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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:
Case No. 24683.

HEARING
DATE: Wednesday, June 3, 2026
TIME: 9:02 a.m.
BEFORE: Hearing Examiner Felicia Orth
LOCATION: Pecos Hall, Wendell Chino Building
122 South St. Francis Drive
Santa Fe, NM 87505
REPORTED BY: Ryan Auten
JOB NO.: 8234801

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A P P E A R A N C E S (Cont'd)

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ALSO PRESENT:

Greg Bloom, Designee, New Mexico State Land
Office

William Ampomah, Designee, Energy, Minerals, and
Natural Resource Department

Sheila Apodaca, Commission Clerk

Aaron B. Tucker, Public Attendee (by
videoconference)

Abby Walker, Public Attendee (by videoconference)

Allen Smith, Public Attendee (by videoconference)

Arthur Brown, Public Attendee (by
videoconference)

Rachael Ketchledge, Public Attendee (by
videoconference)

Rochelle Chavez, Public Attendee (by
videoconference)

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A P P E A R A N C E S (Cont'd)

ALSO PRESENT:

- Theodora Amaobi-Joseph, Public Attendee (by videoconference)
- Neil Haws, Public Attendee (by videoconference)
- Liliana Castillo, Public Attendee (by videoconference)
- Matt Grubb, Public Attendee (by videoconference)
- Eduardo Ugarte II, Public Attendee (by videoconference)
- Brandon Powell, EMNRD (by videoconference)
- Gerasimos Razatos, EMNRD (by videoconference)
- Michael Hall, EMNRD (by videoconference)
- Katherine Walton, WELC Intern
- Francesca Glaspell, WELC Intern
- Tiffany Wallace, Oxy USA, Inc.
- Rob Mathis, Oxy USA, Inc.
- Mandy Sackett, Earthworks (by videoconference)
- Jordan Kessler, EOG Resources, Inc. (by videoconference)

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E X H I B I T S

| NO. | DESCRIPTION | ID/EVD |
|-------------|----------------|--------|
| Case 24683: | (None marked.) | |

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P R O C E E D I N G S

THE CHAIR: Good morning. This is Albert Chang, chair of the New Mexico Oil Conservation Commission. Noting the time just after nine o'clock on June 3rd of 2026, I hereby call the meeting to order.

Commission Clerk, may I please have the roll to confirm attendance?

MS. APODACA: Yes.

Commissioner Bloom?

COMMISSIONER BLOOM: Present.

MS. APODACA: Commission Chair Chang?

THE CHAIR: Present.

MS. APODACA: Commissioner Ampomah?

COMMISSIONER AMPOMAH: Present.

MS. APODACA: Okay --

THE CHAIR: There is an agenda before us, Commissioners. Is there any debate on the agenda?

COMMISSIONER BLOOM: Mr. Chair, I would move to approve the final agenda.

COMMISSIONER AMPOMAH: Mr. Chair, I'll second.

THE CHAIR: Any objections from commissioners?

Without objections, so adopted.

1 There are no minutes to approve today
2 as far as I understand, so we will move on to Case
3 Number 24683. The WELC Application for Rulemaking to
4 amend NMAC 19.15.2, 19 -- 19.15.2, 19.15.5, 19.15.8,
5 19.15.9, and 19.15.25. Is there any matters that we
6 need to resolve before we dive straight into
7 deliberations?

8 COMMISSIONER BLOOM: Mr. Chair, I
9 believe we have before us a motion to exclude NMOGA's
10 closing Exhibit 7. Probably need to back up actually
11 to look at the prior motions. One minute.

12 THE CHAIR: There was a motion to
13 exclude.

14 COMMISSIONER AMPOMAH: Okay.

15 COMMISSIONER BLOOM: So, Mr. Chair --
16 the applicant's motion to exclude NMOGA's closing
17 Exhibit 7 and related finding of facts. That was on
18 May 6th. And then ...

19 THE CHAIR: Do you have the link to --
20 that our commission clerk shared with us most
21 recently?

22 COMMISSIONER AMPOMAH: Yeah -- this one
23 right down there --

24 THE CHAIR: Click on any of those
25 folders and let me see if maybe they're sub-foldered.

1 No. No. Wait. Go back to the previous folder. No.
2 That's -- that's not right. Okay.

3 COMMISSIONER AMPOMAH: Would it be --

4 COMMISSIONER BLOOM: On this one --

5 THE CHAIR: If you want to pull up OCD
6 imaging?

7 COMMISSIONER AMPOMAH: Let me go back
8 to the folder one more time.

9 THE CHAIR: All right.

10 Commissioner Bloom, can you remind me
11 the dates of those three filings, and then maybe I can
12 pull them up on OCD imaging?

13 COMMISSIONER BLOOM: Yes. Mr. Chair,
14 these were some of the first -- some of the last
15 documents filed with respect to this hearing. It was
16 May 6, 2026. That is when the applicants filed a
17 motion to exclude NMOGA's closing Exhibit 7 and
18 related findings of fact. That's about a
19 one-and-a-half page motion.

20 THE CHAIR: Mm-hmm.

21 COMMISSIONER BLOOM: And then NMOGA and
22 IPANM filed on May 21st -- a joint response to the
23 applicant's motion to exclude. A 30-page document --

24 THE CHAIR: And there was a reply on
25 June 1st; is that correct?

1 COMMISSIONER BLOOM: Reply on June 1st.

2 COMMISSIONER AMPOMAH: Okay.

3 THE CHAIR: Okay.

4 COMMISSIONER BLOOM: It's about
5 seven pages.

6 COMMISSIONER AMPOMAH: I read through
7 those but not the reply.

8 THE CHAIR: Yeah. The last reply was
9 on June 1st.

10 COMMISSIONER AMPOMAH: Okay.

11 COMMISSIONER BLOOM: Okay.

12 THE CHAIR: Do we want to maybe put a
13 pin in this motion until lunch so that Commissioner
14 Ampomah has a chance to review the last reply before
15 we --

16 COMMISSIONER BLOOM: Mr. Chair, I agree
17 with that. We could hold this until after lunch.

18 THE CHAIR: Great.

19 COMMISSIONER AMPOMAH: Thank you.

20 THE CHAIR: No problem. Just a second
21 to get organized here.

22 Commission Counsel, we're operating, I
23 think, without our hearing officer today until a
24 little bit later. Do you have any advice as to how we
25 would like to proceed? We have the hearing officer's

1 report if that -- if you would -- would you recommend
2 following that report as a guide for organizing
3 discussions -- deliberations today?

4 MR. SHANDLER: Mr. Chair, the hearing
5 officer and sister environmental agency rulemakings
6 has prepared a hearing officer's report with a series
7 of overarching questions, which she has done for this
8 one as well.

9 Some of your sister agencies have gone
10 through the questions, had a high-level discussion,
11 and at that point may have realized that the applicant
12 has met their burden or has not. And so I -- you have
13 a series of options, but that's what your sister
14 agencies have done.

15 So on page 2 of the hearing officer's
16 report, it says "Major Questions, Number 1." So one
17 option is to start right there and have a debate over
18 that Major Question Number 1.

19 THE CHAIR: Okay.

20 Commissioners, would you like to go in
21 the order as presented in the hearing officer's
22 report? Or would you like to follow the -- I mean,
23 that's fine by me if that's ...

24 COMMISSIONER BLOOM: Mr. Chair, I think
25 that would be a fine way to proceed to make sure that

1 we work through and have a discussion of all those
2 points and questions and concerns that are raised.
3 And I would be prepared to do that, and then perhaps
4 after we could turn to the joint stipulated rule that
5 we have now in front of us. And perhaps go through
6 that section by section.

7 THE CHAIR: Works for me. Okay.

8 COMMISSIONER AMPOMAH: No. It works
9 for me too. Thank you.

10 THE CHAIR: Great. In that case, let's
11 start with the first major question that our hearing
12 officer has teed up for us, which is the commission
13 statutory authority.

14 Commissioners, have you had a chance to
15 review this -- the disputed section here under
16 70-2-14(A) NMSA? This is the same provision that we
17 discussed under the original motion to dismiss?

18 COMMISSIONER BLOOM: Yes, Mr. Chair.

19 COMMISSIONER AMPOMAH: Yes.

20 THE CHAIR: Okay. Any thoughts on the
21 dispute between the applicants? And I'll invite any
22 debate at this point.

23 COMMISSIONER AMPOMAH: I -- that. So,
24 Mr. Chair, I reviewed the 70-2-14 requirements for
25 financial assurance, and in there there are a couple

1 of items that you can highlight and link that to the
2 application and see whether we follow through on that
3 or not. So I will highlight a few of them.

4 So I'm reading the Oil Conservation
5 Division's established categories of financial
6 assurance after notice and hearing -- which I believe
7 that is correct too -- from my own opinion, it
8 happened.

9 "Such categories shall include a
10 blanket plugging financial assurance, which shall be
11 set by rules in an amount not to exceed \$250,000."
12 And I believe that is what the blanket bond that was
13 presented to us was 250,000. So that one -- to me --
14 followed through on that.

15 "A blanket bonding assurance for
16 temporary abandoned status wells, which shall be set
17 by rules at amounts greater than \$50,000." That is
18 what we did too -- or that is what has been presented
19 to us.

20 "One-well plugging financial assurance
21 in amounts determined sufficient reasonably pay the
22 cost of plugging the wells covered by the financial
23 assurance." And through the hearing, there were a lot
24 of discussions on this matter.

25 The applicant presented their case with

1 OCD presenting evidence as to how much it cost OCD to
2 plug their wells, and they used that number to
3 actually -- more or less -- move forward with the
4 application. Now, NMOGA also presented their
5 evidence, and IPANM presented their evidence. So I
6 believe that we also met that burden as well.

7 And the last one that I will point out
8 is "Shall consider the depth of the well involved, the
9 length of the time since the well was produced, the
10 cost of the plugging similar wells, and such other
11 factors as the Oil Conservation Division deems
12 relevant."

13 And I will say that this matter was
14 discussed extensively. OCD and the applicant showed
15 the Commission -- with evidence -- that they've
16 considered all of these factors, and still they
17 believe that some of these factors -- even though
18 relevant -- but do not really amount to the cost that
19 it cost OCD to really plug their wells.

20 So I believe that all the stipulations
21 in this rule -- more or less -- were discussed
22 extensively. And I therefore believe that the
23 Commission do have the authority to -- more or less --
24 proceed to deliberate on this matter. Thank you.

25 THE CHAIR: Commissioner Bloom, any

1 comments?

2 COMMISSIONER BLOOM: Yes, Mr. Chair.
3 Thank you.

4 Sheila, I sent you the 70-2-14. If we
5 could pull that up, I'd appreciate it if we could make
6 that visible on the screen for folks.

7 And you'll see I made a couple
8 modifications here to that, which my comments will
9 address. Where to begin? I think in a moment we'll
10 have a chance to talk about -- we should talk about --
11 because the question's been raised.

12 Does the OCC have the authority to do
13 this sort of rulemaking under -- is it under our
14 jurisdiction? Is this related to prevention of waste,
15 protection of -- rights, and protection of public
16 health and the environment?

17 But let's set that aside for moment.
18 And when we look at 70-2-14, I read this as -- and I
19 think we heard evidence for it -- that the statute and
20 the Oil and Gas Act allows for the creation of new
21 types of bonds.

22 You can see here the language today
23 reads "The Oil Conservation Division shall establish
24 categories of financial assurance after notice and
25 hearing." The legislation -- the law does not say the

1 Oil Conservation Division shall establish three
2 categories of financial assurance. It could have said
3 that. It does not.

4 It goes on "Such categories shall
5 include a blanket plugging financial assurance." You
6 know, it does not say such categories shall only
7 include a blanket plugging financial assurance. So
8 again, I believe that there's room for the creation of
9 new bond categories -- financial assurances under
10 70-2-14.

11 Going down to the next sentence, you
12 know, we see language "In establishing categories of
13 financial assurance, the Oil Conservation Division
14 shall consider the depth of the well involved," et
15 cetera, et cetera. You know, it does not, again, say
16 in establishing these three categories. So again,
17 this is open, and new categories can be established.

18 Looking again at that same sentence, it
19 says "When establishing categories of financial
20 assurance, the Division shall consider the depth of
21 the well, length of time" -- that's for the category.
22 Doesn't necessarily mean that it's the well.

23 And I think that the applicants have
24 shown -- between the environmental groups and the Oil
25 Conservation Division -- that they were looking at --

1 in the creation of this category, factors such as, you
2 know, length of time, what wells cost to plug.

3 You know, we heard \$163,000, but it's
4 been rounded down to \$150,000 per well to plug and
5 reclaim the land around it -- the site on average, and
6 other such factors as well. So I believe it --
7 looking at 70-2-14, clearly there is an opportunity
8 here for the OCC to hear rulemaking on and to create
9 new categories of financial assurances.

10 THE CHAIR: Thank you.

11 For my part, I agree. Thank you for
12 pulling this up here. I think this is -- is helpful.
13 I will note for the record here that the -- just for
14 clarity that the words that are highlighted and with
15 the strike through there were your additions to
16 illustrate that those words aren't in fact there;
17 right?

18 The first sentence of the statute says
19 that "The Oil Conservation Division shall establish
20 categories of financial assurance," and then it
21 proceeds to tell us what we must include. "Shall
22 include the following categories," but it doesn't
23 limit.

24 And in fact if those three were the
25 only ones intended, I'm not sure why would we -- why

1 the statute would tell us to establish categories of
2 financial assurance if the only categories that it
3 contemplated were already listed in the statute
4 itself.

5 And furthermore, I concede that the
6 next sentence is a bit of a run-on sentence and could
7 be confusing, but I -- you know, no amount of
8 highlighting in various colors is going to change the
9 plain reading -- the plain language -- as I see it, at
10 least.

11 You've got various categories. At no
12 point does the statute say that these categories are
13 mutually exclusive. That somehow the Commission or
14 the Division couldn't somehow require all three types
15 of bonds or that any one of them is a cap on the
16 other.

17 So I think I -- all three of us are
18 saying the same thing. So in that case, I will -- if
19 we are all in agreement -- certainly, I'll entertain
20 further debate and comment if there's any.

21 But if we're all in agreement, I think
22 I would entertain a motion to vote -- in the
23 affirmative -- to vote a motion answering this first
24 major question in the affirmative that NMSA 70-2-14
25 does provide the statutory basis for the application

1 as presented by the applicant -- at least in the final
2 version.

3 COMMISSIONER BLOOM: Mr. Shandler, a
4 question for you. Would this typically be something
5 we vote on?

6 MR. SHANDLER: So, Mr. Chair, I'm here
7 to provide a series of options. So this is one option
8 if you're trying to build a record to tell the court
9 that you've reached a conclusion on this. You don't
10 necessarily have to have a motion right now on this,
11 but it is an option if you want to build the record
12 that way.

13 COMMISSIONER BLOOM: Mr. Chair, I would
14 be glad to do so if -- given that answer.

15 THE CHAIR: I'll take that as your
16 motion then?

17 COMMISSIONER BLOOM: Yes, I move to --
18 I move that the record show that we addressed this
19 question and believe that new categories of financial
20 assurances can be created given our understanding of
21 70-2-14.

22 COMMISSIONER AMPOMAH: I second.

23 THE CHAIR: Is there any votes in the
24 negative on the Commission?

25 Without opposition, it is -- let the

1 record reflect that the Commission answers that first
2 major question as presented by the hearing officer in
3 the affirmative. That we do have the statutory
4 authority to adopt new categories of rulemaking and
5 that we do have the -- that this particular statute
6 provides sufficient legal basis for the petition -- at
7 least in the -- as presented in the final draft by the
8 applicants.

9 I will turn to debate on the second
10 question as presented by the hearing officer. Any
11 thoughts or debate on the second issues?

12 COMMISSIONER AMPOMAH: Mr. Chair, I
13 will go first. So it's about preventing waste. IPANM
14 and NMOGA said that the proposed amendments will cause
15 premature plugging of wells resulting in waste of the
16 resource contrary to Section 70-2-2 and 70-2-11 NMSA 1
17 19 78.

18 Now, on this issue, I also asked a
19 question countering that and said that, "What about
20 the unplugged wells that are left to leak -- you know,
21 those that are leaking?" And they're also not
22 preventing -- are they not also causing waste?

23 So I do not really agree to this, and I
24 will go further and say that the Commission gave the
25 opportunity for the parties to all work together. And

1 if you look at the package that they brought together,
2 to me it is preventing waste. So, I mean, I do not
3 really accept to this statement that we -- more or
4 less going forward with this rule will -- more or less
5 prevent -- will result in waste. I disagree with
6 that. Thank you.

7 THE CHAIR: Commissioner Bloom, any
8 thoughts?

9 COMMISSIONER BLOOM: Yes, Mr. Chair.
10 Just give me a second here to prepare my comments.
11 And I should have begun by thanking the parties for
12 this rulemaking and the way it was accomplished. I do
13 appreciate that. And I know that significant time was
14 spent in subsequent negotiations between the parties
15 and these were done in good faith, and I certainly
16 appreciate this.

17 And we're up here trying to, you know,
18 strike a fine balance between the oil and gas industry
19 and what it provides for our state and the
20 environmental exposures that are part of it as well.
21 I don't think this is lost on anybody.

22 These are all, you know, mandates all
23 of us deal with this in our regular jobs -- that's why
24 we're up here on the Oil Conservation Commission. So
25 this is a weighty subject, and I appreciate the work

1 that you have all put into this and thank you.

2 All right. Just take a look again at
3 the hearing officer's report. So -- preventing waste,
4 and, you know, when we're talking about preventing
5 waste here, I think what we're really getting at is,
6 is this an area over which the OCC has jurisdiction?

7 And I believe absolutely that it does.
8 That this rulemaking falls in the statutory
9 jurisdiction of the OCC, given that two of our
10 mandates are to prevent waste and protect public
11 health and the environment.

12 Older wells -- and particularly orphan
13 wells -- leak methane, which is a waste of the
14 resources as Dr. Ampomah -- the oil and gas engineer
15 just mentioned -- professor of oil and gas. And they
16 also present a threat to human health and the
17 environment.

18 The OCD's closing statement -- this was
19 filed April 6th -- notes: "Over 60 percent of the
20 orphan wells plugged by OCD cause waste by leaking
21 natural gas. Even wells and approved TA that have met
22 mechanical integrity testing requirements and OCC
23 rules can nonetheless emit and leak natural gas
24 because equipment can fail over time."

25 The applicant's closing argument notes

1 on page 17 that "The U.S. Environmental Protection
2 Agency estimates that an average low or non-producing
3 oil well leaks 1.8 tons of methane into the atmosphere
4 each year."

5 Mr. Powell of the OCD reminds us on
6 page 16 of the OCD's closing that the legislature also
7 gave the OCD jurisdiction over reclamation. He said
8 "It's also the OCD's job to manage the reclamation
9 fund and to use available funds to plug orphan wells."

10 Goes on to say: "OCD also has the
11 obligation to regulate and require the remediation of
12 releases and environmental contamination. So the
13 legislature and law have been -- have clearly given
14 the OCC authority over bonding and reclamation." I
15 would more generally cite pages 16 through 20 in the
16 applicant's closing argument. I won't read that
17 entire five pages, but I will quote a couple lines.

18 It says: "Applicant's financial
19 assurance proposals which increase bonding for
20 high-risk wells and high-risk portfolios nowhere
21 require an operator to plug a well. Increasing
22 bonding for these wells better reflects the casual --
23 better reflects the actual costs to OCD to P&A, and is
24 necessary to stem the tide of orphan wells.

25 "If an operator is financially unable

1 to internalize legitimate costs of doing business, the
2 operator can transfer the well to a viable operator
3 who can." The applicants go on to remind us that
4 wells are routinely plugged.

5 "In order to be plugged with
6 hydrocarbon still in the ground, it's not economical
7 or even realistic to produce every molecule of
8 hydrocarbon that a well can access." This is
9 discussed in the applicant's closing statement on page
10 17 where an IPANM witness admits as much. I believe
11 that was Mr. Ezzell saying that agreement -- we don't
12 get every hydrocarbon molecule out of every well.

13 We should put any waste arguments in
14 context as well, which the applicant's witness,
15 Mr. Purvis, does for the applicant's closing
16 arguments. On page 17, he said -- or he "Modeled the
17 extent to which wells in New Mexico would be
18 categorized as low producing wells subject to a single
19 financial assurance."

20 He found: "3900 wells would qualify.
21 Representing 6.6 percent of the statewide well
22 population, and only 0.048 percent of total
23 production." So about 4,000 wells represent about
24 7 percent of the wells in the state. They produce
25 less than five one hundredths of the state's total oil

1 and gas production.

2 Also on this point, I'd note that the
3 applicant's proposal does not require a P&A well, but
4 rather that the class of wells be bonded. Operators
5 can decide when it makes economic sense versus
6 continuing to eke out low production, which should be
7 an easy calculation. I think that was from the
8 applicant's closing argument actually.

9 Let me see. There's quite a bit of
10 discussion too about the legislative intent. You
11 know, I'll note that this is Case 24683 meeting. It
12 started in 2024. There have been two legislative
13 sessions during that time. Of course, we saw some
14 changes to HB 80, but the legislature could have
15 intervened knowing the outlines and written --
16 really -- the particulars of this rulemaking. We do
17 not see such an intervention.

18 I think I will leave this here for now,
19 Mr. Chair.

20 THE CHAIR: Thank you.

21 It sounds like the -- I think I agree
22 with the sentiments here generally, and I think
23 Dr. Ampomah put it very succinctly that leaking wells
24 are the waste of natural resources that the Commission
25 needs to be concerned about here.

1 First and foremost, wells that cannot
2 be economically -- first of all, if a well can be
3 economically produced today, it should continue to be
4 economically produced today. And there's nothing in
5 the rule that would foreclose the continued production
6 of economically viable wells.

7 To the extent that a resource is not
8 today -- currently, presently, economically
9 recoverable, preserving it and making sure that it is
10 properly contained and not leaking away to be lost
11 forever but that perhaps in the future, it might be
12 producible is the definition of the prevention of the
13 waste of the state's natural resources.

14 So I think I agree with the comments of
15 the commissioner that the -- our first priority here
16 is making sure that we don't have abandoned wells that
17 allow the state's natural resources to be dissipated
18 into the environment in a way that will not be
19 recoverable into the future.

20 So with that, I'm happy to invite
21 commissioners if they would like to make a record --
22 finding on the record that we don't think -- or that
23 we do think the proposed rule would prevent waste, and
24 we do not concur with the assertion that the rule
25 would cause waste.

1 COMMISSIONER BLOOM: Mr. Chair, I would
2 make that motion. And I would add to that also that I
3 believe that because this activity -- this rulemaking
4 prevents waste, it also affirms that this is under the
5 jurisdiction of the OCC for this and other reasons as
6 well. Thank you.

7 COMMISSIONER AMPOMAH: I second.

8 THE CHAIR: Any opposed?

9 Hearing none opposed, so adopted.

10 Moving on to Issue Number 3, regulating
11 operator registration and change of operators. Is
12 there any -- I'll invite any debate or thoughts on
13 this provision or on this question as presented by the
14 hearing officer?

15 COMMISSIONER AMPOMAH: Commissioner
16 Bloom, will you go first? This one is more on a legal
17 side. So.

18 COMMISSIONER BLOOM: Sure.
19 Commissioner Ampomah, I will go first on this. I'm
20 trying to get to my notes on this topic. So on this
21 topic, I believe that the OCC and the OCD have legal
22 authority to regulate registration of operators and
23 change of operators and indeed have been doing so for
24 some time -- if not decades.

25 I believe the OCD's closing statement

1 does a fine job of recognizing it and elaborating on
2 this. But there's one section I would quote on page
3 9: "The OCC has already exercised this authority. The
4 existing rules authorized OCD to deny operator
5 registrations and change of operator based on an
6 operator's non-compliance."

7 I'm good with that, and then, I think,
8 we saw ample discussion around the word "acquisition."
9 And what's not being stopped is the sale of oil and
10 gas properties from one company to the next -- or one
11 operator to the next rather.

12 Acquisition solely means change of
13 operatorship and should have been, I think, perhaps
14 described in that way. And that may be something we
15 want to address as we go through the rule. I can't
16 remember if that was actually changed over the course
17 of the discussions or in the joint stipulation. But
18 that's something we can look at, but I don't see any
19 conflict there over wider constitutional issues.

20 THE CHAIR: I think I agree with
21 Commissioner Bloom's comments here, but to the extent
22 that the word "acquisition" might be a sticking point
23 for the parties, I'm happy to defer decision on that
24 until we get to the, sort of, section by section
25 debate.

1 But overall, I think the point that
2 transfer of registration is allowed, and that this --
3 that the intent of the application and of OCD is not
4 to change ownership interest in real property, but to
5 manage the registration of operating authorities.

6 I think I'm happy to take that point,
7 but as to whether the word "acquisition" -- whether
8 there might be a better word in the thesaurus, I'm
9 happy to take that on as not so much a major question,
10 but as a wordsmithing question when we go section by
11 section.

12 COMMISSIONER AMPOMAH: Mr. Chair, I
13 agree with you. I had the same thought that -- how it
14 would be fair during the discussion of each provisions
15 and probably we will see if there could be alternative
16 words. But yeah. I agree with you. Thank you.

17 THE CHAIR: Okay. Well, in that case
18 we're just going to put a pin in this, and then we'll
19 come back and revisit whether the word "acquisition"
20 might be better replaced with a different word when we
21 get to the section-by-section debate. Moving on to --

22 COMMISSIONER BLOOM: Oh. But,
23 Mr. Chair, if you'd permit me?

24 THE CHAIR: Oh. Please.

25 COMMISSIONER BLOOM: Yes. Would you

1 entertain a motion to state that the OCC does believe
2 that we have the authority to make rulemaking that
3 regulates operator registration and change of
4 operator?

5 THE CHAIR: Absolutely. If there --

6 COMMISSIONER BLOOM: Then I so move.

7 COMMISSIONER AMPOMAH: I second.

8 THE CHAIR: Any opposition? Any votes
9 against?

10 Without opposition, so adopted.

11 In that case, House Bill 80, that's the
12 fourth major question presented by the hearing
13 officer. Broken down into three subparts -- subpart,
14 (A), (B), and (C).

15 We've already had some debate and
16 discussion on this at the last commission hearing, but
17 I'm happy to entertain any further discussions.
18 Particularly on whether HB 80 as a matter of policy
19 renders the proposed rule amendments unnecessary, and
20 whether it replaces this rulemaking with a legislative
21 choice.

22 COMMISSIONER AMPOMAH: Mr. Chair, I
23 will start on this one. So when I read through this
24 and looking at House Bill 80, I believe that the House
25 Bill 80 will be complimentary to this rulemaking in

1 the sense that it gives OCD more room to plug more
2 wells -- let's say within a year.

3 Because it is giving them more
4 resources to be able to plug those wells that needs to
5 be plugged. But I don't think House Bill 80 address
6 with regards to -- let's say, how much does it cost
7 and all of that, you know.

8 So I believe that House Bill 80 -- just
9 to keep it short -- we'll say that it's complimentary
10 to what we -- what the rule we are looking at today
11 but not necessarily making it unnecessary. I see it
12 as more complimentary. Thank you.

13 THE CHAIR: Commissioner Bloom, any
14 thoughts?

15 COMMISSIONER BLOOM: Yes. Mr. Chair, I
16 agree with Commissioner Ampomah's comments there.
17 Sorry. I'm a little bit off my game here. I didn't
18 know if we were going to begin the day going through
19 the sections or -- I was not prepared necessarily to
20 address all these questions in turn.

21 But let's see. The hearing officer
22 asked us -- one -- "Does the passage of HB 80
23 following the hearing require that recalibration of
24 the reasonably paid standard on the Oil and Gas Act
25 due to the differences between OCD's plugging costs

1 and Industry's plugging costs?"

2 No. And I can discuss this a little
3 bit further, but, you know, under questioning, the
4 OCD's representative said that, you know, "OCD and
5 Industry costs are apples and oranges." You know, OCD
6 may or may not be able to get the lower prices that
7 Industry gets.

8 Clearly, if a company wants to plug
9 wells for the OCD, they have to get on a provider
10 list, you know, via DFA. There's issues involved
11 there. There are more requirements at times. So
12 there's that aspect of it.

13 But I think, you know, more than that,
14 we heard very strongly -- and again, based on OCD
15 testimony -- I think this is seen in both the
16 applicant's and the OCD's closing statements that
17 wells that are orphaned are more expensive because
18 they've languished for years -- if not decades.

19 And when we have cases where, you know,
20 the better operators that -- you know, the vast
21 majority of operators are going out and plugging their
22 wells appropriately and when they should and not
23 leaving them.

24 You know, these folks were caring for
25 those wells in an appropriate manner, you know, over a

1 period of decades, not neglecting maintenance, and
2 then not letting the wells, you know, sit for 20 years
3 at a time. When you look at the difference between
4 the wells that Industry bonds and the wells that come
5 to the OCD to bond as orphaned, it's definitely going
6 to be more expensive for OCD to bond a well.

