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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 Nos. 24683

HEARING
DATE: Monday, October 20, 2025
TIME: 9:00 a.m.
BEFORE: Hearing Examiner Felicia Orth
LOCATION: State of New Mexico Oil Conservation
Commission
Pecos Hall, Wendell Chino Building
1220 South Saint Francis Drive
Santa Fe, NM 87505
REPORTED BY: Ryan Auten
JOB NO.: 7626610

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

2 ALSO PRESENT:

3 Albert Chang, Director (by videoconference)

4 Felicia Orth, OCC Hearing Officer (by
5 videoconference)

6 William Ampomah, OCC Council (by videoconference)

7 Greg Bloom, Commissioner (by videoconference)

8 Sheila Apodaca, Commission Clerk, (by
9 videoconference)

10 Audrey Cuyler, Public attendee (by
11 videoconference)

12 Calder Ezzell, IPANM witness (by videoconference)

13 Clayton Sporich, NMOGA witness (by
14 videoconference)

15 Madai Corral, EMNRD (by videoconference)

16 Dan Arthur, NMOGA witness (by videoconference)

17 Daniel Timmons, Public attendee (by
18 videoconference)

19 Loren Diede, OCD witness (by videoconference)

20 Douglas Emerick, NMOGA witness (by
21 videoconference)

22 Esther Jamison, Public attendee (by
23 videoconference)

24 Phillip Goetze, EMNRD (by videoconference)

25 Brittany Hall, EMNRD (by videoconference)

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

ALSO PRESENT:

Joan Brown, Franciscan Sister (by
videoconference)

Julie Best, Public attendee (by videoconference)

Kyrie Buffa, Public attendee (by videoconference)

Larry Scott, New Mexico State Senator (by
videoconference)

Liz Kuehn, Public attendee (by videoconference)

Michelina Paulek, Public attendee (by
videoconference)

Nicholas Gilmore, Public attendee (by
videoconference)

Ocean Munds-Dry, Public attendee (by
videoconference)

Rachael Ketchledge, Public attendee (by
videoconference)

Gerasimos Razatos, EMNRD (by videoconference)

Robert Arscott, IPANM witness (by
videoconference)

Rosa Romero, OCD witness (by videoconference)

Benjamin Shelton, Public attendee (by
videoconference)

Cory Smith, Public attendee (by videoconference)

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

ALSO PRESENT:

Gabriel Wade, Public attendee (by
videoconference)

Tiffany Wallace, OXY witness (by videoconference)

Yarithza Pena, Public attendee (by
videoconference)

Nicholas Maxwell, Sunshine Audit Inspector (by
videoconference)

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P R O C E E D I N G S

THE CHAIR: Noting the time at 9:00 a.m. on October 20th, I call the meeting of the Oil Conservation Commission to order. Commission Clerk, could we please have the roll, please?

MS. APODACA: Yes. Good morning. Roll call of the Commission. Commissioner Ampomah?

DR. AMPOMAH: Present.

MS. APODACA: Commissioner Bloom?

MR. BLOOM: Present.

MS. APODACA: Commission Chair Chang.

THE CHAIR: Present.

MS. APODACA: Okay. Full commission.

THE CHAIR: May I have a motion to approve the agenda for this meeting, please.

MR. BLOOM: I so move.

DR. AMPOMAH: I second.

THE CHAIR: Thank you very much. Any opposed?

(No response.)

Without opposition, so ordered.

May I have a motion to approve the September 18th and 19th meeting minutes please?

MR. BLOOM: I so move.

MS. APODACA: Commissioner, the minutes

1 haven't been distributed yet. They're not complete.
2 So I'm asking if we could table those until the next
3 meeting?

4 THE CHAIR: Fair enough.

5 MR. BLOOM: I move to table.

6 THE CHAIR: Thank you.

7 DR. AMPOMAH: I second.

8 THE CHAIR: Any opposition?

9 (No response.)

10 Without opposition, it is tabled.

11 With that, I will turn it over to our
12 hearing officer for the case pending in front of the
13 Commission, Case Number 24683. Thank you.

14 THE HEARING EXAMINER: Thank you,
15 Mr. Chair.

16 Good morning. My name is Felicia Orth,
17 hearing officer appointed by the New Mexico Oil
18 Conservation Commission to conduct a hearing in the
19 matter of proposed amendments to sections 19.15.2,
20 19.15.5, 19.15.8, 19.15.9, and 19.15.25 of the New
21 Mexico Administrative Code, docketed by the commission
22 administrator as Case Number 24683.

23 The petition for these proposed
24 amendments was brought by Applicants Western
25 Environmental Law Center, Citizens Caring for the

1 Future, Conservation Voters New Mexico Education Fund,
2 Dine C.A.R.E, Earthworks, Naeva, New Mexico Interfaith
3 Power & Light, San Juan Citizens Alliance, Sierra
4 Club, and WildEarth Guardians.

5 There are a number of parties in the
6 matter, and I'll ask for appearances shortly. The
7 hearing will be conducted pursuant to the Commission's
8 rulemaking rules. Those are set out in 19.15.3 of the
9 New Mexico Administrative Code.

10 Among other things, that means that
11 testimony is taken under oath and subject to
12 cross-examination by the commissioners and other
13 parties. We'll be proceeding this week, next week,
14 and the following week as necessary through technical
15 testimony and also public comment.

16 Will be a lot of opportunities for
17 public comment, which is non-technical. You need not
18 reserve a spot in advance, but it is helpful and
19 certainly puts you at the front of the line for each
20 public comment session.

21 Today's public comment session is at 4
22 p.m. Every subsequent day of hearing, we will invite
23 public comment at nine and at four. For the public
24 comment sessions at 4 p.m. on October 20th, 21st,
25 27th, and November 3rd, there will be an interpreter

1 available to interpret between Spanish and English,
2 and English and Spanish.

3 All documents related to the rulemaking
4 can be found on the Commission's website. You go to
5 OCD imaging webpage and type in Case File Number
6 24683. You will find everything.

7 The most helpful document, I would say,
8 at this point, in terms of understanding how we'll be
9 proceeding through the matter is a document titled
10 "Hearing Scheduling Order," which was filed last week
11 following a pre-hearing conference with all of the
12 parties.

13 In there you'll see the order of
14 presentation. We begin with the Applicants first, of
15 course, and proceed from there, the order of
16 cross-examination, and on the final page of the order
17 is a helpful sheet showing exactly what order the
18 witnesses will be going in and how long their
19 anticipated testimony will be.

20 There may be changes to this order
21 based on travel constraints, other scheduling
22 constraints, but this is mostly how we'll be
23 proceeding through the technical testimony.

24 Mr. Chair, there was a motion to
25 dismiss filed and responses to that motion from the

1 Applicants. The motion was filed by NMOGA and IPANM.
2 It was responded to by the Applicants and the
3 Division.

4 The movants requested a written
5 recommendation from me to you, which I believe you
6 just received this morning. And we should take that
7 up before we proceed to opening statements and the
8 Applicants' first witness. What I'd like to do though
9 is ask counsel for their appearances and then turn the
10 floor over to you to consider that motion.

11 So for the Applicants, Ms. Fox, if you
12 would start us off, please.

13 MS. FOX: Thank you, Madam Hearing
14 Officer, Commissioners. My name is Tannis Fox. I'm a
15 lawyer with Western Environmental Law Center, and with
16 me today is Kyle Tisdell, Morgan O'Grady, and Matt
17 Nykiel.

18 THE HEARING EXAMINER: Thank you very
19 much.

20 For the Division, Mr. Tremaine?

21 MR. TREMAINE: Good morning, Madam
22 Hearing Officer and Commissioners. My name is Jesse
23 Tremaine. With me is Michael Hall for the Division.

24 THE HEARING EXAMINER: Thank you. For
25 OXY.

1 MR. RANKIN: Good morning, Madam
2 Hearing Officer. Good morning, Commissioners. May it
3 please the Commission, Adam Rankin, with Santa Office
4 of Holland & Hart, appearing on behalf of OXY USA,
5 Incorporated. With me, in our Denver office today, is
6 my partner Aaron Tucker as well.

7 THE HEARING EXAMINER: Thank you.
8 For Independent Petroleum Association
9 of New Mexico?

10 MR. CLOUTIER: Good morning, Madam
11 Hearing Officer and members of the Commission. Andrew
12 Cloutier. And with me is Ann Tripp of Hinkle Shanor
13 on behalf of the Independent Petroleum Association of
14 New Mexico.

15 THE HEARING EXAMINER: Thank you very
16 much.

17 For the New Mexico Oil and Gas
18 Association.

19 MR. SUAZO: Good morning, Madam Hearing
20 Officer, Commissioners, Mr. Chair. Miguel Suazo, with
21 the law firm Beatty and Wozniak, appearing today on
22 behalf of the New Mexico Oil and Gas Association. I'm
23 joined today by my colleague Jacob Everhart.

24 THE HEARING EXAMINER: Thank you.
25 For EOG Resources.

1 MS. BRADFUTE: Good morning, Madam
2 Hearing Officer and members of the Commission.
3 Jennifer Bradfute, with Bradfute Sayer P.C., on behalf
4 of EOG Resources, Incorporated.

5 THE HEARING EXAMINER: Thank you.
6 Let's see, for New Energy Economy?

7 MS. NANASI: Good morning, Madam
8 Hearing Officer and Commission. My name is Mariel
9 Nanasi on behalf of New Energy Economy.

10 THE HEARING EXAMINER: Okay.
11 For the State Land Office. Oh, I see
12 Mr. Moore online.

13 Sheila, would you unmute him please?

14 MS. APODACA: Okay. He can unmute
15 himself now.

16 MR. MOORE: Good morning, Madam Hearing
17 Examiner. Richard Moore on behalf of the Commissioner
18 of Public Lands and New Mexico State Land Office.

19 THE HEARING EXAMINER: Thank you very
20 much.

21 And Mr. Maxwell, are you with us
22 perhaps on the platform?

23 MR. MAXWELL: Good morning, Your Honor.
24 This is Nicholas Ray Maxwell from Lea County, New
25 Mexico. Can you hear me?

1 THE HEARING EXAMINER: Very clearly.
2 Thank you, Mr. Maxwell.

3 MR. MAXWELL: Thank you.

4 THE HEARING EXAMINER: I believe that
5 is all of the folks we have appearances from. And of
6 course, Mr. Shandler, the Commission counsel, is on
7 the far end of the dais here.

8 So, Mr. Chair, unless someone has
9 another preliminary matter to identify, I believe it's
10 time to take up the motion.

11 THE CHAIR: Thank you. And I believe
12 all commissioners have received a written
13 recommendation, so I guess I'll open the floor to
14 commissioners to see if they have any thoughts on the
15 moment. Dr. Ampomah?

16 DR. AMPOMAH: Not at this time,
17 Mr. Chair.

18 THE HEARING EXAMINER: Thank you.

19 MR. BLOOM: Mr. Chair, Madam Hearing
20 Officer, thank you for your written recommendation.
21 Mr. Chair, in looking at these matters over the
22 weekend, before I saw this, my position lined up
23 pretty much in parallel with the recommendation we
24 received from Ms. Orth.

25 THE CHAIR: Fair enough. Ms. Orth or

1 Commission Counsel, I wanted to ask for advice on
2 whether it might be possible to take the matter under
3 advisement and revisit it at the end of the hearing
4 since there -- it is possible that objections may
5 be -- or the issues raised by this motions may be
6 assuaged through the proceedings. So if I may get
7 advice on that from either one?

8 THE HEARING EXAMINER: I would defer to
9 Mr. Shandler. I did note in my written recommendation
10 that NMOGA and IPANM can certainly continue to press
11 their arguments. And of course, we'll have arguments
12 from the other side, and it's all for the Commission
13 to deliberate on at the end. But I defer to
14 Mr. Shandler.

15 MR. SHANDLER: Mr. Chair, if you want
16 to take it under advisement, that is an option.

17 THE CHAIR: Is there any concerns from
18 the other commissioners if we were to take the motion
19 under advisement and to revisit it at the end of the
20 proceedings?

21 MR. BLOOM: Mr. Chair, I hadn't
22 considered this, this possibility, but it certainly
23 makes sense. I would not oppose it.

24 DR. AMPOMAH: Mr. Chair, I'm not
25 opposed to that. Thank you.

1 THE CHAIR: Well in that case, I will
2 invite a motion to take the motion to dismiss under
3 advisement and to revisit at the end of the hearing.

4 MR. BLOOM: Mr. Chair, I so move.

5 DR. AMPOMAH: Mr. Chair, I second.

6 THE CHAIR: Thank you very much. Any
7 objections?

8 (No response.)

9 No objections. So taken under
10 advisement. Thank you.

11 THE HEARING EXAMINER: Thank you,
12 Mr. Chair. Anything at all from the parties before we
13 go to Ms. Fox for her oral argument?

14 MR. SUAZO: Just one thing.

15 THE HEARING EXAMINER: Ms. Nanasi? I'm
16 sorry.

17 MS. NANASI: Madam Hearing Officer,
18 Mariel Nanasi on behalf of New Energy Economy, and I'd
19 like to be excused for certain portions of the hearing
20 and hope that I will still be able to cross-examinee
21 and file briefs in the matter regardless.

22 THE HEARING EXAMINER: Yes. If you're
23 here when I call on you to cross-examine a particular
24 witness, you may certainly cross-examine. That would
25 be your opportunity.

1 MS. NANASI: Okay.

2 THE HEARING EXAMINER: And certainly,
3 as far as I'm concerned, brief filing is fine.
4 Anything else? I heard another voice.

5 MR. SUAZO: Yes. Madam Hearing
6 Officer, just one thing to note for the Commission.
7 NMOGA and IPANM have filed exceptions to the
8 recommendations, so those should be on file, and I
9 just wanted to make a note of that. We appreciate the
10 Commission taking the time to consider the motion
11 throughout the proceeding. I just wanted to note that
12 because that just came through a couple of minutes
13 ago.

14 THE HEARING EXAMINER: Right. Thank
15 you. Yes, we're all doing this in real time, so thank
16 you for noting that. Anything else?

17 (No response.)

18 All right. We're going to turn to
19 Ms. Fox's opening statement. As I indicated to all
20 parties last week, you will have an opportunity to
21 offer your opening statement this morning if you would
22 like or to wait until your own presentation. But
23 we'll start with the Applicants, Ms. Fox.

24 MS. FOX: Thank you, Madam Hearing
25 officer, members of the Commission. My name is Tannis

1 Fox, and I'm a lawyer with Western Environmental Law
2 Center representing Applicants, which is a diverse
3 coalition of nine nonprofit organizations.

4 The central purpose of Applicants'
5 proposals is to prevent the proliferation of orphan
6 wells in our state. Although New Mexico does not have
7 a formal definition for "orphan well," it is generally
8 understood to mean a well that is non-producing,
9 unplugged, and with no solvent responsible party to
10 plug or remediate. The liability thus falls to the
11 State.

12 Unplugged wells can emit air
13 pollutants, including methane, a potent greenhouse gas
14 driving climate change, and hazardous air pollutants
15 known or suspected to cause cancer, reproductive
16 diseases, and birth defects. Leaking wells can also
17 pollute ground and surface water.

18 Communities likely to be exposed to
19 pollutants from unplugged wells include historically
20 marginalized groups, including communities in the
21 northwest of New Mexico. Living in proximity to wells
22 is associated with a range of negative health
23 outcomes.

24 This summer, the New Mexico Legislative
25 Finance Committee issued a report on orphan wells.

1 This is Applicants' Exhibit 4.

2 (Applicant Exhibit 4 was marked for
3 identification and received into
4 evidence.)

5 LFC found that the State "faces
6 significant and growing financial liabilities for oil
7 and gas well cleanup." According to LFC, OCD has
8 plugging authority for approximately 700 wells. The
9 State will likely need to plug an additional 1400
10 inactive wells, and there are more than 3,000 low
11 producing wells at risk of being orphaned.

12 LFC estimates the state's current and
13 near future liability for plugging and remediation is
14 between 700 million and 1.6 billion dollars. As of
15 this April, the State's reclamation fund held \$66.7
16 million. That's an enormous, likely insurmountable
17 delta between the State's potential liability and the
18 State's resources to take on that liability.

19 But this is not a liability that should
20 be thrust upon the State. This is a liability that
21 should be borne by industry. Presently, however, the
22 State, its taxpayers, and our communities bear the
23 weight of the orphan well problem because of lax
24 legislative and regulatory controls. Applicants'
25 petition aims to strengthen the State's rules to

1 prevent the catastrophic liability LFC forecasts.

2 LFC's findings and policy
3 prescriptions, which include recommendations for
4 rulemaking, are consistent with Applicants' findings
5 and policy prescriptions put forth in our proposals.
6 LFC is not the only agency to sound the alarm. So too
7 is the State Land Office and the Oil Conservation
8 Division. New Mexico State agencies understand that
9 orphan wells pose a substantial risk to the State and
10 our communities and that regulatory action is needed
11 and is needed now.

12 Since filing our petition in June 2024,
13 Applicants have amended it twice, first to incorporate
14 proposals offered by OCD, second to incorporate
15 proposals negotiated among OXY USA, Inc., OCD, and
16 Applicants. Applicants' final proposed amendments are
17 Exhibit 72.

18 (Applicant Exhibit 72 was marked for
19 identification and received into
20 evidence.)

21 OCD's proposed amendments in its
22 hearing statement mirror Applicants'. The State Land
23 Commissioner "strongly supports the whole of the
24 petition." And OXY doesn't oppose some of Applicants'
25 significant proposals, including those for financial

1 assurance for active and inactive wells, establishing
2 presumptions of no beneficial use, and strengthening
3 operator registration and well transfer requirements.

4 Unfortunately, NMOGA and IPANM would
5 not come to the negotiating table, although Applicants
6 tried mightily to get them there. And, in their
7 hundreds of pages of testimony, their witnesses fail
8 to acknowledge the crisis our state faces, let alone
9 offer constructive regulatory solutions. But
10 maintaining the status quo is not acceptable.

11 The next several days, you will hear
12 from Applicants' experts. Thomas Alexander will be up
13 to bat first. Mr. Alexander spent 35 years working
14 for oil and gas companies, including four small
15 operators, where he focused on field operations and
16 engineering, including drilling, completion,
17 production, and reserve evaluation. After retiring
18 from Southwestern Energy, where he was a vice
19 president overseeing the health, safety, environment
20 division, Mr. Alexander began consulting almost ten
21 years ago.

22 Next, you will hear from Dwayne Purvis.
23 Mr. Purvis has worked as a petroleum reservoir
24 engineer for 30 years, working across the U.S. and
25 internationally. He's a registered professional

1 engineer in Texas and founded his consulting firm over
2 ten years ago. Mr. Purvis developed significant data
3 evaluating New Mexico's oil and gas operations and the
4 impacts of Applicants' proposals.

5 Next, you will from Peter Morgan.
6 Mr. Morgan is a lawyer who received his J.D. and
7 Master's of Science from Stanford. He worked for the
8 Sierra Club for many years, focusing on cleanup of
9 fossil fuel extraction before co-founding the Center
10 for Asset Retirement Accountability, whose mission is
11 to address the national problem of unplugged wells.

12 Batting cleanup is Adam Peltz.
13 Mr. Peltz also is an attorney. He works for the
14 Environmental Defense Fund on the environmental
15 impacts of oil and gas development. He is engaged in
16 legislative or rulemaking activities on financial
17 assurance, idle well management, and well transfers in
18 a number of states and serves on a National Academy of
19 Science study on orphan well plugging. EDF also
20 develops substantial data evaluating the State's oil
21 and gas operations and the impacts of Applicants'
22 proposals.

23 The orphan well problem is a national
24 one. New Mexico is not alone, and many oil and gas
25 states are working to find solutions. This is a

1 complex problem requiring multiple policy
2 prescriptions.

3 Applicants propose a three-pronged
4 strategy. First, Applicants propose increasing
5 financial assurance for high-risk wells. Second,
6 Applicants propose rules to protect against high-risk
7 well transfers. And third, Applicants propose
8 strengthening rules to prevent inactive wells, with no
9 future use, from lingering indefinitely in inactive
10 status.

11 I'll discuss each briefly beginning
12 with financial assurance. It's no secret that New
13 Mexico's financial assurance requirements, both in
14 statute and rule, are woefully inadequate. In 2021,
15 the State Land Office estimated the total cost of
16 decommissioning oil and gas infrastructure could be
17 north of \$22 billion, while financial assurance held
18 by the State paled by comparison.

19 While the commission has no authority
20 to change the Oil and Gas Act, it has authority to
21 change its rules. The Act authorizes the Commission
22 to "establish categories of financial assurance after
23 notice and hearing." Applicants propose establishing
24 new categories of financial assurance based on the
25 risk of wells being orphaned.

1 Applicants first propose, in 19.15.8
2 NMAC, a new category of high-risk/low-producing well
3 called "marginal wells." This proposal originated
4 with OCD, based on their field experience, and has
5 been data tested by Applicants' experts.

6 Marginal wells are wells that produce
7 less than a thousand BOE and less than 180 days during
8 a 12-month period. That's 2.7 BOE per day. It's well
9 established that low-producing wells are at higher
10 risk, as LFC found.

11 Applicants propose one-well financial
12 assurance in the amount of \$150,000 for each marginal
13 well. Under the Act, financial assurance categories
14 must include "one-well plugging financial assurance in
15 amounts determined sufficient to reasonably pay the
16 cost of plugging the wells covered by the financial
17 assurance."

18 The relevant cost for financial
19 assurance is the cost to OCD to plug; it is not the
20 cost to industry because, if a well is orphaned it
21 falls on OCD to plug. \$150,000 approximates an amount
22 sufficient to reasonably pay the cost of plugging the
23 wells. OCD's average cost to plug a well is \$163,000.
24 While there will always be variation in actual
25 plugging costs, it's reasonable to use a figure close

1 to the average cost.

2 According to Mr. Purvis' data, marginal
3 wells comprise 2200 wells in the state, representing
4 3.7 percent of the well population and just .045
5 percent of total production. That's less than one
6 half of 1 percent of total production. That data is
7 reflected in Applicants' Exhibit 40.

8 (Applicant Exhibit 40 was marked for
9 identification and received into
10 evidence.)

11 While marginal wells represent de
12 minimis amount of production for the State, they
13 represent a tremendous potential liability for the
14 State. Applicants adopted another FA proposal from
15 OCD for marginal and inactive wells. This proposal is
16 directed at the operator level, recognizing that a
17 risky portfolio -- that is a portfolio that carries a
18 lot of high-risk wells -- has the potential to unload
19 dozens or even hundreds of wells to the State.

20 Witness the State's settlement with
21 Ridgeway Arizona Oil Corporation when Ridgeway
22 couldn't meet its plugging responsibilities for 299
23 wells, leaving the State to take on the \$30 million
24 liability. In return, Ridgeway gives installment
25 payments to the State, payments that will take

1 literally decades to complete, assuming a company that
2 can't pay for its wells now will even be operating
3 decades from now.

4 Applicants propose an operator with 15
5 percent or more of its wells in marginal and/or
6 inactive status post a one-well financial assurance of
7 \$150,000 for all its wells. According to Mr. Purvis'
8 data and Applicants' Exhibit 52, this category
9 represents only 2.3 percent of production in the
10 State.

11 (Applicant Exhibit 52 was marked for
12 identification and received into
13 evidence.)

14 Again, while this category reflects a
15 de minimis amount of production for the State, it
16 represents a tremendous liability for the State.

17 Finally, Applicants propose one-well
18 assurance of \$150,000 for all wells in inactive
19 status, including wells in approved and expired
20 temporary abandonment status. Inactive wells
21 represent the highest risk because they are no longer
22 producing or generating any revenue.

23 In New Mexico, these wells, inactive
24 wells, have a shockingly high degree of
25 non-compliance. According to data from Environmental

1 Defense Fund, in Applicants' Exhibit 7, there are
2 approximately 3700 wells on OCD's inactive well list;
3 more than 3200, or over 85 percent, are out of
4 compliance with this Commission's rules.

5 (Applicant Exhibit 7 was marked for
6 identification and received into
7 evidence.)

8 Increasing financial assurance for
9 these wells would not only protect the State against
10 orphaning but will also give operators incentive to
11 plug or put the well back into productive use.

12 NMOGA and IPANM witnesses claim that
13 these new categories are not authorized under the Act
14 because blanket bonding is capped at \$250,000. But
15 these new categories are not for blanket bonding, and
16 the cap does not apply. These new categories are
17 fully within the Commission's authority to "establish
18 categories of financial assurance."

19 Applicants next propose provisions in
20 19.15.9 NMAC to better protect the State at the point
21 of operator registration and well transfer. Well
22 transfer, in particular, is a critical point in the
23 life of a well, as LFC has recognized.

24 Low-producing wells are often
25 transferred and sold down the value chain to

1 increasingly less well-capitalized operators who are
2 more likely to walk away from their obligations and
3 leave the State holding the plugging and site
4 remediation responsibilities.

5 Applicants' final proposals for
6 operator registration and well transfer were
7 negotiated with OXY and OCD and are in Applicants'
8 Exhibit 72. The negotiated provisions are highlighted
9 in yellow. Applicants propose to give OCD authority
10 to deny operator registrations and well transfers if
11 an operator is subject to a forfeiture demand, has
12 forfeited financial assurance, or has unresolved
13 orders from another state or federal agency.

14 These categories of non-compliance are
15 targeted, easily identifiable by operators, and
16 represent violations that increase the likelihood of
17 orphaning. OCD denial is not mandatory, as industry
18 witnesses imply, but is discretionary.

19 Applicants also propose that operators
20 taking on new wells submit a plugging and abandonment
21 plan, demonstrating that the operator has the
22 financial ability to meet the Commission's plugging
23 and abandonment requirements. Any prudent operator
24 should be able to make this demonstration, a
25 demonstration that adds one more layer of protection

1 against wells being orphaned.

2 NMOGA and IPANM witnesses claim these
3 proposals are outside OCD's authority. But OCD
4 exercises authority to deny registration and well
5 transfer on various bases. This additional authority
6 falls squarely within the Commission's existing
7 authority.

8 Applicants' third set of proposals, in
9 19.15.25 NMAC, helps prevent wells remaining in
10 inactive status indefinitely. The current rules allow
11 inactive wells to go into TA status with no showing of
12 future use and then allow a well to remain in TA
13 indefinitely with periodic reviews but with no showing
14 of future use.

15 EDF data show that, if an inactive well
16 is going to be reactivated, 99.5 percent of the time,
17 it will be reactivated in eight years. After that,
18 only one half of 1 percent of inactive wells are
19 reactivated, yet wells linger in inactive status in
20 New Mexico for years, even decades.

21 Currently, over 30 percent of inactive
22 wells have been inactive more than eight years. There
23 are a hundred wells that have been inactive for more
24 than 25. This data is in Applicants' Exhibits 8 and
25 13.

1 (Applicant Exhibit 8 and Applicant
2 Exhibit 13 were marked for
3 identification and received into
4 evidence.)

5 Applicants propose requiring operators
6 to demonstrate that a well has future beneficial use
7 to be placed in temporary abandonment status. If a
8 well has no future use, it should be plugged. Many
9 states require such a showing. And consistent with
10 the data, Applicants propose that, after eight years
11 of inactivity, a well must be plugged or put back to
12 use.

13 Finally, there are wells that, while
14 nominally active, are barely limping along, avoiding
15 the inevitability of plugging and increasing the risk
16 of being orphaned. Applicants adopted another OCD
17 proposal establishing rebuttable presumptions of no
18 beneficial use for such wells.

19 Operators have full opportunity to
20 demonstrate these wells do have use. These are wells
21 that are producing less than 90 BOE in less than 90
22 days during a 12-month period. That's just .25 BOE
23 per day.

24 Looking at Applicants' Exhibit 40, only
25 2.9 percent of the State's active wells, or 1700

1 wells, would be presumed to have no beneficial use,
2 accounting for .003 percent of production in the
3 state. According to Mr. Alexander, this proposal is
4 "highly conservative."

5 An abundance of data substantiates
6 Applicants' proposal, data that is not seriously
7 rebutted by industry. And while industry witnesses
8 have no end to objections to the proposed amendments,
9 their objections are not backed up with the quantity
10 and quality of data proffered by Applicants.

11 Finally, all Applicant organizations
12 wish to extend our sincere appreciation to the
13 Commission, Hearing Officer, and Counsel for the
14 substantial time and effort this rulemaking will take.
15 And with that, as we agreed upon during the hearing
16 conference, Applicants call their first witness.

17 THE HEARING EXAMINER: Thank you.

18 Would you please state and spell your
19 first and last name? For --

20 MS. FOX: Mr. Alexander?

21 THE HEARING EXAMINER: Yes.

22 Mr. Alexander.

23 MS. FOX: Is he going to -- ah, yes.
24 I'm sorry.

25 MR. CLOUTIER: Madam Hearing Officer,

1 can we -- this is Andrew Cloutier. Can we just note
2 one thing? As a courtesy to Mr. Alexander, the other
3 parties have agreed to defer opening, if they want to
4 do it early in the case, until after Mr. Alexander has
5 testified because he apparently has a limited
6 schedule. So I wanted to be clear to the Commission
7 and for the record that parties are not waiving
8 opening early in the proceeding.

