in amounts determined sufficient to reasonably pay the cost of plugging the wells covered by the financial assurance. In establishing categories of financial assurance, the oil conservation division shall consider the depth of the well involved, the length of time since the well was produced, the cost of plugging similar wells, and such other factors as the oil conservation division deems relevant. The oil conservation division shall require a one-well financial assurance on any well that has been held in a temporarily abandoned status for more than two years or**, at the election of the operator, **may allow an operator to increase its blanket plugging financial assurance to cover wells held in temporarily abandoned status.** All financial assurance shall remain in force until released by the oil conservation division. The oil conservation division shall release financial assurance when it is satisfied that the conditions of the financial assurance have been fully performed.

NMSA 1978, § 70-2-14(A) (emphasis added). Accordingly, the Act authorizes financial assurance only for the secured well's or wells' plugging and abandonment costs—not for reclamation. Therefore, the Division's current regulation at 19.15.8.12(A) NMAC, which requires financial assurance to guarantee reclamation of a well pad, exceeds the authority granted by the Act. This overreach is just as concerning as the Applicant's proposal to increase financial assurance beyond what the Act authorizes.

7. The Act confirms that the New Mexico State Rules Act, NMSA 1978, §§ 14-4-1– – 14-4-11, governs the publication and appeals of OCC regulations. NMSA 1978, § 70-2-12.2(B)-(C).

8. The State Rules Act provides: "No rule is valid or enforceable if it conflicts with statute. A conflict between a rule and a statute is resolved in favor of the statute." NMSA 1978, § 14-4-5.7.

9. In addition, the Act itself provides that New Mexico courts of appeals are required to set aside rulemakings that are: (1) arbitrary, capricious, or an abuse of discretion; (2) not supported by substantial evidence in the record; or (3) otherwise not in accordance with law. NMSA 1978, § 70-2-12.2(C).

10. First, I will address how the individual well financial assurance requirements, under proposed 19.15.8.9(C)(1) (applicable to active wells) and (E)(1) (currently codified at (D)(1) NMAC, applicable to inactive wells and wells either pending temporarily abandoned status or which have had the status approved for more than two years), unlawfully circumvent OCD's statutory mandate for one-well financial assurance to be "in amounts determined sufficient to reasonably pay to cost of plugging the wells" and consider among other things "the depth of the well involved, the length of time since the well has produced, [and] the cost of plugging similar wells." NMSA 1978, § 70-2-14(A).

11. Second, I will address how Applicants' proposed expansion of the definition of "inactive well" for purposes of financial assurance under proposed 19.15.8.9(E) NMAC (currently 19.15.8.9(D) NMAC), and as cross-referenced in proposed new 19.15.8.9(D) NMAC, would misclassify viable wells as inactive and prematurely subject them to heightened bonding requirements. This proposed approach would directly undermine one of the OCD's core statutory mandates under the Act—preventing waste—by forcing the plugging of wells that remain capable of future production or operational use, thereby squandering valuable resources and diminishing long-term recovery.

12. Third, I will address the Applicants' proposed revisions to the blanket bond option for inactive and temporarily abandoned wells under proposed 19.15.8.9(E)(2) NMAC. By requiring coverage at the $150,000 per-well level, Applicant's proposal effectively eliminates the statutory requirement that the OCD allow temporarily abandoned wells to remain under the $250,000 blanket financial assurance cap for at least the initial two-year period. In so doing, it circumvents both the letter and intent of the Act, which expressly preserves blanket bonding as a compliance pathway during early temporary abandonment status.

13. Fourth, I will address how the proposed blanket bonding alternative for inactive and temporarily abandoned wells under 19.15.8.9(E)(2) NMAC will result in blanket bonding requirements that exceed the $250,000 statutory cap on blanket assurance.

14. Finally, I will address Applicants' proposal to create a new category of heightened financial assurance for so-called "marginal wells" under proposed 19.15.8.9(D) NMAC. This proposal not only exceeds the statutory limits set by the Act, but also conflicts with the Division's statutory mandate to prevent waste.