7 So on (2) we get the question -- or
8 (B), I think, it might be -- "Does OCD's practice of
9 rarely pursuing financial assurance because
10 collections are minimal and only callable after the
11 expenditure of public funds preclude any commission
12 finding that existing bond levels are inadequate."

13 And I think one thing we heard was that
14 bond amounts are so low that calling them is almost
15 discouraged or, you know, something that OCD's perhaps
16 not staffed to get to. Higher bonding amounts would
17 be meant to encourage earlier pluggings, so that
18 people can -- of the bond duties.

19 And then frankly, I think that using
20 public funds or the reclamation funds incentivizes
21 keeping low producing wells active or even inactive
22 for longer periods of time. And then, I think,
23 there's also a place to mention that, you know, HB 80
24 is also something that could be swept once again, and
25 it would most likely to be swept in a time when

1 there's an oil and gas downturn.

2 I think we heard some conflicting
3 numbers, but I don't think there's any argument that
4 oil and gas provides something between 30 and
5 50 percent of the state's budget. Now, if there's an
6 economic downturn, oil and gas is hurt, there's less
7 money for plugging.

8 And that's the same point in time when
9 the LFC -- when our legislators have to make the hard
10 choices about sweeping funds. And, you know, I
11 remember the last downturn, and people were sweeping,
12 you know, pots of money as little as, you know,
13 \$10,000.

14 And so we could end up having the
15 reclamation fund with, you know, hundreds of millions
16 of dollars in it. And that would be an easy target
17 for a sweep. So as Dr. Ampomah said, I believe that
18 this rulemaking is important because it's
19 complementary to HB 80 and provides another mechanism
20 to create funds and wherewithal to have proper P&A of
21 oil and gas wells.

22 THE CHAIR: Thank you.

23 I think I broadly agree with many of
24 the sentiments from my fellow commissioners here. And
25 I agree with the -- or it appears to me that the

1 correct assertion is that HB 80 addresses the orphan
2 wells that are already orphaned today -- the wells
3 that are already causing issues that are already
4 abandoned.

5 Whereas the application in front of us
6 seeks to prevent the rate -- or to slow down the rate
7 at which wells are orphaned, and to prevent this
8 problem from growing into the future. HB 80 does
9 provide significant resources into the reclamation
10 fund.

11 However, I think as some of the briefs
12 pointed out, despite the fact that many legislators
13 were well aware of this rulemaking and that this
14 rulemaking happened both before and after the
15 legislative session, HB 80 is remarkably silent on
16 how -- on what it -- on what the legislature wanted to
17 do with this rulemaking.

18 HB 80 could have in, sort of, the
19 yellow -- the three words -- into 70-2-14(A) that we
20 discussed under the first major question. They
21 didn't. The legislature did not in any way amend
22 70-2-14 to say that HB 80 is in some way replacing or
23 changing the categories of financial assurance.

24 Despite the fact that at least -- I
25 don't recall the specific number of legislators who

1 wrote in to express opinions on this rulemaking one
2 way or the other. The legislature had an opportunity
3 if they -- if the legislature felt that 70-2-14 was
4 somehow being usurped or being replaced by HB 80, the
5 legislature could have said that. The legislature
6 chose not to.

7 So we certainly want to heed the
8 legislature's intent as closely -- at least I do.
9 I'll speak for myself. It's certainly always my
10 intent to heed the legislature's instructions as -- or
11 the legislature's -- well, legislation and any act as
12 closely as possible.

13 But in this case, HB 80 -- the
14 legislative could have told us that they made a
15 legislative choice. And I think the plain text of HB
16 80 and its history shows that the legislature did not
17 in fact weigh in on a policy choice as to how they
18 wish to address how these two mechanisms for
19 addressing the abandoned and orphan well problems
20 should interact. And that's why we are back here in
21 the rulemaking space. Given the legislative silence.

22 It always makes my job easier when the
23 legislatures tells us exactly what they want us to do,
24 so we're not in the difficult position of making these
25 tough choices. But for better or for worse, the

1 legislature -- I don't think the legislature weighed
2 in as clearly and as forcefully as perhaps some
3 parties are urging us to believe.

4 On the other questions, I think my --
5 commissioners have addressed that fairly carefully.
6 On the question of whether HB 80 -- so putting aside
7 the question of how we should calculate what the
8 well-bonding costs are and -- the cost of OCD alone or
9 whether we should have considered a wider range of
10 costs.

11 I will say that at the last hearing, I
12 repeatedly asked, "How HB 80 would change the calculus
13 of what the individual well bonding was." I asked,
14 "Whether it would change the age of the wells out
15 there." I asked, "Whether it would change the depth
16 of the wells that are existing."

17 Had certain parties been able -- had a
18 party been able to proffer a witness who would've --
19 who would make some, sort of, claim that would link HB
20 80 to an actual individual well bonding cost, I would
21 have reopened the record and allowed further
22 exploration of that; right?

23 Had a party been able to find evidence
24 or find credible -- a witness that could have asserted
25 that perhaps due to HB 80's funding -- hypothetically,

1 theoretically, could lead to a cost economy of scale
2 that might lead to better contracting rates that might
3 lead to the OCD being able to get contractors to plug
4 wells at a lower cost. I would've entertained that.

5 Unfortunately, no evidence to that
6 effect or no witness that would have testified to some
7 theory along those lines was presented. And so I'm
8 not seeing a link in the record -- at this point --
9 between how HB 80 would change the cost to OCD or
10 otherwise. How HB 80 -- there's insufficient
11 information in the record for us to be able to
12 articulate how HB 80 would change the calculus of what
13 the individual cost to bond a well might be.

14 And as for whether or not the plugging
15 costs should -- whether or not the plugging costs that
16 OCD brought to this hearing sufficiently reflects
17 plugging costs across Industry, I believe that that
18 was something that we had urged the parties to discuss
19 and negotiate.

20 And I don't recall -- and perhaps
21 commissioners can remind -- refresh my recollection.
22 In my recollection of the record, there was very
23 little presentation of what the actual industry's
24 costs are to the extent that they might defer from
25 OCD's plugging costs.

1 And so looking at the totality of the
2 plugging costs evidenced in front of us, we'll have to
3 make a decision when we get to section by section as
4 to whether or not the \$150,000 proposed in front of us
5 is substantially supported by whatever cost evidence
6 is in front of us through this rulemaking.

7 That's all I have on this particular
8 question. I'll invite any thoughts from other
9 commissioners as to how they would like to -- or
10 whether they want to put any specific findings or
11 decisions onto the record for this question -- for
12 Question Number 4.

13 COMMISSIONER AMPOMAH: Mr. Chair, I
14 will add a few points.

15 THE CHAIR: Please.

16 COMMISSIONER AMPOMAH: Now, with
17 regards to -- let's say (B), you know, OCD discussed
18 the fact that -- and Commissioner Bloom touched on
19 this -- the cost involved to go after -- let's say --
20 the bonds. It's not really worth it because the bond
21 is really low.

22 But even having said that, OCD still
23 presented to the Commission that they've made
24 progress, you know, in going after some of these
25 bonds. So definitely even if the bond -- I believe

1 that if the bond is increased, that would give them
2 more room to be able to pursue these companies, you
3 know, for the bond amount. And then even the
4 number -- (A), as you said.

5 Now, Dr. Arscott -- who was going to be
6 additional witness from -- still the same witness but
7 coming back, you know, if we are reopening the
8 records. We asked IPANM, and they said, "Dr. Arscott
9 is not going to talk about how the HB 80 impacts the
10 cost to plug a well."

11 So that is why I think we also denied
12 that application because, I mean, you are not going to
13 really add anything to the records. And like you
14 said, we will have the opportunity to go through this
15 more detail to see if -- 15 is appropriate or not. So
16 I will defer any other thoughts on this when we go
17 line by line through the rule. Thank you.

18 THE CHAIR: Commissioner Bloom?

19 COMMISSIONER BLOOM: Yes -- I concur
20 with both of you. And I would move to find that HB 80
21 is complimentary to this rulemaking but does not
22 substitute for it, and that both are important
23 instruments in addressing working wells in New Mexico.

24 COMMISSIONER AMPOMAH: I second.

25 THE CHAIR: Motion seconded. Any

1 opposition? Any votes against?

2 Hearing no objections, so adopted.

3 Moving on to -- so the next question
4 the hearing officer presented is the joint
5 stipulation, but I'm not sure that we want -- I'm not
6 sure what the question is other than that we need --
7 we will eventually want to go through it section by
8 section.

9 COMMISSIONER BLOOM: Mr. Chair, if
10 you'd permit me. Yes. I think, you know, as we get
11 to the bottom of that Section 5 of the hearing
12 officer's report, we see the question: "Should the
13 Commission adopt the joint stipulation as submitted?
14 Adopt it with all alternative language or modification
15 proposed by Industry, or reject it on legal grounds?"

16 I think it's exactly what you state
17 that we'll know once we go through the proposed
18 changes and the joint stipulation, which I suggest we
19 do go through that line by line, section by section,
20 and vote on it. We'll then have that answer.

21 COMMISSIONER AMPOMAH: But I do have
22 one question for my fellow commissioners. So if you
23 go to page 7 out of 10? I think probably last but one
24 paragraph. So OCD agreed to issue formal Industry
25 guidance documents on several topics within six months

1 of rule -- I just wanted to ask, do we have any action
2 from our side as part of the rulemaking to comment on
3 this?

4 THE CHAIR: I wasn't planning on it,
5 and I'm not sure.

6 COMMISSIONER BLOOM: Commissioner
7 Ampomah, my understanding -- I think we've -- I think
8 I've encountered this before over the -- give or
9 take -- nine years I've been -- maybe seven years I've
10 been on the OCC.

11 I believe that OCC is agreeing to get
12 those formal guidance documents out quickly, so that
13 there could be communication on that. And make sure
14 that's a process that works for everyone. I know when
15 we did the methane waste rule -- for example, there
16 was some reporting requirements.

17 And we worked with NMOGA to find a
18 reporting form which could be used by all companies --
19 all operators -- that would work for all of them and
20 work for both the OCD and the New Mexico State Land
21 Office.

22 So these sorts of agreements are pretty
23 typical, and, yes, we need guidance documents -- as to
24 how these rules that we would create here would be
25 implemented if that's helpful.

1 COMMISSIONER AMPOMAH: Yeah. So my
2 question was more, like, do we just take that as a --
3 let's say as just a notice to the Commission? But we
4 do not have to take any action on that?

5 COMMISSIONER BLOOM: I would agree with
6 that, Dr. Ampomah.

7 COMMISSIONER AMPOMAH: Thank you.

8 THE CHAIR: Okay. So putting a pin in
9 Question Number 5 and proceeding to Question Number 6;
10 is that correct?

11 COMMISSIONER AMPOMAH: Mr. Chair, I
12 think I also want to add that this is an
13 opportunity -- for me at least -- to thank all the
14 parties, you know, for working together on this joint
15 stipulation. I mean, it's really, really helpful to
16 see how they all came together, you know, after we had
17 a really dramatic hearing.

18 So, you know, thanks to all the parties
19 for working very hard on this, which makes it much
20 easier for us to really work through this. Thank you.

21 COMMISSIONER BLOOM: Mr. Chair, as I
22 read through -- guess it's Sections 6 through 10
23 here -- what I'm seeing are, sort of, highlights or
24 summaries of where the discussions are at with respect
25 to these various sections of the NMAC. Perhaps this

1 is the point at which we actually turn to going
2 through these sections?

3 MR. SHANDLER: Mr. Chair, if you're
4 going to go to that place, let me just provide some
5 advice.

6 THE CHAIR: I may just one point before
7 we turn to that. I'll give you that in one second.

8 I just wanted to echo Dr. Ampomah's --
9 Commissioner Ampomah's appreciation for the parties.
10 Obviously, I was not part of any negotiations, but
11 many of those negotiation sessions happened in a
12 conference room that is -- that was blocked off on my
13 calendar.

14 So I could tell how much time went
15 into -- and how much time and effort went into these
16 discussions. And I know they were -- I know I trust
17 that the parties had a vigorous debate but also seemed
18 to have all walked away in one piece. So for which
19 I'm very thankful to all of you.

20 Commissioner -- I'm sorry. Commission
21 Counsel?

22 MR. SHANDLER: So, Mr. Chair, if you're
23 going to go through section by section, I'm going to
24 give you a series of options. But I think the best
25 option is to focus on a statement made by the

1 applicants.

2 And so far, you seem to have found that
3 major policy questions have sided with the applicant.
4 The applicant said on page 2 of their findings of fact
5 "The compromises they made represent carefully crafted
6 accommodations that fit together as a whole and
7 constitute a package that the OCC should adopt in
8 full."

9 The reason I highlight that out is, if
10 you go section by section, I think your best approach
11 would be is there a preponderance of evidence that
12 supports this? And then make comments on that. I
13 think you're going to get yourself in a more
14 problematic situation if you think it's best to
15 wordsmith things today.

16 Again, as stated by the commissioners,
17 after the rulemaking was concluded, the parties then
18 had a series of meetings. And then they made
19 representations at public meetings about that. As you
20 can see from the highlighted documents, every word was
21 debated.

22 So if the applicants had won a
23 compromise on one word for one wordsmithing, they
24 already did that. So if you believe that something is
25 not supported by the preponderance of the evidence,

1 then you should change it.

2 If you think that you can wordsmith
3 something better today, you're guaranteeing being
4 appealed. And I know that because over a year ago,
5 this body did a rulemaking on PFAS and left a bracket
6 undone. And that's still in the Court of Appeals.

7 So I think you have to be mindful that
8 the -- that you respect the parties -- the parties did
9 try to work through the language -- but we live in a
10 day and age that if you think you can out wordsmith
11 this army of lawyers, you do run the risk of that
12 being appealed.

13 So of course my job here is to provide
14 options, you can wordsmith if you like. I just think
15 the better option would be to just look at whether
16 that meant the preponderance of the evidence, if it
17 did or not, and not try to do -- open your thesaurus
18 today. Thank you.

19 THE CHAIR: Thank you. I appreciate
20 that. I have a feeling that even if we didn't change
21 a single word, that we're going to get appealed
22 anyway. So I trust that there are many billable hours
23 dependent on that. So I --

24 MR. SHANDLER: Let me just add to that.
25 So it would be cleaner to the court if you just do an

1 up or down thing. In the empire and goodnight thing,
2 you tried to split the baby, and they're both
3 appealing; okay?

4 The PFAS -- the winning side is also
5 appealing. Everyone's going to appeal. So I think
6 it's actually easier for the court if you find -- and
7 again I don't have a stake in this -- one group has
8 met its burden, then you should just give the court a
9 clean up and down.

10 COMMISSIONER BLOOM: Mr. Chair --

11 COMMISSIONER AMPOMAH: -- opinions.

12 COMMISSIONER BLOOM: Mr. Ampomah, go
13 ahead.

14 COMMISSIONER AMPOMAH: I will.

15 So, Zach, you know, I've read through
16 the joint stipulation. Now, is it not also more,
17 like, an option for us to look at the ones that they
18 agreed to, you know, and then the ones that you do not
19 agree to?

20 And look at the alternative points that
21 IPANM and NMOGA provided and Oxy provided, and we can
22 more or less come to a conclusion. But I'm not
23 sure -- from what you are saying, I'm not sure if you
24 are saying that if we believe that this is good, we
25 should just say it's good without really making any

1 changes?

2 MR. SHANDLER: So, Mr. Chair, you put a
3 pin in the word "acquisition." So if you go through
4 the rule and you've -- and you're, like: "There is a
5 lack of preponderance of evidence. I didn't find a
6 compelling witness that provided substantial evidence
7 about that term," then you should definitely change
8 that term or get rid of it.

9 If you think that you can come up with
10 a different word, then I think that you're going to be
11 here for many weeks. So I'm not saying -- I mean, you
12 have a series of options. Sure. You could say right
13 now, "We're going to vote right now."

14 Or you could say, "We want to go
15 through line by line or section by section and talk
16 about what evidence was substantial -- how there was a
17 preponderance of evidence." I've given you options,
18 but I just think that because the parties have worked
19 through the language so much that you really should
20 focus on was there a preponderance of evidence for
21 this. As opposed to let's come up with another verb
22 and think that will solve the problem.

23 THE CHAIR: Thank you.

24 I think we are certainly intending on
25 reviewing -- at least I am. I won't speak for other

1 commissioners. But I'm certainly intending on
2 reviewing on whether or not there is sufficient
3 preponderance of the evidence to support each of the
4 amendments that's being proposed here.

5 And I apologize if I was flip earlier,
6 but I think it's fair to acknowledge that this is a
7 sufficiently large and impactful policy to debate.
8 That whether or not parties feel at the end of the day
9 that they need to take this to an appellate level and
10 to further debate it and to review those legal
11 decisions at a higher level, that's not within our
12 control here.

13 So I think we just need to make sure
14 that we put our -- put on the record as clear as
15 possible what our justifications and thoughts are for
16 the series of policy choices that the various parties
17 have put in front of us.

18 There are quite an extensive table of
19 what has been agreed to and what hasn't been agreed
20 to. And the joint stipulation -- I will also just
21 note for the record that there isn't a clear -- there
22 isn't a total consensus amongst the parties here.

23 The only thing that NMOGA and IPANM
24 have agreed to is not to challenge on the basis of
25 substantial evidence. That to me is not a

1 particularly -- so I'm not sure that I see this joint
2 stipulation as quite as comprehensive of a wordsmith
3 agreement and -- as perhaps it's being characterized.

4 If the Commission chose to adopt -- in
5 fact, I wish the parties and -- you know, while I
6 appreciate that a lot of work went into this, I do
7 wish the parties were able to come a little closer.
8 In fact, I'm not quite sure how the -- not all
9 Industry because Oxy. I appreciate you guys having --
10 I appreciate that Oxy has moved in their position.

11 But IPANM and NMOGA in agreeing not to
12 challenge only on the issue of substantial evidence,
13 that seems like -- I'm not sure that that makes any
14 difference with the Commission -- whether or not we
15 adopt the applicant's original proposal or the
16 applicant's amended proposal.

17 Either way, NMOGA and IPANM aren't
18 going to have a substantial basis as -- substantial
19 evidence as the basis of an appeal. So I'm not quite
20 sure that we have as much of an agreement in front of
21 us that we could simply adopt wholesale without going
22 through and reviewing the points of contentions that
23 remain.

24 And I certainly -- to the extent that
25 various portions have not been agreed to by IPANM and

1 NMOGA, it's my hope that we can at least build out a
2 more substantive record for any higher court as to why
3 we chose one proposal as opposed to the other.

4 Understanding of course -- and I take
5 the commission counsel -- I take counsel's point fully
6 that these provisions are interrelated, and that we
7 need to be very, very, very cautious in how -- if we
8 were to adopt any changes at all, how those might
9 interact with other provisions.

10 COMMISSIONER AMPOMAH: Mr. Chair, you
11 know, from my point of view, I believe that the joint
12 stipulation is really great in the sense that, you
13 know -- let's say in the areas where NMOGA has
14 different thoughts, they provide us some options.

15 THE CHAIR: Right.

16 COMMISSIONER AMPOMAH: So we will look
17 at it. I think our job would be to come up with the
18 best or the great rule that we could do based on the
19 hearing that went on. And whatever happens
20 probably -- we'll see. But I think we have obligation
21 to look at what is in front of us and see what we can
22 make -- best out of it. And the legal stuff, yeah.
23 The lawyers will take care of it. Thank you.

24 COMMISSIONER BLOOM: One thing that
25 might determine, Mr. Chair, how we move on would be

1 just an overall sense of, you know, are we in
2 agreement as a commission on the joint stipulation?
3 Or are there aspects of it that we have concerns
4 about, and we want to discuss further.

5 I have a few things. We could run
6 through those, but, you know -- and other people and
7 your -- both of your, you know, concerns if you have
8 any and see where that takes us as we go through the
9 rules too. So, you know, a few different ways to
10 proceed.

11 THE CHAIR: Sure.

12 COMMISSIONER BLOOM: And, you know,
13 Mr. Shandler, I do understand the general thrust of
14 what you're saying and where you're going. You know,
15 in a sense, we're also fortunate to have an agreed
16 upon joint stipulation in front of us, and that's
17 fortunate in many ways. So thank you for your
18 comments there.

19 THE CHAIR: Okay. So turning to the
20 issue right in front of us, which is the -- should we
21 proceed to the rest of the issues as teed up following
22 the hearing officer's guide? Or would the Commission
23 like to turn to perhaps Exhibit 89-A of the joint
24 stipulation and go through that in that order?

25 COMMISSIONER AMPOMAH: Yeah.

1 Mr. Chair, I would suggest that we go through the
2 joint stipulation. We take them one after the other,
3 and then also try to look at the summary table that
4 was provided to us. Because that will give us --

5 THE CHAIR: Yes.

6 COMMISSIONER AMPOMAH: Yeah. Sends us
7 to where we are. Yeah. Thank you.

8 THE CHAIR: Of course.

9 COMMISSIONER BLOOM: And, Mr. Chair, I
10 think it's generally one and the same to go through,
11 you know, either the hearing officer's report -- I
12 mean, she tells us what the definitions are that we're
13 going to discuss, you know. If we actually just turn
14 to 89-A and go through those, we can do that. And
15 then I know there was the side by side, sort of,
16 spreadsheet of changes, but I think --

17 THE CHAIR: The table. Yeah.

18 COMMISSIONER BLOOM: Yeah. That table.
19 But that table only contains things that were agreed
20 to between the parties. It does not include all the
21 new definitions that were put forth. So.

22 COMMISSIONER AMPOMAH: Yeah. So I
23 would say --

24 MR. SHANDLER: -- should probably go
25 through 89-A --

1 COMMISSIONER AMPOMAH: -- so I would
2 say we go through 89-A, but we can cross check that
3 table.

4 THE CHAIR: Yes. Thank you.

5 COMMISSIONER BLOOM: -- very good,
6 Mr. Ampomah.

7 THE CHAIR: Okay.

8 COMMISSIONER BLOOM: And then perhaps
9 the first order of business might be a ten-minute
10 break?

11 THE CHAIR: I was just about to suggest
12 that. I appreciate that. Why don't we take a quick
13 recess and let's see what the current time is. Why
14 don't we return at -- is it 10:06? Or --

15 COMMISSIONER AMPOMAH: 10:06.

16 THE CHAIR: Is 10:15 a good time? All
17 right. Let's do that.

18 COMMISSIONER AMPOMAH: Thank you.

19 THE CHAIR: Thank you all.

20 (Off the record.)

21 THE CHAIR: All right. Calling this
22 meeting back to order. I know we had -- all right.
23 Calling this meeting back to order. Oil Conservation
24 Commission still the morning of June 3.

25 Right before we had a recess, we had

1 discussed going in and reviewing the Exhibit 89-A and
2 going through the post-hearing proposed amendments
3 section by section. I believe actually the
4 commissioners wanted to revisit the motion to exclude
5 before we proceed further.

6 So if that's the Commission's desire,
7 I'm happy to entertain that and take that up and
8 resolve that motion before we proceed. Is that what
9 the Commission would like to do?

10 COMMISSIONER AMPOMAH: Yes.

11 THE CHAIR: Okay. In that case, I will
12 turn to the WELC motion to exclude. So the motion was
13 filed on May 6th if I recall correctly. There was a
14 reply on the 21st; is that correct?? A response on
15 the 21st and the reply on June 1st? Okay.

16 I'll open the floor to commissioners on
17 that motion.

18 COMMISSIONER BLOOM: Dr. Ampomah, go
19 ahead.

20 COMMISSIONER AMPOMAH: Mr. Chair, thank
21 you. And I appreciate the time to -- for me to
22 actually go back and then revisit this issue. I've
23 read through it, and I will say that, you know, even
24 if you look at the timeline, that evidence came in
25 after the closing of the record. And even if you look

1 at all the subsequent replies and all of that. So
2 after reading through it, I side with the applicant
3 that we should exclude this. Thank you.

4 THE CHAIR: Mr. Bloom?

5 COMMISSIONER BLOOM: Mr. Chair, I have
6 to admit I was not aware of the June 1st filing until
7 this morning. Looking at that, I think, what is
8 determinative for me in large part is the notice
9 itself. Which is reprinted in the applicant's final
10 reply here on June 1st, which says "If the evidentiary
11 hearing closes before any of these dates, public
12 comments will no longer be taken, and a translator
13 will not be available."

14 And then some additional language "Any
15 person may submit written comments on the proposed
16 amendments no later than 5 p.m. on the final day of
17 the evidentiary hearing." The document from the
18 entity -- the association we are discussing came in
19 after that. And so I would also support that this
20 public comment is excluded because it arrived too
21 late.

22 THE CHAIR: I don't have a strong
23 feeling on this one either way, but it sounds like if
24 commissioners are ready to make that decision, I will
25 entertain a motion.

1 COMMISSIONER BLOOM: Mr. Chair, I would
2 so move. And, I guess, I should -- we should also say
3 that because we are excluding Exhibit 7, we would also
4 exclude the related findings of fact -- of which, I
5 believe, there was one -- Number 88. And then I think
6 also IPANM Number 191, so we would exclude those as
7 well. I so move.

8 COMMISSIONER AMPOMAH: Mr. Chair, I
9 second.

10 THE CHAIR: Any votes opposed?

11 Okay. So the applicant's motion is
12 granted without opposition. Okay. Thank you.

13 In that case, I will turn to -- let's
14 see. We were going to have Exhibit 89-A as to -- for
15 organizing our deliberations around since that is the
16 applicant's post-hearing proposed amendments as
17 submitted with the joint stipulation.

18 So I will ask commissioners to help me
19 here since nothing is -- well, since I'm just going to
20 go through and look at stuff that's underlined. So if
21 I miss anything, please, please bring it to my
22 attention. Starting with NMAC 19.15.2, the first
23 proposed amendment is in Section (A) -- (A)(13). Is
24 there any debate on that? And feel free to say no if
25 there isn't any.

1 COMMISSIONER BLOOM: Yeah. Mr. Chair,
2 no. And generally, I think these definitions -- well,
3 like, I don't know. I don't know how we're going to
4 go about this actually and have our discussions.

5 I guess, if we had -- for example,
6 issues with some of the treatment of temporary
7 abandonment, perhaps we would follow this through and
8 raise that in subsequent sections. But here -- for
9 me, this definition certainly works, and, I guess, we
10 could keep going through these. And --

11 THE CHAIR: No objection at this time
12 at least?

13 COMMISSIONER BLOOM: No objections.
14 Yes.

15 THE CHAIR: Okay. Can I clarify? I
16 know that I wasn't planning on opening this to all the
17 parties and creating too much chaos, but it would be
18 helpful if perhaps parties could help me understand
19 this.

20 Changes that did not make it into the
21 table reflecting negotiated language. Does that mean
22 this was unanimous -- taking for example, you know,
23 the temporary abandonment change here that's not
24 reflected on this table? Okay. There's no agreement;
25 right?

1 COMMISSIONER BLOOM: Now, I think we
2 have -- I think we have confusion.

3 THE CHAIR: Yeah. Okay.

4 COMMISSIONER AMPOMAH: There's no
5 agreement, so --

6 THE CHAIR: Okay. No agreement either
7 and therefore no negotiations occurred on this?
8 Because I'm just trying to figure out what made it
9 onto the table versus what didn't make it onto the
10 table? I'll invite anybody to weigh in here.

11 MS. FOX: Mr. Chair, members of the
12 Commission, good morning. Thank you for the work that
13 you're doing. I'd say we negotiated practically every
14 provision we had negotiations on and the extent to
15 which there's agreement, you know, is reflected in the
16 joint stipulation. And the extent to which there's
17 disagreement is reflected in NMOGA and IPANM's
18 proposed rules to you all.

19 And as the chair noted, there wasn't a
20 great deal of substantive agreement between ourselves,
21 OCD, Oxy on one hand and IPANM and NMOGA on the other
22 in terms of, you know, the final language. Except to
23 the extent that there's the waiver to challenge based
24 on substantial evidence.

25 COMMISSIONER BLOOM: And, Ms. Fox, if

1 you could identify yourself for the record?

2 MS. FOX: Apologies. I'm Tannis Fox, a
3 lawyer with Western Environmental Law Center
4 representing Applicants in this matter.

5 MR. SUAZO: And this is Miguel Suazo
6 with Beatty and Wozniak appearing today on behalf of
7 NMOGA. I think just to clarify, if it's not on the
8 table, that indicates there's no agreement.

9 THE CHAIR: Okay. Amongst any of the
10 parties; right?

11 MR. SUAZO: Correct.

12 THE CHAIR: Okay. Got it.

13 MS. FOX: Mr. Chair, well, no agreement
14 between Applicants, OCD, Oxy on the one hand and
15 IPANM --

16 THE CHAIR: NMOGA.

17 MS. FOX: NMOGA on the other.

18 THE CHAIR: Got it.

19 MS. FOX: Thank you.

20 THE CHAIR: Thank you.

21 Does that capture it? No other party
22 wants to object to either of those characterizations?
23 Okay. Thank you. Okay. So I will continue on then.
24 So far no objections at this time from -- or no
25 concerns from Commission Counsel on the temporary

1 abandonment language?