9 THE HEARING EXAMINER: Thank you. I
10 had forgotten to mention that.

11 MR. CLOUTIER: Thank you.

12 THE HEARING EXAMINER: Thank you.

13 MR. ALEXANDER: Tom Alexander, T-O-M
14 A-L-E-X-A-N-D-E-R. And I appreciate deferment of
15 those opening statements.

16 THE HEARING EXAMINER: Thank you.

17 MR. ALEXANDER: I am on a tight
18 schedule.

19 WHEREUPON,

20 THOMAS ALEXANDER,
21 called as a witness and having been first duly sworn
22 to tell the truth, the whole truth, and nothing but
23 the truth, was examined and testified as follows:

24 THE HEARING EXAMINER: Thank you very
25 much.

1 Ms. Fox?

2 MS. FOX: Thank you, Madam Hearing
3 Officer. I am just going to bring up Mr. Alexander's
4 PowerPoint, I hope. There it is.

5 THE WITNESS: There it is.

6 MS. FOX: Who knew? Okay. Hold on one
7 second. Okay. And it works.

8 DIRECT EXAMINATION

9 BY MS. FOX:

10 MS. FOX: Please state your name?

11 THE WITNESS: Tom Alexander.

12 MS. FOX: Did you submit direct
13 testimony in this matter, Applicants' Exhibit 3?

14 (Applicant Exhibit 3 was marked for
15 identification and received into
16 evidence.)

17 THE WITNESS: Yes.

18 MS. FOX: Is it accurate, to the best
19 of your knowledge, and do you adopt it?

20 THE WITNESS: Yes and yes.

21 MS. FOX: What is your current
22 employment?

23 THE WITNESS: After working in the oil
24 and gas industry for over 35 years, I started my own
25 consulting firm in 2016, Alexander Engineering, Inc.

1 where I focus on oil and gas operations.

2 MS. FOX: What is your educational
3 background?

4 THE WITNESS: I earned a Bachelor of
5 Arts degree in psychology from Wake Forest University,
6 followed by a Bachelor and Master of Science degrees
7 in mining engineering from South Dakota School of
8 Mines and Technology.

9 MS. FOX: Please summarize your work
10 experience?

11 THE WITNESS: After serving six years,
12 over six years in the Air Force, I began my career in
13 oil and gas with Schlumberger Offshore Services in
14 1981, running open-hole logging operations and then
15 followed by a year sales and interpretation services.

16 Following Schlumberger, I worked for at
17 least four small operators: Altair Energy in the East
18 Texas Basin; Habersham Energy in the Denver-Julesburg
19 Basin; Revere Corporation in the Arkoma Basin, in the
20 Arkansas section; and OXY Petroleum in Arkoma Basin in
21 Oklahoma. In all four of these companies, I focused
22 primarily on field operations and engineering to
23 include drilling, completion, production, and reserve
24 evaluation.

25 In 1999 I went to work for Southwestern

1 Energy as a consultant and then a year later full-time
2 as a staff production and completion engineer until I
3 was promoted to team lead for our federal shale
4 exploration and development efforts.

5 Afterwards, I was promoted to general
6 manager SWN Canada to lead our exploration in New
7 Brunswick, Canada and returned from Canada to a vice
8 presidency, managing our health, safety, environment
9 division. And I retired in April of 2016.

10 MS. FOX: What is your experience
11 working in New Mexico?

12 THE WITNESS: As a consultant to the
13 Environmental Defense Fund, I served as an expert
14 before this Commission during the methane waste rule
15 hearing in 2021 and before the Environmental
16 Improvement Board during the ozone precursor rule
17 hearing in 2022.

18 MS. FOX: And what is your experience
19 determining when to plug inactive and unproductive oil
20 and gas wells and remediating well sites?

21 THE WITNESS: In one word, extensive.
22 I was repeatedly involved in the process of plugging
23 and abandonment wells in the East Texas Basin, Wilcox
24 Basin in Mississippi and Louisiana, Hardeman Basin of
25 Texas, the D-J Basin in Colorado and the Arkoma Basin

1 in Arkansas and Oklahoma for over 27 years of my 35
2 total years in oil and gas.

3 MS. FOX: Is Applicants' Exhibit 2 an
4 accurate copy of your resume?

5 (Applicant Exhibit 2 was marked for
6 identification and received into
7 evidence.)

8 THE WITNESS: It is, yes.

9 MS. FOX: Are current oil and gas
10 regulations, nationally and in New Mexico, generally
11 adequate to ensure appropriate and timely plugging of
12 oil and gas wells?

13 THE WITNESS: No. The problems in New
14 Mexico and other jurisdictions across the country face
15 are well documented and have been problems for some
16 time now. If the regulations had been adequate and
17 followed properly and enforced, there would not be as
18 many as 800,000 wells nationally that are orphan.
19 It's just that simple.

20 Consider the typical lifecycle of a
21 well, wells, or field. The initial completion results
22 in a economic venture, followed by development and
23 adequate production. With time, the production
24 naturally declines, reservoir pressures decline, and
25 profitability falls to a point where many operators

1 may elect, for a variety of reasons, to sell to
2 another operator. All too often, though, the
3 purchasing operator is smaller and less financially
4 capable of handling the unstate.

5 This cycle repeats itself until, too
6 often, the set of wells is operated by someone who has
7 nowhere near the financial wherewithal to finalize
8 operations and plug an abandoned well, wells, or field
9 and remediate the sites. So the state regulator winds
10 up with the entire mess in their lap to handle, as the
11 operator's either walked off or gone bankrupt.

12 Add to this, all too often, state
13 regulations governing financial assurance have not
14 been updated for years and kept pace with costs and
15 are completely inadequate to cover the cost of
16 decommissioning wells or entire fields and remediating
17 sites.

18 My position on this set of problems is
19 straightforward. No one really has the right to
20 operate, be it oil, gas, or other. Also, certainly no
21 one has the right to operate an oil or gas property,
22 knowing full well, someday, they might be stuck with
23 final disposition or the State might be stuck with a
24 final disposition of that well.

25 If a well's net income isn't sufficient

1 to prudently operate, protect health, safety,
2 environment, plus be able to pay for reasonable
3 financial assurance and final distribution,
4 disposition, that well should not continue to be
5 operated, period.

6 The settlement -- and as an example,
7 the settlement between the State of New Mexico and
8 Ridgeway Arizona Oil Corporation is a prime example of
9 the inadequacy of New Mexico's current financial
10 assurance regulations. It became clear to OCD that
11 Ridgeway was not able to fund projected liabilities
12 for abandonment and remediation of almost 300 wells.

13 So in a settlement, the State agreed to
14 plug 299 non-producing wells while the company agreed
15 to reimburse the State 30,000 a month until the bill
16 is repaid. At a potential cost to P&A these wells and
17 remediate in excess of 30 million, repaying would take
18 more than 83 years. What's the likelihood that a
19 company that cannot plug and abandon and remediate the
20 wells today is even going to be around eight decades
21 from now?

22 New Mexico's Legislative Finance
23 Committee recently found, and I will quote this,
24 "thousands of inactive and low-producing wells at risk
25 of being orphaned," and concludes, and I quote, "In

1 New Mexico, the goal should be to structure policies
2 that motivate operators to plug wells before they
3 become OCD's responsibility and leverage the
4 industry's capacity to do the work faster and likely
5 at a lower cost." I fully agree.

6 It's imperative to enact new rules to
7 give the State the regulatory tools necessary to
8 prudently manage New Mexico's portfolio of oil and gas
9 properties. In my opinion, and having worked for over
10 three decades of oil and gas companies, big and
11 little, the proposed rules go a long way toward
12 accomplishing this goal.

13 MS. FOX: What is the general purpose
14 of Applicants' proposals to amend the Commission's
15 rules?

16 THE WITNESS: Clearly and
17 overwhelmingly, the purpose here is to protect the
18 State against the operators most at risk of orphaning
19 their wells. These proposals focus on operators
20 operating at the very margins, wells that are
21 producing so little that they can't be paying in
22 sufficient quantities to fund the future liabilities
23 for P&A and site remediation.

24 Now, these proposals will not totally
25 guard against orphan well -- orphan wells, but they're

1 designed to protect the State, its taxpayers in
2 surrounding communities, and the environment against
3 the most serious risks, while allowing operators of
4 all sizes, including small operators who operate
5 prudently and responsibly, to continue to do so
6 profitably.

7 Regarding the financial assurance, it's
8 widely recognized that financial assurance programs
9 across the country are insufficient, and Mexico -- New
10 Mexico is no exception.

11 In LFC's June 25 report, LFC recognized
12 New Mexico's financial assurance requirements are
13 inadequate, finding that "the gap between actual
14 plugin costs and the required financial assurance
15 weakens the incentive. It weakens the incentive for
16 operators to plug their own wells, especially older
17 wells, low value wells where cleanup costs could
18 likely be higher. And as a result, operators are more
19 likely to walk away from those wells, leaving OCD to
20 manage the problem."

21 They found OCD has a plugging authority
22 currently for about 700 wells on state and private
23 lands. OCD will likely need to plug an additional
24 1400 inactive wells, and there are more than 3,000
25 low-production wells at risk. That's a total of 5100

1 wells.

2 And I quote from LFC: "It would be
3 prudent for the state to reduce its future liability
4 for orphan wells, which could be accomplished through
5 a variety of mechanisms including revising its
6 financial assurance system to incentivize operators to
7 plug wells before they become fully inactive."

8 Also, LFC found, in the past 20 years,
9 OCD has plugged about a thousand orphan wells. That's
10 about 5 percent of all wells plugged, and that's just
11 too many. Industry argues and will continue to argue
12 that some operators won't be able to comply with the
13 additional bonding requirements but should nonetheless
14 be allowed to continue to operate as is. And in my
15 opinion, high-risk operators have no business
16 remaining in business if they cannot pay for adequate
17 financial assurance. If they can't pay for that, they
18 may often not be able to pay to finance P&A and site
19 restoration.

20 Currently there are about 3700 wells on
21 the inactive list in OCD, and about 3200, over 85
22 percent, are out of compliance. That's outrageous and
23 unacceptable. They're out of compliance by virtue of
24 being inactive too long and not going in TA -- TA or
25 return to production, or they have not reviewed

1 renewed TA status.

2 We propose requiring an operator
3 demonstrate an active well -- an inactive well has
4 future beneficial use prior to being placed in TA
5 status. That's not now required in New Mexico, but
6 many states do require that.

7 We also propose that wells shouldn't be
8 allowed to linger indefinitely in TA status, as the
9 Commission rules now allow. After TA status year
10 after year, a well becomes less likely to become
11 useful. We propose that, after eight years of
12 inactivity, a well must be -- be plugged or
13 reactivated. And the data from the New Mexico
14 inactive well supports this, and I'll go over this in
15 a little bit more detail later.

16 Third, we propose OCD's proposal to
17 identify wells that are technically active but in
18 reality no longer have real beneficial use. If the
19 production of a well hasn't been for at least 90 days
20 in consecutive 12 months and 90 BOE, it is presumed to
21 have no beneficial use. These wells comprise 2.9
22 percent of the total well count in New Mexico or
23 approximately 1700 wells, and as stated earlier, only
24 .003 percent of the production in the state.

25 Let's be abundantly clear about this

1 too, and I'll say it more than once. The operator in
2 these proposals has the full opportunity to rebut the
3 presumption of and demonstrate the well has use. It's
4 not an automatic.

5 MS. FOX: Before we discuss specific
6 proposals, can you please give Commission members
7 background on development of Applicants' proposals?

8 THE WITNESS: Sure. I began working
9 with Applicants in the summer of 2023, and we were
10 working on developing the proposals. And the counsel
11 met with OCD staff and the State Land Office to
12 discuss the proposals, and I was part of some of those
13 meetings.

14 Just prior to filing, we reached out or
15 Applicants' counsel reached out to NMOGA and IPANM to
16 let them know we'd be filing a rulemaking application
17 and that we would really sincerely like to work with
18 industry following that.

19 After the filing, our counsel worked to
20 meet with industry and OCD counsel, and they scheduled
21 four meetings in October of 2024, a year ago. But
22 just before the meetings, industry counsel said they
23 could only attend one meeting. I attended that
24 meeting and there was not a substantial negotiation
25 whatsoever.

1 During the second meeting, one industry
2 lawyer attended. OCD said that they would be working
3 on alternate proposals, and they provided that to the
4 parties In February of '25. OCD adopted some of our
5 proposals and offered their own. OCD invited all
6 parties to meet, and that's in Exhibit 5, our
7 proposals with OCD.

8 (Applicant Exhibit 5 was marked for
9 identification and received into
10 evidence.)

11 We agreed to meet NMOGA, and IPANM did
12 not. Applicants' counsel and their experts, including
13 myself, met with OCD a number of times, and these
14 negotiations resulted in us adopting some of OCD's
15 proposals.

16 One industry partner, OXY, did respond
17 to our requests and met with them in the summer of '24
18 and this past summer, and I participated in those
19 latter meetings. And we reached agreement on certain
20 items proposed by OXY, and I appreciated their --
21 their willingness to sit down. Regrettably NMOGA and
22 IPANM did not.

23 And as a result of this work between
24 Applicants, OCD, and the State Land Office, we and OCD
25 have proposed the same rules to the Commission, and

1 the State Land Office supports those proposals.

2 MS. FOX: We'll now turn to Applicants'
3 specific proposals, and I'll start your PowerPoint,
4 beginning with definitions in 19.15.2 NMAC. Okay.
5 Let's see. My PowerPoint is moving on my screen but
6 not here.

7 MR. BLOOM: Do it in view. You can't
8 do it in presentation mode.

9 MS. FOX: Oh, okay.

10 MR. BLOOM: You have to do it -- go
11 to --

12 MS. FOX: View and then what? Outline
13 view?

14 MR. BLOOM: No, do --

15 MS. FOX: Huh. Worked the other day.

16 MR. BLOOM: That's Teams.

17 MS. FOX: There we go. Is that
18 working? No.

19 MR. BLOOM: It's not scrolling through.

20 MS. FOX: Madam Hearing Officer, should
21 we take a five-minute break so I can resolve this?
22 Actually practiced this last week, and it worked.

23 THE HEARING EXAMINER: All right.
24 That's good. Let's take five minutes.

25 MS. FOX: Thank you.

1 (Off the record.)

2 THE HEARING EXAMINER: Let's go back
3 from the break, please. Ms. Fox, you were 15 minutes
4 into Mr. Alexander's testimony; if you would continue,
5 please.

6 MS. FOX: Thank you, Madame Hearing
7 Officer, and apologies for the technical difficulties
8 which have been resolved.

9 BY MS. FOX:

10 MS. FOX: We'll now turn to Applicants'
11 specific proposals and I really will start your
12 PowerPoint. Beginning with 191.5.2 NMAC, Applicants
13 proposed to combine the current definitions for
14 "approved temporary abandonment" at 19.15.2.7(A)(13)
15 NMAC, and "temporary abandonment" or "temporarily
16 abandoned status" at 19.15.2.7(T)(3) NMAC. What do
17 Applicants propose?

18 THE WITNESS: Thank you. We do propose
19 to revise the definition of "approved temporary
20 abandonment" and to include "temporary abandonment"
21 and "temporary abandonment status," and also to delete
22 the current definition for the latter two terms, as
23 shown in the PowerPoint Slide 2.

24 MS. FOX: What's the basis of this
25 proposal?

1 THE WITNESS: Well, the terms "approved
2 temporary abandonment," "temporary abandonment," and
3 "temporarily abandonment status" are used
4 interchangeably throughout Commission's rules and
5 refer to wells that are authorized to be in temporary
6 abandonment, and that authorization has not expired.

7 Also, the current definition, which we
8 propose to strike for "temporary abandonment" and
9 "temporarily abandonment status," which means the
10 status of a well that is inactive, is really not
11 entirely accurate. Let's be clear, temporary
12 abandonment does not equal inactive, so it's --
13 temporary abandonment is a subset, so we just don't
14 think that that definition is accurate.

15 MS. FOX: Applicants also propose a new
16 definition for "expired temporary abandonment" and
17 "expired temporary abandonment status" at 19.15.2.7(E)
18 (8) NMAC; correct?

19 THE WITNESS: Yes. That proposal is
20 shown on the bottom of Slide 2.

21 MS. FOX: What's the basis for this
22 definition?

23 THE WITNESS: So these terms are going
24 to be used in the financial assurance provisions,
25 which require increased financial assurance for

1 inactive wells, including inactive wells that were
2 approved TA but did not renew TA statuses required by
3 Commission rules. These wells are therefore out of
4 compliance with Commission rules.

5 MS. FOX: Applicants propose a
6 definition for "beneficial purposes" and "beneficial
7 use" at 19.15.2.7(B)(7) NMAC; correct?

8 THE WITNESS: Yes. Correct. Slide 3.
9 Yep. Next slide.

10 MS. FOX: What's the basis for this
11 definition?

12 THE WITNESS: Well, the Commission's
13 rules use these terms, which are important, but
14 there's no definition whatsoever. So we propose using
15 the term "beneficial use" in a new provision and
16 creating presumptions of no beneficial use that, if
17 not rebutted, require an operator to plug an abandoned
18 well.

19 The proposed definition is consistent
20 with the current definition of "inactive well." I
21 would point out this definition says, "Means an oil
22 and gas well that is being used in a productive or
23 beneficial manner, such as" -- and that's going to be
24 an important point later on -- "production, injection,
25 or monitoring."

1 If a well is inactive and is being used
2 for speculative purposes, that is based on a guess and
3 not on information, that well should be plugged. And
4 we include that in the latter part of this definition.
5 This does not include the use of a well for those
6 speculative purposes.

7 MS. FOX: We're going to turn to Part
8 25, governing plugging of wells. Before we discuss
9 Applicants' specific proposals, can you discuss why
10 it's important to timely plug and abandon unproductive
11 wells?

12 THE WITNESS: Yeah. I'll bring up
13 about five points here. In my years of operating and
14 then finally as the vice president for vice -- of
15 health, safety, environment at Southwestern Energy,
16 I'd place public safety at the top of the list.

17 Well sites really are a form of
18 attractive nuisance and can -- or can pose a public
19 risk. And abandoned well sites can pose an even
20 greater risk because they're often not well maintained
21 or monitored regularly, and in many ways are an
22 accident waiting to happen.

23 Also, many well sites, and this would
24 be the second point, leaks at the surface. They're
25 going to have wellhead or various pieces of surface

1 equipment that, while small leaks may only be the
2 issue, they'd still pose a fire and explosion hazard.
3 You know, over time, equipment corrodes and increases
4 the possibility of leaks.

5 A third reason are leaks downhole.
6 Unattended, non-productive wells pose risks for public
7 health and environment, often wells that become
8 unproductive or very old and have been managed with
9 older technology and operating techniques. And as
10 wells age, there are distinct possibilities that leaks
11 in the casing, plug failures, cement sheath failures
12 will occur that endangers groundwater and the air.
13 And it can become especially problematic if the well
14 produces fluids with corrosive elements such as H₂S or
15 CO₂.

16 In LFC's report, they recognize these
17 findings, saying, "Oil and gas wells, by design, tap
18 into subsurface reservoirs that are often more than a
19 mile deep. When an active production ceases, the
20 wells can become pathways for hazardous substances to
21 escape, including gases like methane and hydrogen
22 sulfide and fluids like produced water and residual
23 hydrocarbon. Those leaking gases and fluids can
24 contaminate the groundwater, endanger nearby homes,
25 and impede future development of oil and gas

1 resources."

2 A fourth issue is regulatory
3 compliance. Currently, in New Mexico, there are
4 thousands of inactive wells out of compliance. And
5 fifth, closely tied to that, is financial
6 responsibility. Timely plugging wells is part of
7 managing oil and gas wells prudently at the end of
8 their lifecycle. And to neglect to do that does then
9 lead to significant future costs for plugging and
10 environmental restoration.

11 MS. FOX: OCD maintains a list of
12 inactive wells; correct?

13 THE WITNESS: It's on its website, and
14 it's updated daily.

15 MS. FOX: Can you give the Commission a
16 snapshot of information from a recent review of OCD's
17 inactive well list?

18 THE WITNESS: So this is our Exhibit 7.
19 And this was taken a point in time, July the 3rd,
20 2025. The inactive well list shown here is the data.
21 There's a total of 3765 inactive wells. 419 wells are
22 in approved TA -- approved TA status; 155 were in
23 expired TA status. That leaves a whopping 3,234
24 inactive wells that are out of compliance.

25 So only a small percentage of inactive

1 wells were in approved temporary status, while the
2 vast majority of the wells were out of compliance,
3 some almost 86 percent.

4 This also shows that many operators
5 avoid plugging wells on a timely basis. As LFC had
6 put it, virtually all wells on the inactive list are
7 eligible for enforcement action. In my opinion, this
8 is indefensible. And I can tell you, in my old
9 company, Southwestern Energy, behaving like this,
10 heads would have rolled.

11 And this is a bar graph. You'll see,
12 across the x-axis, we've got minimum time inactive,
13 and on the -- on the y-axis, the number of wells on
14 the list meeting this criteria of inactive wells.

15 I'd just like to point out a couple of
16 timeframes here that are important. We started out
17 time zero, basically with 3765 wells. And then, as we
18 march forward, this eight-plus years, there's still
19 1156, or 31 percent of the wells on the list have been
20 active for eight-plus years. And in the time period
21 of ten years, almost 900 wells are inactive. And
22 under the current rules, operators don't have to make
23 any showing that these wells have any future utility.

24 MS. FOX: Does non-compliance get worse
25 over time as inactive wells remain inactive?

1 THE WITNESS: Yes, it does. Here's
2 another graph. This is Exhibit 10.

3 (Applicant Exhibit 10 was marked for
4 identification and received into
5 evidence.)

6 And you'll see the kind of the olive
7 green or out of compliance. You know, in the first
8 nine or ten years, you'll see, you know, a fair amount
9 of the dark green and blue that are ACOI in place and
10 in approved TA status. But once you get to that ten-
11 year point, almost everything is out of compliance.

12 Is there any sound justification why
13 these inactive wells should not be plugged and
14 abandoned? And again, I'll say the longer a well is
15 inactive, dependent upon the operator's financial
16 health, the greater the risk of becoming orphaned, and
17 that leaves communities and the state to wrestle with
18 the consequences.

19 MS. FOX: Are the numbers of expired TA
20 wells increasing over time?

21 THE WITNESS: This is our Exhibit 11 --
22 11.

23 (Applicant Exhibit 11 was marked for
24 identification and received into
25 evidence.)

1 And the answer is, unfortunately, yes.
2 You'll see the kind of olive-green curve there; that's
3 expired TA wells. Back in 1990, they were in the
4 range of about 50, and then in 2021, it's peaked out
5 at about 304.

6 The positive -- I'd say positive --
7 it's an increasing trend is -- is concerning. And I
8 think, you know, any kind of an upper trend in -- is
9 disturbing. Instead of renewing the TA status and
10 renewing the projection -- protections and safeguards,
11 more and more operators are just simply not obeying
12 the rules, and hey allow their wells to linger out of
13 compliance in in expired status.

14 MS. FOX: Under current rules, what
15 demonstration must an operator make to place an
16 inactive well into temporary abandonment instead of
17 plugging and abandoning the well?

18 THE WITNESS: Well essentially not --
19 under the current rules, if the well has not produced
20 for a year, operator has 90 days to either plug the
21 well or place it in TA. But for TA, the operator
22 doesn't have to make any showing that the inactive
23 well will be turned to -- returned to beneficial use
24 or provide a reason why the inactive well should not
25 be P&A.

1 This is done on the Form C-103. It's a
2 multipurpose form, one page. You know, the top half
3 of this thing is just purely administrative: the
4 well, the operator, the depth, et cetera. And then
5 there's a block there: "What do you want to do?" "We
6 want to T&A the well."

7 And then there's a -- a blank area
8 where the operator puts in their procedure for T&A'ing
9 the well. There's no request for even a modest --
10 modest justification for T&A. And this can be done
11 every five years over and over and over. There's no
12 time limit.

13 And again, the current rules require no
14 showing that a well will ever be put into production
15 or other beneficial use or why these inactive wells
16 should not be plugged and abandoned.

17 MS. FOX: And Mr. Alexander, did you
18 review various C-103 forms and put together an exhibit
19 for Applicants, Applicants' Exhibit 12?

20 (Applicant Exhibit 12 was marked for
21 identification and received into
22 evidence.)

23 THE WITNESS: I did. I took about 30
24 wells or -- or C-103 forms at random. And one of the
25 things that's interesting on those forms is that,

1 while the procedure for plugging is that, in almost
2 all cases, the operators are placing a cast iron
3 bridge plug and dumping cement on the top of it and
4 leaving the well that way.

5 MS. FOX: Turning to Applicants'
6 specific proposals for 19.15.25 NMAC, what amendments
7 do Applicants propose for Subsection 8?

8 THE WITNESS: Okay, there's a couple of
9 things here I'd like to point out. First, we clarify
10 the application must be made to the Division to place
11 it in temporary abandonment.

12 The second point I would make here is
13 that that timeframe would be reduced from 90 days to
14 30 days. Keep in mind, these -- this well has been
15 inactive for at least a -- a year most likely. So
16 what's another 30 days?

17 And then finally, in Item Number B3, we
18 proposed to delete the word "continuously." Now
19 according to OCD, the operators game the system in the
20 sense of -- just take for example, January 1st of any
21 given year, you place a well in inactive status. Two,
22 three months later, that operator may open the well up
23 or say they do and burp up a barrel of oil or
24 something like that and then shut it back in. And
25 what they're essentially doing there is resetting this

1 inactive status time clock over and over and over
2 again.

3 MS. FOX: What is Applicants' proposal
4 to establish presumptions for no beneficial use?

5 THE WITNESS: Here are four provisions
6 that we'll talk about in depth. OCD initially
7 proposed establishing the rebuttal presumptions of no
8 beneficial use, and we adopted them. In the yellow
9 highlight there are changes from our proposal that we
10 negotiated with OXY.

11 MS. FOX: What is the basis for this
12 proposal?

13 THE WITNESS: Okay. Starting with
14 Subsection A, the well is -- a key word here --
15 preliminarily determined by OCD to have no beneficial
16 use, if, in a consecutive 12-month period, it has not
17 produced at least 90 days and made at least 90 BOE.
18 Now, that's about a quarter of a barrel per day, which
19 in almost all circumstances is not economic.

20 A point of comparison, in the recent
21 report by the LFC, deemed that wells at or below 2 --
22 2 BOE per day are problematic and observed that, with
23 this level of production, the average well is plugged
24 and abandoned. We -- OCD's proposed presumption,
25 which is rebuttable, is more than rational or

1 reasonable.

2 Now, Mr. Purvis, an expert on our team,
3 made an analysis of all the marginal wells, and I used
4 his Exhibit 40 here. And if you'll take a look at the
5 bottom -- you moved it.

6 MS. FOX: I moved it back.

7 THE WITNESS: Okay. Take a look at the
8 bottom left-hand corner. Those wells are in purple.
9 That would be the wells that are in this
10 classification of 90 BOE, 90 days, 12 consecutive
11 months. And that represents a meager amount of the
12 total wells that the state has: about 2.9 percent of
13 our active wells, or 1700 wells. And again, I've said
14 before, that's .003 percent of the production in the
15 state. The proposal targets the lowest producing
16 wells and is modest.

17 I would also say I believe OCD should
18 have the authority to scrutinize wells that are
19 operating at the edge of solvency, to protect the
20 State from taking on more or from wells. LFC also
21 recognizes that, and I quote: "Potential liability
22 for extremely low-producing wells -- wells greatly
23 exceeds the potential tax considerations. While wells
24 can continue producing very low quantities for
25 extended periods of time, the financial risk those

1 wells pose to the State far exceeds the -- the
2 potential tax revenues."

3 Going back now to Subsection B, a
4 similar approach is taken for injection wells or
5 saltwater disposal wells, in that over a consecutive
6 12-month period, OCD administrative review is
7 triggered when injection occurs less than 90 days and
8 less than a hundred barrels.

9 Subsection C -- and the rebuttal
10 presumption doesn't apply here, by the way -- but
11 wells that have been drilled and completed for less
12 than 18 months and wells that have been completed but
13 have not produced for less than 18 months -- it's not
14 uncommon, and we experienced this in the Fayetteville
15 Shale, so I'm well aware of this sort of thing.

16 You're drilling on pads. It's not
17 uncommon to bring a rig in and drill 6, 8, 10 wells at
18 a time back-to-back-to-back and then move out, wait
19 for the infrastructure to get there, and you come in
20 and complete that same set of wells
21 back-to-back-to-back. So this is a reasonable
22 provision, I believe.

23 And finally, Subsection D sets forth
24 the administrative procedures to determine no
25 beneficial use. First, OCD would give the operator

1 notice of its preliminary determination that a well
2 does not have beneficial use and given the opportunity
3 to demonstrate otherwise.

4 The changes negotiated with OXY don't
5 require operators to provide all the listed
6 information but give OCD discretion to request
7 information so as to ease the burden on operators. I
8 think that the types of information that are requested
9 are appropriate for the determination.

10 MS. FOX: Moving to Applicants'
11 proposals for temporary abandonment, what amendments
12 do Applicants propose to 19.15.25.12, which has been
13 renumbered to 19.15.25.13?