1. Proposed Increases to Individual Active and Inactive Well Financial Assurance Requirements under Proposed 19.15.8.9(C)(1) and (E)(1) NMAC, Do Not Reflect Reasonable Plugging Costs and Eliminate Statutorily Required Risk-Based Considerations

15. Applicants' proposed amendments to increase of the single well financial assurance requirements for active wells under 19.15.8.9(C)(1) NMAC, and inactive wells under proposed amendments to 19.15.8.9(E)(1) NMAC, are not compliant with existing statutory requirements and therefore cannot be adopted by OCD. Both proposals impose a flat $150,000 per-well requirement, disregarding the statutory mandate that financial assurance amounts must be (i) reasonable in relation to actual plugging costs and (ii) tailored to well-specific factors such as depth, production history, and comparable plugging costs.

16. The New Mexico Supreme Court has repeatedly held and long made clear that the OCC and OCD, as creatures of statute, must act strictly within the bounds of their enabling legislation. *Sims v. Mechem*, 1963-NMSC-103, ¶ 11, 72 N.M. 186, 382 P.2d 183 (holding the Commission lacked authority to issue a compulsory pooling order where it failed to make the statutorily required finding of waste). The Court emphasized that the Commission "must fully comply with its creating law to possess any jurisdiction in a matter." Id. Here, pursuant to NMSA 1978, § 70-2-14(A), the OCD must set one-well financial assurance "in amounts determined sufficient to reasonably pay the cost of plugging."

17. Furthermore, the statute requires that OCD "*shall* consider the depth of the well involved, the length of time since the well was produced, the cost of plugging similar wells, and such other factors as the oil conservation division deems relevant." NMSA 1978, § 70-2-14(A) (emphasis added.) Applicants' proposed changes to 19.15.8.9(C)(1) NMAC disregard both of these statutory requirements and are therefore unlawful.

18. Applicants' proposed 19.15.8.9(C)(1) and (E)(1) NMAC disregards the requirement in OCD's enabling statute that one-well financial assurance be "in amounts determined sufficient to *reasonably* pay the cost of plugging."

19. The record established thus far in this rulemaking is rife with evidence that many wells can typically be plugged for far less than $150,000, especially for wells drilled to shallower depths. See, for example, the Direct Testimony of NMOGA lead technical expert Dan Arthur stating that "the cost of plugging and abandoning an oil and gas well can vary enormously" and describes his personal knowledge of "many wells" being plugged and abandoned for $20,000 or "even less."[1] See also the Direct Testimony of NMOGA plugging and abandonment expert Harold

[1] Direct Testimony of Dan Arthur, P.E., NMOGA Lead Technical Expert, *In the Matter of Proposed Amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC*, No. 24683, OCC, Aug. 8, 2025 (hereinafter "NMOGA's

McGownen, stating that "the $150,000 per-well bond (plus inflation) proposed by Applicants is far above what it actually costs, or should cost, on average, to plug and abandon a typical New Mexico oil or gas well."[2]

20. Because this Commission has ample evidence that the costs of plugging a single well often falls well below the $150,000 proposed amount, it cannot find that this amount is always "sufficient to *reasonably* pay the cost of plugging" as statute requires.

21. Additionally, Applicants' proposed 19.15.8.9(C)(1) and (E)(1) NMAC disregard the requirement under the Act that the Commission must "consider the depth of the well involved, the length of time since the well was produced, the cost of plugging similar wells and such other factors as the oil conservation division deems relevant" when setting one-well financial assurance amounts.

22. In fact, Applicants' proposed changes to 19.15.8.9(C)(1) and (E)(1) NMAC explicitly strike the depth considerations from the existing rule language. Eliminating those factors directly contravenes § 70-2-14(A) and exceeds OCD's statutory authority.

2. The Proposed Expansion of the Definition of "Inactive" Under 19.15.8.9(E) NMAC, Combined with New Requirements for Marginal and Inactive Wells Under 19.15.8.9(D) NMAC, Would Result in Waste of Natural Resources

23. When it enacted the Act, the New Mexico Legislature created the OCC and gave "the Commission and Division two major duties: the prevention of waste and the protection of correlative rights." *Santa Fe Expl. Co. v. Oil Conservation Comm 'n*, 1992-NMSC-044, ¶ 27, 114 N.M. 103, 835 P.2d 819 (citing NMSA 1978, § 70-2-11(A)); *Cont'l Oil Co. v. Oil Conservation*

Arthur Direct Testimony"), at 29:604-09.