2 Commissioner?

3 COMMISSIONER AMPOMAH: Oh. Okay.

4 Yeah. So the way I look at it, so I try to compare
5 what the applicant -- OCD -- is saying to the other
6 parties. Now, on this one, it sounds like only NMOGA
7 is the one that wants to strike out the temporary
8 abandonment or temporary abandonment status. Now,
9 IPANM agreed to that. Oxy agreed to that because
10 obviously they did not really -- they did not make any
11 comment on that.

12 So I will say that it doesn't change
13 anything because if you look at the definition, it
14 still means the status of the well that is inactive.
15 So I do not have any objection leaving this provision
16 in the rule. Thank you.

17 THE CHAIR: Commissioner?

18 COMMISSIONER BLOOM: Mr. Chair, yes. I
19 would add in this case that I find those words to be
20 supportive of changes that are made further on in this
21 document in the rulemaking. And that as we move into
22 that, there's adequate support on the record from the
23 applicants -- OCD -- to support that at a minimum.

24 THE CHAIR: Okay. You're finding that
25 there's sufficient evidence in the record to support

1 the change as proposed by in -- or this proposed
2 change; is that correct?

3 COMMISSIONER BLOOM: That is correct.
4 And I would generally say that that holds for --
5 unless I disagree with something explicitly that I
6 believe that there's support in the record for the
7 proposed changes and the agreed to stipulated changes
8 as well.

9 THE CHAIR: Okay.

10 COMMISSIONER AMPOMAH: I'm good.

11 THE CHAIR: Okay. Any debate or any
12 concerns about the next change then? (B)(5), barrel
13 of oil equivalent?

14 COMMISSIONER BLOOM: No, Mr. Chair.

15 THE CHAIR: Okay. I'm not going to go
16 through the renumbering of the automatic renumbering
17 because -- unless there's any objections from
18 commissioners, I'm going to assume that there's
19 sufficient evidence in the record for renumbering of
20 sections. The next then is (B)(7). Any objections,
21 concerns or -- any concerns or objections? Beneficial
22 purposes or beneficial use?

23 COMMISSIONER BLOOM: Mr. Chair, you
24 know, I think I understood where the applicants are
25 trying to go with the inclusion of language around

1 speculative purposes.

2 But there was an agreement to strike
3 that, and I am supportive of that as it was a
4 difficult -- I don't know if notion's the right word,
5 but a difficult addition in some ways. So I can
6 understand why it was struck given the concern we
7 heard about it from all the parties or at least from
8 the industry parties.

9 COMMISSIONER AMPOMAH: Mr. Chair, so if
10 we go to the table?

11 THE CHAIR: Mm-hmm.

12 COMMISSIONER AMPOMAH: That'll be the
13 first one that'll be on page 1.

14 THE CHAIR: Page 1, you said?

15 COMMISSIONER AMPOMAH: Yeah. The page
16 1 of the table.

17 THE CHAIR: Mm-hmm.

18 COMMISSIONER AMPOMAH: Now, all parties
19 agree -- most of the parties agree to the joint
20 stipulation, but NMOGA is proposing something --
21 addition to this now, and I want to address that. So
22 NMOGA is saying that "Include but not limited to
23 production injection monitoring," which is the
24 original -- well, listen. That is the one that was
25 agreed to -- or more or less, that is the original

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1 language in what we are looking at.

2 So NMOGA says that oil -- move on to
3 say that we should add a -- recovery. Now, from my
4 point, that also falls under production and injection
5 monitoring, water flood injection -- and even you can
6 add production to it.

7 With -- compliance -- so that is the
8 one that does not -- but even that one -- so that one
9 is a little bit tricky because I do not see how that
10 falls under the three categories. So my question to
11 my two commissioners is, most of the things that NMOGA
12 is proposing here more or less falls under the
13 production, injection, and monitoring.

14 But the regulatory compliance, that is
15 the one that is not part of the current definition
16 that we have. So I don't know what -- if you have any
17 thoughts about that?

18 THE CHAIR: Commissioner Bloom?

19 COMMISSIONER BLOOM: Dr. Ampomah, what
20 was the word you're suggesting adding there --

21 COMMISSIONER AMPOMAH: So NMOGA is
22 suggesting that we do have multiple terms, but in
23 there I'm able to relate all those terms to the --
24 yeah. I'm able to relate those terms to either
25 production, injection, or monitoring -- except the

1 regulatory compliance. That one I do not. So that is
2 the one that does not fall under the production,
3 injection, and monitoring. So I'm asking, do you have
4 any objection adding that to the definition?

5 COMMISSIONER BLOOM: Commissioner
6 Ampomah, would not enhanced oil recovery, EOR, and
7 water flood operations be included between production
8 and injection?

9 THE CHAIR: Yes.

10 COMMISSIONER AMPOMAH: That is what I
11 said.

12 COMMISSIONER BLOOM: Yeah. Okay.

13 COMMISSIONER AMPOMAH: Yeah.

14 COMMISSIONER BLOOM: And then so now
15 you're thinking of adding regulatory compliance in
16 there?

17 COMMISSIONER AMPOMAH: So that is the
18 one that I cannot really put under production,
19 injection, or monitoring.

20 MR. SHANDLER: But what exhibit or what
21 person persuaded you that this term "regulatory" --
22 fits within beneficial purposes?

23 COMMISSIONER AMPOMAH: So, Commission
24 Counsel, during the discussion, I think, the main
25 thing was about the speculative purposes. And almost

1 all the witnesses that -- from both sides more or
2 less -- touched on this issue.

3 And we started talking about the
4 examples -- most of these that NMOGA is listing here
5 are all examples that were presented to the
6 Commission, you know. And when I look at it, I can
7 really relate each of them. You know, one thing that
8 we did not get the opportunity -- even we asked -- let
9 me put it this way.

10 We asked about if we take out the
11 speculative purposes, you know, does that change the
12 definition? It does not based on the discussions that
13 we had. But these examples that have been provided --
14 I know we discussed most of them during the hearing,
15 so I'm just asking the other commissioners, if we are
16 the regulatory compliance -- change anything.

17 Now, I can tell you that taking out a
18 speculative purposes more or less ends everything, but
19 I do not know -- mostly from OCD point of view -- the
20 regulatory compliance. That one -- I cannot really
21 put that under any of these three.

22 But without that, this definition is
23 still complete. It gives OCD more room to be able to
24 even take consideration of what NMOGA is listing here.
25 So it doesn't really change anything if we decide

1 that. Let's keep this one. It doesn't change much
2 here.

3 THE CHAIR: What jumps to my mind at
4 least when it comes to a well being used for
5 regulatory compliance, if it is not otherwise being
6 used for a beneficial purpose, is typically what I
7 would think of as monitoring; right?

8 Groundwater monitoring, monitoring
9 of -- so, but I'm trying to -- I also am trying to be
10 mindful of what other regulatory compliance needs may
11 or may not arise that is not related to monitoring. I
12 can't say that that's not possible, but I'm -- yeah.
13 I guess, I would have to think a little harder on
14 that. Do you have any thoughts?

15 COMMISSIONER BLOOM: That was my
16 question exactly, Mr. Chair. And I would also wonder
17 if we added that if later it could become some sort of
18 a wide-open door loophole in a sense that it could be
19 used to keep wells was not bonded longer if there's
20 some sort of compliance agreement struck.

21 And we've seen some pretty beefy
22 regulatory compliance movements at times. So that
23 would give me pause as well. I don't know if either
24 of you know of any point in the record that addresses
25 what this addition of regulatory compliance gets at

1 otherwise?

2 THE CHAIR: I couldn't tell you. I
3 couldn't tell you the specific point in the -- but I
4 do -- I think I'm with Dr. Ampomah that I do recall at
5 least monitoring wells being mentioned as a potential
6 beneficial use.

7 And presumably monitoring could be done
8 for the purposes of regulatory compliance. But I
9 couldn't tell you off the top of my head which witness
10 or what point in the transcript that may or may not
11 have happened.

12 MR. SHANDLER: So, Mr. Chair, my advice
13 would be to could pull up on your computers both the
14 applicant's proposed findings of fact and then -- in
15 this case it's the oil and gas. If they've done the
16 research, they will give you the exact -- you can just
17 find that word, find that sentence, and they will tell
18 you who said what. And if they didn't, then there
19 isn't a preponderance of evidence.

20 THE CHAIR: Fair enough.

21 COMMISSIONER AMPOMAH: So that would be
22 in NMOGA's closing brief.

23 COMMISSIONER BLOOM: And so, yeah.
24 Mr. Shandler, Commissioners -- mentioned in two spots
25 here -- one is 78 on page 66. NMOGA's closing has

1 reference of it.

2 COMMISSIONER AMPOMAH: -- 66.

3 COMMISSIONER BLOOM: It does not give
4 an explanation of why regulatory compliance should be
5 added, and then neither does the second treatment of
6 this on page 75.

7 THE CHAIR: What finding number is
8 that --

9 COMMISSIONER BLOOM: It's under "Fee
10 conclusion and request for relief." We just see --
11 I'm just searching the PDF here and finding --
12 "Broaden the definition of beneficiaries and active
13 wells to include regulatory compliance among other
14 things." So, you know, unfortunately, I don't see
15 anything in the record here which would tell us why we
16 would want to add regulatory compliance to production,
17 injection, and monitoring.

18 THE CHAIR: What was the previous one
19 of --

20 COMMISSIONER BLOOM: Yeah. Point 78 on
21 page 66.

22 THE CHAIR: Okay.

23 COMMISSIONER AMPOMAH: And,
24 Commissioner Bloom, so let me say that, you know, I
25 just really wanted us to discuss that. But let me say

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1 that without even adding those, I believe that the
2 production, injection, and monitoring -- you know,
3 like that's business -- more or less covers almost all
4 the operations that you can think of.

5 But I was just not sure about the
6 regulatory compliance. So if we have to leave it as
7 it is now -- let's say they've negotiated and sound
8 like some agreements are there, it doesn't change the
9 definition. It doesn't change the definition. If we
10 are to exclude the regulatory compliance, it doesn't
11 change anything. Thank you.

12 COMMISSIONER BLOOM: Mr. Chair, yeah.
13 I'm not sure what it would change if it was in there.
14 Not having seen discussion of it elsewhere, I would
15 not support adding those words.

16 THE CHAIR: Okay. Perhaps we can
17 phrase it this way. That the Commission finds that
18 the proposed -- that between the applicant's proposed
19 language for this provision -- for this definition --
20 and the modifications proposed by NMOGA, the
21 Commission finds that there is more substantial
22 evidence to support the applicant's proposal --
23 proposed definition.

24 COMMISSIONER BLOOM: I would agree with
25 that, Mr. Chair.

1 COMMISSIONER AMPOMAH: Yeah. That's
2 correct. Thank you.

3 THE CHAIR: Okay.

4 Is this sufficient for the record,
5 Commission Counsel? Or would you -- when there are
6 issues like this, would it be better for us to
7 formally take a vote on it?

8 COMMISSIONER BLOOM: Mr. Chair, that's
9 sufficient.

10 THE CHAIR: Okay. Very good. In that
11 case -- I'm sorry. I got to go back to -- in that
12 case, I will move the discussion along to (E)(f)
13 subsection (E)(f) -- no. I'm sorry. (E)(8) "Expired
14 temporary abandonment." Any discussions on this?

15 COMMISSIONER BLOOM: Yes, Mr. Chair.
16 So here I would note that the joint stipulation does
17 not speak on this. NMOGA's position would be to not
18 include this newly proposed definition. This is the
19 point where I would raise a concern raised by NMOGA --
20 which allow me to get to that -- have about five
21 different windows open here.

22 Page 11 of NMOGA's closing, they state
23 "The Commission lacks authority to remove the two year
24 temporarily abandoned well threshold for heightened
25 inactive well assurance."

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1 So if we look at 70-2-14 again --
2 70-2-14 for the record. If we look at the last
3 sentence there, it says "The Oil Conservation Division
4 shall require a one-well financial assurance on any
5 well that has been held in a temporarily abandoned
6 status for more than two years, or the election of the
7 operator may allow an operator to increase its blanket
8 plugging financial assurance to cover wells held in
9 temporarily abandoned status."

10 So what this is doing is giving the
11 operator with a well that's entering its second -- its
12 first two-year period -- grace period to go unbonded.
13 And NMOGA is saying that to take away that grace
14 period would be inappropriate of an outsider authority
15 because of what we see here in statute -- in 70-2-14.
16 That make sense -- the concern?

17 THE CHAIR: What is your -- I guess,
18 what is your take on that concern, I suppose? Or what
19 is your view or analysis or opinion?

20 MR. SHANDLER: So if I could weigh in,
21 the hearing officer framed it that you made these
22 major decisions. So you've already made a major
23 decision -- 70-2-14 -- the applicants have proposed
24 something that you have legal authority over.

25 So whenever something comes up about is

1 there a legal authority, you've already answered that
2 policy question. So if that's what you're hung up on,
3 then I'd advise if you believe there's -- you've
4 already decided there's legal authority, then you
5 accept the proposal.

6 COMMISSIONER BLOOM: Mr. Shandler,
7 thank you.

8 And here's what I've been thinking on
9 this. Since the Oil Conservation Division shall
10 require a one-well financial assurance on any well
11 that has been held in a temporarily abandoned status
12 for more than two years, I believe that 70-2-14 -- for
13 the reasons I expressed earlier today -- gives the OCC
14 the ability and the latitude to create new financial
15 assurances.

16 And this would simply be a new
17 financial assurance that is required during that first
18 two-year period. And I would be comfortable with
19 that. But I wanted to discuss this and put it on the
20 record. That's why I raised it. Thank you.

21 THE CHAIR: For sure.

22 Commissioner Ampomah, any thoughts?

23 COMMISSIONER AMPOMAH: Yeah. On this
24 one, I do not have much thoughts on this. So based on
25 what Commissioner Bloom is saying and based on the

1 discussions, I do not have -- just to say I do not
2 have any thoughts about -- let's say, taking this off.
3 So I do not have any reason to take this off -- thank
4 you.

5 THE CHAIR: Okay. I think I agree with
6 Commission Counsel's advice and Commissioner Bloom
7 here, that the proposed change here is supported and
8 within our statutory authority. So without
9 objection -- doesn't seem like the Commission is
10 comfortable with this particular proposed change.
11 This subsection (8)?

12 COMMISSIONER BLOOM: Yes, Mr. Chair.

13 COMMISSIONER AMPOMAH: Yes, Mr. Chair.

14 THE CHAIR: Great. In that case,
15 Section (I)(4), inactive well. And this one there was
16 some negotiation -- or at least some outcome of a
17 negotiation on this particular definition.

18 COMMISSIONER BLOOM: There was
19 negotiation, and we come back to the same discussion
20 we had just a moment ago about potentially including
21 the words "regulatory compliance." Again, NMOGA would
22 pull over that suggestion here. But for the reasons
23 that we discussed previously, I would reject that and
24 not include the words "regulatory compliance" or the
25 other NMOGA-proposed additions.

1 COMMISSIONER AMPOMAH: I'll agree with
2 that. Thank you.

3 THE CHAIR: Okay. So if the Commission
4 agrees, I will have the record reflect that the
5 Commission finds the negotiated language in the
6 applicant's final proposed rule to be better supported
7 than the modification language recommended by the Oil
8 and Gas Association?

9 COMMISSIONER BLOOM: Very good.

10 THE CHAIR: Is that fair to you,
11 Commissioner Ampomah?

12 COMMISSIONER AMPOMAH: Yes.

13 THE CHAIR: Okay.

14 Then we go to -- let's see. (L)(6),
15 low producing well -- also another term that was
16 negotiated if I recall correctly.

17 COMMISSIONER BLOOM: Yes. I'm
18 supportive of this definition of low producing well.

19 COMMISSIONER AMPOMAH: This definition
20 is similar to the marginal wells that was discussed
21 extensively, and I'm glad that at least all the
22 parties got together to change that marginal well
23 definition. Because EPA do have a definition for
24 that. I understand -- do have a definition for that.
25 So it becomes a little confusing. So I'm really in

1 support of low producing well. Thank you.

2 THE CHAIR: Commission? Any further
3 comments?

4 COMMISSIONER BLOOM: No, Mr. Chair.

5 THE CHAIR: Okay. So Commission finds
6 that this -- for (L)(6) that the language as proposed
7 in the final stipulated -- joint stipulated proposal
8 is well supported and should be adopted? Yes?

9 COMMISSIONER BLOOM: Yes.

10 COMMISSIONER AMPOMAH: Yes.

11 THE CHAIR: Okay. The next issue --
12 I've got (M)(2) being struck out.

13 COMMISSIONER BLOOM: Yes. As
14 Commissioner Ampomah said, Mr. Chair, we are striking
15 the proposed definition of marginal well, which was
16 replaced up above by low producing well. I believe we
17 just discussed that and have full support there.

18 THE CHAIR: Okay.

19 So without objection, commission
20 concurs.

21 The next change for us to review is
22 still in 19.15.2. But now in section -- or subsection
23 (T), and it looks like (T)(3) is being struck?

24 COMMISSIONER BLOOM: Yes, Mr. Chair.

25 And I would note that in NMOGA's draft, they would

1 retain that. This language was actually -- if we go
2 back up to (A) -- what was added in there -- next to
3 the definition of approved temporary abandonment.

4 The words "temporary abandonment" or
5 "temporarily abandoned status" are added in. So it's
6 really about where those words appear, Mr. Chair. And
7 I am supportive of them appearing above -- under (A)
8 and striking -- (T).

9 THE CHAIR: Okay. Any objections to
10 that modification?

11 COMMISSIONER AMPOMAH: No.

12 COMMISSIONER BLOOM: Thank you.

13 THE CHAIR: Okay.

14 Without objections, so approved or
15 adopted.

16 Okay. I did not -- I'm not seeing any
17 further changes to 19.15.2. Did I miss anything,
18 Commissioners?

19 COMMISSIONER BLOOM: I believe we
20 covered it.

21 THE CHAIR: Okay. Great.

22 COMMISSIONER BLOOM: Mr. Shandler,
23 would it be helpful if we voted on passage as
24 suggested in the joint stipulation? Or was the fact
25 that we went through and approved each definition

1 sufficient for you?

2 MR. SHANDLER: Mr. Chair, what you've
3 done is sufficient. I thought you were going to say
4 you were going to take a vote on this section.

5 THE CHAIR: Happy to.

6 MR. SHANDLER: If you want to do that,
7 or if you want to do a final vote. But what you've
8 done so far is -- satisfied me.

9 THE CHAIR: Okay.

10 For Commissioners, formality's sake,
11 I'm totally fine. If I recall correctly, we didn't
12 make any amendments from the bench here; right? So if
13 the commissioners would like to make a motion to adopt
14 the proposed change -- the specific changes to
15 19.15.2, I'm happy to entertain that motion?

16 COMMISSIONER BLOOM: Mr. Chair, I would
17 make that motion and just note that this is to the
18 applicant's Exhibit 89-A for the record as -- which is
19 part of their closing statement.

20 COMMISSIONER AMPOMAH: I second.

21 THE CHAIR: Any votes opposed? Any
22 objections?

23 Without objection, so adopted.

24 Okay. Turning to 19.15.5 NMAC. The
25 first change -- the first proposed changes that I'm

1 seeing is 19.15.5.9(A)(4) and (5). Yes. (A)(4) and
2 (5).

3 COMMISSIONER AMPOMAH: Mr. Chair, so on
4 this one, the parties did -- agreed on most of this.
5 And neither party opposed to this, so I do not have
6 any modifications to this. Thank you.

7 COMMISSIONER BLOOM: Mr. Chair, and,
8 Dr. Ampomah, I believe if we look at the final
9 proposal from NMOGA, they actually propose an
10 alternative here -- excuse me -- which would -- I
11 think simply strikes the proposed applicant's
12 treatment of this section and leaves it unchanged.
13 Let me get to the second page here.

14 COMMISSIONER AMPOMAH: I got you.

15 COMMISSIONER BLOOM: Yes. So really
16 it's deciding between the joint stipulation and what
17 NMOGA has put forth.

18 THE CHAIR: I don't have my computer
19 open at the moment. I'm trying to juggle too many
20 paper documents.

21 For my fellow commissioners who might
22 have this handy, would you like to refresh for the
23 record and for my recollection, the respective
24 findings of -- proposed findings of fact that would
25 support or justify the alternatives in front of us

1 today?

2 COMMISSIONER BLOOM: Yes. Give me a
3 second. Yes. Mr. Chair, give me a moment here. I am
4 just pulling up some other documents. Thank you.

5 THE CHAIR: Apologies to the audience
6 who I'm sure are wishing they could watch this thing
7 on fast forward.

8 COMMISSIONER BLOOM: Okay. So,
9 Mr. Chair, what's happening here is we are bringing
10 some new aspects of compliance to bear, and I think
11 we'll get more into this as we get further down in the
12 rules. So we're in 19.15.5 right now, and we'll see
13 what those requirements are when we get down to
14 19.15.27.8(A) through (D).

15 We'll have those requirements as an
16 expansion and part of the overall plan of the
17 applicants to bring more wells under bonding. And
18 there are circumstances that that should require it.

19 THE CHAIR: And this is where the
20 interconnected nature of these sections become
21 challenging.

22 COMMISSIONER BLOOM: And if we want to
23 move down there -- I'm looking at the applicant's
24 closing -- we could go to page 115 of that. And I
25 could make a note here, and we can pull up 8(A)

1 through (D) -- so let me go down to 19.15.25.8.

2 I want to make sure we got the citation
3 right there. I'm wondering if we're actually looking
4 at -- if that reference shouldn't be to 19.15.27.9(A)
5 to (D)? Because that's where the -- there's no Point
6 8 of (B) -- 25 -- 27.8. So let me cross-check these
7 references here.

8 COMMISSIONER AMPOMAH: Yeah. I do have
9 a comment if I may?

10 THE CHAIR: Commissioner, please.

11 COMMISSIONER AMPOMAH: Yeah. So --

12 COMMISSIONER BLOOM: -- know if you see
13 this too.

14 COMMISSIONER AMPOMAH: Yeah. So the
15 way I look at this -- remember during the hearing -- I
16 mean, this provision is where NMOGA was saying that if
17 one company -- let's say vents one, you know -- so
18 let's say they vent or flare one, what that means is
19 that more or less, this provision will -- more or
20 less -- be applicable to them.

21 But if you look at what the stipulated
22 agreement is -- to me -- it's unclear because it's
23 saying that subject to an agreed compliance or final
24 order setting a schedule for bringing the wells into
25 compliance with 19.15.25.8 NMAC and imposing sanctions

1 if the schedule is not met.

2 So what NMOGA is saying is that we
3 should be a little bit lenient here and say that if --
4 let's say two wells or 50 percent of wells operating
5 in this doesn't meet that, you know. So that -- to
6 me, that's a little bit of a loophole. So we should
7 more or less look at that from that sense.

8 During the hearing, I mean, the
9 applicant opposed to that. So that is how I see it.
10 So let's say if five wells, if the -- between 110 --
11 101 and 500 wells. So if five wells are not in
12 compliance or unless did not address the compliance
13 order, you know, they should still be good. That is a
14 loophole.

15 COMMISSIONER BLOOM: And, Mr. Chair,
16 I'm still trying to determine if the cross-through the
17 citation to 27.8 is right or if that should be 27.9.

18 THE HEARING EXAMINER: Commissioners,
19 Ann Tripp has her hand raised? I don't know if she
20 can -- or?

21 THE CHAIR: I apologize. We're not
22 monitoring these screens very closely. But sure.
23 I'll entertain a comment from Ms. Tripp. Oh. Sorry.
24 My turn to not have my microphone on.

25 MS. TRIPP: Thank you, Commissioners.

1 And I apologize, I'm not sure if this is the
2 appropriate form and place -- any of the counsel there
3 to correct me.

4 But under 5.9(A)(4) -- and I may have
5 misheard -- but it sounded like there was a conclusion
6 or interpretation that all the parties were agreeing
7 to that change. And I just -- I wanted to clarify
8 that I do not believe IPANM or NMOGA agreed to (4)(a)
9 through (d). The only language agreed to is
10 highlighted in blue for Exhibit 89-B.

11 THE CHAIR: Yes. I think we're on the
12 same page, but -- so the highlighted language is
13 agreed to with reservations, but there is other
14 language that's not highlighted that would be that --
15 where there is no agreement amongst -- or yeah. Okay.

16 MS. TRIPP: Yes. That's correct.
17 Thank you.

18 COMMISSIONER BLOOM: -- if I do this on
19 the record. But, Mr. Chair, I don't know if you're
20 following this too or if the other commissioners are
21 concerned. I mean, is this a proper citation to 27.8?
22 Because if we go there, there's no (A) through (D).

23 THE CHAIR: I'm afraid I can't help
24 with that at the moment because I don't have my -- I
25 don't have a computer that's proper --

1 COMMISSIONER BLOOM: Because there's --

2 THE CHAIR: You can also cross
3 reference and pull up the NMAC as it exists today.
4 Wait. You're in 19.15.25 and not 27. This is 27.

5 COMMISSIONER BLOOM: Twenty-seven.

6 THE CHAIR: I think you might have to
7 pull up the actual NMAC.

8 COMMISSIONER BLOOM: Yeah. I need to
9 go down two sections. Thank you.

10 THE CHAIR: All right. Have you
11 found the -- so first of all, let's just make sure
12 we're on the same page as the --

13 COMMISSIONER BLOOM: Okay. Yeah.
14 That's correct. That works. Yeah.

15 THE CHAIR: Okay. So now going back to
16 my earlier question, have people been -- have
17 commissioners been able to pull up the respective
18 findings of fact? Because there is a disagreement
19 between the parties on this section. And I'd like to
20 review the findings of fact -- the respective proposed
21 findings of fact on the record.

22 COMMISSIONER BLOOM: Almost there,
23 Mr. Chair. Hold on. Yes. I was looking through the
24 cross walking to 19.15.25.8 there. That appears to be
25 appropriate. And generally what we're doing here is

1 refining some of the aspects of compliance and the
2 wells -- the number of wells which would be required
3 to be bonded.

4 Generally, we saw significant testimony
5 on this and its impacts on the bonding regime the
6 state would have after this. And generally, I think
7 this is gone over extensively in the applicant's
8 closing, and that there's strong support for it.

9 THE CHAIR: Okay. Just for the record,
10 can we -- is there a specific finding number in each
11 of these briefs that we can point to? I can also turn
12 to the parties and see if they can help us out with
13 organization?

14 MR. SHANDLER: So, Mr. Chair, on the
15 applicant's proposed findings, it looks like 79
16 through 88 provides the preponderance of the evidence
17 to support the proposed language.

18 THE CHAIR: Seventy-nine through
19 eighty-eight? Is that what you --

20 MR. SHANDLER: Yes.

21 THE CHAIR: Thank you.

22 Okay. And just for the record,
23 perhaps, Mr. Suazo, you can help us with the -- do you
24 have the numbered paragraphs for your proposed
25 findings of facts? Or your --

1 MR. SUAZO: I have it pulled up. Let
2 me try and get to it. It's hard -- yes. I can
3 assist. Apologies. I normally have three or four
4 screens, so it's harder to navigate this one. I have
5 it. I just need to find it. It should be on page 21
6 of NMOGA's closing brief -- finding of fact 72.

7 THE CHAIR: Could you repeat that? My
8 apologies.

9 MR. SUAZO: Yes. It's NMOGA's finding
10 of facts 72 through 74.

11 MR. SHANDLER: Page 64. Yeah --
12 narrative four. Copy of the actual rule that broke
13 down.

14 THE CHAIR: -- here.

15 COMMISSIONER AMPOMAH: -- what I have.

16 THE CHAIR: No. Yeah. That's not this
17 finding --

18 COMMISSIONER AMPOMAH: Because the one
19 that we have is in alphabets. The one I have is in
20 alphabets. I do have in alphabets. I do not have
21 numbers.

22 THE CHAIR: Could you clarify for us
23 again? I'm sorry. Which document you are in? I'm
24 running out of fingers here to bookmark pages here --

25 MR. SUAZO: Sorry. I am too. It's in

1 our closing brief, page 21, finding of fact 72 through
2 74. We also address in our legal arguments on page
3 21.

4 THE CHAIR: So page 60 -- no.

5 COMMISSIONER AMPOMAH: Yes. I think I
6 see --

7 COMMISSIONER BLOOM: I'm looking at
8 here -- NMOGA's closing, page 64.

9 THE CHAIR: You've got bullets on page
10 21. Is that the two paragraphs you want us to look
11 at?

12 MR. SUAZO: Hang on. Let me confirm --
13 the right document.

14 MR. SHANDLER: So what I would suggest
15 is maybe a five-minute break. Let's have Sheila print
16 all this out. Still we'll need the computers because
17 that is still the find's function, but it might be
18 productive that everyone has the three major ones so
19 they can leaf through. Is that an acceptable
20 five-minute break if we could do that?