14 THE WITNESS: In general, we
15 essentially propose two changes. First, to be
16 approved for TA, the operator must demonstrate that an
17 inactive well will be used for a beneficial purpose in
18 the future. As already discussed, this demonstration
19 is currently not required. But if an inactive well
20 has no future root -- use, what good reason is there
21 that that well shouldn't be plugged?

22 To demonstrate beneficial use -- and
23 it's in the body of this text here -- an operator
24 would provide relevant data, analysis, and reasoning
25 for OCD to use and assess whether the well is likely

1 to be put in future use or whether it should be P&A'd
2 because the operator can't make an adequate showing.

3 The proposal includes a list of common
4 technical and economic data and administrative
5 information that any operator should have and easily
6 use to justify investment now or in the future in this
7 project. And it -- it should be there. It's easy to
8 identify. I've done it a hundred times in my career.

9 MS. FOX: What is the second change?

10 THE WITNESS: The second change is,
11 under current rules, as I've said before, you can go
12 into TA in five-year increments and there's no end to
13 it. We propose a different timeframe. We propose
14 that the well may be inactive for a total of about
15 eight years: one year in inactivity, and then you got
16 the two or three months there to apply for TA; an
17 initial term of five years; and then a second term
18 after a second approval of two years.

19 MS. FOX: What is the basis for these
20 timeframes?

21 THE WITNESS: Let's go back to this bar
22 chart. Critical time periods are, one, after well has
23 been inactive for six years. A hearing would be
24 required before OCD. Now, at that point, in six
25 years, you've got a very few wells that are going to

1 ever reactivate, maybe one and a half percent. And
2 then at the eight-year point only .5 percent of wells
3 that are inactive typically are reactivated.

4 This data demonstrates that the chance
5 of wells going back into use after eight years is
6 almost non-existent. There will be exceptions of
7 course. We think that this is a reasonable timeframe
8 based on New Mexico data.

9 And under the proposal to extend the TA
10 status for an additional two years, the operator must
11 provide the same information that he did the first
12 time, plus explain the -- why the well was not put
13 into beneficial use at had been -- as it had been
14 proposed initially, and have a health and safety plan.
15 And that's basically just a -- a beefed-up explanation
16 of the mechanical integrity of the well.

17 That said, I've got some principles
18 that I'll point out here. I've read industry's
19 testimony regarding cutoff date and had discussions
20 with OXY on this point. And I understand their
21 concerns that a development of a limited number of
22 projects, types of projects, could legitimately extend
23 beyond eight years.

24 I would say though, any extension,
25 however it's worded, beyond eight years, would: one,

1 need to be limited in scope; two -- say for an EOR --
2 two, limited in time; three, subject to periodic OCD
3 review, based on, four, solid engineering, technical,
4 and economic information; and five, not based on
5 guesswork or hunches or waiting for some widget to
6 come down the road 20 years from now.

7 Unfortunately, no one in the industry
8 have -- that have complained about the eight-year
9 deadline have attempted to craft a serious alternate
10 proposal. So, barring that, we think this is a good
11 proposal.

12 MS. FOX: What do Applicants propose by
13 way of an implementation schedule for the new TA
14 requirements?

15 THE WITNESS: There are three set --
16 three categories here: one, inactive wells that are
17 not in approved or expired TA status; two wells in
18 approved TA; and three, wells in expired TA.

19 Wells that have been inactive for less
20 than three years and are not in approved TA status are
21 eligible to apply for TA status. Wells that have been
22 inactive for three years or more, and are not in TA
23 status, are not eligible for TA status. OCD staff
24 proposed the three-year cutoff based on their
25 experience, and we adopted that.

1 Wells in approved TA are in compliance
2 and will remain in compliance for remainder of that
3 period, at which time the operator may then turn the
4 well to beneficial use, P&A, or apply for an extended
5 period of time, two years. And there are
6 approximately 419 wells in the state now in that
7 condition.

8 Now, there are currently about 155
9 wells in expired TA. These wells have already been in
10 TA status for at least five years, and the operator
11 should have a good idea of what the realistic destiny
12 of that well is. These wells are out of compliance.
13 We propose the operator can either submit for a
14 two-year extension, return to beneficial use, or plug
15 the well. We feel these proposals are generous.

16 MS. FOX: Turning to Section 14,
17 Applicants propose an additional requirement for TA
18 approval, and that is a demonstration, not only that
19 there is no migration of hydrocarbons or water, but
20 also that wellbore fluids to the atmosphere are
21 contained. What is the basis for this proposal?

22 THE WITNESS: Well, in Item B, there
23 were three principal points made about demonstrating
24 that a well's casing and cementing are mechanically
25 and physically sound and in such a condition to

1 prevent, one, damage to the producing zone,
2 contamination of fresh water or other natural
3 resources, and the leakage of substances to the
4 surface. We propose adding a non-containment of
5 wellbore fluids to the atmosphere. It's just common
6 sense to cover all your bases there.

7 MS. FOX: What amendments do Applicants
8 propose to the existing 19.15.25.14 NMAC, renumbered
9 to section 15?

10 THE WITNESS: These were requirements
11 that OCD recommended and we adopted. They are a
12 couple in nature. One -- and they -- they're
13 basically just additional safety measures applied to
14 wells that are going into TA. The proposal would
15 require running and submitting a caliper log and a
16 casing integrity log. Simply stated, these two logs
17 are fairly straightforward. They're designed to
18 evaluate the status of the casing and especially with
19 regard to any corrosion that may be in process. And I
20 think this is especially critical in wells that have
21 corrosive elements in their produced fluids and gases.

22 We also propose that any device, like a
23 cast iron bridge plug or retrievable plug for example,
24 that's used to test the mechanical integrity of the
25 well, remain in place during the time the well is in

1 TA. It's just an additional layer of protection. And
2 like I said earlier, in the 103s that I looked at,
3 most people do that anyway. We're just putting in --
4 or OCD is just putting it in writing.

5 I would say, too, though, about the
6 logs, that OCD ought to be able to have discretion or
7 exercise discretion as to whether a specific
8 circumstances may not require that. You know, if you
9 got a brand new well, or there's no -- no corrosive
10 elements around, there may be a good reason to not run
11 those logs.

12 MS. FOX: Thank you for your summary,
13 Mr. Alexander. We will now move to Mr. Alexander's
14 summary of rebuttal. Ready?

15 THE WITNESS: Let's do this.

16 MS. FOX: Let's do it. Did you provide
17 rebuttal testimony in this matter?

18 THE WITNESS: Yes. My rebuttal
19 testimony is Applicants' Exhibit 73.

20 (Applicant Exhibit 73 was marked for
21 identification and received into
22 evidence.)

23 MS. FOX: Is that testimony accurate to
24 the best of your knowledge, and do you adopt it?

25 THE WITNESS: Yes and yes.

1 MS. FOX: At the outset, do you have
2 general comments about the direct testimony from the
3 other parties?

4 THE WITNESS: Yes, I do. I would point
5 out that OCD proposals mirror our proposals. And
6 that's because we reached out to them to work on rule
7 changes that would best meet the goals of the Oil and
8 Gas Act and the Commission's rules to prevent waste
9 and protect the State against the risk of additional
10 orphan wells.

11 Also, we reached out to the State Land
12 Office, and the Commissioner strongly supports our
13 proposals. The LFC recently documented significant
14 risks the State faces from orphan wells. Orphan wells
15 risks have been documented by the State Land Office as
16 well.

17 Despite this recognition across state
18 agencies, NMOGA and IPANM failed to acknowledge the
19 problem or offer effective regulatory solutions and
20 rejected all of ours and OCD's proposals and offered
21 little in -- in an alternative. I believe that the --
22 the Commission should not maintain the status quo as
23 NMOGA and IPANM essentially recommend. The existing
24 rules have not kept pace with the operating realities
25 of today and the indisputable risk of becoming --

1 wells becoming orphaned.

2 MS. FOX: Turning to Applicants'
3 specific proposals, NMOGA witnesses object to
4 Applicants' proposed definition for "beneficial use"
5 and "beneficial purposes," objecting that the
6 definition is too limiting and excludes beneficial use
7 activities such as secondary and tertiary recovery,
8 and geothermal use. What is your response?

9 THE WITNESS: Well, I think that they
10 misconstrue the definition. And I certainly don't
11 agree with their -- their contention that it's
12 exclusive.

13 I mean, look, we'll go back to this
14 definition, and I said earlier that I would point out
15 two words: "such as." "Beneficial use means that an
16 oil and gas well is being used in a productive or
17 beneficial manner, such as"; that's "for example." So
18 all the other examples that the -- that IPANM or NMOGA
19 brought up, that would be included in that. It's --
20 it's not exclusive, and the -- the examples are taken
21 directly from the definition of an inactive well.

22 MS. FOX: Industry witnesses object the
23 term "speculative" is vague and will be arbitrarily
24 applied. What is your response?

25 THE WITNESS: Well, I don't think that

1 the term "speculative" is subjective or arbitrary. As
2 a matter of fact the dictionary definition of it is
3 speculative is something based on a guess and not on
4 information. And that's a reasonable showing that a
5 prudent operator should be able to make.

6 To rebut the presumption, an operator
7 must show that the well has utility, based on
8 information, not guess or not hoping that something
9 will come down the road 10, 15 years from now. If it
10 has future utility, the operator should be able to
11 provide a factual basis for that and demonstrate that
12 and not a bunch of arm waving about what might happen
13 in the future.

14 Now, in the context of placing a well
15 in TA, the operator must show future beneficial use
16 based on information and guesswork. Again, our
17 proposal included examples of the information that OCD
18 may use to determine beneficial use in the future.

19 Operators, as the NMOGA witnesses
20 McGowen testified, are constantly evaluating the
21 productivity and product -- and profitability of their
22 wells. And that's a factual demonstration that they
23 should then be able to make. And if the well has no
24 future in utility, it should be plugged.

25 Ms. Felix suggested a well has

1 beneficial use if there is some use in the future, not
2 currently known, based on technology yet to be
3 invented. That is, to me, no definition at all.
4 Under that formulation, all wells would have
5 beneficial use forever. And imagine what that would
6 do to the oil-and-gas-producing landscape. It'd be an
7 unmitigated disaster.

8 MS. FOX: Mr. McGowen and Mr. Arthur
9 claim the definition conflicts with use of the terms
10 in other Commission rules. What is your response?

11 THE WITNESS: Well, the terms
12 "beneficial purposes" and "beneficial use" are used
13 now in the Commission rules and are critical terms,
14 but they have no definition. And in my testimony, I
15 said -- I cited where the -- the terms are used in
16 many places. While both the witnesses claim there
17 could be no -- there could be confusion, they don't
18 explain ever what that confusion could be.

19 MS. FOX: IPANM witness Ezzell objects
20 to use of "beneficial use" because it is not a concept
21 used in New Mexico in the oil and gas arena. What is
22 your response?

23 THE WITNESS: Well, I haven't actually
24 worked in the field in New Mexico, and I can't comment
25 on its usage in New Mexico. But those terms,

1 "beneficial use" and "beneficial purposes," are
2 commonly used or at least inferred in all the other
3 producing areas that I've worked in. And again, I
4 will say they're noted -- that the terms are used in
5 the Commission rules now.

6 MS. FOX: NMOGA offers a lengthy
7 definition of "beneficial purposes" and "beneficial
8 use." What is your opinion of NMOGA's proposed
9 definition?

10 THE WITNESS: Well, I don't think much
11 of it. It's not really a definition; it's mostly
12 regulatory in nature. The definition that was
13 proposed through Mr. Sporich -- and I hope I pronounce
14 his name correctly -- for "beneficial purposes" and
15 "use" contradicts its claim that defining these terms
16 will conflict with the use of terms in other
17 Commission rules.

18 We feel that our definition is clear
19 and simple. And the examples that are cited are not
20 exclusive, and it would include the examples that no
21 NMOGA have represented that they would like to be
22 represented in productive use of a well.

23 And again, I'll say that the -- the
24 last three parts of that definition are mostly
25 regulatory in -- in nature, and they're basically

1 aimed at undermining our definition of "beneficial
2 use," which includes that the future cannot be based
3 on speculative use. So, in all, I disagree with their
4 proposed definition in its entirety.

5 MS. FOX: Witnesses for NMOGA object to
6 combining the definitions for "approved temporary
7 abandonment," "temporary abandonment," and
8 "temporarily abandoned status" as confusing. What is
9 your response?

10 THE WITNESS: Well, they claim that
11 combining the definitions would have wide ranging
12 effects on the Commission rules and create unnecessary
13 confusion, but they don't attempt to explain how that
14 might be.

15 In my direct testimony, I cited where
16 the three terms are used in the Commission rules
17 already. And the NMOGA witnesses gave no example
18 where there's confusion among those terms. I think
19 that's because there is no confusion.

20 If a well is in temporary abandonment
21 or in temporarily abandoned status, that simply means
22 it's in approved TA status. It's that simple. The
23 current definition for "temporary abandonment" or
24 "temporarily abandoned status," which means the status
25 of a well that is inactive, is inaccurate, we believe.

1 I've explained that before. TA wells are simply a
2 subset of inactive wells, and they have been approved
3 by OCD to remain inactive during that period of time
4 in TA.

5 We'll go back to Exhibit 7 to review
6 again. Total inactive wells 3,765, 150 in expired TA,
7 400 or so in TA status, and over 3200 wells are
8 inactive and have not been placed in TA status and are
9 out of compliance. Again, I would say inactivity is
10 not synonymous with temporary abandonment or temporary
11 abandoned status.

12 MS. FOX: NMOGA witnesses object to
13 Applicants' proposed new definition for "expired
14 temporary abandonment" and "expired temporary
15 abandonment status." What is your response?

16 THE WITNESS: Well, their main
17 objection here is that the definition ties a well in
18 an expired TA status to non-compliance. And guess
19 what? It does; it is non-compliant. That's because
20 the operator's not renewed TA status as required after
21 temporary abandonment has -- has expired.

22 Also, the terms "expired temporary
23 abandonment" and "expired temporary abandonment
24 status" need to be defined. We're using those terms
25 with relation to TA requirements, and also they'll be

1 used in the update of the financial assurance
2 thoughts.

3 And this slide, again here, this graph,
4 one more point about these expired TA wells. The
5 number is ever increasing. These wells are out of
6 compliance and potentially a high risk. The upper
7 trend is worrisome, and it supports strengthening
8 regulatory solutions and actions.

9 MS. FOX: Industry witnesses object to
10 Applicants' proposed amendments to 19.15.25.8, and in
11 particular object to deleting the word "continuously."

12 THE WITNESS: Yes. They --

13 MS. FOX: What is your response?

14 THE WITNESS: Sorry. Yes. They do
15 strongly object. We propose deleting "continuously,"
16 after discussions with OCD staff. I mentioned earlier
17 that they are experienced with operators that they
18 gamed the system by turning a well on for a very short
19 period of time and resetting the clock of inactivity.
20 And therefore, what happens there is they avoid the
21 financial obligations required for placing a well in
22 TA Status.

23 Industry claims that this would result
24 in premature plugging. But I think we can assume that
25 OCD would use sound professional judgment to determine

1 if a well is inactive according to the Commission's
2 rules, and that if it's not being used for beneficial
3 purpose over a 12-month period of time.

4 The claim that OCD would require
5 premature plugging infers OCD will be unreasonable.
6 I -- I can't imagine that that is going to be the
7 case. I would note also that neither NMOGA or IPANM
8 offer constructive solution to an identified problem.

9 MS. FOX: Let's turn to Applicants'
10 proposed presumptions of no beneficial use. The
11 presumptions were first proposed by OCD; correct?

12 THE WITNESS: That is correct.

13 MS. FOX: And did we --

14 THE WITNESS: That --

15 MS. FOX: Go ahead --

16 THE WITNESS: And based on OCD staff
17 experience, and after negotiations with OXY shown in
18 the highlighted yellow, OXY does not oppose this
19 provision.

20 MS. FOX: NMOGA witnesses raise various
21 objections to this proposal. What is your response?

22 THE WITNESS: Well they're arguing that
23 setting specific production and time period -- time
24 period thresholds to establish a rebuttal presumption
25 are too rigid and not operationally realistic. I

1 disagree.

2 The threshold here is 90 barrels of oil
3 equivalent, over 90 days, in a 12-month consecutive
4 period of time. I mentioned earlier that's about a
5 quarter of a barrel a day, and there's no way that
6 something like that can be economic at current prices.
7 Prices would have to be way more than they are
8 currently.

9 And then I would mention again LFC's
10 recent report on orphan wells, deemed wells at or
11 below two BOE a day problematic, and found, at this
12 level of production, the average well is getting
13 plugged and abandoned.

14 If a -- if a well is producing at this
15 level, and there's nothing in the immediate future
16 that adds value, it's simply done. It's not a case of
17 premature abandonment; the well is simply done, and
18 it's time to move on rather than walk away and leave
19 it to another operator or the State to plug.

20 We -- experts on our team have tested
21 the criteria. Here's that slide again. And the data
22 substantiate -- substantiate that these criteria are
23 highly conservative. Again, I will say this comprises
24 about 2.9 percent of the state's active wells, or 1700
25 wells, and accounts for only .003 percent of the

1 production in the state.

2 So those wells meeting both criteria
3 are the most marginal of marginal wells, and I think
4 it's appropriate and in fact prudent, and should help
5 prevent wells from being orphaned and becoming a
6 liability of the State, to review these wells.

7 MS. FOX: NMOGA witnesses object the
8 presumption bypasses individualized well evaluations
9 and risks premature abandonment of wells that may
10 retain economic or operational value. And they object
11 that individual presumptions undermine field-level
12 economics and reservoir management. What is your
13 response?

14 THE WITNESS: Well, I disagree again.
15 The proposal expressly allows for individualized
16 determinations. Under this proposal, in Item D, that
17 is the entire proposal or the process by which these
18 wells would be reviewed after a preliminary
19 determination from OCD, and then the operator would
20 have the opportunity to rebut the presumption. So I
21 don't think it's an issue whatsoever.

22 MS. FOX: NMOGA witnesses object that a
23 30-day time period is too short to submit the required
24 documentation to rebut the presumption. What is your
25 response?

1 THE WITNESS: Well I think I mentioned
2 earlier that Mr. McGowen made the comment that
3 operators are constantly evaluating their wells
4 financial performance. That's my experience. I did
5 it all of my career. Any operator, prudent operator
6 would have well files, production and pressure
7 history, maps, whatever to tell the well's story. So
8 based on my experience, 30 days is a reasonable period
9 of time.

10 That said, and as I understand it, OCD
11 certainly can extend the time period for submission of
12 information if it's appropriate to do so. I think
13 this is another point where our proposed time periods
14 and -- and elsewhere for other provisions could have
15 and should have been discussed with industry
16 beforehand, but it just simply didn't happen.

17 MS. FOX: To rebut a presumption of no
18 beneficial use, an operator must provide documentation
19 the well is projected to produce in paying quantities,
20 and the operator is adequately capitalized or has
21 sufficient revenue to meet all P&A and environmental
22 liabilities.

23 NMOGA witnesses object that paying
24 quantities is not individual-well specific but is a
25 lease-wide concept, and therefore the requirement

1 doesn't make sense. What is your response?

2 THE WITNESS: Well, first, I'd say, you
3 know, to -- to evaluate a single well performance
4 based on its -- its production rate, the -- the price
5 of the commodity, and the cost to -- to operate the
6 well is really a relatively straightforward matter.
7 You know, revenue in versus, you know, cost, I mean
8 that's simple to do.

9 Now, NMOGA's point about assessing
10 paying quantities at a lease level, I do believe has
11 merit, and I -- I wish that that would've been an
12 issue that NMOGA should have raised before the
13 hearing. And we could have maybe come up with some
14 constructive language otherwise.

15 MS. FOX: NMOGA witnesses object that
16 assessing presumptive beneficial use over a 12-month
17 period is too short for adequate assessment and
18 recommends three to five years. What is your
19 response?

20 THE WITNESS: Well, let's kind of go
21 back to Mr. McGowen saying that operators are
22 constantly evaluating the value of their properties
23 and how they're doing. So any -- any prudent operator
24 should know their wells intimately insofar as
25 production pressure, geology, lease provisions, et

1 cetera.

2 So this information should be really
3 readily available to the operator for wells that are
4 producing at the levels that we're talking about: 90
5 BOE in less than 90 days over a 12-month period. So I
6 see no reason to add another three to five years of
7 evaluation. As a matter of fact, I think it smacks of
8 kicking the can down the road for unnecessary delays
9 that aren't really well justified. And what happens
10 during that period of time is that that well continues
11 to decline. It continues to potentially be a -- a
12 greater risk of becoming an orphan.

13 If they don't know their wells well
14 enough to come to OCD with the kind of information
15 that's needed for well-specific parameters like that,
16 I'd be seriously worried about their ability to
17 operate safely and prudently.

18 MS. FOX: NMOGA witnesses claim use of
19 the rebuttable presumption can result in "mandatory
20 disclosure of proprietary data." What is your
21 response?

22 THE WITNESS: No. No. No. They
23 failed to cite the authority that is stated under NMSA
24 1978, Subsection 71-2-8 which requires the agency to
25 keep confidential the provisions of any confidential

1 contract or any other confidential information
2 received from a third party, and violation of that is
3 a misdemeanor. So, therefore, OCD must keep this
4 information confidential. That's been my experience
5 in -- you know, the basins that I've worked in.

6 MS. FOX: Let's turn to Applicants'
7 proposals relating to temporary abandonment. OXY
8 doesn't oppose Applicants' proposal to require
9 operators, seeking approved temporary abandonment, to
10 explain the purpose of the request, the future use of
11 the well, and the period needed for that future use
12 and related information.

13 However, OXY objects to having to
14 produce that information on a mandatory basis of the
15 information proposed in 19.15.25.13(A) What is your
16 response?

17 THE WITNESS: Well, first I appreciate
18 OXY's general support of the proposal, and I
19 understand their concerns. However, perhaps they're
20 misreading the proposal. The way we read it and
21 understand it is that the list of information that OXY
22 objects to is not mandatory; it just represents
23 examples of information that OCD may request if
24 appropriate.

25 MS. FOX: OXY proposed to modify

1 proposed 19.15.13(B) in various ways, including
2 deleting a time limit on renewal of TA status to two
3 years, and instead not placing any time limit on a
4 next renewal. What is your response?

5 THE WITNESS: I disagree strongly. I
6 mean, already you have a -- a situation where TA is
7 every five years, and you could go on forever and
8 ever. In their proposal, they're just wanting to have
9 an open end at the end of the two years, and actually
10 that would weaken an already weak provision, in my
11 opinion.

12 MS. FOX: OXY witnesses specifically
13 object to requiring wells in TA status to go back into
14 use or be plugged and abandoned after the second TA
15 term for wells to be used for enhanced recovery
16 because those well fields take many years to develop.
17 What is your response?

18 THE WITNESS: I understand that, and
19 I've talked about this before, but I'll go ahead
20 and -- and specify the five or so provisions that I
21 would say about this.

22 If there is an extension to be had
23 beyond the eight-year period of time, one, it should
24 be limited in scope, limited in time. There should be
25 periodic administrative review by OCD, and it has to

1 be based on very sound engineering, technical, and
2 economic information and not based on guesswork,
3 hunches, or speculation, or the like. Any text that
4 would be put together for this should be crafted to
5 avoid loopholes leading to abuse.

6 Although industry witnesses complain
7 about the eight-year deadline, none has crafted an
8 alternative proposal. So, in the absence of that, we
9 feel our proposal and OCD's proposal is well
10 formulated and defensible.

11 MS. FOX: NMOGA witnesses object that
12 the timelines for allowing a well to stay in TA status
13 are too compressed and don't comport with the economic
14 and logistical realities of operating a well. What is
15 your response?

16 THE WITNESS: Well, the actual well
17 data from New Mexico does not support their claim.
18 You going to put that slide back up there again?
19 Thank you. This is Exhibit 13, and we see again --
20 looked at this thing probably three times now -- that
21 after eight years of inactivity, only half of 1
22 percent of the sampled inactive wells were
23 reactivated, and even after six years, that number's
24 only one and a half percent.

25 So, in summary, chance of wells going

1 back into use after eight years is almost non-
2 existent, and almost all wells return to activity far
3 sooner than that.

4 MS. FOX: NMOGA witnesses object that
5 Applicants' proposal would require operators of wells
6 in expired TA status to reapply for TA or permanently
7 P&A. What is your response?

8 THE WITNESS: That's correct. And that
9 operators with wells in expired TA should have already
10 applied or reapplied for TA. A -- a well that's in
11 expired TA is out of compliance, plain and simple,
12 with the current Commission rules.

13 Non-compliance with such a critical
14 provision is a, I think, a red flag that the operator
15 is at greater risk to the State of orphaning a well.
16 And if an operator can't be bothered by following the
17 rules and renewing TA status, can that operator be
18 expected to properly P&A when appropriate?

19 The State currently faces -- faces a
20 major compliance problem with inactive wells as we've
21 seen demonstrated, with approximately 3200 wells out
22 of compliance, or more than 85 percent, yet no NMOGA
23 or IPANM witnesses recognize that this is a very
24 serious compliance issue in the state or do they
25 recommend any change in the rule to address it.

1 Increasing financial assurance, as
2 we've proposed for these high-risk wells, will -- it
3 should incentivize operators to plug them when
4 appropriate.

5 MS. FOX: NMOGA witnesses object to
6 allowing interested persons, without traditional
7 standing, to intervene in a hearing before OCD to
8 extend TA status because of potential added expense,
9 delay, and risk. What is your response?

10 THE WITNESS: Well, I think that wells
11 that need to be plugged and abandoned is an important
12 issue to the public, and the impact is not limited
13 just to neighboring properties. If a well is not
14 timely plugged, public health, safety, and environment
15 can be threatened. And if it becomes orphaned, then
16 it becomes a State's responsibility.

17 Inactive, at-risk wells are a public
18 issue and a serious nuisance, and the public should
19 have a right to participate in the process to extend
20 TA status. And the hearing provision allows
21 interested persons to participate in this process. It
22 promotes governmental transparency and public
23 participation in a matter of high importance.

24 MS. FOX: This concludes
25 Mr. Alexander's summary of rebuttal. We'll move to

1 surrebuttal. Mr. Alexander, let's begin with the
2 rebuttal testimony of NMOGA witness Dan Arthur. I
3 note he continually refers to you as it a legal
4 expert, but of course you are a technical expert.

5 On pages 35 to 36 of his rebuttal
6 testimony, he states: "In testimony, Mr. Alexander
7 cites Mr. Purvis' marginal well analysis in support of
8 the proposed presumptions of no beneficial use. Yet
9 Mr. Purvis himself never analyzes or even addresses
10 the presumption provision. That disconnect is
11 telling. The Applicants' approach effectively uses
12 marginal well classification as a proxy for
13 non-beneficial use status without providing any
14 technical, economic, or operational basis for that
15 linkage."

16 And on Page 114 of his rebuttal
17 testimony, Mr. Arthur again alleges that Mr. Purvis
18 "never addresses presumptions of beneficial use in his
19 exhibits," and that Applicants' "conflate margin well
20 definitions with presumptions of non-beneficial
21 status." What is your response?

22 THE WITNESS: Well, I think Mr. Arthur
23 is not correct in that I -- I used it to develop my
24 argument on this. I simply point out from OCD's
25 proposal about the type of well that would be

1 considered something that needs to be looked at for no
2 beneficial use.

3 And in my direct and rebuttal
4 testimony, I just simply referred to it. It's a
5 simple scatterplot, plots a number of wells both in
6 the presumption of no beneficial use category, and
7 then the rest of those wells, the blue and then the --
8 the black are in the marginal well category. This
9 Exhibit 40 clearly shows that wells in presumption of
10 no beneficial use category are a subset of that
11 marginal well category.

12 And again, to review, the presumption
13 of beneficial use category, as a -- a proposal
14 proposed by OCD, are wells have produced less than 90
15 BOE, less than 90 days in a 12-month period of time.
16 That's an average of two and a half barrel -- or a
17 quarter of a barrel a day. That represents about 2.9
18 percent of the total wells, .003 percent of the total
19 production, so it's a very small subset.

20 The marginal well category that
21 Mr. Purvis will address on exit -- Exhibit 40, in the
22 financial assurance discussion, is exclusive of wells
23 in that presumption of no beneficial use category, and
24 it represents 3.7 percent of total wells or .045
25 percent of production.

1 So let's keep clear the distinction
2 between the two categories, one of which is marginal
3 wells used for FA purposes, and the other presumptions
4 is used to determine if a well is so unproductive that
5 it should be plugged.

6 MS. FOX: Mr. Arthur argues, on Pages
7 91 to 93 of his rebuttal testimony, that Applicants'
8 financial assurance proposals alone are sufficient to
9 ensure that "operators, regardless of size, must
10 secure significant financial assurance before
11 acquiring wells," and therefore, other proposals from
12 Applicants, such as stricter requirements at the point
13 of transfer, are not necessary. What is your
14 response?

15 THE WITNESS: Well, Mr. Arthur's
16 client, the client of NMOGA, objects strongly to all
17 of our financial assurance -- assurance proposals. So
18 if he and NMOGA were proposing stronger financial
19 assurance requirements, then there would be room for
20 discussions, but they're not.