[2] 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 78:1660-62.

Comm'n, 1962-NMSC-062, ¶ 26, 373 P.2d 809).

24. The Act defines "waste" as including underground and surface waste, as follows:

> A. "underground waste" as those words are generally understood in the oil and gas business, and in any event to embrace the inefficient, excessive or improper, use or dissipation of the reservoir energy, including gas energy and water drive, of any pool, and the locating, spacing, drilling, equipping, operating or producing, of any well or wells in a manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from any pool, and the use of inefficient underground storage of natural gas;
>
> B. "surface waste" as those words are generally understood in the oil and gas business, and in any event to embrace the unnecessary or excessive surface loss or destruction without beneficial use, however caused, of natural gas of any type or in any form or crude petroleum oil, or any product thereof, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage or fire, especially such loss or destruction incident to or resulting from the manner of spacing, equipping, operating or producing, well or wells, or incident to or resulting from the use of inefficient storage or from the production of crude petroleum oil or natural gas in excess of the reasonable market demand;

N.M. Stat. Ann. § 70-2-3(A)-(B).[3]

25. The Act defines "correlative rights" as:

> [T[he opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste the owner's just and equitable share of the oil or gas or both in the pool, being an amount, so far as can be practicably determined and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas or both under the property bears to the total recoverable oil or gas or both in the pool and, for such purpose, to use the owner's just and equitable share of the reservoir energy.

[3] The Act also defines the production of crude petroleum oil and natural gas in excess of the reasonable oil and gas market demand or in excess of the capacity of gas transportation facilities; further defining "reasonable market demand" as used therein as the demand for such crude petroleum oil or natural gas for reasonable current requirements, for current consumption and use within or outside the state, together with the demand for such amounts as are reasonably necessary for building up or maintaining reasonable storage reserves of crude petroleum oil, natural gas, or the products thereof, or both such crude petroleum oil or natural gas and its products. Id. at (C), (E). In addition, "the nonratable purchase or taking of crude petroleum oil in this state" also qualifies as waste. Id. at (D) ("Such nonratable taking and purchasing causes or results in waste, as defined in the Subsections A, B, C of this section and causes waste . . ."). Waste with respect to potash is defined differently as "drilling or producing operations for oil or gas within any area containing commercial deposits of potash where such operations would have the effect unduly to reduce the total quantity of such commercial deposits of potash which may reasonably be recovered in commercial quantities or where such operations would interfere unduly with the orderly commercial development of such potash deposits." Id. at (F).

N.M. Stat. Ann. § 70-2-33(H).

26. Here, Applicants effectively expands the definition of "inactive" wells for purposes of financial assurance determinations, i.e., subject to financial assurance requirements under proposed 19.15.8.9(E) NMAC ("Inactive Wells") (currently codified at (D) and governing inactive wells and certain temporarily abandoned wells), by amending the description of applicable wells to:

i. Add an express reference to "inactive" wells; and

ii. Expand the reference to covered temporarily abandoned wells to all those wells pending, approved, and with expired approved temporarily abandoned status.

See Applicants Prehearing Statement Exhibit 1-C.

27. This effective expansion under Applicants' proposed "inactive well" financial assurance amendments under proposed recodified 19.15.8.9(E) NMAC (governing inactive and temporarily abandoned wells), which is then cross referenced in the marginal well assurance requirements under proposed new 19.15.8.9(D) NMAC (governing marginal and inactive wells), will result in the waste of natural resources, in breach of OCD's statutory directive to prevent waste.