21 COMMISSIONER AMPOMAH: Yes.

22 THE CHAIR: That certainly works for me
23 if --

24 COMMISSIONER BLOOM: Might be closer to
25 15 minutes for Sheila to get upstairs and print a few

1 things out.

2 THE CHAIR: Yeah. That's fine by me.
3 I do want to make sure that we give fair consideration
4 and thorough consideration to all the parties. So I
5 appreciate all of your patience as we make sure that
6 we dot our I's and cross our T's and review each
7 finding of fact with each proposed change here. So
8 with that, let's take a -- let me find the time here.

9 COMMISSIONER BLOOM: Back at 11:30?
10 It's 11:15 right now.

11 THE CHAIR: Yeah. Let's plan on
12 meeting back here around 11:30. Thank you all. I'll
13 call a recess.

14 (Off the record.)

15 THE CHAIR: If I could bring the
16 meeting back to order real briefly from the recess.

17 Commissioner Bloom, did you have
18 something for the group?

19 COMMISSIONER BLOOM: Yeah. Mr. Chair,
20 thank you.

21 Thanks, everyone, for that pause.

22 Sheila, we might --

23 Can you all hear me okay on this? I
24 don't know if this picking me up. It sounds, kind of,
25 weak. You know, just as a -- kind of, a procedural

1 matter as we're going through this, you know,
2 generally I've done rulemaking in the past.

3 You know, we go through, and if there's
4 a difference of opinion or a concern about a change
5 that's being made, you know, we can bring those things
6 up and hash through that based on the -- you know, the
7 evidence we found in the record.

8 But I think if we try to go through and
9 look for findings of fact for every single addition,
10 we're going to be here for weeks and, you know,
11 comparing them across multiple parties' closings. And
12 I certainly didn't come prepared for that, as you saw
13 from, you know, the last half hour. I don't think any
14 of us have, you know.

15 We put some -- a good bit of time into
16 looking at the questions -- the bigger questions about
17 statutory authority. Many of the things that the
18 hearing officer put in her report for us, and, you
19 know, we got through those.

20 But I think just going forward, for me
21 what makes the most sense is going through, seeing
22 where's agreement, disagreement, hashing out
23 disagreement, voting, and moving through this. And
24 then, you know, at the end, we can talk about what our
25 findings of facts are specifically and generally. So

1 I don't know if that would work for the other
2 commissioners?

3 COMMISSIONER AMPOMAH: Commissioner
4 Bloom, I thought that, you know, the chair wanted us
5 to at least crosscheck what each party was saying
6 about this particular issue to guide us on our votes.
7 I do not have any problem with that because at least
8 that shows that we are actually doing, you know, more
9 due diligence to make sure that we make the right
10 decisions based on the facts.

11 So I do not have any problems trying to
12 go back and forth to make sure that we are in
13 agreement. Especially if there's opposition to what
14 the applicant is presenting and any -- the joint
15 stipulation is also saying, it's better probably -- we
16 probably crosscheck. And I'm pretty sure in the
17 past -- I mean, I believe that Felicia is going to
18 help us a lot to direct us straight away -- go to the
19 page to really speed up.

20 THE CHAIR: I think we're all saying
21 slight variations of the same thing. I know going
22 through that there are differences of opinions between
23 the parties on certain sections, and I'm certainly not
24 necessarily trying to belabor and get into the
25 pedantic of each.

1 I don't want to belabor it to the point
2 of being pedantic, but to the extent that this
3 Commission is being called on to make a decision
4 between alternatives that have been presented, I just
5 want to make sure that the Commission feels like it's
6 had an opportunity to articulate what it's relying on
7 and why the Commission is choosing one particular
8 choice as opposed to the other on this menu of options
9 that the parties have asked us to consider.

10 COMMISSIONER BLOOM: Sure. Mr. Chair,
11 and, you know, just for me -- kind of, big picture --
12 like, the homework, you know, prior to coming here was
13 comparing the various arguments and closing arguments
14 versus, you know, actually doing that here, you know,
15 at the dais for hours on end comparing one to another.

16 I think we have -- you know, I think it
17 just has an idea of where this is going. And I don't
18 know where y'all are coming in and/or what issue you
19 might have here. And, you know, clearly, you know,
20 I'm comfortable with a lot of the applicant's
21 application here and so that makes a sensible starting
22 point to do a comparison.

23 And if there's things that I have
24 issues with -- and there have been some. And I think
25 I brought up the issue that NMOGA raised about the

1 first two years of TA status and requiring a new bond
2 for that. You know, we, kind of, talked through it.
3 Y'all didn't have issues with it. We moved past it.
4 Those sorts of things.

5 So I'm going to bring up things that I
6 have issues with, but I'm not necessarily going to sit
7 here and engage in, you know, every single line --
8 comparing every red line, everything that's in blue
9 versus multiple parties' closing arguments and
10 statements, you know, this afternoon. But if y'all
11 need to do that, you know, I'm certainly here for the
12 ride.

13 So we'll get through it, but I didn't
14 come prepared to sit here and look at multiple
15 applications side by side. I did that over the past
16 weekends when I carved out time to do this work. So
17 thank you.

18 THE CHAIR: Understood. And we'll try
19 to do this with -- we'll try to build as full of a
20 record as we can while being as minimally pedantic as
21 possible. Okay. I think our commission clerk needed
22 a little bit more time to print and resolve some
23 business to get us organized with some paperwork up on
24 the dais.

25 And noting the hour, I'm going to

1 recommend that we take an early lunch and reconvene --
2 let's see -- at one o'clock. Would that be acceptable
3 to commissioners?

4 COMMISSIONER BLOOM: Very good,
5 Mr. Chair. Thank you.

6 THE CHAIR: Okay. So with that, let's
7 take a recess -- a lunch recess until one. Thank you.

8 (Off the record.)

9 THE CHAIR: All right. Thank you all.
10 I apologize for the delay. Thank you for all bearing
11 with us. I call this meeting back to order. This is
12 now the afternoon of June 3, 2026. The time is
13 currently 1:13 p.m. Before we pick back up, I think
14 we're waiting for Commission Counsel now.

15 I'll just start by picking up where we
16 left off. But also I want to apologize to the
17 Commission. I think I confused everybody because I
18 was -- I didn't realize that some things were
19 double-sided on the printouts here, and so I was
20 looking at the wrong section. And I think that might
21 have been part of the confusion here.

22 So now, let's see if we can maybe
23 re-pickup at the beginning of proposed changes to NMAC
24 19.15.5. And now that I'm looking at 19.15.5.9(A)(4),
25 both the -- I'm looking at the applicant's proposed

1 post-hearing final post -- post-hearing final
2 amendments -- proposed amendments, as well as the
3 table reflecting the joint stipulation.

4 And I understand from our hearing
5 officer that there is also a -- there is alternate
6 proposed language from IPANM that is not part of the
7 stipulation; right?

8 THE HEARING EXAMINER: No, not IPANM --
9 NMOGA.

10 THE CHAIR: Oh. I'm sorry. My
11 apologies. Yes.

12 THE HEARING EXAMINER: Yeah. So
13 19.15.5.9 is important because compliance criteria
14 control operator registrations and transfers. And as
15 proposed releases of financial assurance, NMOGA, kind
16 of, counter proposes to the stipulation that the
17 exceptions here would be retained or at least not done
18 away with all at once. Perhaps they could be done
19 away with over time.

20 Through the negotiations, the
21 applicants did agree to add back the compliance order
22 exception, which they had lined out as part of their
23 original proposal -- noting that the compliance order
24 needed to impose sanctions for example -- that it was
25 a meaningful compliance order -- impose sanctions if

1 the schedule was not met.

2 The other thing that NMOGA took special
3 note of here is the reference to Part 27. Part 27 is
4 not being changed as part of this rulemaking. That's
5 the venting and flaring compliance section. So that's
6 the other thing NMOGA opposes is the reference -- the
7 cross reference if you will, to the venting and
8 flaring compliance.

9 THE CHAIR: That's 19.15.27.8(A)
10 through (D); is that right?

11 THE HEARING EXAMINER: Yes. Right
12 there.

13 THE CHAIR: Perfect. Okay. And even
14 though there is a alternative being proposed by NMOGA
15 in the record, am I correct in reading the table of
16 negotiated language that NMOGA had nevertheless --
17 while reserving their right -- does also note at least
18 a concession if not full agreement on the proposed
19 language from the applicants as part of the stipulated
20 final; correct? Because I'm seeing blue -- on the
21 table.

22 THE HEARING EXAMINER: Right. My
23 understanding of their agreement is they do not
24 disagree -- they can see that there is substantial
25 evidence in support of the applicant's proposal.

1 THE CHAIR: Okay.

2 So, Commissioners, now that we've had a
3 chance to review the proposed changes in front of
4 us -- the various alternative proposed changes in
5 front of us for 19.15.5.9(A)(4), do Commissioners have
6 a preference as to what we wish to adopt? Or do
7 Commissioners wish to find any of them to be well
8 taken and supported by substantial evidence?

9 COMMISSIONER AMPOMAH: Mr. Chair, so
10 from my point of view, I believe that what has been
11 presented to us through the stipulation agreement -- I
12 do support that. Now, with what NMOGA is proposing,
13 it sounds to me that it might negate, you know,
14 because if you look at what was agreed on from the
15 applicant's point of view, we are not leaving any
16 room, you know, for non-compliance.

17 But the NMOGA proposal more or less
18 gives some allowance, which was in the original rules.
19 So if we are to adopt NMOGA's point of view, then we
20 would have to -- more or less -- rethink about even
21 what was agreed on during the stipulation. So I will
22 agree with the applicants on this particular matter.
23 Thank you.

24 THE CHAIR: Thank you.

25 Anything to add on that, Commissioner

1 Bloom? Well, if you need time to gather your
2 thoughts --

3 COMMISSIONER BLOOM: No. As I stated
4 earlier in this section, this part certainly works for
5 me in that it establishes the newer compliance rules
6 in line with the applicant's general proposal, which
7 I've stated support for earlier. Thanks.

8 THE CHAIR: Great. Having reviewed the
9 alternatives in front of us, I also agree that the --
10 first of all, I think the applicant's proposed
11 language here in the final joint stipulation is
12 supported by the evidence in the record and also has
13 broader range of support amongst the parties than the
14 other alternatives in front of us.

15 And so I also think that that is --
16 adopting the proposed changes to 19.15.5.9(A)(4) would
17 be a better choice. So with that, is that the
18 decision of the Commission that we approve -- that we
19 support the applicant's joint stipulated final
20 language for 19.15.5.9(A)(4)?

21 COMMISSIONER AMPOMAH: Yes.

22 COMMISSIONER BLOOM: Yes, Mr. Chair.

23 THE CHAIR: Thank you so much.

24 Now, moving on to 19.15.5.9(A)(5). I
25 believe that's -- this is all part of the same

1 section. So is there -- is there any further
2 discussion? And if not, do the Commission wish to
3 adopt the language for 19.15.5.9(A)(5) as well?

4 COMMISSIONER AMPOMAH: Yes.

5 THE CHAIR: I should specify. As
6 proposed by the applicant -- the party's final joint
7 stipulated language.

8 COMMISSIONER AMPOMAH: Fine by me.
9 Thank you.

10 COMMISSIONER BLOOM: Mr. Chair, I'm not
11 sure I'm looking at the right spot here.

12 THE CHAIR: Okay. I can assist.

13 COMMISSIONER BLOOM: Okay.

14 THE CHAIR: So we just approved that.
15 This next line is -- this currently meets the
16 requirement of 19.15.27.8(A) --

17 COMMISSIONER AMPOMAH: -- still in (B).

18 COMMISSIONER BLOOM: Yeah.

19 THE CHAIR: Yeah -- any objections to
20 that?

21 COMMISSIONER BLOOM: Mr. Chair, no
22 objections.

23 THE CHAIR: Okay. I don't have any
24 objections either. So the Commission will adopt
25 19.15.5.9(A)(5) with the language as proposed by the

1 applicants. I will note that there -- as far as I --
2 it appears that there is -- this is one -- this is
3 also one of the sections that has more acquiescence
4 amongst the parties than in other provisions.

5 Then moving on to 19.15.5.9(B)(1),
6 there's two changes in (B) -- or (B)(1)(a). Let's
7 look at (B)(1)(a). This is another provision that has
8 relatively more support -- if not unanimous support --
9 but more support amongst the parties.

10 Do the Commission have concerns as to
11 whether the proposed language here from the final
12 joint stipulated language? Or is the Commission
13 comfortable adopting it as sufficiently supported by
14 the record?

15 COMMISSIONER BLOOM: Mr. Chair, I'm
16 comfortable with that, and would adopt (B)(1)(a), (b),
17 (c), and (d) as well.

18 THE CHAIR: Okay.

19 Commissioner Ampomah?

20 COMMISSIONER AMPOMAH: Yes. I'm also
21 okay with that. I do not see any alternate language
22 from NMOGA or IPANM. So I do support this too. Thank
23 you.

24 THE CHAIR: I also find that there's
25 sufficient evidence in the record to support this.

1 And again -- for lack of an
2 alternative proposed -- unanimously, so adopted by the
3 Commission.

4 So that covered (A), (B), and -- or
5 subsections (a), (b), and (c) under (B)(1). So now
6 the last decision for the section, I believe, is
7 19.15.5.9(B)(2).

8 Commissioners?

9 COMMISSIONER BLOOM: Mr. Chair, I have
10 no issues with that. We're just changing 15 months to
11 14 months.

12 THE CHAIR: Commissioner?

13 COMMISSIONER AMPOMAH: Yeah. I do not
14 have any problem with that, but I was curious why 14
15 to 15? But yeah. No problems. Thank you.

16 COMMISSIONER BLOOM: As was I. It
17 looked like a compromise, Dr. Ampomah. That's what
18 I'm --

19 COMMISSIONER AMPOMAH: Okay.

20 THE CHAIR: So adopted as per the joint
21 stipulation? Is that Commission's decision?

22 COMMISSIONER AMPOMAH: Yes, sir.

23 COMMISSIONER BLOOM: Yes.

24 THE CHAIR: Thank you all very much.

25 All right. Moving right along. Now, we're into

1 19.15.8.

2 MR. SHANDLER: -- vote on that section?

3 THE CHAIR: I'm sorry? Oh. Oh. Thank
4 you.

5 If we could get a vote on the entirety
6 of the proposed changes to 19.15.5 or as presented in
7 Exhibit 89-B or as reflected in the table and the
8 negotiated language?

9 COMMISSIONER BLOOM: Mr. Chair, I would
10 vote to approve 19.15.5 as noted in the joint
11 stipulation -- Applicant's 89-B.

12 COMMISSIONER AMPOMAH: Second.

13 THE CHAIR: Any commissioners opposed?
14 Without opposition, so approved.

15 Okay. Moving on to debate on NMAC
16 19.15.8.9. First one is -- first change for our
17 consideration is changes to 19.15.8.9(A).

18 Commissioners, any thoughts? And
19 according to the joint stipulation table, this is one
20 of the provisions where there might be alternatives
21 proposed for us to consider.

22 THE HEARING EXAMINER: -- we have
23 alternative language from both NMOGA and IPANM.

24 THE CHAIR: Thank you. If you have
25 them handy, would you like to quickly summarize them

1 for the record here?

2 THE HEARING EXAMINER: Well, that would
3 be a long summary, frankly.

4 THE CHAIR: Okay.

5 THE HEARING EXAMINER: This is really,
6 I think, the heart of a lot of the proposals
7 motivating the petition to begin with. Some of it
8 goes to the legal arguments made by Industry around
9 their objection to the one-well -- if you will --
10 determining financial assurance using the one-well
11 flat amount -- \$150,000.

12 So I believe you might have covered
13 some of this already this morning before I arrived.
14 What else would I say about (A)? The parts challenged
15 here are all in Section 89, 89(A), (C), (D), and (E)
16 are the provisions. And you have quite a bit of
17 alternative language here.

18 MR. SHANDLER: So what Sheila's done is
19 wonderful. Let's use her work. So she put these
20 binders together, hopefully --

21 I'm using yours, Commissioner Bloom.

22 And so the last documents are maybe the
23 ones, there's one that's tabbed "IPANM." It's the
24 third to last tab in the back, and it's titled
25 "Independent Petroleum Association's Proposed

1 Alternative Language." I'm looking at that because --
2 section by section -- that's what their proposal is.
3 The third tab that Sheila created from the back, and
4 she wrote IPANM.

5 THE CHAIR: Unfortunately, my tabs are
6 different from yours.

7 MR. SHANDLER: What's that?

8 THE CHAIR: So just give me a second --
9 we got it. Those two should be the same.

10 THE HEARING EXAMINER: And it's page 8
11 of that document.

12 THE CHAIR: All right.

13 MR. SHANDLER: And then immediately
14 behind that is NMOGA's.

15 THE CHAIR: Yes.

16 MR. SHANDLER: And they've had, like,
17 green language there. So if you want to use Sheila's
18 work and say, "What are the alternative language?"
19 Those are the two documents that you really should be
20 like: "Okay. This one, this one," compared to
21 exhibits -- that's for the applicant --

22 THE HEARING EXAMINER: -- not much.

23 COMMISSIONER AMPOMAH: So, Zach, for
24 (A), applicability, I do not see any proposed changes
25 by NMOGA nor by IPANM for the (A). Even if you look

1 here, so I'm looking at --

2 COMMISSIONER BLOOM: Mr. Chair, I
3 believe there is when you look at the NMOGA Exhibit 3,
4 page 21.

5 THE CHAIR: Okay. Thank you. Okay --

6 THE HEARING EXAMINER: And this is
7 IPANM.

8 THE CHAIR: Okay.

9 COMMISSIONER BLOOM: Commissioner, I
10 think both these deserve some discussion. The first
11 one is something that I suggested during the
12 evidentiary hearing where there'd be additional
13 language to (A).

14 Saying that "The Division could
15 exercise its discretion and waive its financial
16 assurance requirement because the operator is engaged
17 in plugging operations for that well to be secured,
18 will be in the near future, or for any other good
19 cause determined by the Division."

20 I don't know if I'd go that wide, but
21 you know, there's a -- basically, what this would do
22 would allow a company to drop their bond and use that
23 money to plug a well or not be bonded and -- you know,
24 with the OCD feeling that the operator itself could --
25 would plug the well. So it'd be a little bit of

1 relief potentially to some operators. I'm not sure
2 how widely this would be used. Perhaps something to
3 consider.

4 THE CHAIR: Okay.

5 Commissioner Ampomah, any thoughts?

6 COMMISSIONER AMPOMAH: Yeah. So
7 looking at this, I do not have any objection to the
8 additional language that NMOGA is proposing, like
9 Commissioner Bloom explained. And I think we had a
10 lengthy discussion on this during the hearing. So I
11 do not have any problems with regards to what NMOGA is
12 proposing, and I do not see anywhere there could be
13 extensive conflict to what has already been proposed.

14 THE CHAIR: Perhaps the commissioners
15 can help me? I understand it says "Discretion and
16 waives," but it seems like the green language proposed
17 could very well swallow -- if too widely exercised by
18 future -- in the future, could very well defeat and
19 undermine a significant purpose of the rulemaking.

20 COMMISSIONER AMPOMAH: Mr. Chair, and
21 just recalling what Commissioner Bloom said, assuming
22 an operator is able to more or less come to a
23 consensus with OCD that -- let's say -- the amount of
24 money to bond is going to be used to plug that well.
25 And I think OCD is the one going to implement this.

1 And I do not see the extent of the
2 loophole you described. So I do feel like OCD will
3 still implement this, and they will have the
4 discretion to really implement this rule. So I do not
5 have any problems. Yeah.

6 COMMISSIONER BLOOM: Mr. Chair, I
7 believe we could also tighten this language up. For
8 example, you have it read "Or the Division exercises
9 its discretion, waives its financial assurance
10 requirement because the operators engaged in plugging
11 operations for the well to be secured or will be
12 within the next" -- I think 12 months, period. And
13 not have "Or for good cause if determined by the
14 Division."

15 COMMISSIONER AMPOMAH: So more of we
16 will take out the near future with a --

17 THE CHAIR: Something more specific.

18 COMMISSIONER AMPOMAH: Yeah. More
19 specific -- 12 months. Okay.

20 THE CHAIR: If we adopt that language,
21 I foresee a lot of requests for exercises of that
22 level of discretion.

23 COMMISSIONER AMPOMAH: And OCD has the
24 ultimate authority to either agree to that request or
25 deny that request.

1 THE CHAIR: Yeah. I ...

2 COMMISSIONER BLOOM: So, Mr. Chair, if
3 we had a horrible operator, and -- you know, we've
4 all -- there's a few of them out there, and it's the
5 same ones we're always talking about, you know. Some
6 of those would -- I think would be denied.

7 But if it was a smaller operator --
8 let's say limited resources -- and had a cash bond of
9 \$150,000, take the 150 and apply it to the closing.
10 You know, if they didn't follow through on it, of
11 course OCD could take legal action. And I'm assuming
12 that they would not be given that exemption in the
13 future -- or that variance in the future.

14 THE CHAIR: Fair enough. I guess, it's
15 how much trust do I have in my future self and/or my
16 successors. That's right. And also how much I want
17 to be -- and how much the Division wants to be -- I
18 don't want to use the word inundated, but this will be
19 another layer of dispute that simply shifts.

20 Whereas if there's no -- if it's
21 categorical in the rule, there's less to litigate
22 over. But whereas there's discretion, suddenly
23 that -- it could become highly contentious with
24 every -- with multiple operators and multiple issues.

25 So I think from an operational

1 standpoint, I would rather not have more decisions to
2 make -- as much fun as this hearing has been. I would
3 like to have -- you know, but reasonable minds may
4 differ on that. So I see where you guys are coming
5 from.

6 COMMISSIONER BLOOM: Mr. Chair, I mean,
7 that's -- if you'd permit me, that's a -- I think
8 that's a real -- and I noticed that Ms. Tripp has her
9 hand raised. But let me just finish. We didn't --
10 for example -- hear testimony about what level of --
11 what the volume of variance requests could be.

12 And then it could be a distraction, and
13 it could be something that's very common. And then
14 there has to be, you know, guidance put out on this
15 and what that looks like and forms put out and, you
16 know, maybe it's just, "Hey, P&A your well, and your
17 bond's released." So.

18 THE CHAIR: I think it would certainly
19 have more teeth if it didn't come with (A), and I just
20 didn't want to get -- I guess, that would be my
21 concern is whether or not this would end up having the
22 decision bogged down in these discretionary requests.

23 And I can see some operators taking a
24 OCD decision or an exercise of its discretion and
25 being okay with the decision. But I could also see

1 certain cases where that becomes a very contentious
2 and long process of trying to resolve that. And
3 having cases stuck in this in a dispute over whether
4 or not the -- and/or how the Division should exercise
5 discretion in this -- in that context. So did we --

6 Commissioner, did you want to go first?
7 Or do we want to hear from Ms. Tripp?

8 COMMISSIONER AMPOMAH: Okay.

9 THE CHAIR: Ms. Tripp, did you have
10 something procedural? Or?

11 MS. TRIPP: Yes. Thank you,
12 Commissioner. There was a -- I wasn't sure what order
13 we're proceeding. There is an IPANM alternative
14 proposed. It's on page 8 of that filing, I believe,
15 in your books. So to the extent that you're
16 considering similar language -- know if you were
17 moving through one and then the other. But I wanted
18 to point that out.

19 THE CHAIR: Thank you. Because I do
20 want to make sure we're not missing anything. Thank
21 you. Let me make sure we review that very quickly.
22 Appreciate it.

23 THE HEARING EXAMINER: Sorry -- just
24 the chair.

25 COMMISSIONER BLOOM: Okay. So we don't

1 have language here necessarily about variance but
2 rather this additional language of other state level
3 required financial assurance, et cetera, et cetera.
4 And then down at the end, like with NMOGA, we have
5 language that they suggest would prevent double
6 bonding, which would be our next discussion I believe.

7 So there's actually three different
8 proposals here. One for variance, one for other state
9 level required financial assurance, and then something
10 else related to double bonding. So, I guess, we can
11 take these in turn?

12 THE CHAIR: Sure. Sure. Let's take it
13 in turn, which how --

14 COMMISSIONER BLOOM: Perhaps we finish
15 our discussion of suggested variance language. And,
16 Mr. Chair, I hear your reticence here, and I move that
17 we do not adopt the additional NMOGA language.

18 COMMISSIONER AMPOMAH: So I have a
19 question.

20 THE CHAIR: Mm-hmm?

21 COMMISSIONER AMPOMAH: So let's say if
22 the well just tend to be a low producing well; right?
23 And the operator wants to plug that well. Well, let's
24 say there's OCD order, "You have to take care of
25 this," and the operator wants to use the money that

1 you're going to use to bond that \$150,000 to say that:
2 "Okay. I want to plug this well with it."

3 From what you are describing, I'm
4 giving you probably 12 months within that 12 months to
5 see if you plug the well. If you don't plug the well,
6 then you have to bond that well. Is that not what --
7 discretion that the industry is requesting here?

8 COMMISSIONER BLOOM: Dr. Ampomah, I
9 believe that is basically the discretion that NMOGA
10 was requesting. Yes.

11 COMMISSIONER AMPOMAH: And --

12 THE CHAIR: Without the 12 months, but
13 yes.

14 COMMISSIONER AMPOMAH: Yeah. Without
15 the 12 months. So don't you believe that if we put
16 that 12 months then -- well, they use near future --
17 we are taking out the near future and then making sure
18 that we have right timeline.

19 Because I do see this happening a lot
20 where you have a well not producing, you need to make
21 a decision whether to pay \$150,000 or you plug that
22 well for 150,000 as an operator. So it's something
23 that we should think about it.

24 THE CHAIR: Yes. No. I'm more than
25 happy to engage in this discussion. It just would

1 need to be a little bit more fleshed out, and I'm --
2 because I would have questions around well, what
3 happens in 12 months if that well does not in fact get
4 plugged? How do we enforce that?

5 What is the penalty if they've gotten
6 this -- if somebody chooses not to bond and comes back
7 every 12 months and says: "Oh. Yeah. I'll get to it
8 in the next 12 months." Or and remember we don't --
9 unfortunately, we don't necessarily have as many
10 inspectors and people who can go out to as many of the
11 wells as I would necessarily -- as many of us would
12 hope for.

13 So I know in the past, we've struggled
14 with settlement agreements that require specific
15 performance being hard to enforce when the specific
16 enforcement hasn't necessarily happened in the field.
17 So while I hear you -- and I think this is a
18 interesting point of contention -- I don't know if
19 that -- this whole concept was sufficiently developed
20 during the hearing, and ...

21 COMMISSIONER AMPOMAH: Yeah. We talked
22 about this because this one was more of one of the
23 exemptions that Industry was requesting for. So I'm
24 thinking that instead of saying near future, you just
25 put 12 months. So you don't go beyond that.

1 Well here they are saying that because
2 the operator is engaged plugging operations for that
3 well to be secure -- that is one. And then we can put
4 something there to really stop it right at 12 months.
5 So you cannot be coming back.

6 Because I do see from operator point of
7 view, this is a big deal because you are going to be
8 in that situation where you would have to make a
9 decision. Yeah. And you do not want to go -- because
10 here we have some stipulations where even one well in
11 a non-compliant state can put you in a really
12 difficult situation. So let's look at it carefully
13 and try and see if we can -- what's not best to make
14 it work.

15 COMMISSIONER BLOOM: Mr. Chair, I
16 also -- and Dr. Ampomah, I also -- the commissioners
17 who -- sorry -- the chair's concern that what would
18 happen if after 12 months that well's not bonded
19 then -- where we rule that out in the rule it, sort
20 of, unleashes a chain of edits to the rule. A lot of
21 which the parties haven't spoken to.

22 COMMISSIONER AMPOMAH: But remember
23 it's a discretion of OCD. So I do believe that OCD do
24 have the authority to more or less make some
25 determinations on that. But I'm not making it so

1 difficult, but I'm just trying to see if we can do
2 something about this.

3 THE CHAIR: It does assuage me a little
4 bit that the present tense is used in here. If we
5 were to go down -- if we were to adopt this, that it
6 is engaged. So the operator would have to be actively
7 engaged in cross plugging operations; right?

8 So it can't be something that is to be
9 in the future for that well to be secured. So that
10 does give me some level of pause. I just --

11 COMMISSIONER BLOOM: Mr. Chair --

12 THE CHAIR: I'm always a little weary
13 to give a party discretion that they didn't ask for.
14 But, please?

15 COMMISSIONER BLOOM: Maybe the language
16 could read for the Division exercises discretion and
17 waives its financial assurance requirement because the
18 operator is engaged in plugging operations for that
19 well to be secured, and the well must be plugged --
20 the well must be P&A'd within 12 months or bonded at
21 that time.