21 More fundamentally though, preventing
22 orphan wells kind of takes a multi-pronged approach.
23 There's not one silver bullet, and we're proposing and
24 I support a multi-layered approach: one, we increase
25 financial assurance to reflect actual cost to OCD to

1 put TA wells at risk; two, strengthen the regulatory
2 requirements at the point of transfer, which
3 Mr. Morgan will talk about; and three, placing tighter
4 timelines on P&A'ing inactive wells which are higher
5 risk of becoming orphaned.

6 MS. FOX: Mr. Arthur, on Page 111 of
7 his testimony, of his rebuttal testimony, argues that
8 establishing a rebuttable presumption of no beneficial
9 use is unnecessary because OCD has ample regulatory
10 tools at its disposal, "mechanical integrity testing,
11 reporting, and case-specific compliance hearings to
12 evaluate whether wells remain beneficial. By creating
13 automatic presumptions, the proposed rule shifts the
14 burden to overcome regulatory assumptions that may not
15 reflect operational reality."

16 Ms. Felix, who also variously refers to
17 you as a legal expert, on Page 44 of her rebuttal
18 testimony, makes a similar point. What is your
19 response?

20 THE WITNESS: Well, I am no legal
21 expert. I don't know that I've said that, but let's
22 be clear about that. I'm an engineer. So what --
23 what my response would be is that the presumption of
24 no beneficial use applies to wells producing less than
25 90 BOE, over 90 days, in 12 months. We've said that

1 over and over again. It's entirely appropriate for
2 OCD to evaluate these wells to determine whether these
3 should be plugged because there's no beneficial use or
4 give the operator an opportunity to rebut.

5 And it's really not true that OCD has
6 regulatory tools to address this -- this scenario.

7 Right now, only wells that have been inactive
8 continuously or every day for 12 months are required
9 to be placed in TA or PA. This is not a regulatory
10 mechanism to evaluate the wells. Not -- you know,
11 mechanical testing and reporting under certain rules
12 only occurs after a well is to be placed in TA. So
13 there's no real mechanism for this for case-specific
14 hearings.

15 Our proposal, again initiated by OCD,
16 would provide a new regulatory structure and process
17 to identify wells that should be P&A'd. So
18 Mr. Arthur's statements that the presumptions are
19 automatic is really not accurate at all. The
20 presumption is always rebuttable, and then there's
21 always an appeal process after that. So the
22 operator's given full opportunity to make their case.

23 MS. FOX: On Page 113 of his rebuttal
24 testimony, Mr. Arthur identifies your testimony that
25 "LFC deemed wells at or below two BOE per day

1 problematic and observed that, with this level of
2 production, the average well is plugged and
3 abandoned."

4 He cites your direct testimony on Page
5 43, citing the LFC report at Pages 4 and 21.

6 Mr. Arthur then claims that you misrepresented the LFC
7 report, alleging that the report only stated, "There
8 is no specific threshold at which a well becomes
9 economic, but production of less than two BOE day may
10 be appropriate threshold for additional regulatory
11 scrutiny." Ms. Felix parrots the same claim on Page
12 45 of her rebuttal testimony. What is your response?

13 THE WITNESS: Well, perhaps Arthur and
14 Felix both misread the LFC report. But it's clear on
15 both pages that I cited, on Page 4 and 21. LFC
16 clearly stated the average well produced roughly two
17 barrels of oil equivalent a day in the year before it
18 was plugged, period.

19 An important point here, too, is that
20 the LFC recommended that we do like Colorado and give
21 greater scrutiny to those low-producing wells "because
22 of the risk of becoming orphaned." Our proposal, for
23 wells presumed to have no beneficial use, is
24 consistent with LFC's recommendations.

25 MS. FOX: Mr. Arthur claims, on Page

1 121 of his rebuttal testimony, A 30-day time period
2 for operators to rebut a presumption of no beneficial
3 use is too short, and that you support the 30-day time
4 period suggests "suggesting it creates due process."
5 What is your response?

6 THE WITNESS: Well, again, I'm no legal
7 expert, and I make no claims whether the Applicants'
8 proposal and our proposals meet due process
9 requirements or not, whatever those are. But I can
10 say this, that based on my more than 35 years in oil
11 and gas operations, a 30-day timeframe for turnaround
12 for information required to rebut a presumption of
13 beneficial use is certainly reasonable.

14 That said, as I've stated in my
15 rebuttal testimony, the -- our proposed time periods
16 for submission of information are provisions that
17 could have and should have been discussed with us and
18 industry to try to reach some sort of a compromise or
19 reach an agreement. But instead, industry chose to
20 not negotiate and have brought what are likely
21 unnecessary objections to the Commission.

22 MS. FOX: A number of industry
23 witnesses, including Mr. Arthur at Page 124 of his
24 rebuttal testimony, and Ms. Montgomery from OXY in the
25 bulk of her rebuttal testimony, object to placing a

1 time limit on the inactive wells after which a well
2 must be P&A'd or put back into productive use. What
3 is your response?

4 THE WITNESS: So data developed by EDF
5 indicates that very few inactive wells return to
6 production or are reactivated after eight years.
7 We've said that several times. Only a half of 1
8 percent of the wells sampled between 2010 and '24 were
9 reactivated within eight years of inactivity. So the
10 data supports that eight-year timeframe.

11 That said, there are a number of
12 limited situations, such as EOR projects, that may
13 justifiably require an exception. I'll go through
14 these again. Number one, anything like that should be
15 limited in scope, should be limited in time, should
16 require abundant technical and economic justification,
17 ensure the health and safety of the environment are
18 protected, and -- and require periodic review by OCD,
19 and it can't be speculative in nature.

20 OXY's does offer -- OXY does offer a
21 proposal, but it would allow wells to stay in TA
22 indefinitely after the public hearing -- we've talked
23 about that before -- with no further OCD review, which
24 would make it an even weaker position than we are
25 right now. And in my mind, this is unacceptable. It

1 doesn't limit the scope of projects, and it requires
2 no further regulatory oversight.

3 MS. FOX: On page 129 of Mr. Arthur's
4 rebuttal testimony, he objects to your support for
5 deleting the word "continuously" from the requirement
6 that an inactive well be inactive continuously for 12
7 months in order to trigger the requirement to TA or
8 plug an inactive well. He claims deleting
9 "continuously" ignores the operational realities of
10 intermittent production. What is your response?

11 THE WITNESS: Well, again, we took
12 the -- the definition here largely from the definition
13 of a -- an inactive well for -- and it's not being
14 used for beneficial purposes such as production,
15 injection, or monitoring and that is not being
16 drilled, completed, or repaired, or worked over.

17 According to OCD, operators have gamed
18 the system, again, producing for a short period of
19 time to reset the inactive clock. So deleting the
20 word "continuously" closes that loophole and does not
21 distort the operational reality of a well that
22 operates intermittently or unfairly triggers plugging
23 requirements. Besides, an operator can always make
24 its case to OCD that the well has beneficial use and
25 should not be plugged or required to go into TA.

1 MS. FOX: Mr. Arthur, on Page 142 of
2 his rebuttal testimony, objects to the information to
3 be submitted by operators in Applicants' proposal at
4 19.15.25.13 to demonstrate a well has future
5 beneficial use prior to being in TA status, claiming
6 there are already safeguards in place. What is your
7 response?

8 THE WITNESS: First, unlike many other
9 state requirements, currently, New Mexico does not
10 require any showing that the well has future -- future
11 utility to be placed in TA. If a well has no future
12 use, it should be plugged. It's as simple as that.

13 Our proposal is that operators
14 demonstrate an inactive well has future use prior to
15 being placed in TA. And the types of information that
16 we have used, as an example, the applicant, we -- we
17 believe that that should be readily available to any
18 operator. The routine data and well files, state
19 records, land files, geological files, I can't imagine
20 an operator who has no idea about production pressure,
21 reserve estimates, geological maps, offset operator
22 activities, logs, and the like.

23 It simply makes not -- no sense to be
24 able to fill out a form with basically administrative
25 data and a simple procedure to T&A a well. And

1 there's no justification for putting a well in TA for
2 five-year increments and so on.

3 MS. FOX: On Page 146 of his rebuttal
4 testimony, Mr. Arthur opposes the additional
5 requirements proposed for mechanical integrity testing
6 for TA status as unnecessary. What is your response?

7 THE WITNESS: Well, we had a couple
8 of -- of additional items here just to ensure
9 mechanical integrity or the sound and security of the
10 well. First, the mechanical device used to secure the
11 casing for an MIT remain in place for the TA period.
12 People are already doing that; we're just putting it
13 in writing with OCD. Not having some sort of a device
14 in there to provide a pressure barrier is -- is
15 potentially a serious safety risk. And it's not
16 unusual to ask this, in our opinion.

17 The second part of this is running a
18 caliper or casing integrity log. These are simple
19 devices, can be valuable in identifying breaches or
20 the potential for a breach of casings, especially in
21 older wells that produce fluids that have corrosive
22 elements. And if I were an operator, I sure would
23 want to know if I had a potential disaster on my hand,
24 especially with older wells.

25 Now, it also makes sense that these

1 logs might not be required if wells that are
2 relatively new and there's no corrosive issues, but we
3 would leave that up to OCD for an exception with
4 supporting data and evidence from the operator.

5 MS. FOX: In her rebuttal testimony on
6 Page 26, Ms. Felix states that the marginal well and
7 presumption of no-beneficial-use categories "would
8 reclassify thousands of viable wells as liabilities."
9 What is your response?

10 THE WITNESS: Well, to the best of my
11 knowledge, NMOGA didn't develop any data on the number
12 of wells in those two categories, but Mr. Purvis did,
13 And we've talked about this over and over again,
14 the -- representing about 3900 wells in the
15 marginal-well category of which the presumption is a
16 smaller percentage of that, and not even 1 percent of
17 the total production in the state.

18 So what we're doing is we're talking
19 about wells that represent a very small amount of
20 revenue to the State but are creating a potential for
21 tens if not hundreds of millions of dollars of risk
22 and liability to the State.

23 She says these wells may be
24 reclassified as liabilities and that -- and that that
25 should be clarified. I'm -- I'm just going to say

1 they already are a potential tremendous liability to
2 the State. Operators, not the state or the public,
3 should be responsible for and internalize their own
4 costs and liabilities for these wells.

5 MS. FOX: Ms. Felix, on Pages 1 -- on
6 52 to 50 -- 51 to 52 of her rebuttal testimony, argues
7 that the additional requirements for wells to be
8 placed in TA means that "permanent plugging becomes
9 the default." What is your response?

10 THE WITNESS: Well, frankly, that
11 conclusion makes no sense to me whatsoever. I think
12 it's a huge overstatement. The requirements that we
13 propose for TA approval are straightforward and should
14 be easy to comply with. And in summary, the operator
15 should be able to provide sound evidence to support
16 the request for TA. In the absence of that, the well
17 is a likely candidate for PA.

18 Additionally, Applicants -- or we
19 propose more substantial measures to ensure mechanical
20 integrity to them during TA in the form of keeping the
21 plug in the hole and potentially running simple logs
22 such as caliper and casing integrity to provide the
23 operator and OCD a measure of confidence that the
24 well's casing is not only intact now but will survive
25 the TA period.

1 We also listed the potential data is
2 only exemplary and not all required. The operator can
3 provide the information to the State to make their
4 case. None of our proposals default to some sort of
5 death sentence or permanent plugging for a well or
6 wells.

7 I'll say this again; if the operator
8 can't provide evidence of beneficial use now or in the
9 foreseeable future, the well should be plugged.
10 There's no room for speculation and guesswork and
11 hoping something will come down the road in a few
12 years.

13 MS. FOX: Ms. Felix complains, on Page
14 64 of her rebuttal testimony, that WELC counsel asked
15 to meet with NMOGA to notify NMOGA about their
16 upcoming application for rulemaking but did not engage
17 in negotiations with industry prior to filing. What
18 is your response?

19 THE WITNESS: Our counsel did seek
20 input from OCD and the State Land Office before filing
21 their initial application. And I don't take issue
22 with us not negotiating with the industry prior to
23 that filing. It was appropriate though to give them
24 notice that we were going to do that and assure them
25 that -- that we would like to meet and discuss, try

1 and find common ground.

2 After filing, our counsel tried
3 mightily to engage in substantial talks with the NMOGA
4 and IPANM. And it took a lot of effort to try and
5 schedule meetings. But unfortunately, NMOGA and IPANM
6 notified us right before that they just had conflicts
7 and could only meet one day. And I -- I went to that
8 meeting; there was really nothing substantial
9 discussed.

10 And after that, our counsel continued
11 try and reach out to them, and so did OCD after it
12 submitted its proposal in February of '25. They never
13 responded as far as I know.

14 Our counsel reached out to OXY
15 individually, and on a couple occasions, we did meet
16 with them, and we came to some -- some good
17 cooperative effort there, and I appreciate their
18 willingness to do so.

19 OXY supports and does not object to a
20 good number of our principal proposals, including the
21 FA proposals for active wells, their FA proposals for
22 inactive wells, and proposals for establishing
23 presumptions of no beneficial use. They have a
24 considered approach, and while we disagree on some
25 major issues, I appreciate that they didn't take the

1 slash-and- burn approach.

2 It is disappointing to me that state
3 agency after state agency in New Mexico recognizes
4 orphan wells are a significant problem facing the
5 state, now and in the future, and indeed that it's a
6 nationally recognized problem that all oil and gas
7 states are producing -- or producing states are
8 facing, but NMOGA and IPANM have offered nothing by
9 way of substantial proposals to address the problem of
10 the industry's making.

11 MS. FOX: NMOGA witness Mr. McGowen
12 alleges, on Pages 12 to 13 of his rebuttal testimony,
13 that experts for Applicants "have a bias against small
14 operators and would prefer to bankrupt these companies
15 and/or drive them out of business."

16 He specifically identifies your direct
17 testimony, on Page 27, Lines 12 through 18, as
18 evidence of this bias. What is your response?

19 THE WITNESS: Well, I have no such bias
20 against small operators. I spent probably half of my
21 career with operators that are small. But we were
22 prudent in our operations and took care of our
23 business. And I know what it's like to have a rug
24 pulled out from underneath me; guarantee you.

25 But what I am definitely biased against

1 is operators that produce wells to their last dying
2 breath and walk away leaving the cost of P&A and site
3 restoration to the jurisdiction within which the wells
4 reside. And all too often, the handwriting is on the
5 wall, as it is now, for these types of scenarios.

6 It's straightforward for me. A prudent
7 operator, be they small or otherwise, will operate well
8 to its economic limit or other beneficial use and then
9 have the wherewithal to responsibly P&A and secure the
10 site. And if an operator, small or otherwise, is not
11 capable of doing that, they should not be in business.
12 It's that simple, common sense.

13 MS. FOX: This concludes
14 Mr. Alexander's testimony. He will now stand for
15 cross-examination and questions from the Commission.

16 THE HEARING EXAMINER: Thank you
17 Ms. Fox. I think it's time for a short break.

18 THE WITNESS: I do too.

19 THE HEARING EXAMINER: Let's come back
20 at 11:25.

21 (Off the record.)

22 THE HEARING EXAMINER: All right. We
23 are back after a short break.

24 We begin our questioning of
25 Mr. Alexander with questions from IPANM.

1 Mr. Cloutier?

2 MR. SUAZO: Madam Hearing Officer, I
3 think NMOGA is going to go first on this witness if
4 that's okay with you.

5 THE HEARING EXAMINER: That's fine.

6 MR. CLOUTIER: Yeah. As we discussed
7 with you, we may alternate who goes first on
8 witnesses, Madam Hearing Officer.

9 THE HEARING EXAMINER: Perfectly fine.
10 So Mr. Suazo?

11 MR. SUAZO: Thank you. And just to be
12 mindful of the Division -- or the Commission's time
13 and the witness' time, can we clarify, you know, how
14 much time this witness has for everybody? Like are
15 you limited -- is he limited to today or -- I just
16 want to be aware.

17 THE HEARING EXAMINER: My understanding
18 is he is available to --

19 MR. SUAZO: Just today. Okay.

20 MS. FOX: And, and then he's available
21 a little bit tomorrow morning, but we have public
22 comments. So he could be available until 10:30 -- 10
23 tomorrow, and then he's out of pocket the rest of the
24 week, but available Monday, next Monday.

25 MR. SUAZO: Okay. I just wanted to be

1 mindful of all the other folks you might have
2 questions for him.

3 CROSS-EXAMINATION

4 BY MR. SUAZO:

5 MR. SUAZO: All right. Mr. Alexander,
6 good morning.

7 THE WITNESS: Morning.

8 MR. SUAZO: I'm Miguel Suazo. I'm
9 representing NMOGA. And I certainly appreciated
10 learning about your background from your resume and
11 your testimony, and all the things you've done. And
12 unfortunately, I hope my first question doesn't come
13 off as rude.

14 But instead of asking you about what
15 you are, I'm going to ask you a little bit about what
16 you are not. You are not a licensed engineer in the
17 State of New Mexico; correct?

18 THE WITNESS: That's correct.

19 MR. SUAZO: Okay. And so, while you
20 hold engineering degrees, you cannot practice as a
21 licensed engineer in this state; is that right?

22 THE WITNESS: That's correct.

23 MR. SUAZO: Now, your direct testimony
24 emphasizes your experience at I believe Southwestern
25 Energy?

1 THE WITNESS: Yes.

2 MR. SUAZO: But you retired from that
3 company in 2016; correct?

4 THE WITNESS: That's correct.

5 MR. SUAZO: Okay. So your last actual
6 operational management role was nearly a decade ago;
7 correct?

8 THE WITNESS: Correct.

9 MR. SUAZO: Now, since retiring, your
10 principal client has been the Environmental Defense
11 Fund; correct?

12 THE WITNESS: Yes.

13 MR. SUAZO: Okay. And EDF, for short,
14 it's an environmental advocacy organization that
15 frequently takes positions against or adverse to the
16 oil and gas industry; is that right?

17 THE WITNESS: I don't believe I would
18 put it that way.

19 MR. SUAZO: So that's a no?

20 THE WITNESS: Yeah.

21 MR. SUAZO: And in this case, this
22 proceeding, you were engaged by WELC to advocate for
23 New Mexico regulatory changes; correct?

24 THE WITNESS: Yes.

25 MR. SUAZO: Despite not being a New

1 Mexico engineer?

2 THE WITNESS: Yes.

3 MR. SUAZO: And despite not having
4 operated in the state of New Mexico?

5 THE WITNESS: That's correct.

6 MR. SUAZO: Don't you think it would've
7 been better for WELC to have engaged an actual New
8 Mexico engineer for this rulemaking?

9 THE WITNESS: No, not necessarily.

10 MR. SUAZO: Can you explain?

11 THE WITNESS: Well, I have an old
12 saying: "A hole in the ground's a hole in the ground
13 is a hole in the ground." And I have a ton of
14 experience in other basins. Now, there are probably
15 some nuances and specifics to New Mexico, but the
16 issues at hand here are pretty universal, in my
17 opinion, that I am testifying to.

18 MR. SUAZO: And again, you've never
19 operated in the Permian; correct?

20 THE WITNESS: No, I have not.

21 MR. SUAZO: Never operated in the San
22 Juan?

23 THE WITNESS: No.

24 MR. SUAZO: Now, I want to move on a
25 little bit because, on your direct testimony, you

1 talked -- you said that the industry didn't want to
2 engage with this rulemaking. And you criticized the
3 industry for not sitting down with yourselves, with
4 WELC, OCD, and Applicants to discuss the rules that
5 you're proposing; right?

6 THE WITNESS: I did.

7 MR. SUAZO: And also, in your direct
8 testimony, you acknowledged that, just prior to filing
9 the application for this rulemaking, which was filed
10 in June of 2024, the Applicants' counsel, WELC's
11 counsel reached out to NMOGA and IPANM; is that right?

12 THE WITNESS: That's my information,
13 yes.

14 MR. SUAZO: Okay. But you had been
15 working on this rule making since 2023; correct?

16 THE WITNESS: Correct.

17 MR. SUAZO: And yet WELC did not
18 provide the industry with a copy of this rule making
19 until after it had been filed; correct?

20 THE WITNESS: I think that is correct.

21 MR. SUAZO: So you didn't actually
22 reach out to industry for more than a year after the
23 point in time when you started working on this
24 rulemaking; correct?

25 THE WITNESS: Well, that's correct. It

1 took quite a while to develop our ideas.

2 MR. SUAZO: And yet you're sitting
3 here, telling this commission, making it sound like
4 you all bent over backwards to engage with the
5 industry, but that's not really true until after you
6 filed this rulemaking; correct?

7 THE WITNESS: That is correct. How can
8 you really talk if you don't have something to talk
9 about?

10 MR. SUAZO: Couldn't agree more. You
11 know, it just seems like you all must have really
12 thought that you knew better than the actual oil and
13 gas industry what rules were needed, by only giving
14 them a few days advance notice that you were actually
15 going to file that. Would you agree?

16 THE WITNESS: I -- I'm not sure I
17 understand the point of that question. Knew better in
18 what sense?

19 THE HEARING EXAMINER: Mr. Suazo, I'll
20 also invite you to be that -- dial back the
21 argumentativeness.

22 MR. SUAZO: Sure.

23 BY MR. SUAZO:

24 MR. SUAZO: So, by only providing the
25 industry with these rules several days before they

1 were filed, it certainly seems like you just knew what
2 rules should be passed. Is that right?

3 THE WITNESS: No, I don't -- I don't
4 think I'd agree with that.

5 MR. SUAZO: Okay. Now, I'd like to ask
6 you a little bit about the Legislative Finance
7 Committee's report on orphan wells.

8 THE WITNESS: Okay?

9 MR. SUAZO: You cite that report
10 extensively; correct?

11 THE WITNESS: I do, specific parts of
12 it.

13 MR. SUAZO: And do you recall that the
14 report itself cautions that records associated with
15 orphan wells in the State of New Mexico might be
16 missing or incomplete?

17 THE WITNESS: I don't recall that
18 statement.

19 MR. SUAZO: Okay. But you do know that
20 New Mexico does not have a consistent definition of
21 "orphaned well"; correct?

22 THE WITNESS: That's -- yeah. That's
23 correct. Yeah.

24 MR. SUAZO: Okay. And the LFC report
25 also explained that New Mexico doesn't have a

1 statutory definition of "orphaned well"; is that
2 right?

3 THE WITNESS: That's correct.

4 MR. SUAZO: Okay. So the report that
5 you rely on in your testimony warns that even the most
6 basic definition of an "orphaned well" is essentially
7 inconsistent in this state; correct?

8 MS. FOX: Objection. Could Mr. Suazo
9 refer to the page number in the LFC report?

10 MR. SUAZO: I can.

11 MS. FOX: Thank you.

12 BY MR. SUAZO:

13 MR. SUAZO: It's Page 15 of the LFC
14 report.

15 THE WITNESS: Did you say 15?

16 MR. SUAZO: Yes, sir.

17 THE WITNESS: Yeah.

18 MR. SUAZO: And if you find the
19 language that's starting with "New Mexico does not
20 define orphaned well"?

21 THE WITNESS: I'm there.

22 MR. SUAZO: Okay. Do you mind reading
23 that, starting with "New Mexico" and ending with the
24 word "estimates"?

25 THE WITNESS: Looking for "estimates."

1 Well, "New Mexico does not define "orphaned well" in
2 statute or rule, resulting in different estimates."
3 You want me to stop at "estimates"?

4 MR. SUAZO: Yes, sir. Thank you. So
5 the report warns that even the most basic definition
6 of "orphaned well" in the State is inconsistent at
7 present; correct?

8 THE WITNESS: Still having trouble with
9 your use of the word "inconsistent." But clearly,
10 they don't have a definition for an -- for an orphan
11 well.

12 MR. SUAZO: That's good enough. Thank
13 you. Now, your testimony, you present LFC's numbers
14 as though they're reliable; correct?

15 THE WITNESS: I would -- I would argue
16 against the use of the word "reliable," but they're
17 useful.

18 MR. SUAZO: Okay. So you use them in
19 the report to be useful then not reliable?

20 THE WITNESS: Well, you know, to -- to
21 some extent. I mean, you -- you're talking about the
22 entire report, and I -- I've said I'm not citing the
23 entire report. I've used various pieces and parts of
24 it.

25 MR. SUAZO: Sure. Okay. Now I'd like

1 to move on to Page 11, Lines 16 through 20 of your
2 direct testimony, again referencing the LFC report.

3 THE WITNESS: Page 11?

4 MR. SUAZO: Page 11 of your direct.

5 And I'm going to read you your language, but feel free
6 to turn to it. In your direct you say the gap between
7 actual plugging costs and the required financial --

8 MS. FOX: I'm sorry, excuse me --

9 MR. SUAZO: -- 16 to 20.

10 MS. FOX: 16?

11 MR. SUAZO: Yes, ma'am.

12 MS. FOX: Thanks.

13 BY MR. SUAZO:

14 MR. SUAZO: "The gap between actual
15 plugging costs and the required financial assurance
16 weakens the incentive for operators to plug their own
17 wells." Did I read that correctly?

18 THE WITNESS: Yes.

19 MR. SUAZO: Okay. But you did not
20 state, in your testimony, that the same LFC report
21 cautions its well counts and cost estimates are based
22 on complete and inconsistent data from the OCD, did
23 you?

24 THE WITNESS: I didn't.

25 MR. SUAZO: Okay. And you didn't

1 attempt to independently verify the LFC'S figures
2 against OCD's databases; correct?

3 THE WITNESS: No. No.

4 MR. SUAZO: So, essentially, your
5 testimony and the data that's in it is only as sound
6 as the LFC'S numbers; correct?

7 THE WITNESS: Roughly so.

8 MR. SUAZO: Okay. Now, I'd like to
9 move on to an article that you cited in your direct
10 testimony. You cite a Bloomberg article called "An
11 Empire of Dying Wells." Is that right?

12 THE WITNESS: Yes.

13 MR. SUAZO: And that article contains
14 language stating, "Old oil and gas sites are a climate
15 menace." Is that correct?

16 THE WITNESS: Say that again. I'm
17 sorry.

18 MS. FOX: Can we cite to the page
19 number in the testimony?

20 MR. SUAZO: There were no pages in that
21 article. It was just a printout.

22 MS. FOX: No, the page number from
23 which is -- that you're reading?

24 MR. SUAZO: Sure. Sorry, Ms. Fox.
25 Page 18, Lines 10 through 19.

1 MS. FOX: Thank you.

2 BY MR. SUAZO:

3 MR. SUAZO: So that article has
4 language stating, "Old oil and gas sites are a climate
5 menace." Did I read that correct?

6 THE WITNESS: I -- I'm not finding
7 that, but I'll trust that you're reading it correctly.

8 MR. SUAZO: Okay. Well, it's your
9 cited article.

10 THE WITNESS: And I'm not, I'm not
11 necessarily in agreement with that statement either.

12 MR. SUAZO: Okay. Well, that's good to
13 know. So you'd agree that Bloomberg is a media
14 outlet, not a peer reviewed scientific journal?

15 THE WITNESS: Correct.

16 MR. SUAZO: And the Bloomberg article
17 itself states, "Our own survey was not scientific."
18 Would you agree with that?

19 THE WITNESS: That's fine.

20 MR. SUAZO: Okay. So you're relying on
21 a non-scientific media article to support your
22 regulatory testimony in this proceeding?

23 THE WITNESS: No. No, no, no. I'm
24 relying on 35 years of seeing garbage in the field.

25 MR. SUAZO: So you're not relying on

1 the Bloomberg article?

2 THE WITNESS: I -- I do rely on it.
3 It's an interesting article, and it presents an
4 interesting problem.

5 MR. SUAZO: Okay.

6 THE WITNESS: It's just evidence that
7 this is a ubiquitous problem all over.

8 MR. SUAZO: So you're relying on the
9 article to support your testimony; yes or no?

10 THE WITNESS: To some extent, yeah.

11 MR. SUAZO: Okay. Thank you. A little
12 bit more about that article. It was about wells in
13 Appalachia, specifically Ohio and Pennsylvania and
14 West Virginia; correct?

15 THE WITNESS: Yeah.

16 MR. SUAZO: So the article had nothing
17 to do with New Mexico wells or geology or regulations,
18 does it?

19 THE WITNESS: No.

20 MR. SUAZO: And that same article, you
21 cite to a company called, I guess, Diversified; is
22 that accurate?

23 THE WITNESS: Mm-hmm. Mm-hmm.

24 MR. SUAZO: And they --

25 THE WITNESS: Yeah.

1 MR. SUAZO: -- say that the cost to
2 repair leaks was an average of \$90 per well; is that
3 right?

4 THE WITNESS: I don't remember that
5 number.

6 MR. SUAZO: Okay. Let's move on. I'd
7 like to talk to you a bit about beneficial use and
8 speculative purpose. In your direct testimony, you
9 support WELC's proposal to define "beneficial use" and
10 to prohibit speculative purposes; correct?

11 THE WITNESS: I do.

12 MR. SUAZO: Okay. But you'd agree that
13 neither the Oil and Gas Act or current OCD rules
14 define "beneficial use"; correct?