28. As discussed in the Direct Testimony of Dan Arthur, designating a well as temporarily abandoned is often a strategic, operational decision:

> "As a general matter, a well is temporarily abandoned when operations have ceased, but the well is expected to be returned to service and remains mechanically sound, with no immediate intent or need to plug and abandon. Operators utilize temporarily abandoned status for wells because they wish to preserve leasehold interests, maintain future development options, and avoid premature abandonment while awaiting improved market conditions, infrastructure access, or completion of reservoir studies or project approvals."[4]

29. Therefore, designating a well as "temporarily abandoned" is not always indicative

[4] NMOGA's Arthur Direct Testimony at 23:459-65.

of the well truly being inactive or ready for plugging from a conservation perspective.

30. Applicants' current proposal will force operators to plug some wells that they have strategically designated as "temporarily abandoned" for operational reasons in order to avoid noncompliance, even though the wells may be productive in the future. The result is a waste of natural resources, which OCD is statutorily mandated to prevent.

3. Proposed 19.15.8.9(E) NMAC Conflicts with Statutory Requirements that Wells in Temporary Abandoned Status Remain under the $250,000 Blanket Financial Assurance Coverage Category for an Initial Two-Year Period

31. As stated above, the New Mexico Supreme Court has repeatedly held that the OCC and OCD, as creatures of statute, must act strictly within the bounds of their enabling legislation. *Sims*, 1963-NMSC-103, ¶ 11.

32. Pursuant to the Act, NMSA 1978, § 70-2-14(A), the statute mandates that wells in a "temporarily abandoned" status will remain under the $250,000 blanket financial assurance coverage for an initial two-year period. The pertinent portion of the statute states explicitly, "[t]he oil conservation division shall require a one-well financial assurance on any well that has been held in a temporarily abandoned status for more than two years." Id. (emphasis added).

33. Inexplicably, Applicants seek to ignore this statutory mandate in its proposed changes to 19.15.8.9(D) NMAC, which would require operators to supply one-well financial assurance for temporarily abandoned wells before the statutorily proscribed two-year period has concluded.

4. Blanket Bonding Alternative for Inactive and Temporarily Abandoned Wells under Proposed 19.15.8.9(E)(2) NMAC, and Incomplete Blanket Assurance Requirements under Proposed 19.15.8.9(F) NMAC, Exceed the Statutory $250,000 Cap

34. Again, the OCD is bound by the constraints contained in the Act. One of those

constraints is contained in NMSA 1978, Section 70-2-14(A), which authorizes the Commission to establish categories of plugging financial assurance but explicitly caps blanket coverage at $250,000:

> Such categories shall include a blanket plugging financial assurance, which shall be set by rule in an amount not to exceed two hundred fifty thousand dollars ($250,000), [and] a blanket plugging financial assurance for temporarily abandoned status wells, which shall be set by rule at amounts greater than fifty thousand dollars ($50,000).

35. Applicants' proposed regulation 19.15.8.9(E)(2) NMAC, requiring any blanket bonding for inactive and pending, approved, or temporarily expired abandoned wells to provide blanket bonds with a total of $150,000 for *each well secured.*

36. By definition, any blanket instrument calculated on a per-well basis would exceed the $250,000 statutory ceiling once it covers more than one or two wells. This directly conflicts with the Act's Section 70-2-14(A) and renders the proposal unlawful.

5. Applicants' Creation of the "Marginal Well" Category under Proposed 19.15.8.9(D) NMAC, as well as Adding Regulatory Definition of "Marginal Well" under Proposed 19.15.2.7(M)(2) NMAC, Exceeds the Statutory Restrictions Contained in NMSA 1978 Section 70-2-14(A) and Will Result in Waste

37. Finally, the Applicants' proposed new heightened financial assurance requirements specific to "marginal wells" also violate the Act for two reasons.

i. Statutory Authority for Marginal Well Bonding Is Absent

38. 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 Applicants' proposed "marginal well" requirement—would require legislative amendment before they could lawfully be adopted by regulation.