22 COMMISSIONER AMPOMAH: Exactly.

23 COMMISSIONER BLOOM: We give them 12
24 months. But I don't know if that answers your
25 questions about how many of these applications would

1 the OCD get. Would it become unwieldy -- nuisance?

2 THE CHAIR: And the standards under
3 which the Division would grant this -- or how the
4 Division exercises the discretion may become a
5 litigated issue as in how it makes these
6 determinations. But fair enough. I see your point as
7 to having some latitude here.

8 COMMISSIONER BLOOM: And, Mr. Chair, if
9 I might? I don't know if we'll finish before five
10 today. There's some of these things we could set
11 aside, think about, and return to.

12 THE CHAIR: Fair enough.

13 COMMISSIONER BLOOM: And sharpen up our
14 pencils and see if there's language we might come up
15 with in the next couple days.

16 THE CHAIR: Okay. I certainly
17 appreciate the thought that's being put into this, and
18 I can see where -- I think I would just need to think
19 about it a little. A little bit. But why don't we
20 tentatively -- I'll make a note that we are open to at
21 least the language on discretionary financial
22 assurance.

23 COMMISSIONER AMPOMAH: Okay.

24 THE CHAIR: And then there was a
25 different question though that we need to answer;

1 right?

2 COMMISSIONER BLOOM: There's two more.
3 We take this one, and then we can go back and look at
4 IPANM's as well. Yeah.

5 THE CHAIR: So the last line in green
6 is what we're looking at; right? Can somebody help me
7 interpret what this last green line is attempting to
8 do here -- (C) through (D)?

9 COMMISSIONER BLOOM: The goal at this
10 point is to make sure that -- per my reading of
11 NMOGA's intent here -- and IPANM, I believe, have the
12 same language. We can go look at that when we look at
13 their additional language. I would just -- would make
14 sure that wells only have to be bonded once.

15 So that if a couple of these categories
16 apply to a well, that the bonds don't stack and become
17 more than \$150,000 -- might end up with a well
18 requiring two bonds or something like that. I think
19 it's a preemptive fix of a potential problem.
20 Potentially. And if we're going to park something
21 else, I might park this and come back to it.

22 THE CHAIR: Okay.

23 COMMISSIONER BLOOM: But there could be
24 further discussion on -- if Dr. Ampomah has thoughts
25 on this?

1 COMMISSIONER AMPOMAH: No. I do agree
2 with you, Commissioner Bloom, on this.

3 COMMISSIONER BLOOM: Yeah. I would
4 like -- I looked at it previously, but I would like to
5 take one more crack at --

6 THE CHAIR: Reviewing it --

7 COMMISSIONER BLOOM: Reviewing it and
8 seeing how -- if there is possibility of potential for
9 bonds to stack and multiple bonds to be required.

10 THE CHAIR: Okay. Let's take a -- so
11 if we're going to park this then just the last -- and
12 we may park the IPANM proposals as well. But what
13 does the IPANM --

14 COMMISSIONER BLOOM: We're on page 8.

15 THE CHAIR: Three binders though.
16 Where's the third binder? Oh. It's on the floor.
17 Commissioner Ampomah?

18 COMMISSIONER AMPOMAH: Yeah. I would
19 say that this is similar to what NMOGA is proposing to
20 help prevent double bonding. So I think either one,
21 but I see NMOGA's one is more direct. So.

22 THE CHAIR: So that's the last proposed
23 and then this last alternative -- the last line --
24 line and a half that's -- is that exactly the same
25 in --

1 COMMISSIONER BLOOM: Yes -- here --
2 yes. Satisfaction of any one -- that's the same.

3 THE CHAIR: Okay. So that part's the
4 same. So now it just comes back to -- okay. All
5 right. So I think we've -- if we're parking both
6 these issues then we can come back.

7 COMMISSIONER BLOOM: I think we can
8 take a minute and look at that one. Just trying to
9 understand where that goes.

10 THE CHAIR: Okay.

11 COMMISSIONER BLOOM: This might be the
12 waiver again.

13 THE CHAIR: -- state level financial
14 required financial assurance. So other as in other
15 agency? As in hypothetically State Land Office? Or?

16 COMMISSIONER BLOOM: It says a waiver.
17 So it says "Or this requirement is waived at the
18 discretion of the Division for wells which are
19 approved to be plugged and abandoned are subject to
20 active plugging operations."

21 So it's another take at that. So we
22 could park that and come back to it if we're looking
23 to have this exemption variance for wells that are
24 nearing -- and, you know, I think some people would,
25 of course, P&A their wells and not want to pull the

1 bond ahead of time, but, I guess, we don't know.

2 THE CHAIR: Okay. All right. Well,
3 I'm going to reserve judgment and reserve a decision
4 on 19.15.8.9(A) as per the request of the
5 commissioners.

6 THE HEARING EXAMINER: Mr. Chair, you
7 then skip (B) and go to (C). In (C), Applicant's
8 propose replacing the current one-well financial
9 assurance based on well depth with a flat amount of
10 \$150,000.

11 This approximates -- doesn't quite meet
12 but approximates the current average cost for OCD to
13 plug a well. And Applicant's also propose replacing
14 the current tiered blanket bond amount based on the
15 number of wells with the flat amount set at the
16 statutory limit of \$250,000. IPANM did not propose a
17 separate language for 8.9(C), but NMOGA did.

18 MR. SHANDLER: -- two binder -- use one
19 of them for IPANM and use this one for --

20 THE HEARING EXAMINER: Should I keep
21 going? Oh. Okay.

22 NMOGA did, and the two major
23 differences here are that NMOGA's proposing \$75,000
24 per well or the 25,000 plus \$12 per foot. And also
25 instead of the blanket of \$250,000 to go back to a

1 little bit of the tier \$200,000 for one to five wells
2 and 250 for more than five wells. Those would be the
3 major challenges.

4 THE CHAIR: Okay.

5 Commissioners, did you want to comment
6 on that at all?

7 COMMISSIONER AMPOMAH: Yeah.

8 Mr. Chair, so on this issue, I was expecting that the
9 industry would have come in with experts because, I
10 mean, they've blocked more -- probably 90 percent --
11 more than that of the -- blocked in the state.

12 So I was expecting that -- should come
13 in with the experts showing us the numbers. You know,
14 this is how much it cost us to plug a well. I mean,
15 they've got that opportunity, and I don't think they
16 really followed through on that.

17 OCD on the other hand -- the applicant
18 on the other hand, they showed us evidence. You know,
19 they showed us -- telling us that even there are wells
20 that is probably 5,000 feet will cost probably
21 \$200,000 to plug that well. I mean, they showed us.
22 You know, I was sitting here.

23 I had some -- I thought that it has to
24 be tied to the well, but, I mean, they -- tied to the
25 depth. But they showed us with evidence that it's not

1 really the case. So on this one, I will vote with the
2 applicant and still keep that \$150,000 bond. Thank
3 you.

4 COMMISSIONER BLOOM: Mr. Chair, if
5 you'd permit me?

6 THE CHAIR: Please.

7 COMMISSIONER BLOOM: I would agree with
8 Dr. Ampomah on this, and the preponderance of the
9 evidence was OCD's testimony on this. The applicant's
10 talking about the average cost actually being
11 \$163,000 -- round it down to \$150,000 per well.

12 We heard testimony from OCD -- from
13 Mr. Powell that well depth is not actually a good
14 indicator of how much a well will cost to P&A. And
15 again, we heard ample testimony that Industry costs
16 will be lower because when Industry's plugging their
17 own wells and operators are plugging their own wells,
18 they're typically responsible operators.

19 And the ones with the OCD gets left
20 with -- and that the bonds actually end up covering --
21 are the orphaned wells and wells have been long time
22 inactive, TA'd, et cetera. So I believe that those
23 are the correct amounts. And we heard ample
24 discussion of that throughout the hearing.

25 THE CHAIR: Thank you, Commissioners.

1 You guys took the words right out of my mouth. I
2 think there is the -- it's pretty clear from the
3 record that the evidence here is much more robust
4 favoring a -- we have a record here to support the
5 numbers that the applicant's proposed.

6 And we don't really have anywhere near
7 as strong of a record to support a different number
8 here. The only debate in my mind is to -- would be
9 whether or not to accept 150,000 as opposed to 163,
10 which is what the evidence actually more strongly
11 favors than 150.

12 Please?

13 THE HEARING EXAMINER: I'm sorry.
14 Mr. Chair, one more thing. As I was reviewing it,
15 NMOGA also invites the Division to exercise their
16 discretion again here by allowing applicants to -- I
17 mean, operators to provide lots of documentation to
18 them to justify a different amount.

19 THE CHAIR: I'll let the commissioners
20 go first if they have thoughts, but I also have
21 thoughts on that.

22 COMMISSIONER BLOOM: Mr. Chair, go
23 ahead --

24 COMMISSIONER AMPOMAH: Mr. Chair, so
25 NMOGA and IPANM, they were presented with ample

1 opportunities to really push that -- you know, to push
2 this -- Number 2 -- what they are proposing -- like an
3 operator can propose a different one.

4 I mean, they had the ample opportunity
5 to really push that to the Commission. But I did not
6 have -- like, I did not -- in the records, I do not
7 recollect any discussions on this subject for an
8 alternative where an operator can really come in. I
9 mean, they had that opportunity. They've plugged all
10 these wells. They should have showed us the numbers,
11 you know, for us to compare. Thank you.

12 THE CHAIR: I take that point, and I
13 will add in addition to that point that these are
14 challenging decisions to make, and we've already spent
15 a lot of time here at this commission trying to make a
16 decision to make an individualized
17 operator-by-operator decision would be an
18 administrative -- would be administratively a
19 nightmare.

20 And I'm not sure that that's -- and I'm
21 also not sure that that the administrative burdens of
22 that was sufficiently -- or how that might work in
23 practice was sufficiently explored during the hearings
24 if we were to go down that route.

25 COMMISSIONER BLOOM: Mr. Chair, I agree

1 with you, and I also agree with Dr. Ampomah that we
2 did not hear I don't think any testimony related to
3 this. So I would reject NMOGA's suggested language
4 here in (2), and then I'll just leave it there for
5 now. But I was not moved by (3) either, so thank you.

6 MS. APODACA: And we do have a raised
7 hand on the platform.

8 THE CHAIR: I can't see who it is on
9 the platform.

10 MS. APODACA: Oh. I'm sorry. It's
11 Kyrie Buffa.

12 THE CHAIR: I will take -- you're
13 welcome to speak up.

14 MS. BUFFA: May it please the
15 Commission. Thank you so much. Kyrie Buffa on behalf
16 of the New Mexico Oil and Gas Association. I did just
17 want to note our findings of fact 54 through 62 on
18 pages 36 through 38 of our closing brief detail each
19 of the instances where we had an Industry expert
20 testify in support of a \$75,000 single well bond
21 amount.

22 And I just wanted to make sure I noted
23 that, and if I might be able to add some color as to
24 why we didn't include a protest --

25 MR. SHANDLER: So I'm going to

1 interrupt. I'm going to interrupt. I appreciate that
2 there's a lot of paper and there's a lot of different
3 numbers. But we now have all the paper, Sheila got
4 it. So we don't need any more comments from anyone in
5 the audience where anything is -- and certainly not
6 testimony giving color.

7 THE CHAIR: Thank you for -- thank you.
8 And I think we've -- to the extent that you were
9 orienting us to paper here, I think we've got that.
10 So thank you very much.

11 COMMISSIONER AMPOMAH: Mr. Chair, last
12 one. You know, so what NMOGA is proposing right here
13 is more like going to the depth tier system. And I
14 think there was a lot of evidence to really counter
15 that; right?

16 So irrespective of whether there was
17 75,000 and then let's say 25,000 plus -- or whatever
18 it is, I think the applicant and OCD presented
19 enormous amount of evidence to prove that their number
20 is what should be accepted. You know, I think that
21 was a centerpiece and even all the commissioners -- we
22 asked all NMOGA witnesses at IPANM, "How much does it
23 cost to plug your well?"

24 You know, so irrespective of all the
25 information that let's say we are going through here,

1 I do believe that the applicant presented an enormous
2 amount of evidence to prove that that 150,000 is more
3 or less the average number for OCD to plug wells that
4 they are responsible for. Not operator responsible
5 for.

6 COMMISSIONER BLOOM: Mr. Chair, I think
7 we heard from our counsel here, Mr. Shandler, that --
8 we won't have any more interventions here. But since
9 NMOGA got one in there under the wire, I did want to
10 look at 54 and 62. And, you know, it was, you know,
11 57 -- Expert McGowan testified that 70,000 is a
12 reasonable P&A cost -- 58, you know, Regulatory Expert
13 Arthur plugged wells for 40 to 60,000.

14 And then it, kind of, goes on to their
15 Representative Murphy said "Average P&A costs were
16 approximately 100 to 120,000." Mr. Armstrong said
17 "120,000." Mr. Purvis said "135,000 plus \$2 per
18 vertical foot" -- of course, that was an expert for
19 the applicants. But, you know, we see a range.

20 We saw -- I just think as Dr. Ampomah
21 said ample testimony about the \$150,000 figure.
22 Again, you know, we have this apples and oranges, you
23 know -- operator P&A'd wells are just different
24 creatures than something that's been sitting out in
25 the field of and orphaned for a decade or decades. So

1 just wanted to address that since it was raised.

2 THE CHAIR: Okay. So I was only
3 looking at 19.15.8.9 changes to 8.9(C), but feels like
4 the discussion here addresses (C) and -- well, all the
5 subsections in (D); am I correct?

6 THE HEARING EXAMINER: Well, so (D) and
7 (E) are the two new financial assurance categories.
8 (D) refers to what used to be called marginal wells --
9 now low producing. Didn't want to hurt their
10 feelings, I guess. And (E) is related to the
11 high-risk portfolio -- that is to say the number of
12 inactive wells or TA wells.

13 As you'll certainly remember, there's a
14 flat amount for financial assurance for \$150,000. I'm
15 referring now to (D) specifically. The applicant's
16 proposal removes low producing wells from the blanket
17 bond financial assurance because they are high risk.

18 You'll remember that Industry argued
19 that carving out low producing wells exceeded the
20 Commission's authority, that low producing wells still
21 have plenty of potential, and operators of low
22 producing wells should not be driven to plug them,
23 which might result in waste.

24 As a result of the post-hearing
25 negotiations, there were some changes in the

1 applicant's original proposal, which included
2 providing a variance when there's a physical
3 impediment -- limiting the well's midstream takeaway
4 capacity. They also delayed implementation of the
5 financial assurance for low producing wells until May
6 1, 2029.

7 THE CHAIR: Okay.

8 Commissioners, do you want to go
9 through this like (C), (D), (D)(1), (D)(2)? Or would
10 you like to do this as a package? How would you like
11 to debate or review these sections?

12 COMMISSIONER AMPOMAH: Now, on the
13 (D) -- as we've discussed this extensively -- I think
14 the (C), we are in agreement that -- or probably
15 leaning towards approving what the applicant is
16 presenting to us. Now, under (D), I think it's still
17 the same thing. NMOGA wants us to go back to -- or
18 more or less change the 150 to 75, which I think we
19 did not agree to that.

20 COMMISSIONER BLOOM: Dr. Ampomah?

21 COMMISSIONER AMPOMAH: Yes, sir?

22 COMMISSIONER BLOOM: If you'd permit
23 me, perhaps we would just to take a minute to have a
24 motion to approve (C) as per the applicant -- or the
25 joint stipulation, and then and then we'd move to (D)?

1 COMMISSIONER AMPOMAH: Okay.

2 COMMISSIONER BLOOM: If we're ready for
3 that?

4 Mr. Chair, I move to approve Section
5 (C) of the joint application.

6 COMMISSIONER AMPOMAH: Seconded.

7 THE CHAIR: Any objections from
8 commissioners?

9 Without opposition, we will approve and
10 adopt the language from the final -- or the -- yeah.
11 The applicant's language for subsection (C) here.

12 Okay. Then onto subsection (D).

13 THE HEARING EXAMINER: Sorry. That was
14 my fault. So the alternative language that you have
15 for (D) includes both IPANM and NMOGA.

16 COMMISSIONER BLOOM: Yes. And a couple
17 things that stand out to me here in (D)(1) we have --
18 well, getting into (D), low producing, I'm fine with
19 getting rid of "marginal" and going into "low
20 producing." But at the end of (D)(1) here we have
21 NMOGA and, I believe, also IPANM wanting to strike
22 one-well plugging financial assurance.

23 And I think that this resolves in
24 (D)(4), where we have "An operator may furnish all
25 necessary one-well plugging financial assurance in the

1 form of a single instrument." So I wouldn't call that
2 a blanket financial assurance because we're already
3 using that term elsewhere, but -- it's, like, a
4 multi-well financial assurance. So I think I would
5 support leaving in one-well on (D)(1).

6 THE CHAIR: Right. So you support the
7 language as proposed in the applicant's post-hearing
8 proposed amendments; correct?

9 COMMISSIONER BLOOM: Yes. And looking
10 at NMOGA's language there as well. And they have --
11 again, different -- in (D)(1). Their (D)(1) would
12 offer different costs -- \$75,000 or \$25,000 plus
13 12,000 per foot. So again, based on what we heard, I
14 would not support those. I need to look at the IPANM
15 here as well. Yeah.

16 And IPANM changed the language to
17 say -- that is "Substantially out of compliance,"
18 which is different as, I think, "substantial" is too
19 broad and too baggy and too uncertain -- cause issues
20 and wouldn't support that -- 150,000 is struck to be
21 become reasonably sufficient. Again, I think we've
22 agreed that the \$150,000 figure is the correct one.

23 THE CHAIR: Mm-hmm.

24 COMMISSIONER BLOOM: There's new
25 language at the end that we should probably discuss

1 separately. "This provision shall apply to all other
2 transferee operators 12 months from their effective
3 date of amendment."

4 COMMISSIONER AMPOMAH: Mr. Chair, I
5 concur with Commissioner Bloom on the Number 1. Thank
6 you.

7 THE CHAIR: Yes. I also concur with --
8 yes. I think the record better supports the language
9 as originally -- as proposed by this joint
10 stipulation. For (D) and (D)(1), do we have any other
11 discussions on -- would you like to review (D)(2) as
12 well and accept them as a package? Or would you like
13 to deliberate separately?

14 COMMISSIONER BLOOM: So (D)(1), there's
15 IPANM language here -- a little bit different, which
16 is that "This Division shall apply to all other
17 transferee operators 12 months from the effective date
18 of amendment."

19 I'm wondering if that conflicts with
20 transfer of well operator later on, or I thought that
21 wells had to be bonded immediately upon change of
22 operator. So I would not be in support of that. As
23 we go down later, if we see that that's not the case,
24 we can come back and look at that. But I think at
25 this point, no I would not support that.

1 THE CHAIR: Okay. But you support the
2 language then as proposed?

3 COMMISSIONER BLOOM: In the joint
4 stipulation.

5 THE CHAIR: In the joint stipulation?

6 COMMISSIONER BLOOM: Yes. For (D)(1).
7 Absolutely.

8 THE CHAIR: Okay. And so in that case,
9 would you like to move to approve the language
10 proposed for (D) and (D)(1) together?

11 COMMISSIONER BLOOM: Or you can keep --

12 THE CHAIR: Or do you want -- yeah.

13 All the subsections for (D) as a whole?

14 COMMISSIONER BLOOM: Yeah.

15 THE CHAIR: Sure. Okay.

16 COMMISSIONER BLOOM: So then, you know,
17 the next thing we see here is (D)(2) currently, and
18 the joint stipulation has a start date of May 1st and
19 the -- IPANM and NMOGA both say June 1st. June 1st.
20 And I don't know if that month is significant in any
21 way other than just giving someone an extra month. I
22 don't know how that reverberates throughout the rule.
23 I don't know if anyone else does?

24 THE CHAIR: And it comes up twice;
25 right? So let me -- can I --

1 COMMISSIONER BLOOM: I think it comes
2 up quite a bit later on as well.

3 THE CHAIR: Yeah. Well, just in this
4 section in -- June.

5 COMMISSIONER AMPOMAH: Yeah. Yeah.
6 Commissioner Bloom, so on this one, if you recall it
7 was January 1, 2028. And we had a lot of back and
8 forth on this matter. I mean, it was agreed that to
9 give OCD more flexibility because even January then
10 you are getting into session and legislative session.
11 And so I would still agree to the May 1, 2029. I
12 think that was what was discussed extensively, even if
13 that was even 2028, and even they moved it to 2029.

14 So I'm not sure of the June 1 -- how
15 different that is, you know, and no evidence was
16 presented to that. So I will more or less agree to
17 what has been discussed by all parties and then agreed
18 on here.

19 THE CHAIR: The only thing I can think
20 of for June 1st versus May, is that it's -- aligns
21 with the state -- state fiscal year. For purposes of
22 reporting, that could make it slightly easier. So I
23 don't have a dog in that fight though. I take
24 Commission Counsel's caution that we try not to
25 wordsmith too much.

1 So I don't have a strong feeling either
2 way other than that June 1st could make reporting
3 easier on a calendar -- on a fiscal year basis as it
4 aligns with the state's fiscal year. But I have no
5 prejudice against the month of May either.

6 COMMISSIONER AMPOMAH: But that one is
7 highlighted in green.

8 COMMISSIONER BLOOM: Is it?

9 COMMISSIONER AMPOMAH: Yeah. So
10 definitely it was discussed between all the parties,
11 and they all agreed to that.

12 COMMISSIONER BLOOM: You mean it's
13 highlighted in blue?

14 COMMISSIONER AMPOMAH: Blue. Yeah.
15 It's my eyes --

16 COMMISSIONER BLOOM: -- okay. I think
17 we can stay with May 1st. It sounds like there's a
18 consensus around that. And then IPANM goes on to
19 suggest that the assurance be in an amount reasonably
20 sufficient to plug the well.

21 I would not be supportive of that
22 language because it gets us away from the just
23 straight up \$150,000 and puts the OCD in a position
24 where it would have to determine bond amounts for
25 every single well. And then NMOGA --

1 THE CHAIR: Concur.

2 COMMISSIONER BLOOM: NMOGA also
3 proposes alternate prices or levels -- \$75,000, et
4 cetera, et cetera. So for the same reasons as (D)(1),
5 I would oppose that, and they want to bring back the
6 one-well language, which I don't believe we need. So
7 I would move -- I would support (D)(2) as it appears
8 in the joint stipulation and the applicant's
9 Exhibit --

10 THE CHAIR: Okay. Any further debate
11 on (D)(2) before we move to (D)(3)?

12 COMMISSIONER AMPOMAH: No. Thank you.

13 THE CHAIR: All right. Commissioner is
14 on (D)(3).

15 COMMISSIONER AMPOMAH: I remember we
16 discussed this extensively.

17 And, Commissioner Bloom, if you
18 remember we were talking about what are some of the
19 options that we can discuss -- more or less to --
20 protect the operator? You know, and I'm glad, you
21 know.

22 I was very happy to see that all the
23 parties were able to negotiate the three to really --
24 more or less -- take into consideration any unforeseen
25 events that the operator do not really have a lot of

1 control. So I do support the Number 3 that all the
2 parties have worked hard to really come up with.

3 THE CHAIR: Yes. The joint stipulated
4 language appears to have broader support than the
5 other options in front of us.

6 COMMISSIONER BLOOM: I agree. Now, I
7 think the continuation of this is there's a refinement
8 of the nature of the variance that looks to be similar
9 language between NMOGA and IPANM, which goes on to
10 elaborate what some of these reasons could be. And we
11 have that language in front of us here. I'm not going
12 to read it all.

13 COMMISSIONER AMPOMAH: So just to be
14 sure, is NMOGA -- what NMOGA has proposed -- in
15 addition to this? To the joint stipulated language?
16 Or?

17 COMMISSIONER BLOOM: Yes.

18 THE HEARING EXAMINER: Yes.

19 COMMISSIONER BLOOM: This would be in
20 addition. So this would be added.

21 COMMISSIONER AMPOMAH: Oh. Okay.

22 THE HEARING EXAMINER: It's in green
23 font on there.

24 COMMISSIONER AMPOMAH: Yeah.

25 THE HEARING EXAMINER: Yeah.

1 Exhibit --

2 COMMISSIONER BLOOM: Yeah.

3 COMMISSIONER AMPOMAH: Yeah. So I do
4 see it right here just to be sure.

5 THE HEARING EXAMINER: Yeah.

6 COMMISSIONER AMPOMAH: Yeah. I believe
7 that, you know, the way they crafted the joint
8 stipulation covers all the examples that NMOGA is
9 proposing here because it is on the operator to really
10 demonstrate to OCD.

11 So I believe that a joint stipulation
12 is much broader than -- more or less -- going forward
13 with let's say all the detailed language that NMOGA
14 has presented. I believe that a joint stipulation
15 still serves the same purpose as what NMOGA is
16 proposing.

17 THE HEARING EXAMINER: Commissioner
18 Ampomah, I would only note that NMOGA adds an
19 explanation in green -- what do they call it?
20 Emphasis language -- that they suggest that the lack
21 of takeaway capacity variance should also apply to
22 transportation constraints.

23 COMMISSIONER AMPOMAH: Okay.

24 THE HEARING EXAMINER: That was
25 something they covered on the transcript, but that's

1 not what was stipulated to.

2 COMMISSIONER BLOOM: So as I look at
3 these -- these are things that we deal with in the
4 course of our work at the Land Office as well, and I
5 don't really -- I don't believe I would have any
6 issues with (B) through (G). Well, (B) through (F).

7 But (G) is, you know, "An exception
8 would be allowed for otherwise permitted by the
9 provisions of the subject lease or approved by the
10 SLO, BLM, or other governmental agency." That's a
11 pretty big -- that could be a pretty big hole. Age is
12 financial capability based on well economics --
13 operational plans.

14 So, you know, getting an exemption to
15 have a bond because the well economics aren't there
16 means your well's not producing enough and doesn't
17 need to be bonded. I think that's a giant hole. (I)
18 is interesting. "No current market or the only market
19 would require selling at a loss, which constitutes
20 waste." That might make sense. Of course people can
21 request to shut in.

22 Any thoughts, Commissioners?

23 THE CHAIR: I agree with your concerns
24 about the loopholes being too -- potentially being
25 wider than intended or acceptable. And also I go back

1 to the fact that there's a wider range of -- broader
2 range of support amongst the parties for the language
3 from the joint stipulation.

4 COMMISSIONER BLOOM: Perhaps a question
5 for our Hearing Examiner or Mr. Shandler, you know,
6 this is new language. I don't believe we dealt with
7 this in the course of the hearing, and yet in what we
8 did have -- (3) -- was the product of at least
9 negotiations between the parties with OCD input.

10 And for example, I don't know if OCD
11 has read this, what they think about this, we haven't
12 heard testimony on it. So perhaps for those
13 reasons -- I don't know if either Mr. Shandler or the
14 Hearing Officer would like to weigh in at all?

15 THE HEARING EXAMINER: So I can
16 certainly look again through the proposed findings
17 submitted by NMOGA. My memory of the discussion
18 though was that NMOGA was inclined to seek exceptions
19 for how -- how can I put this? A much a broader
20 category of force majeure or circumstances that might
21 be characterized as force majeure.

22 COMMISSIONER AMPOMAH: And I do believe
23 that the joint stipulation is very broad, you know,
24 and I believe that it can cover most of the things
25 that NMOGA has presented here. So I'm not sure if

1 it's duplicative if we are adding this to that, or --
2 the way NMOGA put it, they did not really touch on all
3 the joint stipulation in the session. So it's a
4 little bit difficult to see which one they do accept,
5 and which one they do not.

6 COMMISSIONER BLOOM: This was one of my
7 concerns that I mentioned was I wish that -- I stated
8 this, I think, a number of times during the hearing.
9 I didn't necessarily expect the parties to work
10 together and collaborate, but I was disappointed that
11 I didn't see other suggestions from IPANM and NMOGA.
12 And, you know, now here we are in final deliberations,
13 and we're looking at this.

14 THE CHAIR: Well, and if I can point
15 back to the table reflecting the negotiated outcomes
16 in the joint stipulation, I will point out that while
17 NMOGA does offer modifications for our consideration,
18 it is noted that they do accept it.

19 They do accept the joint stipulated
20 proposed language with the fact that they are making
21 suggested modifications. So I think the record will
22 show that there is more -- that the joint stipulated
23 language for (D)(3) has been more thoroughly vetted
24 and discussed amongst the parties than other proposals
25 in front of us.

1 And that there would be more
2 substantial parties' support -- or at least less party
3 opposition amongst the parties and a stronger record
4 to support the language in the joint stipulation.