15 THE WITNESS: I'd agree that?

16 MR. SUAZO: Yes.

17 THE WITNESS: Okay.

18 MR. SUAZO: That's a yes?

19 THE WITNESS: Yeah.

20 MR. SUAZO: Okay. Thank you. Did you
21 review the testimony of NMOGA's witness, Andrea Felix?

22 THE WITNESS: Some of it.

23 MR. SUAZO: Okay.

24 THE WITNESS: I didn't read the whole
25 testimony.

1 MR. SUAZO: I -- I understand. There's
2 a lot there.

3 THE WITNESS: I mean --

4 MR. SUAZO: Are you aware that
5 Ms. Felix's testimony says that the Commission has the
6 flexibility to account for evolving technology and
7 specific circumstances?

8 THE WITNESS: I'm fine with that.

9 MR. SUAZO: Now, you suggest that
10 adding the term "speculative purposes" adds clarity to
11 the definition of "best beneficial use." Is that
12 right?

13 THE WITNESS: It's part of that
14 definition, yeah.

15 MR. SUAZO: Okay. But it's true that
16 WELC has not -- or Applicants' -- excuse me -- have
17 not defined "speculative purposes"? That's undefined
18 in this proposal; correct?

19 THE WITNESS: It is not.

20 MR. SUAZO: "Speculative purposes" is
21 defined?

22 THE WITNESS: No. I said it -- it is
23 not defined.

24 MR. SUAZO: Okay. Thank you for the
25 clarification. So, essentially, the Commission, if

1 they adopt your proposal, would have to make, or in
2 this case, the Division would have to make
3 case-by-case judgments about what is speculative and
4 what is not; correct?

5 THE WITNESS: True. Yes.

6 MR. SUAZO: And you don't think that
7 creates more uncertainty, not less, without a
8 definition?

9 THE WITNESS: No, I don't. I think, if
10 an operator presents proper evidence and discusses
11 their case, you know, rebuts a presumption, then I
12 would rely on the OCD to use their technical expertise
13 and wisdom to make a correct choice.

14 MR. SUAZO: Okay. And to give the
15 Commission an example of what you consider
16 speculative, you mentioned your experience with the
17 Denver International Airport as an example; correct?

18 THE WITNESS: Correct. I did.

19 MR. SUAZO: Okay. But you don't
20 provide any examples in New Mexico where a well was
21 improperly classified and when it might've been
22 considered speculative; correct?

23 THE WITNESS: I don't.

24 MR. SUAZO: So you're asking this
25 commission to adopt sweeping new definitions without a

1 single example of misuse under the current rules in
2 this state; correct?

3 THE WITNESS: I don't have any specific
4 New Mexico examples.

5 MR. SUAZO: I'm going to ask you about
6 Ms. Felix's testimony again, and I'm going to see if
7 you remember. Do you remember where she stated the
8 power to define is the power to exclude?

9 THE WITNESS: No, I don't.

10 MR. SUAZO: Okay. Moving on then. Do
11 you think that it would risk excluding legitimate
12 beneficial uses, as technology evolves or
13 circumstances change, without a definition of the term
14 "speculative use"?

15 THE WITNESS: Say that again, please?
16 Do I believe what?

17 MR. SUAZO: Without a definition for
18 the term "speculative use," do you think that, by
19 adopting beneficial use without the term "speculative"
20 defined, that it risks changes in the future that may
21 not be accounted for based upon how you're conceiving
22 a beneficial use now?

23 THE WITNESS: No, I don't. I -- I
24 mean, I -- I'm truly -- having trouble understanding
25 your question, but --

1 MR. SUAZO: Well let's use the
2 fracking --

3 THE WITNESS: Perhaps state it a
4 different way?

5 MR. SUAZO: Let's use the fracking
6 revolution as an example. The fracking revolution
7 began, what would you say, maybe five years before you
8 retired?

9 THE WITNESS: No.

10 MR. SUAZO: Six years? No?

11 THE WITNESS: Fracking revolution began
12 in 1950.

13 MR. SUAZO: Well --

14 THE WITNESS: All we did is do it the
15 same way that -- that -- I mean, what we did in the
16 industry, in the -- in the shale gas plays and the
17 shale oil plays, is take old technology and reapply
18 it. There was nothing new about it.

19 MR. SUAZO: Okay. But it was applied
20 horizontally; correct?

21 THE WITNESS: It doesn't matter whether
22 the well is vertical or horizontal; the in-situ
23 stresses are going to deal with what you're putting
24 into the ground the same way.

25 MR. SUAZO: But my point is that, as

1 technology and the industry evolves, you want to
2 retain flexibility in whatever definition is adopted?

3 THE WITNESS: Sure.

4 MR. SUAZO: So the industry can
5 continue to operate?

6 THE WITNESS: Yeah.

7 MR. SUAZO: Would you agree?

8 THE WITNESS: Yeah.

9 MR. SUAZO: Okay. That's all I'm
10 getting at.

11 THE WITNESS: Okay.

12 MR. SUAZO: In your direct testimony,
13 you provide support for WELC's proposal to create a
14 presumption that a well is incapable of beneficial use
15 if it fails to produce or inject for at least 90 days
16 in a 12-month period; correct?

17 THE WITNESS: That's the presumption.

18 MR. SUAZO: Okay.

19 THE WITNESS: Yes.

20 MR. SUAZO: Okay. But you don't cite
21 any New Mexico specific data showing that a 90-day
22 threshold is a reliable indicator of whether a well is
23 incapable of a beneficial use, do you?

24 MS. FOX: Objection. Misstates the
25 evidence. It's 90 days and less than 90 BOE is the

1 criteria.

2 MR. SUAZO: I'm asking him about the
3 data. I'm glad to acknowledge that clarification.

4 MS. FOX: Thank you.

5 BY MR. SUAZO:

6 MR. SUAZO: But you don't cite any --

7 THE WITNESS: Restate -- restate then,
8 please.

9 MR. SUAZO: Sure. You don't cite any
10 New Mexico specific data showing that a 90-day
11 threshold is a reliable indicator of whether a well is
12 incapable of beneficial use?

13 THE WITNESS: No, I don't.

14 MR. SUAZO: And you don't point to a
15 single example of a New Mexico well that was, I guess,
16 left idle inappropriately under the current one-year
17 standard, do you?

18 THE WITNESS: Well, I think so. You
19 know, I cited the example of Ridgeway Arizona. And
20 apparently, while not having studied all the details
21 of that -- that particular case, those wells were in
22 jeopardy, and the State made a deal with them.

23 MR. SUAZO: We can move on from that a
24 little bit because I think you've actually touched on
25 some of the questions I had. Under normal operational

1 circumstances such as pipeline maintenance or
2 compression downtime or offset frack protection, would
3 you acknowledge that those can cause wells to be
4 shut-in for more than 90 days?

5 THE WITNESS: Yeah, it could. You
6 could have some pipeline issues. Offset fracking, I
7 can't imagine that taking 90 days.

8 MR. SUAZO: Okay. So, under your
9 proposed presumption of 90 days, even wells that are
10 temporarily shut-in for operational reasons could be
11 deemed as not capable of beneficial use?

12 THE WITNESS: No. Now, again, get back
13 to the point that -- that it's rebuttable. If this
14 has happened, then it's up to the operator, and -- and
15 OCD says, "Well, what's the deal here guys?" OCD has
16 the right to take a look at that. And then operator
17 just comes with reasonable information: "Hey, we're
18 waiting on this or that."

19 MR. SUAZO: Okay.

20 THE WITNESS: There's nothing automatic
21 about that.

22 MR. SUAZO: Mr. Alexander, did you
23 provide the Commission any analysis of how many New
24 Mexico wells would fall under the 90-day presumption
25 compared to the existing one-year rule?

1 THE WITNESS: I didn't, but a member of
2 our team produced that plot that we looked at several
3 times, that showed the number of wells that fall in
4 that 90 BOE, 90 days, 12-consecutive-month timeframe.

5 MR. SUAZO: So you relied on his data;
6 you didn't put it together yourself?

7 THE WITNESS: No, I didn't.

8 MR. SUAZO: Okay.

9 How am I doing on time?

10 THE HEARING EXAMINER: You're 21
11 minutes in.

12 MR. SUAZO: Okay. Thank you.

13 BY MR. SUAZO:

14 Now I'd like to talk to you a little
15 bit about temporary abandonment. In your testimony,
16 you support WELC's proposal to limit the length of
17 approved temporary abandonment, or ATA, and add new
18 requirements such as a beneficial use demonstration;
19 correct?

20 THE WITNESS: Yes.

21 MR. SUAZO: And you don't provide any
22 data in your testimony showing that the current ATA
23 rule, which already requires OCD approval, such as
24 mechanical integrity, testing, reporting, has failed
25 to protect against risks, do you?

1 THE WITNESS: No.

2 MR. SUAZO: Now you're aware NMOGA
3 witnesses testified that plugging timelines must
4 account for contractor availability, landowner
5 coordination, reservoir management, things like that;
6 correct?

7 THE WITNESS: I am aware of that.

8 MR. SUAZO: Okay.

9 THE WITNESS: It's that way everywhere.

10 MR. SUAZO: And would you agree that
11 arbitrary cutoffs for ATA could increase the risks
12 rather than reduce them, based upon the circumstances
13 that operators might face?

14 THE WITNESS: The risks of what?

15 MR. SUAZO: Well, contractor
16 availability, landowner negotiations, reservoir
17 management, anything you can come up with, frankly?

18 THE WITNESS: All right. So let's
19 restate that question?

20 MR. SUAZO: So I'm asking about --

21 THE WITNESS: Or -- or state it again?

22 MR. SUAZO: I'm asking about the
23 plugging timelines that must account for various
24 factors. Okay? And so, if the rule that you're
25 proposing establishes arbitrary cutoffs for when ATA,

1 don't you think that increases the risks, not reduces
2 them?

3 THE WITNESS: Well, let's -- let's be
4 clear. If a well is to be plugged, and if there are
5 problems with scheduling and problems with vendors,
6 you know, it's incumbent upon the operator to let OCD
7 know, and I -- I would imagine that they're going to
8 be reasonable and account for that.

9 MR. SUAZO: But your testimony doesn't
10 address those operational realities, does it?

11 THE WITNESS: Not really. Not
12 specifically.

13 MR. SUAZO: Now I'd like to ask you a
14 few questions -- well, maybe just two -- about your
15 PowerPoint Slide 11.

16 If somebody could pull that up?
17 Ms. Fox, if you have it. If not, we can.

18 MS. FOX: Yeah.

19 MR. SUAZO: Okay. No problem.

20 MS. FOX: I just got off the platform.

21 THE HEARING EXAMINER: Sheila, would
22 you offer him permission to share his screen, please?

23 MS. APODACA: Is it Mr. Suazo trying to
24 share?

25 MR. SUAZO: No, it's Mr. Everhart,

1 who's sitting next to me.

2 MS. APODACA: Okay. Okay.

3 THE WITNESS: Is it that?

4 MR. SUAZO: I don't know. I don't have
5 that in front of me. It's on the PowerPoint?

6 THE WITNESS: Well, I'm waiting.
7 Whatever.

8 MS. APODACA: Okay. You should be able
9 to right now.

10 THE WITNESS: Okay.

11 BY MR. SUAZO:

12 MR. SUAZO: All right. So Slide 11 of
13 your PowerPoint and Applicants' proposed changes to
14 rule 25.13, the ATA language limiting temporary
15 abandonment to five years with one two-year extension;
16 is that right?

17 THE WITNESS: Correct.

18 MR. SUAZO: Okay. And then moving on
19 to Slide 12, there's nothing on that slide showing any
20 technical or statistical basis for selecting five
21 years as the initial TA period, is there?

22 THE WITNESS: Not on this slide.

23 MR. SUAZO: Okay. So the time limit is
24 essentially arbitrary; correct?

25 THE WITNESS: No. No. Our -- our time

1 limit's very clear: one five-year period, and then
2 you can request a two-year extension.

3 MR. SUAZO: But it's not supported by
4 data on that, that's available on that slide; correct?

5 THE WITNESS: Well, it's not on that
6 slide; it's on a different slide.

7 MR. SUAZO: Okay. Mr. Alexander, you
8 didn't review OCD's records of wells that remained in
9 temporary abandonment beyond five years without
10 mechanical integrity failures, did you?

11 THE WITNESS: No.

12 MR. SUAZO: And in your testimony, you
13 support WELC's proposal to expand -- sorry. Moving on
14 to a different section. Let me get organized here.

15 In your testimony -- this is a whole
16 different subject, not related to the slide, so
17 there's no confusion.

18 THE WITNESS: Okay.

19 MR. SUAZO: So you support Applicants'
20 proposal to expand protest rights in approved
21 temporary abandonment cases; correct?

22 THE WITNESS: Protest rights? Are you
23 talking about an operator coming and making their
24 case?

25 MR. SUAZO: And you support Applicants'

1 proposal to expand the number and classes of people
2 who can participate in those proceedings --

3 THE WITNESS: Oh, oh, oh. Okay. I
4 thought you were talking about -- you're talking
5 you're talking about the public being able to
6 participate in the process?

7 MR. SUAZO: Yes, sir. Sorry for --

8 THE WITNESS: I'm -- I'm good with
9 that.

10 MR. SUAZO: Okay. But as you've
11 mentioned through your testimony, or I think
12 demonstrated, I should say, approved temporary
13 abandonment determinations are primarily technical in
14 nature; correct?

15 THE WITNESS: Yeah.

16 MR. SUAZO: They cover things like
17 casing integrity and annular pressure and plugging
18 plans, things like that; correct?

19 THE WITNESS: Reserves, production
20 forecasts.

21 MR. SUAZO: So things that --

22 THE WITNESS: Geology.

23 MR. SUAZO: -- a general layperson or a
24 lawyer like me wouldn't know much about if they were
25 just walking into protest an ATA application; right?

1 THE WITNESS: Some might not. Some
2 might. You might be surprised who knows things.

3 MR. SUAZO: But the general layperson
4 probably would not; correct?

5 THE WITNESS: I don't know that I'd
6 agree with that statement.

7 MR. SUAZO: All right. Well, I'll move
8 on. Are you aware that current OCD rules already
9 define "affected persons" for purposes of notice and
10 protest of applications?

11 THE WITNESS: I mean, not specifically,
12 but that makes sense.

13 MR. SUAZO: So it wouldn't surprise you
14 that it does?

15 THE WITNESS: Yeah.

16 MR. SUAZO: But the proposal from
17 Applicants would allow virtually anyone, including
18 those with no technical expertise or direct interest,
19 to protest an ATA application; correct?

20 THE WITNESS: I don't -- I don't care
21 for the word "protest." I think what I used was that
22 they have -- they participate in the process.

23 MR. SUAZO: Okay. Well, and you know,
24 in New Mexico, folks can protest applications?

25 THE WITNESS: Okay.

1 MR. SUAZO: And then there's
2 participation. So I hope -- I'm just not trying to
3 confuse you there, just wanted --

4 THE WITNESS: Been there and done that.
5 I saw more times than you can imagine.

6 MR. SUAZO: Okay. Let's move on to
7 financial assurance.

8 Are we good on time?

9 MS. FOX: I'm just --

10 MR. SUAZO: Oh, okay. I thought you
11 said something.

12 BY MR. SUAZO:

13 MR. SUAZO: So, Mr. Alexander, in your
14 testimony, you support WELC's proposed increases in
15 financial assurance across multiple categories;
16 correct?

17 THE WITNESS: I do.

18 MR. SUAZO: Okay. But you don't
19 provide an independent analysis of actual plugging
20 costs in New Mexico, do you?

21 THE WITNESS: I don't.

22 MR. SUAZO: You just rely on the LFC
23 reports?

24 THE WITNESS: We relied on the OCD data
25 that we were given about what the average well that

1 they've had to plug costs to plug.

2 MR. SUAZO: And the LFC report;
3 correct?

4 THE WITNESS: It -- I don't -- you know
5 it -- I'm sure it was in there somewhere. I don't
6 recall where it would've been.

7 MR. SUAZO: Okay, fair enough. You
8 didn't independently verify the plugging cost numbers
9 in the LFC report against OCD's databases or field
10 data, did you?

11 THE WITNESS: No, I did not personally
12 do that.

13 MR. SUAZO: And going back to our
14 earlier discussion about the LFC report, again, you're
15 aware that the LFC report cautions that OCD's records
16 are often incomplete or inconsistent; correct?

17 THE WITNESS: They could be.

18 MR. SUAZO: In your testimony, you
19 don't offer any analysis on how increased financial
20 assurance requirements would impact smaller operators
21 in New Mexico, do you?

22 THE WITNESS: I didn't do any personal
23 analysis of that.

24 MR. SUAZO: Don't you think it would've
25 been helpful to provide that kind of information to

1 the Commission that has to make a decision about how
2 it's going to impact those size of operators?

3 THE WITNESS: I'm more concerned about
4 how not taking care of business impacts the State and
5 the communities within which these wells reside. I
6 recognize, more fully than you know, because I've had
7 it happen to me, that some of these provisions will
8 have a detrimental effect on some operators. But as
9 far as doing a full analysis of that, no, haven't done
10 it.

11 MR. SUAZO: Let's move on to the change
12 of operator provisions briefly. In your direct
13 testimony, you support WELC's proposed revisions to
14 operator registration, including multi-state
15 compliance certifications and disclosures about
16 officers and directors; correct?

17 THE WITNESS: Yeah. I've participated
18 in that. I think it makes sense. But let me be
19 clear, I'm not the one testifying about that, and I'm
20 not an expert in that.

21 MR. SUAZO: Understood. But you
22 supported that in your testimony?

23 THE WITNESS: Yeah.

24 MR. SUAZO: Okay. Thank you.

25 MS. FOX: Objection. That proposal has

1 changed.

2 THE HEARING EXAMINER: Are you
3 referring to the original proposal or the revised
4 proposal?

5 MR. SUAZO: Can you clarify for me the
6 nature of the change you're talking to?

7 MS. FOX: The operator registration and
8 operator transfer requirements were amended in our
9 rebuttal filing in Exhibit 72.

10 MR. SUAZO: Okay. So there's still --
11 which provision change? I mean, which specific
12 provision are you talking about? The multi-state?

13 MS. FOX: Correct.

14 MR. SUAZO: Because it did change
15 slightly.

16 MS. FOX: Yes, they did. Yeah. And
17 I'm just trying to clarify if you're referring to our
18 original proposal or the proposals that we negotiated
19 with OXY that are in our Exhibit 72, and the changed
20 provisions are highlighted.

21 MR. SUAZO: Okay.

22 BY MR. SUAZO:

23 MR. SUAZO: Mr. Alexander, you said
24 earlier you're not a lawyer; correct?

25 THE WITNESS: That's correct.

1 MR. SUAZO: Now, sticking with these
2 changes in operator registration that Ms. Fox just
3 referenced, did you do any sort of an analysis as to
4 whether these registration requirements would conflict
5 with any sort of corporate legal principles?

6 THE WITNESS: No.

7 MR. SUAZO: Okay. Any analysis of
8 whether they would impact fiduciary duties of
9 companies?

10 THE WITNESS: No.

11 MR. SUAZO: Did you provide, in your
12 testimony, any examples in New Mexico where current
13 change of operatorship failed because OCD lacked the
14 authority to deny an inappropriate transfer?

15 THE WITNESS: No.

16 MR. SUAZO: And you did not address, in
17 your testimony, that expanding these change of
18 operator requirements might delay transactions?

19 THE WITNESS: No.

20 MR. SUAZO: That it might increase
21 costs?

22 THE WITNESS: No. Again, I'm not
23 testifying as to those provisions, and I'm not an
24 expert in that.

25 MR. SUAZO: Thank you. Just confirming

1 that's not your testimony; correct?

2 THE WITNESS: Right.

3 MR. SUAZO: Thank you.

4 THE WITNESS: Correct.

5 MR. SUAZO: Give me just a second. I'm
6 about done here. And I know it's coming on the lunch
7 hour, and I know folks tend to get hangry. Could I
8 finish with this witness in the 10 minutes after
9 lunch? Would that please the hearing officer?

10 THE HEARING EXAMINER: No, I actually,
11 I'd rather, you have 10 minutes left, if you could
12 finish.

13 MR. SUAZO: Okay. I wasn't sure if you
14 were --

15 THE HEARING EXAMINER: Yeah. Thank
16 you.

17 MR. SUAZO: -- wanting us to get out of
18 here. Let me just -- give me a second. I only have a
19 few more questions, if any.

20 BY MR. SUAZO:

21 MR. SUAZO: Just a couple more
22 questions. Mr. Alexander, on your direct with
23 Ms. Cross [sic], you mentioned the term "prudent
24 operator." Are you able to define that term?

25 THE WITNESS: Reach back in my memory

1 banks, having studied mining law, the prudent operator
2 is someone that is going to operate in the best
3 interests of not only himself but those who are
4 invested in the operation. It's just a general
5 definition.

6 MR. SUAZO: Are you aware that's a
7 legal definition, a legal term of art?

8 THE WITNESS: Yes. I took a course in
9 mining law.

10 MR. SUAZO: I'm sure you did.

11 THE WITNESS: But I'm not a lawyer.

12 MR. SUAZO: Understood. Thank you.
13 Appreciate your time, Mr. Alexander. NMOGA has no
14 further questions on cross for this witness.

15 THE HEARING EXAMINER: Thank you very
16 much Mr. Suazo. I think before moving to the next
17 questioner, we'll take a lunch break. Let's come back
18 at one. Thank you.

19 (Off the record.)

20 THE HEARING EXAMINER: Let's come back
21 from the lunch break, please. It's one o'clock. When
22 we broke for lunch, NMOGA had completed its
23 questioning. We move now to IPANM. Mr. Cloutier?

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CROSS-EXAMINATION

BY MS. TRIPP:

MS. TRIPP: Officer. Good morning,
Madam Hearing Officer and members of the Commission.
My name's Ann Tripp.

Mr. Alexander, I'm with IPANM, and I'll
be the one examining you. And so I'm going to --
Ms. Apodaca already granted me permission. I'm just
going to -- I'll save that for a bit though.

So before we went on break,
Mr. Alexander, there was a question about the effect
of these proposed rules on operators. And I
apologize, I don't have a court reporter to look back
on, but I believe, you know, you agreed that there
would be some effect on small operators. My follow-up
question to that is what about the responsible
operators who are already plugging their own wells?
What effect would the increases in financial
assurances have on them?

THE WITNESS: Well, good for them if
they're doing that and they're conducting their
operations prudently. I -- I don't -- I don't have
any specific analysis on that.

MS. TRIPP: Well, you would agree,
under the proposed rule for marginal wells, financial

1 assurance of \$150,000 is required for each marginal
2 well; is that correct?

3 THE WITNESS: It'll -- it'll have an
4 effect, yes.

5 MS. TRIPP: So for an operator with a
6 hundred marginal wells, they're looking at an
7 increased financial assurance bonding requirement of
8 15 million?

9 THE WITNESS: Well, I'm going to --
10 let -- let me be clear, I'm not the expert in
11 financial assurance. That's our next expert witness.
12 I'm not going to do the math on this because I'm not
13 qualified to do that.

14 MS. TRIPP: Yes, sir. And I can
15 understand that. But you're here to testify about in
16 your operational experience; is that correct?

17 THE WITNESS: Yes.

18 MS. TRIPP: Okay. And so in your
19 operational experience, would an additional capital
20 expenditure of 15 million have an effect on a small
21 operator?

22 THE WITNESS: It would.

23 MS. TRIPP: Could it potentially put a
24 small operator out of business?

25 THE WITNESS: Depends on the financial

1 resources of that small operator.

2 MS. TRIPP: Mr. Alexander, I believe
3 you testified earlier that you spent half your career
4 with small operators. So in the -- in your own
5 experience in those small operating companies, which
6 were not in New Mexico, would an additional price tag
7 of 15 million have had an effect on your operations
8 with those companies?

9 THE WITNESS: Yes. Yeah.

10 MS. TRIPP: Yes.

11 THE WITNESS: We had nowhere near those
12 kinds of FA requirements.

13 MS. TRIPP: And in what state was that,
14 sir?

15 THE WITNESS: Well, I've operated in
16 Texas, Louisiana, Mississippi, Oklahoma, Arkansas,
17 Wyoming, Nebraska, Colorado.

18 MS. TRIPP: And it's your testimony
19 today that there was nowhere near financial insurance
20 requirements of \$150,000 per well at that time?

21 THE WITNESS: No. No. It also didn't
22 cost what it's costing now to plug a well.

23 MS. TRIPP: Yes, sir. And we'll talk
24 about plugging costs of wells a little bit later. So
25 you agree that there'll be an effect from this rule on

1 responsible operators as well as those bad actors,
2 which you intend to target.

3 But what about the effect on an
4 operator who's plugging his own wells but has already
5 posted that financial assurance? Are you familiar
6 with that process?

7 THE WITNESS: No, I'm not.

8 MS. TRIPP: Would you disagree that,
9 under the -- well, have you reviewed the statutes and
10 the regulations for financial assurance?

11 THE WITNESS: Not closely. Again, I'm
12 not the expert on that. Those questions are better
13 directed at our next witness.

14 MS. TRIPP: Mr. Alexander, I'm not
15 asking about the overarching economic effects. I'm
16 asking about an operator who has to post \$150,000 bond
17 and then plug that well before the \$150,000 bond is
18 accessible or returned. Is that correct?

19 THE WITNESS: I'm not -- I'm not sure
20 I'm -- say that question again?

21 MS. TRIPP: Yes. So under the current
22 regulatory scheme and statutory requirements --

23 THE WITNESS: Right. Which I have
24 reviewed.

25 MS. TRIPP: Financial assurance is

1 required to be posted for wells either in a blanking
2 form -- blanket bonding form or a one-well plugging;
3 is that correct?

4 THE WITNESS: Right. Right, right.

5 MS. TRIPP: And the financial
6 assurance, that requirement is tied to the plugging
7 and abandonment of the well; is that right?

8 THE WITNESS: Yes.

9 MS. TRIPP: And so a financial
10 assurance, that bond is not released until the well is
11 plugged; is that correct?

12 THE WITNESS: I believe that's true.

13 MS. TRIPP: And so if an operator's
14 required to post this additional let's say 15 million
15 in financial assurance, those funds are not returned
16 to the operator until they've already had to pay out
17 of pocket to plug the well for which that financial
18 assurance is tied to?

19 THE WITNESS: Yes.

20 MS. TRIPP: Yes. And so, aside from
21 small operators, do you see an effect on any other
22 operators in New Mexico from the bonding rules?

23 THE WITNESS: I haven't analyzed it
24 specifically, but I'm sure it will have some effect.

25 MS. TRIPP: Well, in your testimony,

1 you do offer some experience in the cycle of the
2 industry. Is that an accurate summary?

3 THE WITNESS: That is accurate.

4 MS. TRIPP: And in the cycle of the
5 industry, wells pass from one operator to another,
6 typically from larger to smaller?

7 THE WITNESS: Correct.

8 MS. TRIPP: And so, if small operators
9 exit New Mexico because of these financial assurance
10 requirements, who will take over those wells from the
11 larger operators?

12 THE WITNESS: Depends on how they exit.
13 If they walk away from it, then OCD will have to take
14 on that operational responsibility and plug the wells.

15 MS. TRIPP: Well, let's back that
16 hypothetical up a few steps. So, if the larger
17 operators typically transfer wells to smaller
18 operators that can run a well more efficiently with
19 leaner operations, less administrative overhead, if
20 smaller operators aren't there to take on those wells,
21 would this rule affect larger operators?

22 MS. FOX: Objection. Speculation.

23 THE HEARING EXAMINER: Yeah, it does
24 invite speculation, Ms. Tripp.

25 MS. TRIPP: That's fair. We can move

1 on.

2 BY MS. TRIPP:

3 MS. TRIPP: So in your opinion,
4 Mr. Alexander, will the financial assurance rules
5 affect all operators within New Mexico?

6 THE WITNESS: Potentially, I guess.

7 MS. TRIPP: Mr. Alexander, were you
8 involved in the drafting or proposal of House Bill
9 133?

10 THE WITNESS: No.

11 MS. TRIPP: And so you didn't
12 participate in any of the stakeholder meetings or any
13 of the proposed legislation?

14 THE WITNESS: I did not.

15 MS. TRIPP: So, in your testimony, you
16 mentioned that you reviewed regulations from many of
17 the -- 15 producing states; is that right?

18 THE WITNESS: I -- I looked at -- and
19 I -- I've got a list of them here. There was an
20 intern, I believe, that worked for WELC, did actually
21 went out and grabbed some of the major provisions in
22 upwards of 15 different states and how they deal with
23 idle wells. And I read through that spreadsheet.

24 MS. TRIPP: And did you review -- I
25 think earlier you just said you did review the New

1 Mexico statutes and regulations as it pertains to
2 bonding and idle wells and active wells?

3 THE WITNESS: Yes.

4 MS. TRIPP: And I believe you've also
5 testified before the Oil Conservation Commission
6 before in prior rulemakings; is that accurate?

7 THE WITNESS: I have.

8 MS. TRIPP: And so you're familiar with
9 the primary duties of the Oil Conservation Commission?

10 THE WITNESS: Vaguely. Yes.

11 MS. TRIPP: If I use the phrase "to
12 prevent waste" and "to protect correlative rights," is
13 that familiar?

14 THE WITNESS: Yes it is. It's like
15 that in every state.

16 MS. TRIPP: Okay. So in your
17 experience as an operator, you're familiar with the
18 definition of "waste" or a concept of "waste."