39. NMOGA agrees with Oxy that:

> [I]n an effort circumvent this statutory restriction for active 'marginal' wells, Applicants asks the Commission to: (a) define a 'marginal well;' (b) remove these active wells from the $250,000 blanket financial assurance authorized by Section 70-2-14; (c) imposing a 'one-well' plugging financial assurance in the amount of $150,000 'for each' of these active 'marginal' wells; and (d) if 'over 15 percent' of an operator's wells are considered 'marginal or inactive, or a combination thereof,' then that operator must provide financial the amount of $150,000 'for each' of the wells registered to that operator, including active wells producing above what Applicants considers a 'marginal' threshold. See Applicants Ex. 1-A at p. 6 (proposing a definition of "marginal well") and Applicants Ex. 1-C at p. 2 (proposed 19.15.8.9.D NMAC).

See Oxy's Prehearing Statement at pages 4-5.

40. Accordingly, any changes to the financial assurance categories and amounts set by statute would require amendments at the legislative level.

41. The New Mexico Legislative Finance Committee's ("LFC") June 2025 Policy Spotlight on Orphaned Wells ("LFC Report"), relied on by Applicants and attached as Exhibit 4 to its Prehearing Statement, specifically recommends that the *legislature* amend NMSA 1978, Section 70-2-14 to specify that wells producing below certain thresholds set in rule require additional financial assurance. LFC Report at 2, 36. I interpret this language as an acknowledgement that a statutory change is needed to require additional financial assurance for "marginal wells."

ii. The Proposed Heightened Marginal Well Requirements Promote Waste in Contravention of the Statutory Purpose of the Act

42. Even if the Commission had statutory authority (which it does not), the Applicants' proposal would undermine one of OCD's core statutory mandates: preventing waste.

43. Testimony from NMOGA experts Daniel Arthur and Harold McGowen demonstrates that imposing $150,000 per-well assurance on marginal wells will incentivize premature plugging of wells that remain mechanically sound, strategically valuable, or potentially productive in the future.

44. As described above in Part A.2, the Applicants' proposal to add heightened financial assurance requirements for "marginal wells" under a proposed new 19.15.8.9(D) NMAC will also result in a waste of natural resources, directly contravening one of OCD's primary statutory directives under NMSA 1978, Section 70-2-11(A).

B. Proposal to Add Requirement Well Operators Certify Compliance with Other States' Laws for Registration, Annually, and for Transfers (i.e., Acquisitions) under 19.15.9.8 NMAC and 19.15.9.9 NMAC

45. Applicants propose adding a requirement under 19.15.9.8(B), (C), and (E) NMAC (governing operator registrations), and 19.15.9.9(B) and (C) NMAC (governing change of operators), mandating an operator certify to OCD that it is in full compliance with the laws of the other states in which it operates. This new certification requirement would apply to an operator applying for operatorship commencing operations, under proposed 19.15.9.8(B) NMAC, and annually thereafter, under proposed 19.15.9.8(C) NMAC, and when applying to transfer operatorship, under proposed 19.15.9.9(B) NMAC. Additionally, the requirement to certify compliance with other states' laws would be added as grounds to deny operator registrations and transfers under proposed 19.15.9.8(C) NMAC and 19.15.9.9(C), respectively.

46. This requirement is plainly outside OCD's statutory authority. OCD is not authorized by its enabling statute to enact this type of extraterritorial power.

47. Pursuant to the Act, the OCD and OCC have "jurisdiction, authority, and control of and over all persons, matters, or things necessary and proper to enforce the provisions of this act or any law of this state…." NMSA (1978), § 70-2-6(A). The Act also provides that the OCD and OCC shall have "jurisdiction and authority over all matters relating to the conservation of oil and gas…in this state." Id.

48. New Mexico courts have consistently held that agency rules are valid only if they are within the scope of authority expressly or impliedly delegated by statute. See *N.M. Mining Ass'n v. N.M. Mining Comm'n*, 122 N.M. 332, 336-337 (1996).

49. Furthermore, while it is clear that administrative agencies may properly exercise those powers that are within the scope of the authority delegated to them, they may not, however, amend or enlarge their authority through the device of promulgating rules and regulations. *Chalamidas v. Environmental Improvement Div.*, 102 N.M. 63, 66 (Ct. App. 1984).