5 COMMISSIONER BLOOM: Mr. Chair, I could
6 agree with that.

7 THE CHAIR: Okay. Having debated
8 subsections (D) and then within (D), (D)(1), (D)(2),
9 and (D)(3), is there any further debate on this? If
10 not, would somebody like to propose that we accept
11 the --

12 COMMISSIONER BLOOM: Oh. But wait.
13 There's (D)(4).

14 COMMISSIONER AMPOMAH: (D)(4).

15 THE CHAIR: Oh. I apologize.

16 COMMISSIONER BLOOM: There's more.
17 (D)(4).

18 THE CHAIR: Oh. Wait. There's more.
19 Okay. (D)(4). I apologize.

20 COMMISSIONER BLOOM: We have a number
21 of (D)(4)s here.

22 COMMISSIONER AMPOMAH: Two of them.

23 COMMISSIONER BLOOM: Yeah. The
24 applicants in the joint stipulation have (D)(4) "And
25 the operator may furnish all necessary one-well

1 plugging financial assurance in the form of a single
2 instrument." Now, NMOGA, I think, got at that by
3 striking the one-well references throughout this
4 section, but we've left those in. NMOGA has a
5 different (D)(4), which --

6 Thank you. Good save -- get hurt by a
7 binder collapse up here before the end of the day.
8 Okay. So NMOGA's proposed (D)(4) which says "Upon
9 receipt of an operator's written variance
10 request." So this could be, like, a (D)(5) or
11 something like that.

12 "Upon receipt of an operator's written
13 variance request, the individual shall have 30 days to
14 accept or deny the operator's variance. The Division
15 denies the variance, the operator shall have 30 days
16 in which to file a request for hearing. Normal appeal
17 and hearing procedures apply, and any such hearing
18 shall be conducted pursuant to the procedures for the
19 adjudicatory proceedings in 19.15.4 NMAC."

20 So this might offer some clarity on how
21 a variance request is handled. And this is pretty
22 standard language, you know, throughout NMAC, and I
23 remember working with this and doing -- hearings back
24 in the day.

25 THE CHAIR: Are you considering

1 adopting both? So as an -- instead of an alternative
2 between the two?

3 COMMISSIONER BLOOM: Yeah --

4 THE CHAIR: Subsection (4)s that we
5 adopt both?

6 COMMISSIONER BLOOM: That's right. I
7 think we should consider NMOGA's (D)(4) as a potential
8 (D)(5) -- at least have that conversation. And IPANM
9 does not have additional language on this, so
10 clarifying.

11 COMMISSIONER AMPOMAH: Commissioner
12 Bloom, that has to still be Number 4; right? Because
13 if you look at NMOGA new Number 5, that is the Number
14 4 for all the other ones, and that is more like the
15 climax of all of it. So I think --

16 COMMISSIONER BLOOM: You are correct.

17 COMMISSIONER AMPOMAH: Yeah. That has
18 to still be (5). I do not have any problem adapting
19 NMOGA's Number 4, like you're saying standard
20 language, and it clarifies even the joint stipulation.
21 So.

22 COMMISSIONER BLOOM: Mr. Chair, I don't
23 know if this is something you want to reflect on
24 further. We could pin it. But, you know, this says
25 that "The operators will have 30 days in which to file

1 a request for hearing."

2 And then "In front of the Division,"
3 and, you know, I just don't, I guess -- you know,
4 what, sort of, administrative burden is accompanied by
5 this, but I don't know that (4) creates any more of a
6 burden, you know. We've already done that
7 potentially. And (3) -- sure. We've created the
8 variance, so how does the variance get worked through?
9 This is probably a good attempt at it.

10 THE CHAIR: As written, it's unclear to
11 me what happens if the Division fails to make a
12 decision within 30 days. And it doesn't -- it's
13 neither a deem, accept, or denial. It's a vague
14 language. Let's put a pin in that. I just want to
15 make sure that I can sort through and find substantial
16 evidence to support adopting this if we go that route.

17 COMMISSIONER BLOOM: Yes. And I
18 actually thought of that as well. But we might say
19 for example, you know, no notification means that it
20 was denied, and the Division -- you know, that the
21 operators will have 30 days to file a request hearing.
22 So.

23 THE CHAIR: Right.

24 COMMISSIONER BLOOM: So we could fix it
25 that way. I don't know that we're going to see

1 support for this in the record. I think it's just
2 come up now in a sense. But it does -- would give OCD
3 clear guidance on how to handle a variance request.

4 Whereas currently, I would imagine that
5 these, sort of, 30-day timelines would exist --
6 similar to other things, but I don't know if there's
7 somewhere else in the statute that's a catchall for
8 how the variance is determined. Typically, I think
9 that each section has its own variance.

10 THE HEARING EXAMINER: Commissioner
11 Bloom, if I might? I've been looking at NMOGA's
12 proposed findings and conclusions from 69 to 76, which
13 addresses the force majeure language of above when
14 you're applying for a variance.

15 And I'm reminded that in the joint
16 stipulation, the OCD did agree to create a guidance
17 document confirming that low producing well variances
18 are determined annually at the same time as low
19 producing well status determinations are made. And
20 that those variances continue for one year but not
21 indefinitely.

22 So the joint stipulation did include
23 that language aside from the language that you see in
24 the rule. And I'm not seeing -- for example, in
25 proposed finding 75 that there is a reference to

1 testimony supporting the variance language around 30
2 days to accept or deny.

3 COMMISSIONER BLOOM: Oh. I'm sorry.
4 Would you say that last part again? You did or
5 didn't?

6 THE HEARING EXAMINER: And so it's on
7 page 40 of NMOGA's closing brief with proposed
8 findings and conclusions. I'm looking at page -- I
9 was looking all the way back to findings of fact 69
10 where they're talking about force majeure and how much
11 more broadly they would read that than the other
12 parties.

13 You know, a lot of which is repeated in
14 this green font here in their post-hearing amendments
15 document. So there's duplication there, but then in
16 proposed finding 75 it says "NMOGA also proposes a
17 procedure for protesting variance determinations as
18 shown in closing Exhibit 3."

19 I don't see a reference there to
20 testimony supporting that statement. Above, you know,
21 they refer to the discussion that was had between
22 Commissioner Bloom and the witnesses about force
23 majeure. But that's all.

24 THE CHAIR: May I propose to
25 commissioners that we put a pin in (D)(4) alongside

1 the other provisions that we put a pin in earlier to
2 have the night to review in more detail. And may I
3 suggest that for now we approve the changes in (D) --
4 or from the beginning of (D) through (D)(3) and
5 reserve judgment on (D)(4)? Or at least revisit
6 tomorrow?

7 COMMISSIONER BLOOM: Mr. Chair, I would
8 so move.

9 COMMISSIONER AMPOMAH: Mr. Chair, I
10 second.

11 THE CHAIR: Any opposition from
12 commissioners?

13 So without opposition, so decided on
14 (D) through (D)(3) with (D)(4) to be reviewed
15 tomorrow.

16 Moving on to --

17 COMMISSIONER AMPOMAH: Mr. Chair, what
18 about the new (D)? The original (D)(4) now (D)(5)
19 from NMOGA?

20 THE CHAIR: Let's review all of that
21 together. So (D)(4) and (5). So everything after
22 (D)(3), we can review tomorrow together.

23 COMMISSIONER AMPOMAH: But I thought
24 that one was very simple; right?

25 THE CHAIR: Oh. Sure. Okay. If you

1 would like to? Sure.

2 COMMISSIONER AMPOMAH: Yeah. Because
3 as an operator may furnish all necessary one-well
4 plugging -- NMOGA just strike out one-well. And based
5 on our previous agreements, I think we will not -- I
6 will not agree to the striking of one-well.

7 THE CHAIR: Oh. Sure. Okay.

8 THE HEARING EXAMINER: This is the
9 single instrument statement.

10 THE CHAIR: Yeah. And just to clarify,
11 you're proposing that we accept the language as
12 drafted in the joint stipulation then?

13 COMMISSIONER AMPOMAH: Yes.

14 THE CHAIR: Okay.
15 Commissioner Bloom?

16 COMMISSIONER BLOOM: Yes.

17 THE CHAIR: Okay. Any opposition?

18 Hearing no opposition from
19 commissioners -- the numbering's going to be
20 complicated, but that provision was just discussed is
21 accepted by the Commission.

22 Okay. So now, am I missing anything
23 else if I move on to NMAC 19.15.8.9(E)? Or -- if not,
24 I invite commissioners on any debate.

25 COMMISSIONER BLOOM: Mr. Chair, I would

1 note that originally this, I believe, was a 15 percent
2 threshold. It was moved to 20 percent after
3 negotiations between the parties. And I'll take a
4 look and see if there's any alternative language
5 suggested by IPANM or NMOGA. And there is.

6 THE CHAIR: -- just E. Is there any?

7 COMMISSIONER BLOOM: Oh. For (E)? No.

8 THE CHAIR: Okay.

9 COMMISSIONER BLOOM: No. So, I guess,
10 we could go -- perhaps move to (E)(1).

11 THE CHAIR: Okay.

12 COMMISSIONER BLOOM: And on (E)(1), I
13 think we've covered this terrain already. We're faced
14 with the choice of the May 1 date or the June 1 date.
15 We elected May 1st. And then also there's the
16 one-well strike out which we have previously denied.

17 And then the amount would change from
18 150,000 to reasonably sufficient to plug the well
19 covered by financial assurance which would leave OCD
20 in that position of having to determine the adequate
21 bond for each well -- which we had decided against.
22 So let me take a look at NMOGA -- anybody else has
23 comments?

24 THE CHAIR: If I recall correctly, we
25 had -- on the question of -- I mean, we've already

1 decided that 150K is going to be administratively far
2 more efficient. But I believe there was a witness on
3 behalf of -- I can't recall whether it was IPANM or
4 NMOGA.

5 But there was an economist who agreed
6 with me on the witness stand that trying to figure the
7 appropriate bonding on a well-by-well basis -- the
8 transaction costs of that is -- would outweigh the
9 benefit.

10 COMMISSIONER BLOOM: I think that's an
11 important addition. And of course we have discussed
12 multiple times now, sort of, the apples and oranges
13 nature of the cost of P&A for a well.

14 I've looked at NMOGA's language also
15 here and while a little bit different from IPANM's,
16 again it would abandon the \$150,000 bonding amount for
17 the \$75,000 plus X amount per foot or something along
18 those lines. So again, something we've seen and
19 rejected, and then also the one-well language and the
20 June language, which we have previously rejected.

21 THE CHAIR: And I believe the same
22 comments around the one-well -- I mean, that applies
23 to (E)(2) as well; right?

24 COMMISSIONER BLOOM: Yes. But IPANM
25 has some additional language there also. They put in

1 a million-dollar cap. Maybe we should finish with one
2 first and see if we want to adopt that or if there's
3 any further discussion on it -- together.

4 THE CHAIR: I do not have further
5 comments on (E)(1).

6 But, Dr. Ampomah?

7 COMMISSIONER AMPOMAH: No. I do not.
8 Thank you.

9 THE CHAIR: Okay. (E)(2) then?

10 COMMISSIONER BLOOM: So on (E)(2),
11 NMOGA proposes striking one-well, which we have
12 denied. And -- IPANM says that -- would it add the
13 additional language "Any operator whose total plugging
14 financial assurance for active oil and gas wells
15 whether required under subpart (C), (D), (E) herein
16 will exceed 1 million as of June 1, 2029, may apply
17 for a variance pursuant to subpart (D)(3)."

18 Or the alternative "Contribute
19 3 percent of additional financial assurance required
20 under subparts (D) and (E) annually to the reclamation
21 fund." So this would certainly lower the impact on
22 oil and gas operators, but there -- and then there
23 could be variances after a million dollars or
24 contributions to the reclamation fund.

25 You know, it's my recollection we did

1 not discuss that sort of proposal. I don't know if
2 I've seen that language before. I didn't see it in my
3 preparations. I could be wrong. But in general, I
4 would not be supportive of that as it really
5 undermines the vast bulk of the applicant's proposal
6 in the joint stipulation.

7 THE CHAIR: Okay.

8 Commissioner Ampomah, any thoughts?

9 COMMISSIONER AMPOMAH: Commissioner
10 Bloom, so did you read like the -- (E)(2)? Was that
11 what you just read? (E)(2)?

12 COMMISSIONER BLOOM: Yes. That was
13 IPANM's suggested addition to (E)(2). Can pass this
14 down for you --

15 THE CHAIR: Right here; right?

16 COMMISSIONER BLOOM: Yeah.

17 THE HEARING EXAMINER: Is still --
18 IPANM --

19 THE CHAIR: I think for my part I
20 concur. Would you want -- mind reiterating?

21 COMMISSIONER BLOOM: Sure. And perhaps
22 we'll take a three o'clock break for a cup of coffee
23 and maybe a bathroom break. I'm starting to slur my
24 words up here, Mr. Chair. So IPANM's suggested
25 additional language here --

1 THE CHAIR: Yes.

2 COMMISSIONER BLOOM: -- would
3 essentially allow for a variance if someone's bonds
4 went over \$1 million total as of June 1, 2029. Or
5 alternatively, that operator could contribute
6 3 percent of the additional financial assurance
7 acquired for subparts (D) and (E) annually to the
8 reclamation fund.

9 THE CHAIR: Yeah.

10 COMMISSIONER BLOOM: To me, that's a
11 new proposal. I did not recall that being discussed
12 at all or at length or hearing testimony on that. It
13 really creates a new approach to bonding that's very
14 different from where the applicants were going and
15 what we see within the joint stipulation. And so for
16 those reasons, I would deny that language. I think we
17 have more support -- good support for the applicant's
18 joint stipulation.

19 THE CHAIR: I agree. Thank you.

20 THE HEARING EXAMINER: Mr. Chair, I
21 could offer from the findings and conclusions -- other
22 than from IPANM -- that by negotiating from 15 percent
23 to 20 percent of the portfolio, that provision would
24 apply to 13 percent of the wells in the state.

25 THE CHAIR: Okay. I think --

1 COMMISSIONER BLOOM: Oh. I was going
2 to say thank you, Ms. Orth, for that.

3 Right. So when we go from 15 to
4 20 percent, less wells are included. It gives folks a
5 little more breathing room if they have more wells
6 that are in those categories. Yes.

7 THE CHAIR: Yes. And I think your --
8 Commissioner Bloom, your point as to what has broader
9 support amongst the other parties, looking at (E), the
10 language here in the joint stipulation that every
11 party -- including NMOGA and IPANM -- got to discuss
12 it.

13 I'm seeing that all parties would be
14 able to accept even reserving the -- with all the
15 reservations and whatnot taken into account. So I
16 think your point that the language in the joint
17 stipulation would have had more vetting and would have
18 broader support amongst the parties in front of us
19 today stands.

20 COMMISSIONER AMPOMAH: I agree. Thank
21 you.

22 THE CHAIR: Okay. Any further debate
23 on subsection (E)?

24 COMMISSIONER BLOOM: No. Mr. Chair, I
25 would move to adopt the language that we see in the

1 applicant's joint stipulation.

2 THE CHAIR: For subsection (E)?

3 COMMISSIONER AMPOMAH: I support.

4 THE CHAIR: Yes.

5 COMMISSIONER AMPOMAH: Yeah.

6 THE CHAIR: Great. Any objections?

7 Without opposition from commissioners,
8 so adopted for subsection (E).

9 Okay. Let me look at real quick at
10 the -- do you want to finish this NMAC before we take
11 a break? Or?

12 COMMISSIONER BLOOM: Maybe we look at
13 (F), which is a little bit similar, and then we take a
14 break before 8(G) and (H), which are -- I think we can
15 do (G). But to take a break before (H), which gets
16 into Consumer Price Index.

17 THE CHAIR: Okay. 19.15.8.9(F).
18 Debate? Thoughts, commissioners?

19 COMMISSIONER AMPOMAH: Mr. Chair, so
20 here, NMOGA is proposing that we strike out so
21 inactive wells, so we have -- wells in approved and
22 expired or approved temporarily abandoned status for
23 more than two years.

24 We discussed this extensively, and I
25 tend to agree with NMOGA because I'm wondering why a

1 well that is in a approved status -- you know, that
2 two years more or less give them that room to be able
3 to more or less put that well to a beneficial use.

4 So why should we more or less bond that
5 well at a very high amount? So I will -- I'm leaning
6 towards striking the approved wells and then keeping
7 the expired. So that will be my comment for now.

8 THE CHAIR: Commissioner Bloom, any
9 thoughts?

10 COMMISSIONER BLOOM: Dr. Ampomah, could
11 you explain to me again the difference? So between
12 these two? Starting to look like a word salad, and
13 I'm just at that point. So we have in the applicant's
14 petition was for it to read "Inactive wells and wells
15 in approved and expired TA status," but then NMOGA
16 would suggest "Wells in expired or approved." It
17 seems like they're just reversing the words.

18 THE CHAIR: One says --

19 COMMISSIONER AMPOMAH: Not really.

20 COMMISSIONER BLOOM: So I think the
21 difference; right? Is that they're adding more than
22 two years.

23 COMMISSIONER AMPOMAH: So essentially,
24 they are seeing that they approved temporarily
25 abandoned wells. The approved ones you have to give

1 them two years before you ask them to provide the new
2 bonding.

3 COMMISSIONER BLOOM: Yeah. Okay.
4 Okay. Let me digest that. So am I right that the
5 wells in TA status -- the first five years they're
6 exempt from the bond coverage; correct? And then
7 there's another two-year period and another two-year
8 extension?

9 COMMISSIONER AMPOMAH: I probably need
10 some recollection on that.

11 COMMISSIONER BLOOM: Yeah.

12 COMMISSIONER AMPOMAH: But essentially,
13 what this provision -- the applicant wants all wells
14 in TA status to be bonded same as expired -- putting
15 them at 250,000.

16 COMMISSIONER BLOOM: So I think what
17 this gets back to is that conversation we had
18 originally that goes back to Mr. Rankin's Rainbow.
19 The last sentence there that says -- just have to go
20 back to that.

21 70-2-14, the last sentence says "The
22 Oil Conservation Division shall require a one-well
23 financial assurance on any well that has been held in
24 temporary abandoned status for more than two years."
25 And what the -- have proposed is actually requiring

1 that without that two-year exemption.

2 COMMISSIONER AMPOMAH: Exactly.

3 Exactly.

4 COMMISSIONER BLOOM: And so that --
5 this actually ties back in here as well. And I think
6 we said at the beginning we were supportive of
7 creating a new category where -- a new category of
8 bond, which is one that requires a one-well financial
9 assurance. Even in the beginning of that time -- I
10 don't know if Mr. Chair wanted to weigh in on this.
11 It could all be -- also be something we come back to.
12 Just going through these things one more time.

13 THE CHAIR: Sure. I prefer the joint
14 stipulated language here because again, for -- again,
15 there's broader support; right? Because NMOGA --
16 despite proposing an alternative, NMOGA and IPANM both
17 say that they are able to live with -- even if they
18 don't like it. But they are able to live with the
19 negotiated stipulated language.

20 Temporary abandonment is also fairly
21 easy to get, and that's -- from my perspective, it
22 appears to me that temporarily abandoned wells can
23 nevertheless remain risky of being fully abandoned.
24 And they are lower producing wells by -- you know,
25 practically by definition. So I don't know that there

1 has been sufficient evidence in the record that would
2 convince me to adopt the alternative -- I think it's
3 NMOGA's.

4 COMMISSIONER AMPOMAH: Mr. Chair, so we
5 had a lot of discussion on this subject. I mean,
6 like, let's say you are putting this well TA, so you
7 start to -- oil recovery. Now, if we are not giving
8 that two-year room, it sounds to me that we are
9 prematurely plugging wells that could be utilized for
10 enhanced oil recovery.

11 We had a lot of discussion on this
12 matter. So I'm not sure why we should treat expired
13 TA wells same as approved TA wells right from the
14 onset. I'm not sure why we should treat them all the
15 same. And we had a lot of discussion on this matter.

16 Because bonding a well at \$150,000 --
17 it's not an easy number. And I do believe that we
18 will push wells that could be utilized for enhanced
19 oil recovery to shut down -- or let's say to be
20 plugged prematurely. So that is where I'm coming
21 from.

22 THE CHAIR: I'm not sure that I agree
23 with that position, but I'm happy to continue to
24 debate.

25 Commissioner Bloom?

1 COMMISSIONER BLOOM: Yeah.
2 Dr. Ampomah, I did see your comments about this again
3 in people's closing statements. So I do hear your
4 concern there. I think at this point, I'd ask that --
5 we've done this in the past in deliberations.

6 Put a pin in this here, take some time,
7 and I just want to understand again the -- I can't put
8 my fingers on it right now. The current bonding rules
9 for TA wells. I just want to make sure that I
10 understand when -- currently -- those are bonded and
11 how that would change in this new world. If that's
12 all right with you all?

13 COMMISSIONER AMPOMAH: And, Mr. Chair,
14 I do have a question for you though. So how would
15 you -- so what is the incentive for people to have
16 approved TA compared to expired TA? If let's say in
17 the direction where you want us to go, what will be
18 the motivation for -- because before you get approved
19 TA, you have to show that it meets mechanical
20 integrity test; right?

21 So there is -- so you made mention that
22 those wells are more susceptible to more, like,
23 failure and all of that. But those wells need to pass
24 MIT before they are given the approved TA. So there
25 has to be some kind of support for that other than

1 company -- "Okay. Expired TA." I don't need to --
2 yeah. And then I'll just leave it as that. So
3 something for us to think about.

4 THE CHAIR: I appreciate that, and I
5 will get back to you. I will think about it and get
6 back to you. I think we're probably at a point where
7 thinking won't happen without some coffee. So if it's
8 all right with commissioners, I propose that we
9 take -- put a pin in the conversation and take a break
10 at this point. 3:20 or 3:30?

11 COMMISSIONER BLOOM: 3:30.

12 THE CHAIR: 3:20? Can we come back at
13 3:20? Okay. Any opposition to taking a recess?
14 None. No. All right.

15 (Off the record.)

16 THE CHAIR: Good afternoon. Welcome
17 back. We're back on -- calling the meeting back to
18 order on to continue deliberations on WELC application
19 for rulemaking to amend in NMACs 19.15.2.5, 8, 9 and
20 25. All right.

21 I think we are -- if I recall
22 correctly, we'll come back on. I want to see if we
23 can get through what issues are non-controversial or
24 the Commission has all agreed and then that way we can
25 have a day to come back and gather all of our thoughts

1 on provisions where there might need to be more
2 discussion and deliberations. So where are we on NMAC
3 19.15.8.9(H)? I'm sorry. (G) and (H).

4 COMMISSIONER AMPOMAH: Mr. Chair, I
5 think it'd be -- for the (F) maybe (1), (2). I think
6 probably it's more similar to what we've dealt with
7 before. Unless you just want to table that for let's
8 say on Friday. That is fine. But other than --

9 THE CHAIR: Yeah.

10 COMMISSIONER AMPOMAH: Okay.

11 THE CHAIR: Well, let's come back and
12 discuss (F) on Friday.

13 COMMISSIONER AMPOMAH: Okay. Okay.

14 THE CHAIR: Any debate on -- I'll give
15 people a second to pull up where we're at.

16 COMMISSIONER BLOOM: So let's see.
17 We're on (G) now?

18 THE CHAIR: Yeah.

19 COMMISSIONER BLOOM: So does this
20 adjust for the new rulemaking. We see that this
21 allows a single instrument to be used versus using the
22 language of replacement blanket bond, which, I think,
23 caused confusion with the previous 250,000 -- or the
24 previously existing \$250,000 blanket bond, which still
25 exists. See what NMOGA says about this and IPANM.

1 THE CHAIR: Well, paragraph -- what
2 would be paragraph G in the applicant's final proposed
3 amendments, and what is -- I believe it's (E) in
4 NMOGA -- NMOGA proposes two additional words and -- in
5 green. Yeah.

6 COMMISSIONER AMPOMAH: Mr. Chair, is
7 that a legal term?

8 THE CHAIR: I suppose so.

9 COMMISSIONER AMPOMAH: Then I'll defer
10 that to you.

11 THE CHAIR: I mean, it already says
12 "Limitations," so I'm not sure that I feel strongly
13 that I see the need for that particular wordsmithing
14 there. I'm fine with the language as proposed in the
15 applicant's -- but, like, I will entertain debate or
16 contrary opinions on that.

17 COMMISSIONER BLOOM: Yeah. Yeah. I
18 think this went through a meeting -- many meetings of
19 the parties. And at that point, people were good with
20 limitations, and I would be fine with that here.

21 COMMISSIONER AMPOMAH: I think the
22 limitations works pretty well -- the rights. I don't
23 see how it changes this. So I will also agree to what
24 the applicant is proposing here. Thank you.

25 THE CHAIR: Okay. Any opposition to

1 the language as proposed by the applicants for
2 subsection (G)? Which (G)? No? Right? Because I
3 think that's what we just said.

4 COMMISSIONER AMPOMAH: Yes.

5 THE CHAIR: Okay. Without opposition.
6 Fair enough.

7 So now onto what is numbered (H) in the
8 applicant's post-hearing proposed amendments. There
9 is some disagreement between the parties on this as
10 well. There is some green text in NMOGA's version.

11 COMMISSIONER AMPOMAH: I do have a
12 question for my fellow commissioners. So this
13 provision is more of OCD would have to review the
14 financial cost -- the financial assurance cost. Could
15 this number be lower than the 150,000?

16 COMMISSIONER BLOOM: Mr. Chair,
17 Dr. Ampomah, I believe no. Towards the middle it says
18 "Any financial assurance shall not be adjusted below
19 the minimum amounts required in the subsections as a
20 result of a decrease in the Consumer Price Index."
21 Does that answer your question?

22 COMMISSIONER AMPOMAH: Yeah. You know,
23 I've talked about this, and I don't recall if there
24 was an extensive discussion in the record. But I was
25 just thinking about that -- the cost to plug a well --

1 I mean, the financial assurance should be the amount
2 that OCD -- more or less used to plug a well.

3 So is it not -- does OCD not need to
4 consider let's say within that time -- the time period
5 how much it cost them to actually plug their well?
6 And would that include that in fixing what the -- cost
7 should be other than just setting more -- like, we are
8 going probably increase to this amount without going
9 back to how much does it cost OCD to plug a well.
10 That's just a question I have for the Commission.

11 COMMISSIONER BLOOM: Dr. Ampomah, your
12 question is, should the base amount always be
13 \$150,000? Or should that be periodically updated? Or
14 did I just put words in your mouth, Dr. Ampomah? I'm
15 sorry.

16 COMMISSIONER AMPOMAH: No. What I'm
17 saying is that -- so you have the base amount, but I'm
18 asking if -- let's say after several years, definitely
19 the cost might go up, but advancement of technology --
20 cost might come down, you know, so -- or even
21 operators might end up plugging their wells, and OCD
22 will not even plug any company's wells.

23 So I'm just asking should there not be
24 a situation where OCD has to also factor -- in the
25 adjustment -- how much it cost OCD to plug their well

1 within that time frame?

2 COMMISSIONER BLOOM: Sure.

3 THE CHAIR: So if I could just clarify,
4 I believe your question is, whether or not the
5 Consumer Price Index is an appropriate proxy for costs
6 to plug into the future, and whether the Consumer
7 Price Index is calculated in a way that is
8 sufficiently reflective of the specific well plugging
9 costs?

10 COMMISSIONER AMPOMAH: Exactly. Thank
11 you.

12 THE CHAIR: Well, that's, I think, a
13 policy decision for this body to make.

14 COMMISSIONER BLOOM: Yes. And I think
15 we heard some testimony on that, and I'm very
16 comfortable with the proposed language here. You
17 know, I think because of the -- some of the pushed
18 back dates here, there'll actually be a bit of a price
19 break for Industry.

20 Because certain increases are not
21 happening until -- now, 2032 instead of 2028. So
22 inflation's going to take a bite out of the actual
23 value of the \$150,000 bond before it starts to rise
24 again.

25 Dr. Ampomah, to your question, I think,

1 you know, if suddenly there's crews of robots out
2 there, and they're plugging wells with cement printers
3 or something like that and the price, you know,
4 seriously falls -- and I think it's -- you know,
5 unfortunately at this point, you know, people would've
6 to come back and repetition -- petition again the OCC
7 to look at that.

8 We don't have, you know, something in
9 there that says, you know, every five years, the OCD
10 shall recalculate costs, you know, the average price
11 to P&A a well, you know, for better or for worse. So,
12 you know, this, kind of, locks it in.

13 COMMISSIONER AMPOMAH: Thank you for
14 the clarification. So with that then I do not have
15 any problem with what the applicant is proposing here.
16 Thank you.

17 COMMISSIONER BLOOM: And so I would
18 just add that I don't see differing IPANM language
19 here, but NMOGA does have some minor changes made.
20 They line out, for example, some of the subsections.
21 And what that's getting at is, I believe, their
22 position that some of these bonds cannot be pinned to
23 CPI.

24 And I went through the record and
25 looked at that, and I think it was OCD talked about

1 that that's a pretty standard part of what -- you
2 know, it exists elsewhere. It's a power that OCD
3 already has to adjust by CPI and other, you know,
4 agencies and so on. So I feel fine with the language
5 here.