19 THE WITNESS: A concept, yes.

20 MS. TRIPP: And how would you define
21 it?

22 THE WITNESS: Well, in -- in
23 combination with this idea of -- of protecting
24 correlative rights and, you know, preserving the
25 resources that the state has, the way I think about

1 that and the way I've seen it done is that it's the
2 duty of the OCC or OCD to make sure that oil and gas
3 resources aren't wasted in the process of operations
4 and/or plugging and abandonment.

5 Now, when that becomes, you know -- and
6 that definition, in its strictest terms, I believe
7 there's a point at which, you know, a well is done,
8 you need to plug it. Is there still oil and gas in
9 that reservoir? Yes, but it's not economic to recover
10 it. And to keep plugging at it and just keep
11 hammering at it to get that last molecule out, I view
12 as waste. Some may view that, if you plug it, it's
13 waste of oil and gas, but I view it as waste of an
14 overall resource.

15 MS. TRIPP: And what resource is wasted
16 in that scenario?

17 THE WITNESS: Capital.

18 MS. TRIPP: Capital is wasted in that
19 scenario?

20 THE WITNESS: Yeah. Yeah. I mean, I
21 can produce a well down to the last molecule, and I
22 might get a dollar out of my efforts, but it might
23 cost me a thousand dollars to do that. That's
24 wasteful.

25 MS. TRIPP: But in your preparation and

1 in your opinion, in this rule making, have you
2 reviewed the statutory definition of "waste"?

3 THE WITNESS: No.

4 MS. TRIPP: Okay. Would you -- but you
5 would -- let me restate that.

6 So you talked about economic waste,
7 capital waste. Are there other forms of economic
8 waste that you're familiar with?

9 THE WITNESS: Well, perhaps. I haven't
10 thought about it lately.

11 MS. TRIPP: Well, would producing a
12 well at low market or commodity prices, would that
13 create economic waste?

14 THE WITNESS: Well, if I'm producing a
15 well at a price for the commodity that is causing me
16 to have a loss, I mean, why would I do that? That
17 would be -- that would be wasteful.

18 MS. TRIPP: Thank you. And I -- I
19 would agree. And so, to the extent that the marginal
20 or the no-beneficial-use presumption carry production
21 thresholds in those rules, wouldn't -- would you agree
22 that there's an incentive to operators to produce
23 wells in excess of those limits, which would create
24 economic waste?

25 THE WITNESS: I -- I think so. I -- if

1 I'm understanding your question. Are --

2 MS. TRIPP: My question is there could
3 be market conditions which would make it uneconomical
4 to produce a well for certain --

5 THE WITNESS: I get that.

6 MS. TRIPP: Okay.

7 THE WITNESS: Some people will shut a
8 well in. But let's be careful about that. Am I to
9 shut a well in and wait for the price of oil to go to
10 \$500? No. That's speculation. You know, you get a
11 few hundred -- a few dollars per barrel variance here,
12 and if that's going to take a well from uneconomic
13 to -- to economic, you're in trouble already.

14 MS. TRIPP: Mr. Alexander, are there
15 any parts of the proposed amendments to the rules that
16 take economic factors into analysis?

17 THE WITNESS: Let me think about that.
18 Indirectly so, I would say.

19 MS. TRIPP: And in what --

20 THE WITNESS: Yeah. When you think
21 about the presumption provisions that OCD provided and
22 that we adopted, where you have 90 barrels of oil
23 equivalent, over 90 days, in 12 consecutive months,
24 there's an implied economic factor in that for sure.

25 MS. TRIPP: So there's an implicit

1 economic, but it is not expressly stated within the
2 definition of "marginal well"?

3 THE WITNESS: I don't recall seeing
4 that in the regulations.

5 MS. TRIPP: Okay. Thank you. Can
6 premature plugging of wells also create waste, waste
7 in the sense of unrecovered hydrocarbons?

8 THE WITNESS: It depends on your
9 definition of "premature." It could. If the well was
10 actually plugged, and it shouldn't have been, then
11 there is waste.

12 MS. TRIPP: And so, to the extent that
13 a well is marginal but could have another 15 to 20
14 years of production, if an operator couldn't afford a
15 financial assurance of 15 million and plug that well,
16 that would create waste. Is that correct?

17 THE WITNESS: I don't think so. If you
18 can't operate the well economically, and that would
19 include whatever the financial assurance provisions
20 are and other operating expenses, it's done.

21 MS. TRIPP: In your experience in other
22 states, is financial assurance in the plugging cost,
23 is that incorporated into a production and paying
24 quantities analysis?

25 THE WITNESS: I -- you know, it's been

1 a while since I've been involved with operations to
2 consider that sort of thing. I would say yes, but I
3 don't have any direct recent experience with that.

4 MS. TRIPP: Okay. Thank you for that.
5 And I think we touched on it briefly, but you also
6 don't have any operational experience within the San
7 Juan Basin or the Permian Basin; is that accurate?

8 THE WITNESS: I do not.

9 MS. TRIPP: And so you're not familiar
10 with the geological formations or the Permian Stack or
11 the formations in the San Juan Basin?

12 THE WITNESS: Just -- just, you know,
13 mildly so.

14 MS. TRIPP: And your experience in
15 Arkansas, that was in the Fayetteville Shale
16 development; is that accurate?

17 THE WITNESS: That was part of it.
18 When I joined the company, we had production in the
19 fairway. It was all conventional production.

20 MS. TRIPP: And what were the average
21 depths of those wells?

22 THE WITNESS: In the fairway, probably
23 anywhere between 45 and, you know, 65 hundred,
24 something like that. In the Fayetteville Shale, the
25 TVD would be, you know, in that 5,000-or-so-foot range

1 on average, before you kicked off. And our laterals
2 would cause our measured depths to be upwards of
3 10,000 feet.

4 MS. TRIPP: And that experience was
5 with Southwestern Energy; is that correct?

6 THE WITNESS: Yes, that's correct.

7 MS. TRIPP: And is Southwestern Energy
8 still in Arkansas?

9 THE WITNESS: They are not.

10 MS. TRIPP: Did they plug and abandon
11 each of their wells before leaving the state?

12 THE WITNESS: No, they sold them.

13 MS. TRIPP: And they sold them to a
14 smaller operator?

15 THE WITNESS: Yeah. The Fayetteville
16 was sold, I believe, to Flywheel. I don't know
17 anything about them. I really forget who we sold all
18 of our conventional production to.

19 MS. TRIPP: Do you have any knowledge
20 about whether that had an effect on the local economy
21 or the communities in around that area of Arkansas?

22 THE WITNESS: When we sold the
23 conventional production, it really didn't have any
24 impact whatsoever. The operator was a, you know, as
25 far as I know, a good operator. And like I said, I

1 don't know anything about Flywheel. You know, the --
2 the community experienced great positive things from
3 our development of the Fayetteville Shale.

4 And when the drilling essentially
5 stopped, and we had drilled about everything that was
6 going to be economic, then, you know, a lot of those
7 opportunities kind of slid away. But I have no direct
8 experience of how things have gone. I think it was
9 sold in 2018, something like that, and I haven't kept
10 up with that.

11 MS. TRIPP: Do you have any operating
12 experience as a stripper-well operator?

13 THE WITNESS: I've operated wells that
14 are in that category of stripper. Yeah. I wouldn't
15 say that our companies were called stripper-well
16 operators.

17 MS. TRIPP: But you're familiar with
18 the lifecycle of primary production moving to
19 secondary or tertiary recovery?

20 THE WITNESS: I am.

21 MS. TRIPP: And that there's a
22 substantial percentage of hydrocarbons that can be
23 recovered either in that secondary or tertiary phase?

24 THE WITNESS: Absolutely.

25 MS. TRIPP: Have you put together any

1 of those projects before?

2 THE WITNESS: No.

3 MS. TRIPP: Oh. So you're not aware of
4 how long it takes to create a secondary recovery unit?

5 THE WITNESS: Well, I -- I'm aware.
6 I'm aware it takes a long time to develop those
7 projects. As a matter of fact, my wife used to work
8 for Shell and was involved with a lot of those
9 projects early on.

10 MS. TRIPP: And just developing, would
11 you -- is that inclusive of the permitting process?

12 THE WITNESS: Everything. Everything.
13 It's very complicated. Unitization can take forever.
14 I -- I get that.

15 MS. TRIPP: In terms of --

16 THE WITNESS: And I don't think these
17 regulations are meant to interrupt that process
18 either.

19 MS. TRIPP: And which part of the
20 regulations would affect those processes?

21 THE WITNESS: Well, you know, the --
22 this idea that -- that, you know, if we have to come
23 up with, you know, with reasons that a well should or
24 should not be T&A'd or P&A'd and whatnot, there are --
25 as we said, all of these presumptions are rebuttable.

1 And if there are future uses, or if an EOR project is
2 taking this long to develop, and nobody's here to try
3 and say, "No, you've taken too long. That's enough.
4 We're out of here."

5 MS. TRIPP: And in the proposed rules,
6 while beneficial use and temporary abandonment have
7 these exceptions or these rebuttable opportunities,
8 marginal well does not; is that correct?

9 THE WITNESS: I don't think that'd be
10 the case.

11 MS. TRIPP: Well, would you disagree --

12 THE WITNESS: I think -- I think --
13 well, go ahead and ask the question.

14 MS. TRIPP: My only question is that
15 the definition of "marginal well" sets an arbitrary
16 threshold of days of production and barrels of oil
17 equivalent per year. Is that an accurate summary of
18 the rule?

19 THE WITNESS: I don't -- well, the --
20 the presumption of beneficial use is a class of
21 inactive wells, and they are within the marginal well
22 category. So yes.

23 MS. TRIPP: That's a fair
24 clarification. So to the extent that beneficial -- no
25 beneficial use wells are included in marginal wells,

1 there is an exception to appeal that determination.
2 But within the range of greater than 90 BOE, less than
3 1000 BOE, is there any appeal opportunity or
4 determination of economics of a well?

5 THE WITNESS: I'm not specifically
6 aware of that, but I can't believe that it is not
7 available. An appeal -- there's always an appeal
8 process. And OCD is going to -- to have a presumption
9 of no beneficial use based on that -- that threshold
10 that we have presented of 90 barrels of oil
11 equivalent, over 90 days, within a 12-month
12 consecutive period. That -- beyond that, I don't
13 think that OCD is going to be issuing orders to review
14 wells that are above that threshold.

15 MS. TRIPP: I would agree,
16 Mr. Alexander, under the proposed rules. But the
17 proposed rules set a financial assurance requirement
18 for all marginal wells; is that right?

19 THE WITNESS: I believe that's true.

20 MS. TRIPP: And there is no exception
21 for marginal wells, in other words, for a well that's
22 producing less than 180 days and less than 1000 BOE,
23 for an operator to appeal that determination of
24 financial assurance that's required?

25 THE WITNESS: I don't know about that.

1 I didn't get involved with the marginal well category;
2 that's our next witness.

3 MS. TRIPP: And so --

4 THE WITNESS: I was more involved with
5 the 90, 90, and 12 months of inactive wells.

6 MS. TRIPP: Thank you, sir. We'll
7 reserve those questions then for Mr. Purvis. In your
8 experience as an operator and operating expenses, do
9 you have familiarity distinguishing between capital
10 expenses and operating expenses?

11 THE WITNESS: Fairly.

12 MS. TRIPP: Did you have a chance to
13 review any of the testimony from the Division's
14 witnesses?

15 THE WITNESS: I did not read their
16 testimony.

17 MS. TRIPP: But you would agree that
18 there's a distinction in the way an operator would
19 treat a monthly lease operating expense as opposed to
20 a capital expenditure?

21 THE WITNESS: Oh yeah. Absolutely.

22 THE HEARING EXAMINER: Be careful not
23 to speak on the end of each other's sentences.

24 THE WITNESS: Okay. Sorry.

25 MS. TRIPP: Thank you, ma'am.

1 BY MS. TRIPP:

2 MS. TRIPP: And so there are some parts
3 of your testimony where you mentioned the Reclamation
4 Fund. Do you recall those areas?

5 THE WITNESS: Not really. No, I don't.

6 MS. TRIPP: Are you familiar with what
7 the Reclamation Fund is?

8 THE WITNESS: Basically, but I don't
9 know anything specifically about it.

10 MS. TRIPP: But you did state that the
11 Reclamation Fund could be used for other purposes or
12 other programs?

13 THE WITNESS: I don't recall saying
14 that. Maybe I did, but I don't recall that. In my
15 direct testimony?

16 MS. TRIPP: In your direct testimony,
17 sir. Do you have a copy of that, or would you like me
18 to pull it up?

19 THE WITNESS: I do. Tell me what page?

20 MS. TRIPP: I believe it's Page 17,
21 Footnote 3.

22 THE WITNESS: What line?

23 MS. TRIPP: I believe it's a Footnote 3
24 at the bottom of the page. It continues from Page 17
25 to Page 18.

1 THE WITNESS: Yeah. Okay. I get it.
2 I see it.

3 MS. TRIPP: And so you state that "I
4 understand, in New Mexico, the Reclamation Fund is
5 funded through a tax on oil and gas operations.
6 However, that public money, spent on plugging and
7 abandoning wells of operators that have abandoned
8 their responsibilities, could have been spent on other
9 worthy and necessary public programs."

10 THE WITNESS: Okay. Okay.

11 MS. TRIPP: I read that correctly?

12 THE WITNESS: Yeah.

13 MS. TRIPP: Okay. And so the other
14 public programs -- but you've not reviewed the statute
15 which creates the Reclamation Fund?

16 THE WITNESS: No.

17 MS. TRIPP: And so you're not aware of
18 whether the Reclamation Fund is actually limited or
19 constrained to specific purposes?

20 THE WITNESS: I am not.

21 MS. TRIPP: And when you say,
22 throughout your testimony, about the effect of
23 orphaned or the State having to plug in abandoned
24 wells and the effect on that on the taxpayer, you're
25 not referring to taxpayers providing any portion of

1 that Reclamation Fund, are you?

2 THE WITNESS: Well -- well, one way or
3 another, the taxpayers pay. Even if it comes from
4 Washington DC, you're paying for it. It -- it hits
5 the individual taxpayer one way or another. No, I'm
6 not saying that the taxpayer's out here at the steps
7 writing a check; I don't say that at all. But the
8 money doesn't come from out of the sky that nobody has
9 any -- any, you know, no control over it. It's --
10 it's coming out of your pocket one way or the other.

11 MS. TRIPP: Are you familiar with the
12 oil and gas conservation tax?

13 THE WITNESS: In -- not really.

14 MS. TRIPP: Well, I'll offer to you
15 that the oil and gas conservation tax is one of the
16 only contributions into the Reclamation Fund, which is
17 paid by industry.

18 THE WITNESS: And is that --

19 MS. FOX: Objection. Testimony. That
20 wasn't a question.

21 THE HEARING EXAMINER: All right. Do
22 you have a question to follow up on that, Ms. Tripp?

23 MS. TRIPP: Yes, Madam Hearing Officer.

24 BY MS. TRIPP:

25 MS. TRIPP: So just to restate,

1 Mr. Alexander, you've not reviewed any of the
2 Reclamation Fund statute; is that correct?

3 THE WITNESS: I have not.

4 MS. TRIPP: And so you're not aware of
5 how the oil and gas conservation tax contributes to
6 the Reclamation Fund?

7 THE WITNESS: Not specifically.

8 MS. TRIPP: Okay. We'll move on. So
9 there were several exhibits that were referenced today
10 and throughout your testimony. Exhibit 7 is the
11 inactive well list, and I can display that for the
12 commissioners. Just a second. And I don't know that
13 I can expand it large enough that it --

14 THE WITNESS: Oh, it's fine.

15 MS. TRIPP: -- it's going to be
16 helpful.

17 THE WITNESS: I can see it.

18 MS. TRIPP: And so I -- I just wanted
19 to ask a couple follow-up questions about how this
20 exhibit was created. And so did you compile these
21 numbers?

22 THE WITNESS: I did not. There's a
23 employee of Environmental Defense Fund that pulled
24 this information together from OCD data.

25 MS. TRIPP: And so you're not aware of

1 how they actually created the chart in terms of what
2 data was used or what dataset?

3 THE WITNESS: Well, it would be the
4 status of wells that is kept by OCD.

5 MS. TRIPP: Yes, sir.

6 THE WITNESS: And it came from OCD
7 data, and it was compiled in this chart.

8 MS. TRIPP: And was there a certain --
9 is there a certain dataset you're aware of? OCD
10 maintains a lot of data. New Mexico Tech maintains a
11 lot of data.

12 THE WITNESS: I don't know the name of
13 the dataset, but it would be their inactive well list,
14 is what I would call it.

15 MS. TRIPP: And then are you aware if
16 these numbers of wells include federal, state, and fee
17 wells in New Mexico?

18 THE WITNESS: I believe we stayed away
19 from federal wells.

20 MS. TRIPP: But you're not aware of any
21 of the process in terms of how you would've excluded
22 federal wells in creating this?

23 THE WITNESS: No. I didn't get
24 involved with their pulling this list together, you
25 know, the -- the raw data.

1 MS. TRIPP: And so you're not aware of,
2 in terms of what category of inactive well, whether
3 it's total approved TA wells, on inactive well search,
4 total expired TA wells, or total wells under ACOI, the
5 287 Ridgeway Arizona Wells are included?

6 THE WITNESS: I don't know if those
7 specific wells are included. No.

8 MS. TRIPP: But you're familiar with
9 the Ridgeway as an operator and the settlement --

10 THE WITNESS: Basically familiar with
11 that, yes.

12 MS. TRIPP: I also want to refer back
13 to your direct testimony and, and the summary that you
14 offered today. The phrase "out of compliance" was
15 used repeatedly. And I want to clarify on that. When
16 you use the term "out of compliance," is there a
17 specific regulation that you're referring to?

18 THE WITNESS: Well, with -- with
19 current regulations, you know. For example, that
20 chart that you just put up there, there's inactive
21 wells that are in -- out of compliance. Yeah, those
22 are the specific -- the specific regulations, you have
23 to go find them.

24 But you know, basically, you know, a
25 well could -- is inactive for a year, and then you

1 have 90 days to either P&A the well or apply for TA.
2 Okay? And then, if you don't do either one of those,
3 then it's out of compliance. And that's kind of the
4 basic category there.

5 MS. TRIPP: So that --

6 THE WITNESS: And just -- and -- and my
7 point about that was is that, from OCD's discussions
8 with us, operators have learned to game that system.
9 So, for example, you shut a well in on January the 1st
10 of any given year, whatever date you shut it in, and
11 three, four months later, you open it up for half a
12 day, you burp up a barrel of oil, and then you shut it
13 back in. And so, in their minds, that's resetting
14 that inactivity or inactive status clock, and it just
15 goes on and on and on. And I presume that's the way a
16 lot of these are. And -- and that's not the way the
17 rule is -- is written. But those wells are out of
18 compliance because they have not been applied for and
19 put into TA or P&A.

20 MS. TRIPP: Thank you. And so just to
21 put a bow on that, "out of compliance" is used with
22 respect to specifically well activity in terms of
23 temporary abandonment or active/inactive status?

24 THE WITNESS: Yeah. Yes.

25 MS. TRIPP: It's not referring at all

1 to environmental compliance or other notice of
2 violation that the Division may issue?

3 THE WITNESS: No, no, no.

4 MS. TRIPP: Moving on to the
5 "beneficial use and purpose" definition, we've already
6 touched on whether "speculative" is defined. But just
7 to recap, "speculative" is not a defined term under
8 the current regulations or the proposed amendment?

9 THE WITNESS: It is not.

10 MS. TRIPP: Okay. However, the oil and
11 gas industry, there's many legitimate activities that
12 occur which someone may call speculative. Is that a
13 fair summary?

14 THE WITNESS: I guess it's a fair
15 statement. It depends on, you know, an individual's
16 risk-aversion profile.

17 MS. TRIPP: But you would agree that a
18 speculative activity can be based on information; it's
19 just that there is not a known outcome?

20 THE WITNESS: No. That's not the --
21 that's not where we're going with that. It -- the
22 outcome is independent of what we're talking about.
23 In the -- in -- in the context of does not include
24 speculative use, we went straight to the dictionary.
25 And the dictionary calls it, you know, basically

1 guesswork, and there's no information on it. Okay?

2 So that's clearly different than what
3 you just said. I think you just said speculative use
4 could be tied to something that -- with an unknown
5 outcome. I mean, every well you drill has an unknown
6 outcome. So is every well a speculative well? Of
7 course not.

8 MS. TRIPP: And the in the definition
9 of "beneficial use" that's proposed, were you aware
10 that New Mexico adopted a well repurposing act?

11 THE WITNESS: A well what?

12 MS. TRIPP: Well repurposing act for
13 carbon storage or other energy storage?

14 THE WITNESS: I'm not familiar with
15 that act.

16 MS. TRIPP: Okay.

17 THE WITNESS: Well, let's be clear.
18 Remember those two words in that definition: "such
19 as." That opens the door to any viable use beyond
20 production, injection, or monitoring. Okay?

21 MS. TRIPP: That's fair. But to the
22 extent that operators rely on certainty and
23 regulations, to the extent a regulation doesn't
24 provide an exhaustive list, and administrators are
25 prone to change, there's uncertainty in that?

1 THE WITNESS: Well, I would disagree
2 with that. If I see something like "such as" or "for
3 example," to me, that opens the -- the door to any
4 viable use.

5 MS. TRIPP: And energy capture or
6 carbon storage would be one of those viable uses?

7 THE WITNESS: I would think so.

8 MS. TRIPP: Earlier, on the subject of
9 temporary abandonment of wells, you testified that
10 temporary abandonment is simply a subset of wells; is
11 that correct?

12 THE WITNESS: Of inactive wells.

13 MS. TRIPP: A subset of inactive wells?
14 But, however, currently, the regulations have two
15 separate temporary abandonment definitions. Is that
16 right?

17 THE WITNESS: Remind me of that.

18 MS. TRIPP: Currently, there's
19 temporary abandonment, and then there's a different
20 category of well, approved temporary abandonment?

21 THE WITNESS: Yeah. Let me turn --
22 hold on just a second here. Yeah. Approved temporary
23 abandonment, we're adding to that temporary
24 abandonment or temporary abandoned status means the
25 status. So we're adding to that definition of

1 "approved temporary abandonment."

2 MS. TRIPP: But as it exists --

3 THE WITNESS: In --

4 MS. TRIPP: Oh, I'm sorry. Go ahead,
5 sir.

6 THE WITNESS: In getting rid of the
7 temporary abandonment or temporarily abandon status,
8 because TA does not equal, necessarily, inactive; it's
9 a subset.

10 MS. TRIPP: Is that a change in
11 Division interpretation?

12 THE WITNESS: I don't know the answer
13 to that. I don't know how they interpreted TA versus
14 inactive. I -- you'd have to ask them.

15 MS. TRIPP: But the current regulation
16 states that a temporary abandoned well is an inactive
17 well; is that --

18 THE WITNESS: It is inactive.

19 MS. TRIPP: Yes. And under the
20 regulation --

21 THE WITNESS: But an inactive well is
22 not necessarily a temporary abandoned well.

23 MS. TRIPP: I understand that that's
24 your opinion. I'm asking what the current regulation
25 states for temporary abandonment?

1 THE WITNESS: It says it right here.
2 "Temporary abandonment or temporarily abandoned status
3 means the status of a well that is inactive." And
4 we're saying we don't think that's quite accurate.

5 MS. TRIPP: Yes. And so you're
6 proposing a change?

7 THE WITNESS: Get rid of that
8 definition and go with the new definition that we're
9 proposing.

10 MS. TRIPP: Thank you. And so you, in
11 your testimony, you also mentioned that financial
12 assurances haven't changed in years in New Mexico. Do
13 you recall that?

14 MS. FOX: Could you cite the page
15 number please?

16 THE WITNESS: Yeah. I did.
17 I'm sorry. What?

18 MS. FOX: Could you cite the specific
19 testimony please?

20 MS. TRIPP: Yes, I can grab that.

21 BY MS. TRIPP:

22 MS. TRIPP: I apologize. Page 16, Line
23 18 to 19.

24 THE WITNESS: I see it.

25 MS. TRIPP: "Financial assurance levels

1 have not been updated for years." Is that correct?

2 THE WITNESS: That's what it says.

3 MS. TRIPP: And so what would --

4 MS. FOX: Objection. It refers to
5 state regulations, not specifically New Mexico.

6 THE WITNESS: You're right.

7 MS. TRIPP: That's fair enough.

8 BY MS. TRIPP:

9 MS. TRIPP: Mr. Alexander, when was the
10 last time financial assurance levels were changed in
11 New Mexico?

12 THE WITNESS: What was that? 2018,
13 '19, somewhere. I don't remember specifically.

14 MS. TRIPP: Were you involved in that
15 rulemaking proceeding?

16 THE WITNESS: I was -- I was not.

17 MS. TRIPP: And have you reviewed the
18 transcript from that proceeding prior to this?

19 THE WITNESS: No.

20 MS. TRIPP: Would it surprise you that
21 the witness for OCD testified that a temporary
22 abandoned well is an inactive well?

23 THE WITNESS: No, that wouldn't
24 surprise me a bit. I would say the same thing. But
25 what I said was an inactive well is not necessarily a

1 temporary abandoned well.

2 MS. TRIPP: Which is a change that
3 Applicants are proposing here?

4 THE WITNESS: Exactly. Yeah, yeah.

5 MS. TRIPP: So you referenced several
6 times today that you spoke with OCD staff, and some of
7 the changes are based on OCD staff experience. Is
8 that a correct summary?

9 THE WITNESS: Yes.

10 MS. TRIPP: And in these changes, which
11 include several exceptions or ability to rebut a
12 presumption, did Applicants analyze any of the
13 administrative burdens created by these rules?

14 THE WITNESS: No.

15 MS. TRIPP: Is that something that you
16 spoke --

17 THE WITNESS: Well, I -- I didn't.
18 Maybe someone else on staff did, but I did not.

19 MS. TRIPP: Have you reviewed any
20 testimony of any witnesses that addresses the
21 administrative burden that would be created by these
22 proposed rules?

23 THE WITNESS: No.

24 MS. TRIPP: There's another concept
25 that's referred to throughout your direct and rebuttal

1 testimony, and that's of risk. And I want to ask a
2 few questions about that. Because earlier, we were
3 told that everything had been data tested in terms of
4 the testimony of the Applicants. So how is risk
5 determined for an orphaned well?

6 THE WITNESS: In the context that we're
7 talking about, it's a production level that, at least
8 on the surface, there's a presumed idea that it's not
9 making enough revenue from the production to cover the
10 costs. And therefore, that well is potentially at
11 risk of becoming a burden to the State and becoming an
12 orphaned.

13 MS. TRIPP: And is that how you -- does
14 that correlate to your experience with Southwestern
15 that you operated on a well-by-well basis?

16 THE WITNESS: Yeah. We -- we
17 evaluated. All the, all the companies that I worked
18 with, we -- we knew what each well was doing.

19 MS. TRIPP: But there is a presumption
20 built into your concept of risk. You said that
21 there's a presumption that the production levels will
22 not support operation of the well. And I may be
23 misstating. I apologize if I am.

24 THE WITNESS: I'm not real sure what
25 you're asking. I'm sorry.

1 THE HEARING EXAMINER: Restate, please?
2 BY MS. TRIPP:
3 MS. TRIPP: Are there presumptions
4 built -- presumptions or assumptions built into the
5 concept of risk to which you testified?
6 THE WITNESS: Yes.
7 MS. TRIPP: Have you reviewed any of
8 the testimony of IPANM witnesses or other New Mexico
9 operators?
10 THE WITNESS: Some. Yes.
11 MS. TRIPP: So you're aware that there
12 is testimony from those operators that plugging costs
13 typically come from production of new wells?
14 THE WITNESS: Well, if somebody said
15 that, I don't remember seeing that. But it -- you
16 know, it could be that. I -- I, you know, I don't --
17 I don't really know how to respond to that question.
18 MS. TRIPP: Is it your position that
19 every well should be self-sufficient? In other words,
20 there should be production sufficient to accomplish
21 all expenses related to that well?
22 THE WITNESS: No. No.
23 MS. TRIPP: Okay.
24 THE WITNESS: No. There are going to
25 be certain situations where you're looking at a lease

1 level, and that makes sense. And I think I made that
2 statement. And that would be some sort of -- that
3 would be the type of information that an operator
4 would come to OCD with and say, "Hey, we're not
5 producing this well because it's going to be used for
6 something else." And I -- I get that.

7 MS. TRIPP: Yes, sir. I think this
8 question is slightly more specific in terms of whether
9 the funds to plug a well must come from that well's
10 production?

11 THE WITNESS: I've made no such
12 statement.

13 MS. TRIPP: Okay. And I just want to
14 clarify that; that's not your position?

15 THE WITNESS: No.

16 MS. TRIPP: However, in your testimony
17 at Page 26, Line 18 through 20, "Production thresholds
18 to generate sufficient revenues in remaining lifespan,
19 to fund plugging and reclamation, puts those wells at
20 greater risk of being orphaned"?