50. As stated above, the OCD has no express or implied authority to compel operators to comply with the oil and gas laws *of another state*. However, the Applicants propose to grant the Commission precisely this power through its addition of 19.15.9.8(B), (C), and (E) NMAC and 19.15.9.9(B) and (C) NMAC, flying in the face of the legislative mandate that the Commission only regulate matters relating to the conservation of oil and gas "in this state."

51. Absent an extraterritorial provision—the kind found normally in the realm of workers' compensation or credit unions' regulation of out-of-state entities doing business in New Mexico—the Division's jurisdiction ends at the physical borders of New Mexico. Accordingly, Applicants' proposed rules cannot contain a requirement that operators certify compliance with the laws of other states, as this constitutes an unlawful expansion of the OCD's legislatively proscribed limitations.

C. The Division's Unlawful Attempt to Codify an Unauthorized Extraterritorial Requirement

52. NMOGA membership has raised serious concerns regarding the proposed amendments to 19.15.9.8 NMAC, 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 for operatorship, and to 19.15.5.9 NMAC, prohibiting the transfer of operatorship where the transferee operator satisfied that same criteria. It has come to NMOGA's attention that, since 2017, the Division has already been enforcing this mandate by inserting it into its forms—specifically Form C-145—absent any statutory or regulatory basis for doing so. Now, through this rulemaking, the Division seeks to retroactively legitimize the very requirement it has unlawfully imposed for nearly a decade.

53. As the New Mexico Supreme Court has consistently recognized, an agency's authority is confined to the powers expressly granted by the Legislature. See, e.g., *New Mexico State ex rel. Taylor v. Johnson*, 1998-NMSC-015, ¶ 22, 125 N.M. 343, 961 P.2d 768 ("Administrative agencies are creatures of statute and have only those powers conferred by law."). Agencies cannot create new rules, obligations, or penalties not authorized by statute. That limitation extends not only to agency enforcement but also to the promulgation of regulations. A regulation that exceeds statutory authority is ultra vires and invalid.

54. The New Mexico State Rules Act ("SRA") underscores this principle. It provides: "Except in the case of an emergency rule, no rule shall be valid or enforceable until it is published in the New Mexico register as provided by the State Rules Act." NMSA 1978, § 14-4-5. It is inconceivable that an "emergency" has persisted continuously since 2017 to justify the Division's ongoing enforcement of a rule that was never validly adopted. The SRA's annotations confirm the categorical nature of this requirement:

> The language of this section is categorical: a rule is not valid or enforceable until it is filed. There is no implicit exception that makes the rule effective before filing with respect to those with actual notice of the rule. *Pineda v. Grande Drilling Corp.*, 1991-NMCA-004, ¶ 9, 111 N.M. 536, 807 P.2d 234.

NMSA 1978, § 14-4-5 Annotation.

55. The Attorney General has reached the same conclusion. In Opinion 93-1, the Office of the Attorney General explained that the SRA requires the filing of any policy, manual, or directive that purports to affect persons or agencies beyond the issuing agency itself:

> If a policy manual or directive contains statements of policy purporting to affect one or more agencies besides the agency issuing the manual or to affect persons not members or employees of the issuing agency, it must be filed in accordance with the State Rules Act.

1993 N.M. Op. Att'y Gen. No. 93-1, 1993 N.M. AG LEXIS 2, *1–*2.

56. The opinion further stresses that "the terms 'rule' and 'standard' in the SRA's definition of rule include procedural standards, manuals, directives, and requirements" whenever they purport to extend beyond the issuing agency. Id. at *2. Importantly, "an agency may not avoid filing and publishing a rule by incorporating it by reference in an otherwise properly filed and published rule." Id. at *2.[5]

57. That is precisely what has occurred here. The Division has unilaterally incorporated this extraterritorial requirement into Form C-145 without any lawful authority to do so. And because the regulation at issue also implicates other agencies—most notably the State Land Office ("SLO"), which issues the leases upon which OCD permitting depends[6]—it underscores why this requirement cannot be shielded from the filing and publication requirements of the SRA. Indeed,

[5] *See, e.g., Bokum Res. Corp. v. N.M. Water Quality Control Com'n,* 1979-NMSC-090, ¶ 63, 93 N.M. 546, 550, 603 P.2d 285, 289-90 (holding regulations which required persons who discharged toxic pollutants to submit a discharge plan to the Director of the Environmental Improvement Division for approval, and which defined "toxic pollutants" as contaminants that will, "on the basis of information available to the Director or the Commission, cause death," or other dire results were unconstitutionally vague since the discharger's acts were to be judged, not by what he could read in print about the standards, but by "information available to the Director or the Commission.") ("a penal statute or regulation which either forbids or requires the doing of an act in terms so vague that men of common intelligence must guess at its meaning and differ as to its application lacks the first essential of due process of law.").