6 THE CHAIR: I broadly concur. I
7 generally concur with Commissioner Bloom. Any further
8 debate on this section?

9 COMMISSIONER AMPOMAH: No, Mr. Chair.

10 THE CHAIR: Okay.

11 Commissioner Bloom, are you moving to
12 accept?

13 COMMISSIONER BLOOM: I would move to
14 accept, Mr. Chair --

15 COMMISSIONER AMPOMAH: I second.

16 THE CHAIR: Okay. And that would be
17 the applicant's proposed language -- the final
18 proposed language for 19.15.8.9(H); is that correct?

19 COMMISSIONER BLOOM: Correct.

20 THE CHAIR: Okay. There's a change in
21 19.15.8.10.

22 COMMISSIONER BLOOM: Yes. You know,
23 looking at some of the testimony on this, the
24 reputable companies that are listed by the Department
25 of Treasury and Circular 570 are generally -- are

1 considered reputable corporate surety companies.

2 And this is pretty common in government
3 and business, and, I think, we heard testimony on
4 that. NMOGA seeks in its draft to line this out, but
5 I'm comfortable based on what I've seen throughout the
6 hearing that this is fine.

7 COMMISSIONER AMPOMAH: Mr. Chair, I
8 agree with that. Definitely. We should leave that
9 provision in there. Thank you.

10 THE CHAIR: Okay. Is there a motion
11 then to -- or just the -- the Commission wish to
12 approve the proposed language in 19.15.8.10?

13 COMMISSIONER BLOOM: Yes.

14 COMMISSIONER AMPOMAH: I second.

15 THE CHAIR: Any opposition?

16 No opposition.

17 The next change that I see -- and
18 correct me if I'm wrong -- but the next change for the
19 Commission's review is in 19.15.8.12(B). This was
20 addressed in the joint stipulation. Let me see if
21 there's -- and there is -- well, the NMOGA proposal is
22 to not include the change if I read this correctly?

23 COMMISSIONER AMPOMAH: Yes.

24 THE CHAIR: And I'll invite any debate.

25 COMMISSIONER BLOOM: Where? I'm not

1 sure I'm seeing that. Let me look at your version?

2 THE CHAIR: This line right here. And
3 NMOGA basically green strikes the backup.

4 COMMISSIONER BLOOM: Yeah.

5 COMMISSIONER AMPOMAH: So you're here;
6 right?

7 THE CHAIR: Mm-hmm.

8 COMMISSIONER AMPOMAH: Okay.

9 THE HEARING EXAMINER: Yeah -- this
10 line --

11 COMMISSIONER AMPOMAH: Yeah. It's in
12 the record reflecting why they believe that should be
13 canceled? I'm trying to read through that, but ...

14 THE CHAIR: I will note that if I'm
15 looking at the table for the joint stipulation, that
16 it's generally satisfactory to WELC, OCD, SLO, Oxy,
17 and while NMOGA and IPANM, you know, reserve legal
18 arguments, that they're generally able to live with
19 the proposal. So.

20 COMMISSIONER BLOOM: Let me add if I
21 may, Mr. Chair?

22 THE CHAIR: Please.

23 COMMISSIONER BLOOM: So I think if
24 we -- yeah. I would actually need to go down and
25 scroll down to look at 19.15.9.9. And see what that

1 is -- refresh my memory.

2 THE CHAIR: Change of operator.

3 COMMISSIONER BLOOM: Oh. It's change
4 of operator. So, you know, I think this has to stand
5 because it's actually part of the overall changes.
6 So.

7 THE CHAIR: I would agree.

8 COMMISSIONER AMPOMAH: No objections.
9 Thank you.

10 THE CHAIR: Okay. Commission is
11 satisfied with the language as proposed in the
12 applicant's final proposed amendments for 19.15.8.12?

13 COMMISSIONER BLOOM: Yes. I would move
14 to adopt that.

15 COMMISSIONER AMPOMAH: Seconded.

16 THE CHAIR: Okay. Any opposition?
17 Without opposition, so accepted.

18 I think that brings us to the end of
19 19.15.8. Hang on one second. Brings us to the end of
20 19.15.8; correct?

21 COMMISSIONER AMPOMAH: Yes.

22 THE CHAIR: Okay. So proposed changes
23 to 19.15.9. Give me just --

24 THE HEARING EXAMINER: Do you want a
25 few words, Mr. Chair?

1 THE CHAIR: Please.

2 THE HEARING EXAMINER: So the rule
3 revisions are designed to ensure that new operators
4 seeking authority to operate and existing operators
5 acquiring new assets in New Mexico do not have a
6 history of financial assurance forfeitures in other
7 states.

8 The applicant's OCD and Oxy did revise
9 that language as part of the stipulation to address
10 concerns that the original language was too broad and
11 would tee up administrative challenges. They also
12 revise some of the well operator provisions to allow a
13 representative designated by the operator to make the
14 forfeiture and compliance certification, so that
15 operators have discretion to determine who they deem
16 fit to be held accountable for those certifications.

17 Also changes were made to base
18 certification, denial of registration on final
19 administrative forfeiture demands, and the look back
20 period of ten years was also changed. NMOGA's
21 proposed findings would have you focus instead on
22 statements like "The record reflects no evidence that
23 existing Part 9 requirements of cause compliance
24 failures or impeded OCD's ability to enforce operator
25 obligations."

1 And Mr. Powell testified that the Form
2 C-145 language is -- not now, of course, there is
3 actually a contingent on Part 27. He believed the
4 compliance certification is overly broad and not
5 supported by substantial evidence. All of that is
6 found in NMOGA's findings 123 through 132. You do
7 have proposed language by NMOGA starting in their
8 Exhibit 4. And you also have proposed language from
9 IPANM.

10 THE CHAIR: Okay. Let's start with
11 19.15.9.8(B). Thoughts from commissioners?

12 COMMISSIONER BLOOM: Mr. Chair, I
13 see -- I think we had quite a bit of testimony on
14 operator registration -- change of operator
15 essentially. And this is a way to make sure that bad
16 operators aren't starting up in the state or coming
17 into the state.

18 And it looks to me like IPANM's
19 language here is quite similar to what we're seeing
20 from -- in the joint stipulation. But NMOGA lines
21 out -- would line out about the last half of this
22 where it starts to look at, you know, disclosure of
23 any officer, director, or person that has 25 percent
24 control. Language along those lines.

25 I thought there was good support for

1 maintaining that language. Obviously, the OCD is part
2 of the joint stipulation -- felt that this was
3 manageable, so I'm comfortable with the proposal that
4 we see the joint stipulation for 8(B).

5 THE CHAIR: Commissioner?

6 COMMISSIONER AMPOMAH: No. I do not
7 have much different thoughts on this, so I will
8 support Commissioner Bloom's submission. Thank you.

9 THE CHAIR: I also broadly support
10 Commissioner Bloom's comments here. This seems to be
11 a significant -- an important move towards ensuring
12 that anybody -- making sure that we're not having
13 operators who are undercapitalized or somebody who has
14 a history of financial forfeitures and -- operating in
15 a way in the state that creates a problem for the
16 public.

17 I'm comfortable with the proposed --
18 the post-hearing amendments as proposed by the
19 applicants for subsection (B). Is there any contrary
20 thoughts?

21 COMMISSIONER BLOOM: Mr. Chair, I move
22 to adopt.

23 COMMISSIONER AMPOMAH: Mr. Chair, I
24 second.

25 THE CHAIR: Okay. Any opposed?

1 Without opposition, (B) is adopted as
2 proposed by the applicant's post-hearing and --
3 post-hearing final proposed language.

4 Subsection (C). Any concerns from
5 commissioners?

6 COMMISSIONER BLOOM: So, Mr. Chair, the
7 suggestion from NMOGA -- not from IPANM -- is that the
8 ten years be made five years here, but ten years was
9 agreed to in the joint stipulation. So I would be
10 comfortable with that.

11 COMMISSIONER AMPOMAH: Yeah. I also
12 support that because even on the first one that we
13 just talked about, we still agreed to the ten years.
14 Thank you.

15 THE CHAIR: Okay.

16 COMMISSIONER BLOOM: And then,
17 Mr. Chair, I think we could go down to the new (5)
18 without any problem. There's no change there --

19 THE CHAIR: The new (5)?

20 COMMISSIONER BLOOM: Disagreement --
21 yes.

22 THE CHAIR: Oh. (C) --

23 COMMISSIONER BLOOM: (C)(5).

24 THE CHAIR: (C)(5)? I see.

25 COMMISSIONER BLOOM: You see a (C)(5)?

1 Yeah. There's no suggested different language from
2 IPANM or NMOGA. So I would suggest we could adopt at
3 this time 19.15.9 (C)(2) and (C)(5). And we might
4 look separately at (E), which does draw some different
5 language.

6 THE CHAIR: Okay. So we are adopting
7 19.15.9.8(C) in its entirety; correct?

8 COMMISSIONER BLOOM: Correct.

9 COMMISSIONER AMPOMAH: Yes. Yes.

10 THE CHAIR: Okay. Any opposition to
11 adopting 19.15.9.8(C)?

12 Hearing no opposition, 19.15.9.8(C) is
13 adopted.

14 So new 19.15.9.8(E). Any debate?

15 COMMISSIONER BLOOM: So, Mr. Chair,
16 here we have NMOGA lining out a number of spots --
17 three different spots -- look at that -- in front of
18 you. Might want to walk this backwards to (C)(2) and
19 (C)(3) up above, which NMOGA would rule out. And let
20 me check IPANM on this.

21 THE CHAIR: I mean, this is tied to the
22 previous sections. This is making it mandatory that
23 an operator shall certify compliance as opposed to
24 using the permissive may language -- swapping "may" to
25 "shall," and to make it consistent with the new --

1 with (C).

2 COMMISSIONER AMPOMAH: So, Mr. Chair,
3 on the (E), so NMOGA is saying that the Division may
4 require?

5 THE CHAIR: Which is the former
6 language. Yes.

7 COMMISSIONER AMPOMAH: Yeah. So does
8 that not -- I mean, does that not help? I'm thinking
9 about operator who is more compliant, you know, with
10 no record. Why should they be doing that every year?
11 So is it not -- should there not be a discretion of
12 OCD to more or less require?

13 THE CHAIR: So --

14 COMMISSIONER AMPOMAH: I feel like --
15 yeah. Let's really discuss more of what NMOGA is
16 proposing here.

17 THE CHAIR: Sure. So in my view, if we
18 make it a "may" instead of "shall," then you undercut
19 the -- it makes it more difficult to enforce the new
20 provisions in (C) that we just adopted. By mandating
21 annual certification instead of OCD having to go out
22 there and figure out who needs to certify, it puts the
23 onus on the operator to certify on an annual basis.
24 That's my understanding.

25 COMMISSIONER BLOOM: That is my

1 understanding as well. Yes. And so I would imagine
2 the OCD would create a form when they're creating
3 their guidance and the companies would with that and
4 certify themselves.

5 And, Commissioner, I apologize. I may
6 have missed something when -- just up above. I can't
7 remember if I said if IPANM had different language or
8 not, but I believe actually they coincided with NMOGA
9 in a lot of the line outs in 9.8(B) and (C), which we
10 were looking at. I don't know if you care to go back
11 and look at that. It was, I think, nearly identical.
12 We might want to finish with this first.

13 THE CHAIR: Yeah.

14 COMMISSIONER BLOOM: I just wanted to
15 let you know.

16 THE CHAIR: Having reviewed both --
17 having reviewed the alternatives proposed here, I'm
18 still comfortable with subsection (E) as proposed in
19 the applicant's post-hearing.

20 COMMISSIONER BLOOM: Yes. As am I, and
21 I would move to adopt that.

22 COMMISSIONER AMPOMAH: Seconded.

23 THE CHAIR: Any opposition?

24 Adopted without opposition.

25 Okay. 19.15.9.9(B). There's a

1 significant portion that the applicant proposes that
2 is -- that would not be adopted in the NMOGA proposal.

3 COMMISSIONER BLOOM: And that is the
4 same. And there's also a significant line out in
5 IPANM's proposal as well.

6 COMMISSIONER AMPOMAH: Mr. Chair, so on
7 this one, I'm not sure why the industry will strike
8 down a plugging and abandonment plan. I believe it's
9 very important.

10 And then also if we do not agree to
11 what the applicant is presenting here, then it means
12 that we still have to go back to the earlier portions
13 where we are requesting for the -- and then people
14 with their stake. So if we've approved that one, then
15 I do not have any reason to reject this. Thank you.

16 THE CHAIR: Yes. The two provisions
17 that Commissioner Ampomah is referencing do correlate.
18 So I agree on that point.

19 COMMISSIONER BLOOM: I coincide. I
20 would move to adopt 19.15.9.9(B) as seen the in the
21 joint stipulation.

22 THE CHAIR: Okay. Applicant's final?

23 COMMISSIONER AMPOMAH: Seconded.

24 THE CHAIR: Any opposition?

25 Without opposition, so adopted.

1 19.15.9.9 -- we just did 9.9(B) so
2 9.9(C). Again, this is a corresponding section to all
3 of the above. And the same policy -- and the same
4 overarching issues resonate through.

5 COMMISSIONER BLOOM: Yes, Mr. Chair.
6 Exactly. I see the line outs proposed by IPANM and
7 NMOGA here. And they're very similar to those line
8 outs up above with respect to the roles of operator,
9 officers, et cetera -- previous companies.

10 You know, I think significantly the
11 language here is that the -- you know, the director --
12 the director's designee may deny a change of
13 operators. It doesn't mean that any of these things
14 are -- would disallow change of operators.

15 So I would -- you know, and I also see
16 down in (5) we added limited liability, limited
17 partnership, which is important. So I would recommend
18 adopting 19.15.9.9(C)(2). We see it in the
19 applicant's final version of the joint stipulation.

20 THE CHAIR: Okay. What about (C)(3),
21 (4), (5), and (6)?

22 COMMISSIONER BLOOM: Yes. I would
23 adopt those as well -- all of (C). Yes.

24 THE CHAIR: Okay.

25 COMMISSIONER AMPOMAH: No objection.

1 Thank you.

2 THE CHAIR: No objections from me. Any
3 objections from commissioners?

4 Without --

5 COMMISSIONER AMPOMAH: No.

6 THE CHAIR: Okay. Without objection,
7 adopted.

8 Just for the record, I will note that
9 we had a discussion about the legality of looking to
10 other states and federal agencies as to whether or not
11 there's been forfeiture of financial assurance.

12 And I just want to recall the
13 conversation that I had with the witness who -- being
14 licensed and being a licensed attorney, most of us who
15 are licensed to practice law have to report if we're
16 ever disbarred by any other state. So it would be the
17 same logic here that if -- what we would have to
18 report compliance with all states where one is -- one
19 operates. So (E), any debate on (E)?

20 COMMISSIONER BLOOM: Mr. Chair, I would
21 just note that in (D), there are also some line outs.

22 THE CHAIR: Oh. I apologize.

23 COMMISSIONER BLOOM: But they appear in
24 black, which is different.

25 THE CHAIR: That's right. (D).

1 COMMISSIONER BLOOM: We can look at (D)
2 and (E) together. Yeah.

3 COMMISSIONER AMPOMAH: Some
4 consolation. And who comes to that.

5 THE CHAIR: Oh. Yeah. So it's whether
6 or not to remove the words "More than the allowed
7 number of."

8 COMMISSIONER AMPOMAH: And NMOGA wants
9 to bring it back. So.

10 THE CHAIR: Yes.

11 COMMISSIONER AMPOMAH: So, Mr. Chair,
12 we cannot agree to this because if you remember we did
13 not allow -- we did not agree to NMOGA argument about
14 trying to -- no. Are we tabling that for future
15 discussion? Where it was talking about two wells --
16 50 percent. I think we did not. We did not agree to
17 that.

18 COMMISSIONER BLOOM: I don't know that
19 we touched -- I don't think that we touched on that,
20 Dr. --

21 COMMISSIONER AMPOMAH: Yeah -- that is
22 connected to this. So if we can cross-check that.

23 THE CHAIR: Okay. In order to keep the
24 day moving along, why don't we do the cross-checking
25 and research over the evening?

1 COMMISSIONER AMPOMAH: Yeah.

2 THE CHAIR: So I will make a note that
3 we will review 19.15.9.9(D).

4 COMMISSIONER AMPOMAH: I think they did
5 not agree --

6 COMMISSIONER BLOOM: Very well.

7 COMMISSIONER AMPOMAH: Mr. Chair, I
8 believe we did not agree to what NMOGA was proposing
9 right here. So they are coming back.

10 THE CHAIR: Yeah. 19.15 --

11 COMMISSIONER AMPOMAH: Check that.

12 THE CHAIR: 19.15 --

13 COMMISSIONER AMPOMAH: .5.9.

14 THE CHAIR: That's right. Okay. So in
15 that case, is it your proposal that we adopt the
16 applicant's proposed final language as written?

17 COMMISSIONER AMPOMAH: Yes. In the
18 strikeout. Yes. It has to stand. Yes.

19 THE CHAIR: Okay.

20 COMMISSIONER AMPOMAH: Thank you.

21 COMMISSIONER BLOOM: Mr. Chair, I want
22 some more time to review that.

23 THE CHAIR: That's fine. Okay.

24 COMMISSIONER BLOOM: Thank you -- for
25 me, Dr. Ampomah. Thank you.

1 THE CHAIR: Sure. What about (E)?

2 COMMISSIONER AMPOMAH: Mr. Chair, so
3 this one was discussed because based on the
4 discussions that we're having, it sounds like big
5 companies that do have the muscle to really plug these
6 wells or transfer these wells to smaller operators who
7 will not be in the position to really plug these
8 wells.

9 So I believe we were more inclined to
10 really go after the bad actors; right? So I believe
11 this (E) has to stand in the sense that it protects,
12 you know, the state where the wells will not fall into
13 smaller operators that will not be able to really plug
14 these wells. So I support that this (E) provision has
15 to stay in the rule.

16 COMMISSIONER BLOOM: Mr. Chair, I would
17 concur. Additionally, just to note that Part 29
18 refers to releases or spills, and Part 30 refers to
19 remediation.

20 So this is essentially saying you can't
21 transfer a well facility or site to another company
22 unless it's been brought into compliance or the new
23 operator submits a schedule of compliance. It's been
24 approved by the Division. So this seems common
25 sense -- you know, so that we get away from any sort

1 of pass the trash situation.

2 THE CHAIR: I concur.

3 COMMISSIONER BLOOM: So I would move to
4 adopt 19.15.9.9(E) in the joint stipulation in the
5 applicant's post-hearing amendments.

6 COMMISSIONER AMPOMAH: I second,
7 Mr. Chair.

8 THE CHAIR: Any opposition?

9 Without opposition, so adopted.

10 Okay. I don't see any further
11 additional changes to 19.15.9.9 or -- yeah. I don't
12 see any additional changes to 19.15.9; is that
13 correct? Anybody else see something that I don't?

14 COMMISSIONER BLOOM: No.

15 COMMISSIONER AMPOMAH: No.

16 THE CHAIR: Okay. Moving on then to
17 19.15.25. First change that I see -- well, almost
18 right away. 19.15.25.8(A) -- (B) -- 8(B).

19 THE HEARING EXAMINER: Mr. Chair, just
20 a reminder. This is the section where Oxy -- having
21 stipulated to a lot of the applicant's other
22 provisions -- does have recommended changes here.

23 THE CHAIR: Great.

24 COMMISSIONER BLOOM: And just a
25 question, I don't know if anyone else is seeing this.

1 I don't see any proposed alternate language from IPANM
2 in the section; is that right?

3 THE HEARING EXAMINER: That's correct.
4 We have finished the proposed IPANM language.

5 COMMISSIONER BLOOM: Okay. And we will
6 get -- thank you. Mr. Shandler reminds us that
7 there's Oxy's final proposed amendment is to Part
8 25 -- when we hit 13(C). So.

9 COMMISSIONER AMPOMAH: Yeah. 13(C).
10 Yeah.

11 THE CHAIR: Does somebody have a spare
12 copy of -- let me make sure I can pull up and tab
13 Oxy's proposed changes, so we can go through that.

14 COMMISSIONER BLOOM: I have it here.
15 We can share if you'd like?

16 COMMISSIONER AMPOMAH: Yeah. That one
17 is 13; right?

18 COMMISSIONER BLOOM: Yes -- extra one
19 here.

20 COMMISSIONER AMPOMAH: Yeah --

21 THE CHAIR: I have the proposed finding
22 of fact --

23 COMMISSIONER BLOOM: -- happened to
24 your --

25 THE CHAIR: Okay. Yeah. If I could

1 just have a copy, that'd be good. Okay. All right.
2 And now I've lost my place in the original.

3 Did you have other overarching thoughts
4 for us, Madam Hearing Officer?

5 THE HEARING EXAMINER: No. Not really.
6 It relates to the section -- the part relates to
7 plugging and abandonment. Applicants propose to
8 reduce the current 90-day timeline to either plug or
9 abandon a well or place it in approved TA for 30 days.

10 Industry witnesses testified that the
11 30-day timeline was unreasonable. Applicants revised
12 the well operator provisions in the post-hearing
13 amendments to provide a 60-day timeline to either plug
14 or abandon or place it in TA.

15 Retain the requirement that the
16 one-year period of inactivity be continuous. Trying
17 to strike a balance there. Do I understand correctly
18 that y'all already have reached some conclusion about
19 the presumption of no beneficial use this morning?

20 COMMISSIONER BLOOM: We included
21 that -- the definition, Madam Chair -- or, Madam
22 Hearing Examiner.

23 THE HEARING EXAMINER: Oh. Okay.
24 Well, in 25.9 is where it comes into play.

25 COMMISSIONER BLOOM: Yes. All right.

1 THE CHAIR: Well, starting with --
2 let's just ..

3 COMMISSIONER BLOOM: For 25.8(B)(1)?

4 THE CHAIR: Yeah. Let's do that.

5 COMMISSIONER BLOOM: Yeah. Or --

6 THE CHAIR: Or 8(B) unnumbered. Yeah.

7 COMMISSIONER BLOOM: One and three.
8 Yes. I noticed that we have no different language
9 from NMOGA nor IPANM here, and, you know, I think
10 we've seen some changes, some compromise, you know.
11 And I would say that there are other changes --
12 compromises that I'm accepting here.

13 I think that if we're looking at a
14 three-year limitation deadline -- if I'm not
15 mistaken -- or timeline. I think that's very
16 generous. Maybe two years would've been in order or
17 18 months, but -- three years, that's what the parties
18 agreed to. And I can live with that out of that
19 spirit of compromise.

20 You know, that's elsewhere, I think, in
21 the document -- probably already gone over it. You
22 know, I did want to note that. And I note that the
23 OCD was part of those in those conversations as well.
24 And I think that's significant when the agency or the
25 Division that is going to implement any rulemaking

1 thinks that three years is appropriate. You know,
2 could be for their own interior timelines and
3 necessities as well.

4 So that's something I could live with
5 here. You know, I think these additions are great --
6 you know, except for a well that has been drilled and
7 properly cased but not completed. So you're getting
8 at the ducts, the drill, not completed wells or
9 uncompleted wells. So I think all of this looks good.
10 We don't see any other competing language. So I would
11 move to adopt the changes to Part 25.8(B)(1), (2), and
12 (3).

13 COMMISSIONER AMPOMAH: No objections.

14 THE CHAIR: Okay. Question is whether
15 to adopt 19.15.25.8 and all the changes as in the
16 applicant's post-hearing proposed final amendments.
17 Any objections?

18 COMMISSIONER AMPOMAH: None.

19 THE CHAIR: With no objections, so
20 adopted.

21 19.15.25.9. NMOGA has some commentary
22 or -- thought commentary in their proposed rule here
23 in italics about the presumption of no beneficial use
24 and also proposed amendments should the Commission
25 proceed.

1 COMMISSIONER BLOOM: Yes. Mr. Chair,
2 my understanding of this is -- looks to me like NMOGA
3 does not have language that is different. I'm, kind
4 of, jumping pages here.

5 THE CHAIR: -- green here if that
6 helps.

7 COMMISSIONER BLOOM: Yeah. Okay. So
8 not till we get down to, I guess, in (D) -- change.
9 Okay. So NMOGA's language would -- I think it's
10 pretty clear here. "The Division may use its
11 discretion to grant another -- a 30-day extension
12 after the notice for good cause." I don't know if you
13 do have any thoughts on that, Commissioners?

14 COMMISSIONER AMPOMAH: So this will be
15 the (D); right?

16 COMMISSIONER BLOOM: Yes.

17 COMMISSIONER AMPOMAH: Okay. Okay.
18 Yeah. So on that one, I do not have any objection to
19 what NMOGA is requesting here, but I'm curious to know
20 what you all think about this.

21 THE CHAIR: I'm always a little weary
22 when a party is given discretion that it didn't ask
23 for, but do we want to break this down into smaller
24 subsections one at a time?

25 COMMISSIONER BLOOM: If we were doing

1 that, I think I would agree with Part 25.9(A), (B),
2 and (C) as proposed. Given that there's some
3 anonymity around that language, although of course
4 NMOGA -- I believe IPANM -- of course I think this is
5 an overstep and would challenge it on that
6 potentially. But --

7 THE CHAIR: Well --

8 COMMISSIONER BLOOM: You know, I think
9 the real first change or disagreement we're seeing in
10 (D) and the only change would be to give the party 60
11 days instead of 30. You know, in the chance -- in the
12 case that a party does ask for more time.

13 THE CHAIR: I'm always a little -- I
14 mean, my only hesitation there is the -- again, just
15 more decision points and more potential things that
16 this Division staff have to make decisions on. It
17 already says "Grant an extension," but if we were to
18 adopt the green here, my only ask is that we make it
19 "grant one extension" so that we don't have potential
20 later argument of repeated 30-day extensions.

21 COMMISSIONER AMPOMAH: Mr. Chair, I
22 will agree with you.

23 COMMISSIONER BLOOM: I'd be fine with
24 that, Mr. Chair. You know, I -- 30 days could be
25 short if it's November, December, January, session,

1 February, so extra an 30 days I don't think would
2 cause too much difficulty -- and limiting that to one
3 30-day extension would be fine.

4 THE CHAIR: Okay. What about the -- so
5 that we can consider (D) as a whole, what are the
6 thoughts on (D) subsections (3), (4), and (5) below
7 that NMOGA does not agree to?

8 COMMISSIONER BLOOM: Mr. Chair, I think
9 I would not adopt NMOGA's language here because
10 there's been another change made up at the beginning
11 before the enumerated parts we see "Such documentation
12 may include." And so that just means that the
13 applicant may include these other aspects including
14 that they, you know, maintain adequate capitalization
15 or revenue sufficient.

16 THE CHAIR: -- already says "May
17 include."

18 COMMISSIONER AMPOMAH: So it's
19 optional?

20 THE CHAIR: This is merely an
21 illustrative list. I mean, the way it's written now
22 with "May include," it merely means that the list is
23 illustrative and not --

24 COMMISSIONER AMPOMAH: Shut?

25 THE CHAIR: Yes.

1 COMMISSIONER AMPOMAH: Okay.

2 THE CHAIR: So is it the Commission's
3 desire to adopt the -- for 19.15.25.9(D), to adopt
4 language as proposed by the applicants except with the
5 inclusion of "Upon request by the operator, the
6 Division may use its expression to grant one extension
7 of the -- grant one 30-day rebuttal period extension
8 for good cause"?

9 COMMISSIONER AMPOMAH: Grant one.

10 THE CHAIR: You, kind of, have to
11 reword it a little bit for --

12 COMMISSIONER BLOOM: Instead of "and"
13 it would be "one" --

14 COMMISSIONER AMPOMAH: Yeah --

15 THE CHAIR: One 30 day -- or grant an
16 extension. I guess, "an extension" makes clear that
17 it's one.

18 COMMISSIONER AMPOMAH: Which is one.
19 Yeah.

20 THE CHAIR: So fine. Is that what the
21 Commission wants to do? So accept the applicant's
22 proposed language with the one addition -- one
23 additional sentence from NMOGA's proposed language?

24 COMMISSIONER BLOOM: Yes, Mr. Chair.

25 COMMISSIONER AMPOMAH: Seconded.

1 THE CHAIR: Any opposed?

2 Without opposition.

3 Okay. Oh. I lost my place again.

4 COMMISSIONER BLOOM: We're down to (E).

5 The 12 months -- effective.

6 THE CHAIR: I have no objection other
7 than that somebody has to fill in the effective date
8 of this rule.

9 COMMISSIONER BLOOM: This is
10 interesting. So I wonder if this actually needs to
11 generate conversation because it says: "The subsection
12 shall become effective 12 months after the effective
13 date of the rule.

14 "Except that as to operators that the
15 Division determines are substantially out of
16 compliance" -- Parts 24, 9, and 25 "This subsection
17 shall become effective on" -- oh. "Immediately."
18 Okay. "On the effective date." There we go. I'm
19 okay with that. And I didn't see any different
20 language from NMOGA or the other parties.