21 THE WITNESS: Mm-hmm.

22 MS. TRIPP: But it's your opinion today
23 that a well doesn't need to be self-sufficient? In
24 other words, the production threshold from a single
25 well does not need to generate sufficient revenue to

1 plug and reclaim that well?

2 THE WITNESS: Well, I'm making a
3 statement that that's the case, but it's not
4 necessarily where the monies are going to come from to
5 plug that well.

6 MS. TRIPP: Because an operator is
7 generally operating more than just one well?

8 THE WITNESS: Generally.

9 MS. TRIPP: And so an operator can plan
10 in terms of setting a plugging and abandonment budget,
11 and an operator can also assign funds, either
12 operating expenses or capital expenses, to accomplish
13 that?

14 THE WITNESS: True. Yes.

15 THE HEARING EXAMINER: Ms. Tripp, you
16 have five minutes.

17 MS. TRIPP: Thank you, Madam Hearing
18 Officer.

19 BY MS. TRIPP:

20 MS. TRIPP: And circling back to this
21 idea of risk, did you undertake any independent
22 analysis of orphan wells in terms of looking at the
23 period of time of activity before they were deemed
24 orphaned by the Oil Conservation Division?

25 THE WITNESS: I didn't personally do

1 that, no.

2 MS. TRIPP: So is there any evidence
3 that you're offering today that increasing financial
4 assurance levels will address the risk of orphan
5 wells?

6 THE WITNESS: I think earlier today, I
7 said there's no silver bullet that will take care of
8 everything. But closing the gap between the current
9 level of financial assurance that is required under
10 the current set of regulations, we need to close that
11 gap between that and reality.

12 And I think that that situation is
13 prevalent in every jurisdiction with oil and gas
14 operations. Every state is struggling with this and
15 recognizes that it's insufficient, as I said earlier
16 in my testimony today, otherwise, we wouldn't have
17 over 800,000 wells in this nation that are orphaned.
18 That came about because the regulations aren't
19 sufficient, they weren't enforced, and operators
20 didn't pay attention to their business.

21 MS. TRIPP: But it's not your opinion
22 today that all operators in New Mexico are acting
23 imprudently?

24 THE WITNESS: Oh no, of course not. Of
25 course not.

1 MS. TRIPP: And you would agree that 95
2 percent of the wells in the state are plugged by
3 operators?

4 THE WITNESS: I think that's accurate.
5 You know, earlier, I said that OCD has, in the last 10
6 years or so, plugged -- or 20 years, plugged a
7 thousand wells, which represents about 5 percent of
8 the total wells plugged. If that relationship, I
9 think that's about right.

10 MS. TRIPP: And in terms of whether
11 operators want to maintain the status quo or not, you
12 mentioned that you reviewed some of the witness
13 testimony from New Mexico operators. And there were
14 suggestions regarding alternate uses of the
15 Reclamation Fund or election of the conservation tax.
16 Did you review any of those portions?

17 THE WITNESS: I don't recall that.

18 MS. TRIPP: Would you agree or disagree
19 with the statement that New Mexico should produce less
20 oil and gas, not more?

21 THE WITNESS: I -- I -- if it can
22 produce more, that's great. I -- I don't -- I -- I'm
23 not here to try and shut down the oil and gas
24 industry, and I don't think any of us are.

25 MS. TRIPP: But you would agree there

1 could be a significant effect on small operators by
2 increasing financial assurance levels?

3 THE WITNESS: Yes. But I can also tell
4 you that, based on some of the charts that we've
5 thrown up there, the amount of production that it
6 would have an impact on in the state is insignificant;
7 .003 percent, I think, is in that group of wells, in
8 that 90 barrels of oil equivalent, 90 days, 12
9 consecutive months. So it's an insignificant amount
10 of oil.

11 MS. TRIPP: Yes, sir. But that level,
12 that 003 percent is referring to wells without a
13 presumption of beneficial use; that's not referring to
14 the category of marginal wells. Is that accurate?

15 THE WITNESS: No. That's correct.
16 That's true.

17 MS. TRIPP: Thank you. My final
18 question, if I have time for it; your Exhibit 12
19 refers to a collection or a sampling of C-103s for
20 temporary abandoned wells. Are you familiar? At any
21 point, did you have -- did you or an intern follow up
22 on the status of those wells that are TA?

23 THE WITNESS: No. Didn't --

24 MS. TRIPP: So you're not aware of what
25 percentage were returned to production, what

1 percentage were plugged, or which percentage are in
2 compliance?

3 THE WITNESS: I'm not. The purpose of
4 that exercise was to just take a look at some random
5 sampling. And my big point about that was that, in --
6 under current regulations, there is no provision where
7 an operator has to justify putting a well into TA
8 status. And I think that's unacceptable.

9 MS. TRIPP: And that random sample
10 wasn't generated by you; that was done by a staff
11 member or intern?

12 THE WITNESS: No. I -- I did it. I
13 just accessed the OCD site and just started picking
14 here and there.

15 MS. TRIPP: The --

16 THE WITNESS: Over a various periods of
17 time. I think I state, in my direct testimony, how I
18 went about doing it, but I did that.

19 MS. TRIPP: And then the final question
20 I have is on Exhibit 11, which is the, the wells in
21 approved or expired TA status. It's a line chart.
22 Share that again.

23 THE WITNESS: Is that the one with two
24 line -- two line -- two graph --

25 MS. TRIPP: Yes. There's a green -- a

1 dark green and a light green line.

2 THE WITNESS: Let me turn to it. I've
3 got it.

4 MS. TRIPP: And so your testimony is
5 that these -- these numbers have been increasing. But
6 in this analysis, did you take into account the fact
7 that the number of wells in New Mexico has increased
8 significantly over the past two decades?

9 THE WITNESS: No.

10 MS. TRIPP: Okay. Thank you. I have
11 no further questions.

12 THE HEARING EXAMINER: Thank you very
13 much, Ms. Tripp.

14 Ms. Bradfute, do you have questions of
15 Mr. Alexander?

16 MS. BRADFUTE: No, Ms. Hearing
17 Examiner, I do not.

18 THE HEARING EXAMINER: Thank you.

19 Mr. Rankin, do you have questions of
20 Mr. Alexander?

21 MR. RANKIN: I do. And I wonder if we
22 might take us a very short break before I initiate
23 that?

24 THE HEARING EXAMINER: All right.
25 Let's take a short break. Come back in like five

1 minutes?

2 MR. RANKIN: Yeah.

3 THE HEARING EXAMINER: All right.

4 MR. RANKIN: Thank you.

5 (Off the record.)

6 THE HEARING EXAMINER: Let's come back
7 from the break please. All right. We turn now to
8 Mr. Rankin, and his questions on behalf of OXY USA.

9 MR. RANKIN: Thank you very much, Madam
10 Hearing Officer.

11 CROSS-EXAMINATION

12 BY MR. RANKIN:

13 MR. RANKIN: Good afternoon
14 Mr. Alexander. Welcome. Thank you for your time
15 today. As the Hearing Officer mentioned, I'm counsel
16 for OXY, so we appreciate your comments and support of
17 OXY's engagement with WELC and the Applicants in this
18 rulemaking. Thank you.

19 THE WITNESS: Absolutely. It's a
20 pleasure working with y'all.

21 MR. RANKIN: Well, of course, you know,
22 we agreed on some things, but not everything; right?

23 THE WITNESS: Right.

24 THE HEARING EXAMINER: And I'm sorry,
25 Mr. Ranken, to interrupt.

1 MR. RANKIN: Yep.

2 THE HEARING EXAMINER: We are making a
3 transcript, and so it's really important not to speak
4 on the end of each other's sentences, and also not to
5 speak quite too fast.

6 MR. RANKIN: Okay.

7 BY MR. RANKIN:

8 MR. RANKIN: Mr. Alexander, before I
9 get into the portions of the rule that we don't agree
10 with, I'm going to just ask you just to spell out a
11 couple more aspects or details about your background
12 experience for my edification.

13 Your work was in mostly dry-gas basins;
14 is that right?

15 THE WITNESS: Yeah. Arkansas is a
16 dry-gas basin.

17 MR. RANKIN: And do you have any
18 experience working in a conventional or unconventional
19 oil basin?

20 THE WITNESS: Conventional oil, yes.
21 East Texas, Hardeman Basin, D-J, but nothing
22 horizontal.

23 MR. RANKIN: Okay. And in your past
24 experience working in the field, what, specifically,
25 experience do you have looking at increasing the life

1 of wells? What sort of things did you do in the field
2 to increase the life of the wells that you were in
3 charge of?

4 THE WITNESS: Well, I think some of the
5 best examples I would say is, when I first went to
6 work for Southwestern Energy as a consultant, I was
7 given about a 30-well package to evaluate on Fort
8 Chaffee for any possible upgrade in production, or do
9 they need to be plugged, et cetera, so a total review
10 of the well files and the geology. And I actually
11 didn't come up with anything much, just, you know,
12 keep doing what you're doing. But from that grew an
13 effort to begin to apply a plunger lift to dozens of
14 the conventional wells.

15 It was quite an adventure, I will tell
16 you. Because the pumpers would tell me things like,
17 "Well, them things don't work in Arkansas," you know,
18 whatever. You know, dozens of wells later, we
19 extended the life of many wells. We got rid of
20 soaping and blowing, which is wasteful and takes a lot
21 of time and effort.

22 And then I spent quite a bit of time
23 reviewing a number of wells and well files. You got
24 to understand, originally, SECO, or Southwestern
25 Energy, drilled wells in that basin to supply Arkansas

1 Western Gas and ship gas up to Northwestern Arkansas.
2 So their M.O. was a little different.

3 They didn't necessarily frack a lot of
4 wells. So I went in and take a look at a lot of wells
5 that had high permeability, still enough reservoir
6 pressure. You can hit them with some foam, nitrogen
7 foam, and really increase production and increase the
8 ultimate recovery. So I did quite a bit of work on
9 really that whole set of 250 or 300 conventional
10 wells.

11 MR. RANKIN: So the range of options
12 would be depending on -- depends on the reservoir,
13 depends on the nature of the reservoir, that's
14 conventional or unconventional, would you agree the
15 type of activities that would be potentially under
16 review?

17 THE WITNESS: Yes.

18 MR. RANKIN: And that would include
19 recompletions, workovers to add artificial lift, other
20 types of things; correct?

21 THE WITNESS: Yeah. We got rid of a
22 lot of dual and triple completions and turn them into
23 singles, and yeah, all of the above.

24 MR. RANKIN: Did you ever evaluate
25 wells for converting to disposal, for water disposal?

1 THE WITNESS: Yeah, one set of wells
2 was early on in the Fayetteville Shale experience. We
3 bought some properties from an operator. And in that
4 part of the basin, there's quite a -- quite a few
5 really nice packages of sand. And we spruced up
6 and/or converted some wells to disposal wells.

7 MR. RANKIN: Okay. So those are among
8 the types of things that operators might look at that
9 could potentially be a beneficial use or extend the
10 life of a well; correct?

11 THE WITNESS: Absolutely.

12 MR. RANKIN: Okay. Now, when you made
13 these determinations, in your experience, you never
14 yourself looked at potentially converting to EOR or
15 looking at a potential --

16 THE WITNESS: I've never personally
17 been involved with EOR.

18 MR. RANKIN: Whether secondary
19 recovery, or tertiary recovery, or any kind of --

20 THE WITNESS: I have not. I've been
21 peripherally around it. We had some of those
22 operations, but I was never involved with it.

23 MR. RANKIN: So potential beneficial
24 uses would depend on the type of reservoir, the
25 condition of the well, what surface facilities are

1 available or might need to be added. So there's a
2 range of issues that might need to be evaluated to
3 determine how or whether a well could be extended;
4 correct?

5 THE WITNESS: That's correct.

6 MR. RANKIN: Okay. Now, so you'd agree
7 with me that lots of factors at play, depending on
8 where the well is, the field, potential reservoirs,
9 and stacked system, how old the well is, the condition
10 of the well, all those things; right?

11 THE WITNESS: Correct.

12 MR. RANKIN: Okay. Now, I want to kind
13 of move over and talk a little bit about your
14 testimony about the registration and compliance
15 requirements under the new proposed rules that you're
16 proposing. Now, your testimony and your experience
17 was primarily with smaller oil and gas companies;
18 correct? Your personal experience was with smaller
19 oil and gas --

20 THE WITNESS: Depends on your
21 definition of "small." I, you know -- Southwestern
22 Energy ultimately operated around 4500 wells. I don't
23 think that's small.

24 MR. RANKIN: Okay.

25 THE WITNESS: But, you know, in the

1 time period from Schlumberger to Southwestern, four or
2 five companies that were, you know, 50 or a hundred
3 wells or less, something like that. But that's half
4 or less of my experience.

5 MR. RANKIN: Did Southwestern operate
6 wells across different states?

7 THE WITNESS: Yes.

8 MR. RANKIN: And on federal land as
9 well as state land?

10 THE WITNESS: Yes.

11 MR. RANKIN: And private lands as well;
12 correct?

13 THE WITNESS: Yes.

14 MR. RANKIN: And when you were in
15 charge, or when you oversaw the production from
16 Southwestern Energy, were you ever required to certify
17 that your company's operations were in compliance with
18 all state and federal regulations?

19 THE WITNESS: I didn't personally have
20 to do that, but somebody did.

21 MR. RANKIN: And you reviewed and
22 discussed with OXY the challenges of having to do that
23 as the rule was originally proposed; correct?

24 THE WITNESS: I think so.

25 MR. RANKIN: Yeah. And as a result,

1 the Applicant has changed and agreed with the
2 proposals made by OXY for the rule; correct?

3 THE WITNESS: Correct.

4 MR. RANKIN: Okay. And as a result of
5 those discussions with OXY, Applicant has changed its
6 proposed rule to adopt what OXY was proposing for the
7 requirements of certification. Is that correct?

8 THE WITNESS: Yes.

9 MR. RANKIN: Okay. Now, I want to talk
10 a little bit more about getting to the things that we
11 didn't agree on. So that was one area that we did
12 agree, right, was on some changes to the
13 certifications?

14 THE WITNESS: Yeah.

15 MR. RANKIN: But I think I also want to
16 now discuss some of the areas that we -- where we
17 weren't able to reach agreement. In your testimony,
18 you refer to -- and others have asked you about
19 this -- the Legislative Finance Committee issued a
20 report recently, addressing the issue of abandoned
21 wells in New Mexico; correct?

22 THE WITNESS: Yes.

23 MR. RANKIN: And that was marked as
24 your Exhibit Number 4 in your exhibit packet?

25 THE WITNESS: I think so. I think so.

1 MR. RANKIN: Okay. Now, in your
2 testimony, you cite to that report in support of the
3 proposed rules; right?

4 THE WITNESS: Say that again?

5 MR. RANKIN: You cite to that report in
6 support of the proposed rules that you're supporting;
7 right?

8 THE WITNESS: Yes. Yeah. Yes.

9 MR. RANKIN: And you've made numerous
10 recommendations in this proposed rulemaking that
11 addressed the issues that were raised in that LFC
12 report; correct?

13 THE WITNESS: Some of the issues, not
14 all.

15 MR. RANKIN: Okay. And generally, I
16 understood your testimony be that you're -- the
17 proposed rules here generally track the
18 recommendations made in the LFC report?

19 THE WITNESS: Generally, yes.

20 MR. RANKIN: Okay. And some of those
21 recommended changes were regulatory in nature; right?
22 The LFC made recommendations to the Energy and
23 Minerals Department that they should update their
24 rules; correct?

25 THE WITNESS: Correct.

1 MR. RANKIN: And that's what the
2 Applicants here proposed to do; correct?

3 THE WITNESS: Correct.

4 MR. RANKIN: And the proposals here,
5 obviously because we're in a regulatory environment,
6 are limited to the regulatory changes; right? The
7 Applicants are only proposing regulatory changes?

8 THE WITNESS: Correct.

9 MR. RANKIN: Right? And they're not
10 seeking to make the legislative changes that the LFC
11 recommended; correct?

12 THE WITNESS: No.

13 MR. RANKIN: Okay. But the LFC did
14 make recommendations for legislative changes; correct?

15 THE WITNESS: I think so.

16 MR. RANKIN: Okay. So I'm going to
17 share my screen and just walk through some of your
18 testimony and then ask you specifically about some
19 aspects of the LFC report; okay?

20 THE WITNESS: Okay.

21 MR. RANKIN: So on Page 16 of your
22 direct testimony here at the bottom, on Line 23, I've
23 highlighted, and it goes on to the next page. And
24 I'll read out loud. It says, "New Mexico amended its
25 financial assurance provisions in the Oil and Gas Act

1 in 2018. But the amendment limiting blanket bonds for
2 an operator's active wells to \$250,000 was sorely
3 inadequate at the time and certainly is now when the
4 average cost to OCD to plug and abandoned one well
5 exceeds \$150,000."

6 Did I read that correctly?

7 THE WITNESS: Yes.

8 MR. RANKIN: Okay. And the amendment
9 that you're talking about here in your testimony is
10 specifically relating to a statute; it's 70-2-14. Is
11 that your understanding?

12 THE WITNESS: I think so. I -- I don't
13 have that in front of me.

14 MR. RANKIN: No reason to disagree;
15 right?

16 THE WITNESS: Right.

17 MR. RANKIN: Right. Okay. I know you
18 said that you're not a lawyer; sometimes, I wish I
19 wasn't either. But nevertheless, that's what you're
20 citing; right?

21 THE WITNESS: Okay. Yes.

22 MR. RANKIN: Okay. Now, are you
23 generally familiar with the language of that statute?
24 Have you looked at it? Are you familiar with it?

25 THE WITNESS: I would say, generally,

1 no.

2 MR. RANKIN: Okay. But you cite to it;
3 you reference it in your testimony --

4 THE WITNESS: The Oil and Gas Act,
5 you're talking about?

6 MR. RANKIN: Well, it's part of the Oil
7 and Gas Act.

8 THE WITNESS: Yeah.

9 MR. RANKIN: It's the specific statute
10 that addresses the financial assurance requirements.

11 THE WITNESS: Okay. Right.

12 MR. RANKIN: Have you reviewed that
13 statute?

14 THE WITNESS: In the past, probably,
15 but not recently.

16 MR. RANKIN: But --

17 THE WITNESS: And I -- I do talk about
18 it here. But I do want to make this statement again,
19 is that I'm not the expert here on financial
20 assurance. And a lot of these types of things are
21 going to be relying upon our expert who will be after
22 me.

23 MR. RANKIN: I understand. I heard you
24 say that. But I'm definitely going to focus in on
25 your testimony; okay?

1 THE WITNESS: Okay. That's fine.

2 MR. RANKIN: And then, if, you know --
3 but I understand that there's another witness who also
4 is going to testify on that, but I'm definitely going
5 to just ask you about your testimony.

6 THE WITNESS: Sure.

7 MR. RANKIN: Okay. So you're not --
8 you have reviewed that statute, but you're not very
9 familiar with it?

10 THE WITNESS: Correct.

11 MR. RANKIN: Okay. So I'll go ahead
12 and pull it up then. Just give me a moment. I've got
13 the statute here, it's 70-2-14, and I've highlighted
14 the language here. So basically, under Subsection A,
15 it provides that "Oil Conservation Division shall
16 establish categories of financial assurance after
17 notice and hearing." Are you familiar with this
18 statute now that I've got in front of you?

19 THE WITNESS: Okay.

20 MR. RANKIN: Okay. And it goes on to
21 say, and I've highlighted in different colors, it goes
22 on to say, as it identifies different categories of
23 financial assurance, the first one being -- and I've
24 highlighted this in green -- "a blanket plugging bond,
25 a blanket plugging financial assurance, which shall be

1 set by rule in an amount not to exceed \$250,000." Did
2 I read that correctly?

3 THE WITNESS: Yes.

4 MR. RANKIN: Okay. And that, as you
5 understand, does that apply to all active wells?

6 THE WITNESS: Active and inactive, as I
7 understand it.

8 MR. RANKIN: So you understand that
9 that applies to inactive wells as well?

10 THE WITNESS: It could be, yes, I would
11 think.

12 MR. RANKIN: Okay. But you cited to
13 the LFC report; right? And do you recall what the LFC
14 report has to say about what aspect of the -- what
15 wells those apply to?

16 THE WITNESS: No, I don't.

17 MR. RANKIN: Okay. But your
18 understanding is that plugging -- that blanket bond
19 would apply to all active and inactive wells? Is that
20 your understanding?

21 THE WITNESS: I would think.

22 MR. RANKIN: Okay. So, under the
23 statute, OCD is tasked, or the Commission is tasked
24 with setting, by a rule, the exact amount of this
25 blanket plugging financial assurance for up to

1 \$250,000; correct?

2 THE WITNESS: That's what it says.

3 MR. RANKIN: And then your
4 understanding is that's what the Division currently
5 has set as the maximum --

6 THE WITNESS: I believe that's true in
7 the current rules.

8 MR. RANKIN: Okay. But OCD, under this
9 rule, under the statute, can't exceed the 250,000
10 limit for blanket plugging; correct?

11 THE WITNESS: That's what it says.

12 MR. RANKIN: Okay. But it goes on to
13 say that it can create additional categories of
14 financial assurance; correct?

15 MS. FOX: Objection. Mr. Rankin is
16 really seeking a legal opinion from Mr. Alexander, and
17 he's not here for that.

18 THE HEARING EXAMINER: Yeah. And he's
19 not a regulator either. If he were a regulator, I'd
20 feel differently.

21 MR. RANKIN: Well, I'm asking him these
22 questions because he testifies that it's sorely
23 inadequate. And I'm just trying to understand why.
24 And he testifies at length about the LFC report and
25 the \$250,000 plugging bond limit.

1 THE HEARING EXAMINER: But you're not
2 taking him through that LFC report. You're taking him
3 through a statute.

4 MR. RANKIN: I am initially, but I
5 intend to come back to the LFC report.

6 MS. FOX: Madam Hearing Officer, he can
7 ask why Mr. Alexander thinks a \$250,000 blanket bond
8 is insufficient. But I think going through the
9 statutory construction is out of the -- outside the
10 scope.

11 THE HEARING EXAMINER: And outside of
12 his area of expertise.

13 MR. RANKIN: Okay.

14 BY MR. RANKIN:

15 MR. RANKIN: I will not ask you any
16 more questions about the statute, at least to opine on
17 its construction. So let me ask you this then. Is it
18 your understanding that all active wells would be
19 covered by this \$250,000 blanket bond; correct?

20 THE WITNESS: I would --

21 MS. FOX: Objection. Are you referring
22 to the statute or the regulation? And we've already
23 discussed that he's not going to talk about his
24 interpretation of the statute.

25 //

1 BY MR. RANKIN:

2 MR. RANKIN: Well, let me ask you this.
3 You testified, Mr. Alexander, that -- in the portion
4 of the testimony I asked you -- that the \$250,000
5 blanket bond was woefully inadequate; correct?

6 THE WITNESS: That's what I said.

7 MR. RANKIN: Okay. And based on that,
8 it's -- and you believe it's -- is it your opinion
9 that's inadequate because that applies to all active
10 wells, and that's not enough money to cover the
11 plugging of all --

12 THE WITNESS: The reference here, as I
13 say --

14 MS. FOX: Objection. Asked and
15 answered about active and inactive.

16 THE HEARING EXAMINER: You've already
17 led him through that, Mr. Rankin.

18 BY MR. RANKIN:

19 MR. RANKIN: Mr. Alexander, please
20 testify to me why it is that you believe that the
21 \$250,000 blanket bond is inadequate?

22 THE WITNESS: Because there's a cost
23 that actually costs to plug an abandoned well these
24 days.

25 MR. RANKIN: Okay. So --

1 THE WITNESS: And that's the gap we're
2 trying to close.

3 MR. RANKIN: Right. So an operator,
4 under the current regulatory and statutory scheme,
5 operators can choose to have a blanket bond; correct?

6 THE WITNESS: I think. I'm not the
7 expert on FA. I really can't say that too many times.

8 MR. RANKIN: Well, again, I'm just
9 asking you because you said it was inadequate here,
10 and I'm trying to understand --

11 THE WITNESS: It is inadequate with
12 respect to how much it costs to actually plug wells.

13 MR. RANKIN: Okay. And that's because
14 they have a choice, right, between doing a blanket
15 bond, which is limited to \$250,000, right, for all
16 state -- for all their -- all their --

17 THE WITNESS: Versus a single-well
18 bond?

19 MR. RANKIN: Well, I'm asking you,
20 what's your understanding? Because you testified that
21 the \$250,000 was inadequate?

22 THE WITNESS: I -- I'm saying it's
23 inadequate with respect to what -- I'm simply saying
24 it's inadequate with respect to the actual costs that
25 operators are -- are incurring or would incur to plug

1 a well. That's all I'm saying.

2 MR. RANKIN: Okay. And so because of
3 that, you're saying it needs to be higher; right?

4 THE WITNESS: I believe it does.

5 MR. RANKIN: Okay.

6 THE WITNESS: So does our other expert
7 witness; so does OCD.

8 MR. RANKIN: And so, as a result, under
9 the proposed rules then, Applicants are proposing to
10 create a new category of wells, which are marginal
11 wells. Is that correct?

12 THE WITNESS: Yes.

13 MR. RANKIN: And that new category of
14 wells would have a different financial assurance
15 applied to them; correct?

16 THE WITNESS: Yes.

17 MR. RANKIN: And that would be \$150,000
18 per well; correct?

19 THE WITNESS: I was not involved with
20 that determination. Our next witness will get into
21 that, and you can ask him all those questions.

22 MR. RANKIN: Okay. So on the LFC
23 report -- now, you reviewed this LFC report, and you
24 highlighted a number of provisions throughout this
25 report. Do you recall that?

1 THE WITNESS: I -- I really -- I -- I
2 don't know where that's coming from. What do you mean
3 I highlighted a number of provisions?

4 MR. RANKIN: Well, in the --

5 THE WITNESS: This is not -- this is
6 not mine. This --

7 MR. RANKIN: This is Exhibit 4 of
8 WELC's -- of your exhibit packet; correct?

9 THE WITNESS: Okay. Okay.

10 MR. RANKIN: And it's highlighting in
11 here that I understand -- because it's your --

12 THE WITNESS: I don't -- I mean, I may
13 have -- I -- I read it for sure, and I've referred to
14 some of these things. Sure.

15 MR. RANKIN: Okay. Now, I highlighted
16 myself; the red highlighting is what was part of the
17 exhibit. And then I highlighted this section here in
18 between what you highlighted. Do you see that?

19 THE WITNESS: Yeah.

20 MR. RANKIN: Okay. And I highlighted
21 the section here that says, "On top of that, there are
22 more than 3,000 wells on state or private land,
23 producing extremely small quantities of oil and gas,
24 whose expected cleanup costs far exceed their
25 predicted future revenues, increasing their risk of

1 being orphaned." Did I read that correctly?

2 THE WITNESS: You did.

3 MR. RANKIN: And my understanding is
4 that this goes to the heart of Applicants' concerns
5 here, is that, for these marginal wells, as the
6 production decreases, there's a risk of these wells
7 being orphaned; correct?

8 THE WITNESS: There is a risk, yes.

9 MR. RANKIN: Do you know whether the
10 LFC evaluated these wells and the reservoirs to
11 determine what the --

12 THE WITNESS: I don't know.

13 MR. RANKIN: Okay. So you don't know
14 if there was any sort of engineering or reservoir
15 engineering analysis done?

16 THE WITNESS: I don't know
17 specifically, but I would imagine that there was some
18 amount of information gathered and an assessment made
19 to make a statement such as that. I don't think they
20 just pulled that out of thin air.

21 MR. RANKIN: It wasn't just based on
22 the production numbers?

23 THE WITNESS: It could have been.

24 MR. RANKIN: But if you were an
25 operator of a well, you'd want to look at more than

1 just the production numbers to understand the --

2 THE WITNESS: Generally.

3 MR. RANKIN: Right. What sort of
4 things would you look at?

5 THE WITNESS: Well, I'd do some decline
6 curve analysis. And depending on the type of
7 reservoir, you could do a P over Z plot, and that's
8 basically looking at pressure. Of course, pressure is
9 always a viable thing to look at. I'd look at the
10 geology. I would look at offset operators, you know,
11 what's going on around. I mean, there's a whole host
12 of things that you could look at. But you know, you
13 can basically do a -- a decline curve analysis, and if
14 there's no reason to believe there's not else --
15 something else really wrong with the well, it tells
16 you a lot.

17 MR. RANKIN: So you'd want to look at,
18 as I think you mentioned, looking offset production,
19 look at other stacked horizons; right? If there's
20 other opportunities?

21 THE WITNESS: Yeah. Yep.

22 MR. RANKIN: You want to look at
23 determining whether or not the reservoir is still as
24 viable with the production, what the pressure is,
25 right, all those things?

1 THE WITNESS: Yeah.

2 MR. RANKIN: Whether or not there's a
3 potential for EOR?

4 THE WITNESS: Correct.

5 MR. RANKIN: Some of the factors that
6 you and I discussed previously, right, about what
7 might an operator look at to determine whether that
8 well has still got future life maybe in a different
9 zone or --

10 THE WITNESS: And we -- we listed a lot
11 of those typical things that you -- the types of data
12 that would be available to the operator is also is to
13 state their case for beneficial use.