[6] Rebuttal Testimony of Dan Arthur, P.E., NMOGA Lead Technical Expert, *In the Matter of Proposed Amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC*, No. 24683, OCC, Sept. 19, 2025, at 60.

it is no surprise that the SLO has intervened in this very proceeding, as its authority is directly impacted.

58. Finally, I concur fully with Ms. Felix's rebuttal testimony. The Division's proposed requirement that operators certify compliance with other states' laws is regulatory overreach on its face. That overreach is compounded by the Division's eight years of enforcing the requirement through Form C-145 without statutory or regulatory authority. Applicants now argue that codification is "necessary," but necessity cannot cure unlawfulness. The Division cannot bootstrap an unauthorized practice into validity by sheer repetition. Put simply, the Division lacked authority to impose this requirement in 2017, and it lacks authority to impose it now.

59. I further concur with all the concerns that NMOGA Vice President of Regulatory Affairs and industry witness Ms. Andrea Felix raises in her rebuttal testimony regarding this issue.[7]

60. In conclusion, the myriad proposals contained in the current version of the proposed rules that do comply with New Mexico law cannot be included in the final version of the rules adopted at the conclusion of this rulemaking. Those provisions include:

A. Applicants' changes under proposed 19.15.8.9(C)(1) and (E)(1) NMAC, pertaining to one-well financial assurance for active and inactive wells;

B. Applicants' proposed expansion of the definition of "inactive" for purposes of financial assurance requirements under proposed 19.15.8.9(E) and (D) NMAC;

C. Applicants' attempted circumvention of the statutory requirement that OCD allow wells in temporary abandoned status to remain under the $250,000 blanket financial assurance for an initial two-year period under proposed 19.15.8.9(E) NMAC;

[7] Rebuttal Testimony of Andrea Felix, NMOGA Vice President of Regulatory Affairs and Industry Witness, *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, at 65-67.

D. Applicants' creation of the "marginal well" category under proposed new 19.15.8.9(D) NMAC, which exceeds the statutory restrictions contained in NMSA 1978, Section 70-2-14(A), and will result in waste in contravention of NMSA 1978, Section 70-2-11(A);

E. Applicants' proposed blanket bonding requirements for inactive wells and certain temporarily abandoned wells under proposed 19.15.8.9(E)(2) NMAC, and supplementing incomplete blanket assurance under proposed 19.15.8.9(F) NMAC;

F. Applicants' proposed addition of 19.15.9.8 NMAC governing operator registration, and 19.15.9.9 NMAC governing changes of operator, mandating certification to OCD of full compliance with the laws of other states prior to commencement of operations.

61. The Commission must strike all provisions of the proposed rules that do not comply with New Mexico law. Additionally, the Commission should grant NMOGA's Motion to Dismiss dated September 15, 2025, wherein NMOGA requests that certain portions of the proposed rules be stricken or modified because they currently exceed the authority granted by the New Mexico Legislature under the Act.

62. Finally, and relatedly, I recommend the Commission order OCD to strike the unauthorized requirement that well operators certify compliance with other states' laws from its Form C-145. The Division's Notice and Operator Facility Transfer Form C-145 are attached hereto as Appendices A and B, respectively.

That concludes my 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. I affirm that my testimony above is true and correct and is made under penalty of perjury under the laws of the State of New Mexico.

Prepared by:

Signature: _____ **Date:** September 19, 2025

Name: Clayton Sporich, J.D.

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 by EMNRD's CentreStack Platform this 19th day of September 2025, as follows:

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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:_____