21 THE CHAIR: Commissioner, are you
22 moving to adopt?

23 COMMISSIONER BLOOM: Mr. Chair, I would
24 move to adopt.

25 COMMISSIONER AMPOMAH: I second.

1 THE CHAIR: Any opposition?

2 Without opposition, subsection (E) is
3 adopted.

4 Am I correct that the next section
5 is -- to be debated is now the newly enumerated
6 19.15.25.13?

7 COMMISSIONER AMPOMAH: But there was --

8 THE CHAIR: Am I missing one? Oh. I'm
9 sorry. 19.15.25.10. I don't have any objection.

10 COMMISSIONER BLOOM: We have a
11 numerical update --

12 THE CHAIR: From 11 to 12?

13 COMMISSIONER BLOOM: -- any objection I
14 would move to approve 19.15.25.10 -- notice of
15 plugging.

16 COMMISSIONER AMPOMAH: I second.

17 THE CHAIR: Any opposition?

18 Without opposition, so adopted.

19 Now, 19.15.25.13.

20 THE HEARING EXAMINER: When you're
21 ready for me to describe Oxy's proposal, let me know.

22 THE CHAIR: Go for it.

23 THE HEARING EXAMINER: All right. It
24 is in (C)(2). And you presumably can see what they've
25 proposed to delete. They proposed to delete these

1 words "And the operator shall provide at least 30
2 days' notice of the application for extension in a
3 newspaper general circulation." In the next sentence,
4 propose to delete the words "Any interested --

5 COMMISSIONER BLOOM: Person?

6 THE HEARING EXAMINER: Before the word
7 "Person." And then "-- that in any such adjudicatory
8 proceeding any interested person may intervene under
9 19.15 -- 11(A)." So their reasoning for these
10 proposals is that the adjudicatory -- any mandatory
11 adjudicatory hearing for request to extend already
12 approved TA status are unnecessary and inefficient.

13 The Division's docket is at capacity,
14 which would create compliance issues for wells
15 awaiting hearings and decisions. Continuing to
16 evaluate extension requests via administrative
17 applications allows the Division to efficiently and
18 effectively address those requests without burdening
19 its document -- sorry -- docket.

20 And eliminating the requirement that an
21 interested party demonstrate standing to request a
22 hearing or intervene, will further burden Division's
23 docket. There's nothing unique about a request to
24 extend TA status that warrants Applicant's request to
25 deviate from traditional standing requirements.

1 THE CHAIR: So that's in subsection
2 (C) --

3 THE HEARING EXAMINER: (2). (C)(2).

4 THE CHAIR: (C)(2). Right.

5 COMMISSIONER BLOOM: Mr. Chair?

6 THE CHAIR: Yes.

7 COMMISSIONER BLOOM: Yeah. So on
8 those, I don't know if you wanted to talk about those
9 now or work our way down to them, but either way.

10 THE CHAIR: Well, I've just looked --
11 glanced through (A) and (B) to see if there's
12 alternative language proposed. I'm not seeing
13 alternative language proposed. And so does the
14 Commission want to adopt (A) and (B) as proposed?

15 COMMISSIONER AMPOMAH: I'm okay with
16 that. Thank you.

17 THE CHAIR: Okay.

18 COMMISSIONER BLOOM: Mr. Chair, I
19 agree. I would move to adopt 19.15.25.13(A) and (B).

20 COMMISSIONER AMPOMAH: I second.

21 THE CHAIR: Any opposition?

22 Without opposition, so adopted.

23 Okay. (C) -- (C)(1). Are the parties
24 in agreement within -- the parties are in agreement
25 for (C) -- or at least there's no alternatives for us

1 to consider for (C)?

2 COMMISSIONER BLOOM: That is correct.

3 (C)(1) --

4 THE HEARING EXAMINER: NMOGA supports
5 Oxy's proposals in (C)(2).

6 COMMISSIONER BLOOM: Yes.

7 THE CHAIR: Okay.

8 COMMISSIONER BLOOM: So really what
9 we're looking at here is cutting from the joint
10 stipulation the requirement to provide 30 days' notice
11 in a newspaper of general circulation and allow any
12 interested person to request a hearing on the on the
13 application for extension. Or allow those people to
14 allow any such -- allow any interested person to
15 participate in adjudicatory proceedings; right?

16 THE CHAIR: Yes. Yeah. The green.
17 The green is what's -- yeah.

18 COMMISSIONER BLOOM: To my mind, you
19 know, the OCD was part of the joint application and is
20 supportive of, you know, having this 30-day advance
21 extension -- of notification in a newspaper of general
22 circulation already at this sort of proceeding -- of
23 course would be notified via the OCD's distribution
24 list.

25 Most people that would be interested

1 could sign up for that. It's a little more targeted
2 way of finding this information than having to read
3 the newspaper.

4 THE CHAIR: The general circulation?

5 COMMISSIONER BLOOM: Yeah.

6 Announcement, you know. And of course, you know,
7 assuring that that is documented -- something else
8 that your hearing examiners have to look at. And then
9 the other thing we would be weighing is, should an
10 interested person be able to request a hearing and/or
11 participate in the adjudicatory proceeding. As that
12 could create a little more -- you know, more parties
13 in front of your hearing officers I suppose.

14 THE CHAIR: That's true.

15 COMMISSIONER BLOOM: Yeah.

16 THE CHAIR: Though I wonder whether or
17 not -- I mean, we've seen disputes in front of my
18 hearing examiner as to who constitutes a party with
19 standing. So that may very well end up being
20 litigated both in front of my hearing examiner and in
21 front of this body over and over again as to who
22 constitutes somebody with standing.

23 COMMISSIONER BLOOM: So you're saying
24 that -- are you saying, Mr. Chair, that that this
25 language -- that the joint stipulation language could

1 help resolve some of that because it creates broader
2 standing?

3 THE CHAIR: I don't know. I think they
4 just have different problems; right? One is any
5 interested means that it's really, really, really
6 broad.

7 COMMISSIONER AMPOMAH: Broad.

8 THE CHAIR: But the alternative
9 language proposed here I anticipate creating all sorts
10 of disputes as to who has or lacks standing. So two
11 different problems, but I don't know that either one
12 of them is a silver bullet.

13 COMMISSIONER BLOOM: Right. So if we
14 were to adopt the NMOGA language -- I think which is
15 also the Oxy language -- "person with standing" is --
16 could create issues for the Division and potentially
17 for the Commission. And any interested other person
18 could lead to more people in front of the OCD hearing
19 officers.

20 THE CHAIR: Yeah. One is that we would
21 have a -- either way, I feel like it's -- it doesn't
22 really -- we just create two different sets of
23 problems. One is that we have a really heavy docket
24 because any interested person. The other is that we
25 have a heavy docket of who can or cannot demonstrate

1 standing.

2 COMMISSIONER AMPOMAH: For the
3 commissioner, so if someone, let's say, wants to
4 intervene in a particular case, don't they have to
5 establish that you do have standing?

6 THE CHAIR: Well --

7 COMMISSIONER AMPOMAH: Well, for
8 example, let's say there is a well in Pinon, and then
9 someone from Santa Fe is coming in, I mean, don't they
10 have to show that they have standing?

11 THE CHAIR: Well, if we adopt the
12 applicant's language -- I think the applicant's
13 language would grant any interested person standing.

14 COMMISSIONER AMPOMAH: Yeah.

15 THE CHAIR: Right?

16 COMMISSIONER AMPOMAH: But that is
17 going to be very broad.

18 THE CHAIR: I understand. I agree that
19 it's -- I agree that it's problematic. I'm just
20 saying I don't know that the alternative is workable
21 either because they both create issues here. One is
22 that we have far too many parties. The other is that
23 we simply kick the can down the road, and we have
24 people arguing about who should be parties.

25 COMMISSIONER AMPOMAH: But don't you

1 believe that if someone is coming to intervene in the
2 case, they would have to more or less check and make
3 sure that they do have standing before they show up?

4 THE CHAIR: Right. But what is -- so
5 what is standing; right? So one is in the statute
6 you're telling them, "You have standing," period. If
7 you're interested, you have standing; right? The
8 other leaves it -- as far as I know, and maybe I'm
9 wrong and maybe somebody can point me to where else
10 it's defined.

11 But I'm just saying we are going to end
12 up having to decide -- or at least the hearing
13 examiner is going to have to decide when parties
14 assert standing and, you know.

15 COMMISSIONER AMPOMAH: So --

16 THE CHAIR: It's not a hypothetical
17 given that we actually have cases in front of us where
18 people are arguing standing.

19 COMMISSIONER AMPOMAH: Standing.
20 Exactly.

21 COMMISSIONER BLOOM: Yeah --

22 COMMISSIONER AMPOMAH: Exactly. So
23 based on that case, that is why I'm stressing that, I
24 mean, this with standing -- more or less -- kind of,
25 help to narrow who can really context or -- more or

1 less -- participate. And I'll ask you, so you are the
2 attorney, how would you define the "standing"? Yeah.
3 Let's say in legal terms, how do you define the
4 "standing"?

5 THE CHAIR: I don't pretend to be a law
6 professor, but standing is a remarkably squishy
7 concept. And I think I'm not the only one who would
8 say that the -- I mean, I ...

9 THE HEARING EXAMINER: Does it help,
10 Chair, to know that New Mexico law would address it if
11 the Commission doesn't have any other rule?

12 THE CHAIR: Right.

13 THE HEARING EXAMINER: That describes
14 that. I don't know if Mr. Shandler can speak to it or
15 not, but there are --

16 THE CHAIR: -- sure.

17 THE HEARING EXAMINER: There is case
18 law about standing.

19 MR. SHANDLER: So my advice is to put a
20 pin in this.

21 THE CHAIR: Okay.

22 MR. SHANDLER: Try to see if you can
23 get in the next half hour, everything done, then
24 you'll have a discreet homework that you can look at.

25 THE CHAIR: Okay. Fair enough.

1 Because yes, I do take the point that it -- that "Any
2 interested person" is incredibly broad. But I'd like
3 to do a little bit of thinking as to whether there
4 might be different language there that might help us.

5 COMMISSIONER AMPOMAH: Okay.

6 THE CHAIR: Okay. Is there anything
7 else in 19.15.25.13(C)?

8 COMMISSIONER AMPOMAH: Yes. I do.
9 Yes. I do. So to my fellow commissioners, I'm not
10 sure. So Number 2; right? So let's say if the
11 Division shall provide at least 30 days' notice of the
12 application for extension on its website and to the
13 Division's mailing list. I'm not sure why operators
14 should also put this in newspaper for general
15 circulation.

16 THE CHAIR: I am sorry. Repeat that?

17 COMMISSIONER AMPOMAH: So under Number
18 2 -- (C)(2). So the original language is saying that
19 "And the operator shall provide at least 30 days'
20 notice of the application for extension in a newspaper
21 of general circulation."

22 THE CHAIR: Yes.

23 COMMISSIONER AMPOMAH: But before then,
24 we're saying that the Division shall provide at least
25 30 days' notice of the application for extension on

1 its this website.

2 THE CHAIR: Yes.

3 COMMISSIONER AMPOMAH: And to the
4 Division's mailing list. Is that not enough? Why
5 should we ask operators to also -- more or less --
6 publish this in the newspaper?

7 THE CHAIR: I think that was the same
8 point that Commissioner Bloom made earlier. I
9 understand. I think this is very common though
10 perhaps a little old-fashioned way of providing notice
11 to the public is to publish in a newspaper of general
12 circulation.

13 I don't have huge personal objections.
14 If we think that the more targeted notice and notice
15 on the website is sufficient. It's not unusual for
16 many statutes to use newspapers as a formal way of
17 providing notice to the public. Though is it old
18 fashioned and outdated? One could make that argument.

19 COMMISSIONER AMPOMAH: You know, I do
20 believe that probably just on the website and the
21 mailing list should be good enough. You know, one
22 case that we're working on where someone said: "I saw
23 the notes on OCD's website. That is why I'm here."
24 So that proves that it's very effective. So I'm not
25 sure if going extra mile into the newspaper will add

1 anything to it, especially people that do have
2 interest in the case.

3 COMMISSIONER BLOOM: And, Dr. Ampomah,
4 Mr. Chair, I think Mr. Rankin made some -- cited a few
5 examples of where a newspaper publication is required.
6 And then generally it's for, I think, things a little
7 higher -- larger impacts such as rulemaking and -- by
8 various entities. I can't remember if it was EIB or
9 water quality or one of those. But perhaps we put a
10 pin in this as well because it's the same section as
11 interested person. And we revisit it on Friday.

12 THE CHAIR: Yeah. It sounds like --
13 yes. And I'm just saying I don't have a huge -- I
14 don't have a strong opposition, or I don't have a
15 strong feeling one way or the other as to whether or
16 not we require notification in newspapers. But the
17 more interesting question for me that I'd want to put
18 a pin in is the question on standing. So if we could
19 put a pin in (C)(2)?

20 MR. SHANDLER: And what I recommend for
21 your homework is take all the -- this binder -- the
22 proposed findings. We looked at that. Now, look at
23 the -- just compare, and are you persuaded by their
24 proposed findings compared to this proposed findings?

25 And so if you've limited it down to,

1 like, five issues, it may only take you an hour or
2 two. But this would be a chance for you to re-review
3 their proposed findings, see what their exhibits are,
4 what their arguments are.

5 THE CHAIR: All right. Do we want to
6 separately review -- so (C)(2). So if we look at
7 the -- party's joint stipulation table, there's (C)(2)
8 where we talked about the notice, and we talked about
9 the interested person/standing issue.

10 (C)(2), but there are additional
11 negotiated changes here. So (C)(2)(a), (C)(2)(b),
12 (C)(2)(c), any of those. Is there any debate or any
13 consideration that we need to make on those? Or?
14 Because I'm not seeing -- I don't see alternative
15 language for those, do I? Oh. There it is for (5);
16 right?

17 COMMISSIONER BLOOM: The addition of
18 (5). Yes.

19 THE CHAIR: All right. But let me --
20 sorry. Let me -- this one at a time. So (C)(2)(b)
21 Roman numerals I, II, III, IV, and V. Is there any
22 debate on those? Or can the Commission accept what
23 has been proposed here? Because I'm not seeing
24 alternative language proposed for (b) Roman numerals
25 I, II, III, IV, and V.

1 COMMISSIONER BLOOM: What about (C) and
2 (4) also?

3 THE CHAIR: I'm sorry?

4 COMMISSIONER BLOOM: What about (C) and
5 (4) also? Do you want to adopt those? Is there any
6 alternative language for any of those?

7 THE CHAIR: No.

8 COMMISSIONER AMPOMAH: No alternative
9 language.

10 COMMISSIONER BLOOM: -- I would move to
11 adopt those.

12 COMMISSIONER AMPOMAH: I second.

13 THE HEARING EXAMINER: Isn't it that
14 NMOGA has offered up a (5) that doesn't appear in the
15 stipulation?

16 THE CHAIR: Yes. But we haven't gotten
17 there yet.

18 COMMISSIONER BLOOM: That's our next --

19 THE CHAIR: I was looking at the little
20 baby Roman numerals.

21 THE HEARING EXAMINER: Sorry.

22 THE CHAIR: But you wanted through
23 Bracket 4; right? And then we'll go on to (C)(5)
24 after.

25 COMMISSIONER BLOOM: Yes.

1 THE CHAIR: Okay. Any concerns?

2 COMMISSIONER AMPOMAH: No. No
3 concerns.

4 THE CHAIR: Okay. Any opposition?
5 Without opposition, so adopted.

6 So now (C)(5). (C)(5) is proposed by
7 NMOGA, but not in the applicant's post-hearing
8 proposed amendments.

9 COMMISSIONER BLOOM: I think I'd like
10 to put a pin in that and go back and --

11 THE CHAIR: Review?

12 COMMISSIONER BLOOM: Review. Because
13 this gets into --

14 THE CHAIR: Okay.

15 COMMISSIONER BLOOM: You know, some of
16 the things that, I think, Dr. Ampomah and I were
17 talking about previously with five-year extensions and
18 two-years extensions and which ones fall after the
19 other. Not something I deal with on the daily. So
20 I'm not entirely fluent with that. Just familiar. So
21 I would want to go back and look at that carefully.

22 THE CHAIR: Great. So just let me
23 double check and make sure I write this down.

24 19.15.25.13(C) --

25 COMMISSIONER BLOOM: (C)(5).

1 THE CHAIR: (C)(5). Okay. 13. Okay.
2 So then next would be 19.15.25.13(E)(1). Looks like
3 that we've got an agreed -- stipulated language here.
4 I don't see an alternative proposal here to consider.

5 COMMISSIONER BLOOM: Is it (D)(1) and
6 (2), Mr. Chair?

7 THE CHAIR: It used to be.

8 COMMISSIONER BLOOM: I guess, it
9 depends if you're looking at NMOGA's version or the
10 joint stipulation.

11 THE CHAIR: It used to be (D) and now
12 it's (E), isn't it?

13 COMMISSIONER BLOOM: (D) here and (D)
14 there. Oh. It's (D); right? Let me go back. (E)?

15 THE CHAIR: But (D) is just
16 renumbering. I don't see actual text changes.

17 COMMISSIONER BLOOM: Right. Okay. And
18 then we're going down to (E). Sorry. Okay.

19 THE CHAIR: Yeah.

20 COMMISSIONER BLOOM: I'm on the same
21 page now.

22 THE CHAIR: Okay. And there's no
23 alternative language as far as I can tell, anybody?
24 That's in blue.

25 COMMISSIONER BLOOM: That's correct.

1 THE CHAIR: Blue is good.

2 COMMISSIONER BLOOM: Yes. Mr. Chair, I
3 would move to -- we adopt 19.15.25.13(E) and (F) as
4 they appear in the joint stipulation.

5 COMMISSIONER AMPOMAH: So -- combine
6 all of them.

7 THE HEARING EXAMINER: (D) and (E).

8 COMMISSIONER AMPOMAH: (D) and (E)?

9 THE HEARING EXAMINER: (D) and (E).

10 THE CHAIR: No. (E) and (F).

11 COMMISSIONER BLOOM: It's the new (E).
12 It's the new -- (E) is the new (F).

13 THE CHAIR: -- new (E) and new (F).

14 COMMISSIONER AMPOMAH: Okay. No
15 objection from me.

16 THE CHAIR: I'll take that as a second?

17 COMMISSIONER AMPOMAH: Yes.

18 THE CHAIR: And any objections?

19 Without objections, so adopted.

20 Okay. I think that puts us through the
21 end of 13; right? Now, into 14. So 14 (A). I
22 believe there's no proposed alternatives here either.

23 COMMISSIONER BLOOM: Mr. Chair, I
24 believe there's no proposed alternatives for 14(A),
25 (B), (C), (D), (E), or (F). I would move to adopt all

1 of 25.14.

2 COMMISSIONER AMPOMAH: I second.

3 THE CHAIR: Any opposition?

4 Without opposition, so adopted.

5 19.15.25.15. Any debate?

6 COMMISSIONER BLOOM: I think the
7 parties are in agreement here. Did I miss anything?

8 COMMISSIONER AMPOMAH: No, you did not.

9 COMMISSIONER BLOOM: Okay. Then I
10 would move to adopt 19.15.25.15. The joint
11 stipulation.

12 COMMISSIONER AMPOMAH: I second.

13 THE CHAIR: Any opposition?

14 Without opposition, so adopted.

15 COMMISSIONER BLOOM: And I would move
16 to adopt all of 19.15.25.16 -- wells to be used for
17 fresh water. I do not see any differences there
18 between the parties. I would move to adopt the
19 version of the joint stipulation.

20 COMMISSIONER AMPOMAH: I second.

21 THE CHAIR: Any opposition?

22 Without opposition, so adopted.

23 COMMISSIONER BLOOM: We have 20 minutes
24 left, Mr. Chair. I might just suggest that we go back
25 and make sure that all we all have the same homework

1 written down.

2 COMMISSIONER AMPOMAH: Yeah.

3 THE CHAIR: I'm a little shocked that
4 we made it to the end of the day, and we actually made
5 it through. Okay. Here's the list I have for things
6 to review.

7 COMMISSIONER BLOOM: Give me a second
8 here. All right. I'm ready.

9 THE CHAIR: I have 19.15.8.9(A).

10 COMMISSIONER BLOOM: 8.9(A). So we're
11 looking at the waiver language and double bonding
12 issue that we saw from IPANM and NMOGA?

13 THE CHAIR: Yes.

14 COMMISSIONER BLOOM: Okay.

15 THE CHAIR: Correct me if I'm missing
16 anything. But the next one I have is 19.15.8.9(D)(4).

17 COMMISSIONER AMPOMAH: Hold on.
18 (D)(4)?

19 THE CHAIR: (D)(4). Well, because it's
20 not in the --

21 COMMISSIONER BLOOM: What was the issue
22 there, Mr. Chair?

23 COMMISSIONER AMPOMAH: Oh. Okay. It's
24 in the --

25 THE CHAIR: I'm sorry. I'll have to

1 flip to it. Give me just a second.

2 COMMISSIONER BLOOM: Yeah.

3 THE CHAIR: This would be a NMOGA
4 proposal for the language: "Upon receipt of an
5 operator's written variance request, the Division
6 shall have 30 days to accept or deny the operator's
7 variance.

8 "If the Division denies the operator's
9 variance, the operator shall have 30 days in which to
10 file a request for the hearing with the Division."
11 And then the appeal and hearing procedures. It's the
12 30 days -- the variance request that we discussed
13 earlier.

14 COMMISSIONER BLOOM: Yeah. Yeah. So
15 19.15.8.9(D)(4), variance requests?

16 THE CHAIR: Mm-hmm.

17 COMMISSIONER BLOOM: Okay. Yeah. I
18 have that as well. Yeah.

19 THE CHAIR: And the next one I have is
20 19.15(F) -- I'm sorry. 19.15.8.9(F)(2).

21 COMMISSIONER BLOOM: That's inactive
22 wells and wells in expired or approved temporarily
23 abandoned status for than two years according to
24 NMOGA's language; right? Yeah.

25 THE CHAIR: -- 15.8 --

1 COMMISSIONER BLOOM: (F)(2)?

2 THE CHAIR: Wait. Something's wrong
3 there. 8.9(F) -- 19.15.8.9, but I don't have (F)(2).
4 What am I looking at? I guess -- NMOGA --

5 MR. SHANDLER: -- page 2140.

6 THE CHAIR: 8.9 -- oh. Here we go.
7 The 8.9(F) --

8 COMMISSIONER AMPOMAH: Two.

9 THE CHAIR: Yep. It's on the --

10 COMMISSIONER BLOOM: -- page are you
11 on -- 23?

12 THE CHAIR: I'm looking at the
13 applicant's proposed --

14 COMMISSIONER BLOOM: Yeah. Yeah.

15 THE CHAIR: Well, because you're
16 looking at NMOGA's; right? But that's with NMOGA's
17 edition. So it's going to be a different page. So if
18 you put 19.15.8.9 -- I couldn't find it in the NMOGA
19 filings.

20 COMMISSIONER BLOOM: 19.15.8.9 --

21 MR. SHANDLER: Mr. Chair, my
22 recollection is Dr. Ampomah didn't think both these
23 terms should be in there. That's my memory of it.

24 THE CHAIR: I'm sorry. What? Could
25 you repeat that? I'm sorry.

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1 MR. SHANDLER: So first, there was the
2 discussion about approved and expired temporary and --
3 my memory is Dr. Ampomah thought only one of them
4 should be considered a subcategory of inactive wells.

5 COMMISSIONER BLOOM: Yeah. So --

6 COMMISSIONER AMPOMAH: Yeah. That
7 should be (D) now (F). Yeah. (F) -- so it is the
8 actual (F). The inactive -- yeah -- (2).

9 THE CHAIR: Yes.

10 COMMISSIONER AMPOMAH: Yeah. But I
11 think there is one more up there. The Commission will
12 look at this on Friday that was under 9(A). There was
13 something there.

14 THE CHAIR: I'm sorry. Give me that
15 number again?

16 COMMISSIONER AMPOMAH: The (A) I put
17 something there, but I'm not sure what was the problem
18 with the -- on the (A).

19 THE CHAIR: 19.15.8.9(A)?

20 COMMISSIONER AMPOMAH: Yes. Sounds
21 like --

22 THE CHAIR: That's all right. We
23 can --

24 COMMISSIONER AMPOMAH: Okay. But --

25 THE CHAIR: Yes. Yes. Yes.

1 19.15.8.9(A).

2 COMMISSIONER AMPOMAH: Yeah.

3 THE CHAIR: Yep. Well, that's going to
4 be considered with -- yes. Yep. I have that.

5 COMMISSIONER AMPOMAH: And then the (F)
6 as well?

7 THE CHAIR: Yes. (F). And
8 specifically, (F)(2).

9 COMMISSIONER AMPOMAH: (F)(2).

10 THE CHAIR: Yes.

11 COMMISSIONER AMPOMAH: No. The actual
12 (F). The definition.

13 THE CHAIR: Oh. Just (F). Okay.

14 COMMISSIONER AMPOMAH: Yeah.

15 COMMISSIONER BLOOM: Yeah -- the
16 numbering changes. So the applicant's joint
17 stipulation has it as (F).

18 THE CHAIR: Yes.

19 COMMISSIONER BLOOM: Inactive wells and
20 wells in approved --

21 THE CHAIR: Yes.

22 COMMISSIONER BLOOM: And expired
23 abandoned status.

24 THE CHAIR: Yes.

25 COMMISSIONER BLOOM: Okay. And then

1 NMOGA has it as (D). Now --

2 THE CHAIR: I mean, NMOGA has, like,
3 19.15.8 -- like, one sentence under 19.15.8.9 for some
4 reason.

5 COMMISSIONER BLOOM: So then there's --
6 there's this.

7 COMMISSIONER AMPOMAH: Yes.

8 COMMISSIONER BLOOM: Soon as you get to
9 the NMOGA --

10 THE CHAIR: Oh. Oh. Oh.

11 COMMISSIONER BLOOM: Exhibit 3 -- on
12 Exhibit 4.

13 THE CHAIR: Oh -- this is Exhibit 3.

14 COMMISSIONER BLOOM: Right there. See,
15 that's (D) for them. And it's (F).

16 THE CHAIR: Okay. Found it.
17 19.15.8.9. What is going on? Okay. All right. Now,
18 I think we're all on the same page as to the language
19 that we're looking at though; right? Okay. The next
20 issue I have flagged is 19.15.9.9(D).

21 COMMISSIONER BLOOM: And those are the
22 questions around --

23 THE CHAIR: More than a number --

24 COMMISSIONER BLOOM: Interested person,
25 a person with standing, and publication in a

1 newspaper?

2 MR. SHANDLER: No. You wanted -- to
3 look at --

4 COMMISSIONER BLOOM: Oh. No.

5 THE CHAIR: -- where it says "More than
6 the number of -- more than the allowed number of wells
7 out of compliance."

8 COMMISSIONER AMPOMAH: Yeah.

9 THE CHAIR: It's not on the joint
10 stipulations.

11 COMMISSIONER AMPOMAH: Okay.

12 THE CHAIR: And then the next one I
13 have is 19.15.25.13(C)(2).

14 COMMISSIONER BLOOM: 13(C)(2)?

15 THE CHAIR: This is the 30 days'
16 notice, general newspaper of general circulation,
17 interested person standing, all of those related
18 issues. The last one I have is 19.15.25.13(C)(5).

19 COMMISSIONER AMPOMAH: Okay. Note
20 here --

21 THE CHAIR: Yes. A new one, (C)(5).

22 COMMISSIONER AMPOMAH: -- NMOGA.

23 THE CHAIR: And that one is only --
24 yeah. Only with NMOGA -- yes. You won't find it in
25 the -- yeah. Were there any other sections that I

1 missed?

2 COMMISSIONER BLOOM: That's what I had
3 as well, Mr. Chair. We got it.

4 THE CHAIR: In that case, shall we
5 recess and reconvene Friday morning at nine? Having
6 had a chance, hopefully by then to review the issues
7 that we just flagged?

8 COMMISSIONER AMPOMAH: Thank you.

9 COMMISSIONER BLOOM: Thank you.

10 THE CHAIR: Thank you all. We're in
11 recess.

12 (Whereupon, at 4:52 p.m., the
13 proceeding was concluded.)

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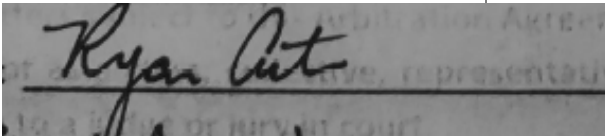
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CERTIFICATE

I, RYAN AUTEN, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



RYAN AUTEN
Notary Public in and for the
State of New Mexico

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CERTIFICATE OF TRANSCRIBER

I, ADRIENNE HINOJOSA, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



ADRIENNE HINOJOSA

[& - 19.15.5.9]

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