

REBUTTAL TESTIMONY OF BRANDON POWELL

1 My name is Brandon Powell, and I am the Deputy Director of the Energy, Minerals and
2 Natural Resource Department, Oil Conservation Division (“OCD” or “Division”). I hereby present
3 my direct rebuttal testimony regarding Western Environmental Law Center’s (WELC) Amended
4 Application for Rulemaking, OCC Case number 24683.

5 I am providing rebuttal testimony on a few topics. I have also provided these topics in
6 Exhibit 31. My exhibit directly addresses testimony by Andrea Felix with NMOGA and similar
7 testimony provided by other witnesses. I will not directly address all of NMOGA’s
8 recommendations, as several would cause the rule to be effectively unenforceable, delay agency
9 actions, and cause the reviews of thousands of individual wells which would create additional
10 ambiguity and potentially be arbitrary in application.

11 In OCD’s Exhibit 31 Slides 2-5, I discuss NMOGA’s statements on authority. To help
12 clarify the Division’s positions, I provide some of the authorities which OCD relies upon in support
13 of the petition and explain the significance and implementation of the proposed rule related to the
14 referenced authority. OCD’s legal interpretation and argument will be addressed by counsel in a
15 Response pleading and closing arguments. 1978 NMSA Section 70-2-14.A provides that the
16 division shall establish categories of financial assurance. The Division has historically created
17 categories, such as for inactive well financial assurance requirements. As I provide in my direct
18 testimony, the creation of a new category was also part of LFC’s recommendations in which they
19 state “[p]romulgate rules specifying that low-producing wells require individual well financial
20 assurance.” Exhibit 18 at 37. The proposed rule addresses the recommendation for the
21 promulgation of a new category of financial assurance for individual wells. There are specific
22 provisions that must be considered when establishing categories of financial assurance. As
23 provided in Exhibit 31, OCD has considered these items when establishing the proposed financial

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1 assurance. It should be noted that the financial assurance should be in an amount determined
2 sufficient to reasonably pay the cost of plugging wells covered by the financial assurance. The
3 OCD has provided information demonstrating its average cost for plugging wells which shows
4 what would be reasonably needed for the Division to plug wells in the future. IPANM's testimony
5 regarding industry plugging costs is irrelevant, as financial assurance forfeiture is intended to
6 reimburse the state's plugging expenses - not operator plugging expenses - and the Division often
7 plugs more problematic and expensive wells years after those wells would have been plugged by
8 a responsible operator.

9 In Exhibit 31 Slide 7, I discuss NMOGA's statements on days being a determining factor
10 for consideration. Similar statements were also made by IPANM and Oxy. After careful
11 consideration and reviewing direct testimony, it has become evident that while the days may show
12 responsible use of a well by an operator, the way it is combined with volumes appears to be
13 potentially confusing. As such the OCD is open to eliminating the days component from the
14 provisions defining marginal wells and the presumption of no beneficial use, and only
15 incorporating the volumes. This is also consistent with the LFC report. The reasoning is the days
16 can be something the operator then refers to in their response to the OCD if they receive a notice
17 of presumption of no beneficial use. An important distinction is that if a component of these
18 provisions are removed it should only be the days and not the volume. Production volume is more
19 important to determine beneficial use, as a well can have a valve open and be considered producing
20 even though no real effort is being made or no significant volumes produced, allowing the well's
21 condition to continue to degrade over time.

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