14 MR. RANKIN: And wouldn't you want to
15 know what the full evaluation is of such assessments
16 before you made a determination about whether the
17 cleanup costs exceed future predicted revenues?

18 THE WITNESS: In general, yes.

19 MR. RANKIN: Right. So we don't know,
20 as we read this or any parts of this report, like,
21 what actually analyses were done to evaluate whether
22 or not any of these wells might have the ability --

23 THE WITNESS: We don't know that, but
24 it could have been a thorough analysis. Who knows?

25 MR. RANKIN: Okay. Moving to some

1 questions about temporary abandonment. Applicants'
2 proposal is to limit temporary abandonment status to a
3 maximum of eight years; correct?

4 THE WITNESS: That's our proposal.
5 Yes.

6 MR. RANKIN: And your testimony is that
7 only a small percentage of wells from a dataset were
8 actually ever returned to production after eight
9 years; correct?

10 THE WITNESS: That's correct.

11 MR. RANKIN: But you agree that some
12 wells are returned to production after more than eight
13 years in TA status?

14 THE WITNESS: Of course.

15 MR. RANKIN: Of course. And those are
16 the exceptions you're talking about; right?

17 THE WITNESS: Of course.

18 MR. RANKIN: And under the proposal
19 that is before the commission at this point, the
20 proposed rule would not allow for any additional
21 extensions to TA status beyond those eight years;
22 correct?

23 THE WITNESS: Under the proposed rules.
24 But I would also point out; I said, three times in my
25 testimony this morning, I understand the concern

1 there, and based on four or five different principles,
2 there could be some exception language developed.

3 MR. RANKIN: So do you believe it's
4 appropriate to provide for some exception language to
5 allow for the Division to have discretion to evaluate
6 the potential for extending a well in the case --

7 THE WITNESS: I think it's worth
8 investigating.

9 MR. RANKIN: Okay. And I think I'm
10 going to -- I'll -- I'm going to turn to this. I've
11 written down what you said, and I'm going to ask you
12 about that in a moment. Okay?

13 THE WITNESS: Sure.

14 MR. RANKIN: But I'm going to work
15 through a couple questions first. First of all, as I
16 understand the rule as proposed, the Applicants'
17 proposal was to limit the extension, right, to two
18 years?

19 THE WITNESS: Yes.

20 MR. RANKIN: Right? And that would be
21 true whether or not the initial TA status was for one
22 year or five years; correct?

23 THE WITNESS: No. If a well -- if a
24 well is in TA, approved TA, and these -- these rules
25 passed, then they would be able to continue for four

1 more years to have that five-year term and then
2 reapply for two more.

3 MR. RANKIN: I think, under the
4 proposal, isn't there a one-year TA status on
5 you're -- under the proposed rule as well as a
6 five-year TA status for the initial TA period?

7 THE WITNESS: I don't -- I don't recall
8 that.

9 MR. RANKIN: Okay. So your
10 understanding, as you sit here, is that the first TA
11 status period would be for a period of five years?

12 THE WITNESS: Correct.

13 MR. RANKIN: Okay. And that's your
14 intent would be to have a rule that allowed for a
15 five-year TA status initially?

16 THE WITNESS: Correct.

17 MR. RANKIN: Okay. So a two-year
18 extension would make a maximum of seven years for TA
19 status, approved TA status; correct?

20 THE WITNESS: That's correct.

21 MR. RANKIN: Okay. But now getting to
22 your point that, in your testimony today -- get to
23 that here. You said there were four different things,
24 I think, that would make sense to consider, by the
25 Division, to increase potentially a well into a

1 additional TA period; correct?

2 THE WITNESS: Four or five, yes.

3 MR. RANKIN: Scope of the -- you said
4 "scope." I'm not sure what you meant by "scope."

5 THE WITNESS: Limited in scope;
6 limit -- and -- and say for EOR or whatever, limited
7 in time; subject to periodic OCD review, based on
8 solid engineering, technical and economic information;
9 and then not based on guess work, hunches, or
10 speculation or the like.

11 MR. RANKIN: Okay. And have you
12 reviewed OXY's testimony addressing its proposed
13 modifications to Applicants' rule?

14 THE WITNESS: And as it -- yes, I did.

15 MR. RANKIN: And I thought I understood
16 you to say that OXY was proposing something that would
17 not allow for OCD to review or to look at additional
18 information, but that would require open-ended
19 extensions of the TA period?

20 THE WITNESS: That's the way we read
21 it, yes.

22 MR. RANKIN: Okay.

23 THE WITNESS: Yes, sir.

24 MR. RANKIN: So if OXY actually did
25 provide for, you know, an orderly approach so that

1 provide additional information, demonstrate whatever
2 additional information the Division requires, and
3 therefore, at the Division's discretion, would be
4 allowed to thereby extend or put a well into
5 additional TA status, do you think that's appropriate?

6 THE WITNESS: Wonderful.

7 MR. RANKIN: So you agree with me that
8 the Division, based on its expertise, would be able to
9 evaluate the appropriateness of going beyond the eight
10 years that the Applicants propose for additional TA
11 status periods, based on the information that the
12 Division wants to see and would expect to see from an
13 operator?

14 THE WITNESS: Yeah. I trust their
15 ability to evaluate that adequately, yes.

16 MR. RANKIN: Okay. Because,
17 essentially, I think that that's what your -- your
18 testimony was that the Division should have discretion
19 to determine -- it's the provision that it strikes the
20 "continuously" -- the -- and I don't have that right
21 from me. I think it --

22 THE WITNESS: Yeah. Yes.

23 MR. RANKIN: Right?

24 THE WITNESS: Yeah. We can go to that
25 definition.

1 MR. RANKIN: I think it's Slide 8 on
2 your demonstrative?

3 THE WITNESS: Yeah. Got it. Got it.
4 Got it.

5 MR. RANKIN: Under 19.15.28.8, your
6 testimony was that the Division should have discretion
7 to know whether a well is actually inactive or not
8 within that one-year period, right, even though you're
9 striking the "continuously" from this provision?

10 THE WITNESS: Yeah, according to the
11 Division -- this is direct communication with them --
12 the operators have abused this provision here, B3.
13 And we propose and they agree to strike "continuously"
14 because they'll produce a well for a very minimal
15 period of time to kind of reset the inactive clock.
16 And that's not correct. That's not the right way to
17 go about business.

18 MR. RANKIN: But in this instance here,
19 you're saying that the Division should have discretion
20 to determine what the true intent is or whether the
21 well is actually inactive or not; right?

22 THE WITNESS: Yes.

23 MR. RANKIN: Okay. And you agree with
24 me that the same discretion can be applied to
25 determine whether a well can be -- should be extended

1 in a TA status beyond the eight years that the
2 Applicant had proposed?

3 THE WITNESS: Correct.

4 MS. FOX: Objection. Well, that
5 misstates the evidence because he laid forth five
6 principles that would have to be applied for the
7 exercise of discretion.

8 THE HEARING EXAMINER: I do remember
9 that.

10 THE WITNESS: Yeah. Yeah.

11 BY MR. RANKIN:

12 MR. RANKIN: So based on those
13 principles, the Division should have discretion to
14 determine whether or not a well should be continued in
15 TA status?

16 THE WITNESS: Yes. And the language
17 needs to be very carefully crafted so that there is
18 not loopholes in there for somebody to abuse the
19 intent and the actual language.

20 MR. RANKIN: But you're not offering
21 any principles under which the Division can determine
22 whether or not a well is inactive under 19.15.28.8,
23 are you?

24 THE WITNESS: No.

25 MR. RANKIN: And they have broad

1 discretion to decide whether or not an operator is
2 playing the system by simply turning a well on or off
3 during that period of time; correct?

4 THE WITNESS: Correct.

5 MR. RANKIN: Okay. So no guidance
6 here. And does that give the regulators --

7 THE WITNESS: The guidance is clear:
8 get rid of the loophole that operators are using to
9 avoid the 12-month period of inactivity and keep on
10 extending it.

11 MR. RANKIN: But it's up to the
12 Division to figure out whether or not they're trying
13 to violate the loophole or actually are operating the
14 well appropriately, given the reservoir or other
15 conditions; correct? So there's no principle here
16 under which you're giving the Division to decide
17 whether or not a well is inactive or not?

18 THE WITNESS: Well, if we can get rid
19 of one word and close the loophole, why worry about
20 having the Division trying to determine whether a well
21 has actually not been producing for 12 months or not?

22 MR. RANKIN: Okay. So, in this
23 instance, this well -- this rule was proposed and went
24 through the rulemaking to come up with this language.
25 And now, without this guidance, will the operators, in

1 your opinion, operators and/or the Division have
2 certainty about how this rule's going to be applied
3 going forward?

4 THE WITNESS: I -- I think, if -- if it
5 is adopted as proposed, I think there will be
6 certainty.

7 MR. RANKIN: Okay. Well, what
8 principles does the Division have to determine whether
9 a well is inactive if they no longer have -- if it's
10 no longer simply about whether it's been continuously
11 inactive for that period of time?

12 THE WITNESS: I'm not -- I --

13 MS. FOX: If you don't understand the
14 question, you can --

15 THE WITNESS: I -- I don't really --

16 MS. FOX: -- ask that it be restated.

17 THE WITNESS: -- understand. What --
18 what do you mean "what" -- I mean, if the well is
19 producing or not.

20 BY MR. RANKIN:

21 MR. RANKIN: I guess that's the way the
22 rule was; right? If a well was inactive, continuously
23 inactive for that period of time, than it was -- but
24 by eliminating the "continuously," now it's not clear
25 under what principles the Division has to determine

1 whether it's inactive or not?

2 THE WITNESS: It's -- it either -- it
3 either is producing, in which case it's not inactive,
4 or it is not producing, in which case it is inactive.
5 It's one or the other.

6 MR. RANKIN: Okay. On the proposal to
7 have the TA status go to a hearing, it's the
8 Applicants' proposal that, for an extension, an
9 applicant seeking to extend the TA status would have
10 to go to a hearing before the Division; correct?

11 THE WITNESS: Correct.

12 MR. RANKIN: Who would be required,
13 under the proposal, to be given notice of an
14 application?

15 THE WITNESS: Let me go -- say that
16 question again please.

17 MR. RANKIN: Under the Applicants'
18 proposal, who would be required to receive notice of
19 such an application?

20 THE WITNESS: I don't know the answer
21 to that.

22 MR. RANKIN: Does the proposal provide
23 a direction on who should be provided notice?

24 THE WITNESS: Well, the operator would
25 be given notice. Are you asking me who?

1 MR. RANKIN: Yeah. I mean, if the
2 operator of a well, right, the well that's under TA
3 status is applying to extend the TA status, who do
4 they give notice to of a hearing, of the application
5 to extend the TA?

6 THE WITNESS: Oh, who does the operator
7 give notice to?

8 MR. RANKIN: Yeah.

9 THE WITNESS: I -- I don't know the
10 answer to that.

11 MR. RANKIN: Okay. Is it in the rule?
12 Is it clear in the proposal by Applicants?

13 THE WITNESS: No, it is not.

14 MR. RANKIN: Okay. Is there any
15 guidance or -- what interested parties would be
16 permitted to potentially intervene in that case?
17 Any --

18 THE WITNESS: Well, I -- I would -- I
19 would say that based on the way the rule is proposed,
20 that any interested party may come.

21 MR. RANKIN: And so, under the
22 definition of the rule, they would have to demonstrate
23 some sort of standing, correct, some standing in order
24 to intervene?

25 THE WITNESS: Well, we didn't actually

1 say that.

2 MR. RANKIN: Okay. But is it your
3 intent to have any member of the public be able to
4 intervene, to opine on --

5 THE WITNESS: Yeah. And in my
6 experience, particularly at Arkansas, you know,
7 anybody could come and listen. Now, if it got to the
8 point where you're going to be discussing confidential
9 information, you'd clear the deck.

10 MR. RANKIN: Let me ask you this. I'm,
11 I'm not asking about who can come and listen. I'm
12 asking about who can actually participate as a party?
13 Is it your intent to allow any member of the public to
14 appear at a hearing on the TA status of a well, appear
15 as a party?

16 THE WITNESS: I would say that was the
17 intent to provide transparency. Yeah.

18 MR. RANKIN: For them to appear as a
19 party, meaning that they could present evidence?

20 THE WITNESS: No, no. No. No. They
21 can just be part of the process, listen, and if there
22 is a point in time during this, where anybody that's
23 in the audience is given an opportunity to make a
24 comment, then so be it.

25 MR. RANKIN: So are you aware that the

1 current regulations governing adjudications before the
2 Division allow for public to -- require public notice,
3 allow for parties to appear publicly and make public
4 comments?

5 THE WITNESS: I'm not aware of that
6 particular regulation.

7 MR. RANKIN: So, if that were the case,
8 would that satisfy Applicants to allow the public to
9 appear, to have transparency, to see how these things
10 are operated?

11 THE WITNESS: Well, I'd have to read
12 that to -- to opine on that, but it sounds reasonable.

13 MR. RANKIN: Okay. Now, are you
14 familiar with the Division's current regulatory
15 hearing docket?

16 THE WITNESS: No.

17 MR. RANKIN: Are you familiar with how
18 many hearings are on the schedule every month?

19 THE WITNESS: No.

20 MR. RANKIN: Are you aware that they
21 currently only hear new applications once a month or
22 12 times a year?

23 THE WITNESS: No, I'm not aware of
24 that.

25 MR. RANKIN: Are you aware that the

1 hearing officer has currently limited each hearing to
2 only 60 new applications?

3 MS. FOX: Asked and answered.

4 MR. RANKIN: I'm asking --

5 THE HEARING EXAMINER: It doesn't sound
6 as though he has testimony to offer.

7 MR. RANKIN: Okay.

8 BY MR. RANKIN:

9 MR. RANKIN: Mr. Alexander, I want to
10 ask you a little bit about waste. You testified to
11 some extent already, in in questioning with Ms. Tripp,
12 about waste. And you have a general understanding of
13 what waste means in the oil and gas industry. Agree?

14 THE WITNESS: Yes.

15 MR. RANKIN: And as I understand -- you
16 understand that the Division and Commission have an
17 obligation to prevent waste; agree?

18 THE WITNESS: Yes.

19 MR. RANKIN: And I understand you to
20 say that, as a result of this rule, at least as to the
21 non-beneficial wells, you've identified that there's
22 going to be some impact to production in the state;
23 correct?

24 THE WITNESS: Yes.

25 MR. RANKIN: But you haven't analyzed

1 what effect the rule would have on the economics of
2 operators; right? You haven't evaluated what that
3 would mean, how many additional wells, or what
4 production, or what volumes might be shut-in, or what
5 wells might be plugged as a result of implementation
6 of this rule; correct?

7 THE WITNESS: Well, I think we did in
8 Exhibit 40. Took a look at the number of wells that
9 would be in this category of rebuttal presumption of
10 beneficial use, 90 BOE, 90 days, 12 consecutive
11 months. And that represented, I think, .003 percent
12 of total production.

13 MR. RANKIN: Understood. And I guess
14 what I'm asking is; so you've analyzed what number of
15 wells and production might be impacted by -- that
16 would fall into the no-beneficial-use category; right?

17 THE WITNESS: Yeah. Yeah.

18 MR. RANKIN: But you haven't analyzed
19 what the economic impact would be, of this additional
20 financial assurance burden, on operators; right?

21 THE WITNESS: No.

22 MR. RANKIN: And you haven't analyzed
23 how many wells or what volume of production might be
24 lost as a result of implementation of this rule, have
25 you?

1 THE WITNESS: Not specifically. I have
2 not. Now, our next witness may have more on that. I
3 don't know.

4 MR. RANKIN: So you're not aware of
5 anybody on behalf of Applicant making an analysis to
6 determine what potential effect on waste the rule
7 would have?

8 THE WITNESS: I don't think it will
9 have any effect on waste. Get -- get my point about
10 what I think about waste. Yeah, you can produce a
11 well way below its economic limit, and you can sit
12 there and say, "Well, we're not wasting oil and gas
13 resources." Of course you're not, but you're
14 operating at a detriment economically, and I think
15 that's a waste.

16 THE HEARING EXAMINER: Mr. Rankin, you
17 have five minutes.

18 MR. RANKIN: Understand. Thank you.

19 BY MR. RANKIN:

20 MR. RANKIN: But your testimony -- I'll
21 ask other witnesses -- but your testimony, you've not
22 yourself done an analysis like an --

23 THE WITNESS: I have not.

24 MR. RANKIN: -- to determine what
25 effect, beyond the non-beneficial use wells, this

1 proposed rule would have on other wells in their
2 production in the state; correct?

3 THE WITNESS: I haven't.

4 MR. RANKIN: Okay. And have you done a
5 similar analysis -- nor have you done a similar
6 analysis for the potential impacts on correlative
7 rights? Agree?

8 THE WITNESS: No.

9 MR. RANKIN: Are you aware of anybody
10 on behalf of the Applicants who have done that
11 analysis?

12 THE WITNESS: At this point, no.

13 MR. RANKIN: Okay.

14 No further questions.

15 THE HEARING EXAMINER: All right.
16 Thank you very much, Mr. Rankin.

17 Mr. Maxwell, do you have questions of
18 Mr. Alexander?

19 MR. MAXWELL: Your Honor, my question
20 has been asked and answered. I do not. Thank you.

21 THE HEARING EXAMINER: Thank you.

22 Is Ms. Nanasi with us?

23 (No response.)

24 No? All right.

25 Mr. Moore, in the State Land Office, do

1 you have questions of Mr. Alexander?

2 MR. MOORE: I do not, Madam Hearing
3 Examiner. Thank you.

4 THE HEARING EXAMINER: Thank you.

5 And Mr. Tremaine?

6 MR. TREMAINE: I just have a couple
7 questions, Madam Hearing Examiner. Thank you.

8 CROSS-EXAMINATION

9 BY MR. TREMAINE:

10 MR. TREMAINE: Good afternoon now,
11 Mr. Alexander. My name's Jesse Tremaine for the Oil
12 Conservation Division. I want to ask you a clarifying
13 question about your -- if it was your direct or your
14 rebuttal testimony earlier.

15 I believe you made a statement to the
16 effect that some of the logs that OCD had recommended
17 or proposed for approved TA status may not be strictly
18 necessary for newer wells. Is that fair
19 characterization?

20 THE WITNESS: Correct.

21 MR. TREMAINE: Okay. Even if you
22 assume that there's a high degree in confidence in
23 well integrity at the time of the original TA
24 application or at the time of a new well, would you
25 agree that the logs proposed by OCD could establish a

1 useful baseline of information for a situation where,
2 later in a well's productive life or extended TA, OCD
3 needs to look back and see information reflected in
4 those logs?

5 THE WITNESS: Absolutely.

6 MR. TREMAINE: Okay. Thank you. I
7 want to draw your attention to -- we've talked at
8 length, and I think we will continue speaking at
9 length about the -- LFC report. On Page 15, Mr. Suazo
10 had asked you a question about the line, "New Mexico
11 does not define 'orphaned well' in statute or rule."

12 I'd like to draw your attention to the
13 second line of that paragraph, immediately after the
14 one in which you were prompted: "For this report,
15 orphaned wells are those for which OCD has already
16 pursued and received plugging authority, either
17 through a settlement agreement or administrative
18 hearings, because those represent the most immediate
19 and certain costs."

20 Mr. Alexander, when you reviewed the
21 LFC report, would you agree that the LFC did in fact
22 define "orphaned well" for the purposes of the report
23 and the numbers generated as part of the report?

24 THE WITNESS: I would. It's also
25 reflected on Page 4.

1 MR. TREMAINE: Well, you beat me to my
2 next question.

3 THE WITNESS: Oh. Sorry.

4 MR. TREMAINE: So we're in agreement
5 that the same definition is listed on Page 4. Thank
6 you. One more question for you, Mr. Alexander. As a
7 prior manager of operators of various different sizes,
8 if you were managing a portfolio that included a well
9 that produced, say, 50 barrels of oil equivalent in
10 the previous 12 months, how would you analyze that
11 well, and what would you have done with it?

12 THE WITNESS: Well, I can tell you, if
13 the production was at that level, I'd have been
14 looking at it long before then. And it would be a
15 process of assessing, through decline curve analysis:
16 what's the -- or are we talking about an oil or gas
17 well, you know; what's -- are there any potential
18 upgrades, recompletions; is there a zone that hadn't
19 been fracked. There's a lot of things that would go
20 into analyzing is this the end state or not. And like
21 I say, we would've done it a long -- I mean, 50 BOE in
22 a year, I mean if there's nothing else to that well,
23 that thing would've been plugged a long time ago.

24 MR. TREMAINE: And could you describe
25 what "a long time ago" would mean? What kind of

1 production threshold or a point in time would you --

2 THE WITNESS: Well, you know, the
3 economic limit is dependent upon a lot of things, you
4 know, what kind of surface equipment do you have,
5 compression, et cetera. But, you know, every -- every
6 basin, you know, has kind of a basic economic limit
7 based on the type of production, the type of
8 reservoirs, and the type of operator. You know,
9 Exxon's economic limit's going to be up here. Joe and
10 Sally's are going to be down here.

11 So, you know, we -- we would just --
12 I -- I would've looked at all of those things, and --
13 and long in advance. And, you know, a well doesn't,
14 you know -- if a well is all of a sudden clipping
15 along, and now it's making 50 BOE, maybe something
16 broke. I mean, I got examples that I worked on in
17 Arkansas, turned a -- turned wells into great wells.
18 But if it's been generally declining like that, some
19 sort of an exponential decline, yeah, it would've been
20 uneconomic a long time ago based on current prices.

21 MR. TREMAINE: Thank you.

22 THE WITNESS: Does that answer your
23 question?

24 MR. TREMAINE: You did. Thank you.

25 No further questions.

1 THE HEARING EXAMINER: Mr. Tremaine is
2 completed?

3 MR. TREMAINE: Yes. No further
4 questions.

5 THE HEARING EXAMINER: Thank you so
6 much.

7 Ms. Fox, do you have redirect you'd
8 like to pursue?

9 MS. FOX: Yes. Madam Hearing Officer,
10 only one question.

11 REDIRECT EXAMINATION

12 BY MS. FOX:

13 MS. FOX: Mr. Alexander, Mr. Suazo
14 asked you whether you had a specific example that
15 supports your support for the proposal for the
16 presumptions of no beneficial use, a specific example
17 from New Mexico, and you said you did not; correct?

18 THE WITNESS: That's correct.

19 MS. FOX: You haven't worked in New
20 Mexico. You were clear about that; correct?

21 THE WITNESS: Very clear.

22 MS. FOX: What is the basis for your
23 support for the 90-BOE/90-day threshold for
24 presumptions of no beneficial use, based on your
25 personal experience?

1 THE WITNESS: Just basic economics. I
2 mean, I -- I don't know of a well, ever, that I've
3 been involved with, making a quarter of a barrel oil a
4 day, that's economic. The price of the product would
5 have to be humongous for that to be economic. So it's
6 just based on experience.

7 In the LFC report, they were talking
8 about two barrels a day. You know, that's -- you
9 know, they made the comment that that's probably a
10 reasonable number. So something less than that is
11 just way out of bounds in my experience.

12 MS. FOX: Thank you.

13 Madam Hearing Officer, that's all I
14 have.

15 THE HEARING EXAMINER: All right.
16 Thank you.

17 We would turn next to questions from
18 the commissioners. Commissioners, do you want to go
19 to that now or take a break before you go to that?
20 What's your pleasure?

21 THE CHAIR: I don't have any questions
22 for this witness, so I don't have a preference. It's
23 up to the rest of the commissioners.

24 THE HEARING EXAMINER: Thank you,
25 Mr. Chair.

1 Commissioner Bloom?

2 MR. BLOOM: Dr. Ampomah, would you like
3 to go first?

4 THE HEARING EXAMINER: Mr. Ampomah?

5 DR. AMPOMAH: Sure. Thank you.

6 Mr. Alexander, thanks so much for your
7 testimony. I do have a couple of questions for you.
8 So I'm going to start with your Slide Number 3 from
9 your PowerPoint, the beneficial purposes or the
10 beneficial use.

11 So, on the last point, a well for
12 speculative purposes. So in your testimony, you also
13 more or less agreed to the fact that geothermal, EOR
14 will all form part of the, let's say, beneficial use.
15 Now my question to you is that, are all those not
16 speculative?

17 THE WITNESS: I'm sorry. Can you
18 repeat that question?

19 DR. AMPOMAH: Okay. So I'm looking at
20 your Slide Number 3.

21 THE WITNESS: Yeah, I got that.

22 DR. AMPOMAH: Okay. So you've made --
23 you used the term "such as," and you've talked about
24 it --

25 THE WITNESS: Oh. "Such as"? Okay.

1 DR. AMPOMAH: -- multiple over.

2 THE WITNESS: Yeah.

3 DR. AMPOMAH: You said production,
4 injection, or monitoring. And based on the cross,
5 there was a discussion about what about geothermal,
6 what about EOR. And you said that will still form
7 part of the beneficial use. And I'm asking you are
8 those additional examples not speculative?

9 THE WITNESS: No. No. This -- this is
10 a two-part definition. But to be clear, "such as"
11 could easily have just said, "for example, production
12 injection, or monitoring," which opens the window up
13 for anything that is actually of beneficial use. And
14 it's separate and apart from the last part of that
15 definition.

16 And we wanted to be clear, but it does
17 not include use of a well for speculative purposes.
18 In other words, as some of the other -- others have
19 testified, well there might be a new technology down
20 the road, let's just wait another ten years and just
21 see what happens. So they're very different parts.
22 Does that make sense?

23 DR. AMPOMAH: It does, but the use of
24 the "speculative purposes," and that is not actually
25 defined in your proposed rule. Is that correct?

1 THE WITNESS: That's correct.

2 DR. AMPOMAH: So would that not be
3 confusing?

4 THE WITNESS: Well, it's not confusing
5 to me, in my opinion. I think, in general, based on
6 the definition in a standard dictionary, "speculative"
7 is pretty well defined.

8 DR. AMPOMAH: So what would mostly
9 based on the judgment from OCD; is that correct?

10 THE WITNESS: To some extent, you know,
11 and if there needs to be a definition for
12 "speculation," that would be easy to do.

13 DR. AMPOMAH: So if I turn over to --
14 this one will be the rebuttal testimony in exhibits
15 submitted by the Applicants. So I'm looking at Page
16 53, which will be actually Page 11 on the document,
17 but Page 53 on the PDF. So there was a question,
18 NMOGA -- hopefully you are there. Can I proceed?

19 THE WITNESS: I don't have their
20 document.

21 DR. AMPOMAH: Oh, okay.

22 MS. FOX: Are you referring to
23 Mr. Alexander's rebuttal testimony?

24 DR. AMPOMAH: Yes.

25 THE WITNESS: Oh, mine?

1 DR. AMPOMAH: There is a document that
2 is Applicants' rebuttal testimony in evidence, and we
3 went through that, question and answers, question and
4 answers.

5 MS. FOX: And Commissioner, what page
6 are you referring to in his rebuttal testimony?

7 DR. AMPOMAH: So this will be on Page
8 53 on the actual PDF, but it is actually Page 11,
9 Applicants' Exhibit 73.

10 THE WITNESS: So are you referring to
11 NMOGA's offering? Okay. I got it.

12 DR. AMPOMAH: Thank you. Okay.

13 THE WITNESS: I've got -- so what's
14 your -- what's the question?

15 DR. AMPOMAH: Yeah. Thank you. So
16 NMOGA offers the following definitions for beneficial
17 purposes and beneficial use. And, you know, you put
18 that in parenthesis there. Now, my question to you
19 is, is this not comprehensive enough?

20 THE WITNESS: No. I think it oversteps
21 actually. The very -- so NMOGA proposed a
22 four-paragraph definition. What we're saying is that
23 at least the last three are not definitional at all;
24 they're more regulatory, and they have no -- no reason
25 to be in a definition. The other -- the first

1 paragraph is more definition, but we think it -- it --
2 ours is really more specific and easier to understand.

3 DR. AMPOMAH: So do you have any
4 concern if the Commission decides to adapt at least
5 the first paragraph, as you mentioned, of NMOGA's
6 definition?

7 THE WITNESS: Hold on just a second,
8 please, sir. So I would say this. We look at our
9 definition; it's very simple and concise, and it
10 adheres to part of the definition of an inactive well.
11 Okay? And this term "such as," all right, opens the
12 window up for any type of beneficial use. Their
13 definition, you know, adds additional possible uses.
14 And they do use "it includes, but it's not limited
15 to." So it's sort of an example.

16 I just think that this is a little -- I
17 just think ours is just more concise. I mean, would I
18 have a whole lot of heartburn? I don't know if that's
19 probably speculation on my part. I'd really have to
20 think about it a little bit longer.

21 DR. AMPOMAH: Thank you. So I'll move
22 on to Slide Number 8 of your PowerPoint.

23 THE WITNESS: Is this on the rebuttal
24 or the direct?

25 DR. AMPOMAH: No, the direct, Number 8.

1 And it's titled, "Wells to be Properly Abundant."

2 THE WITNESS: Okay.

3 DR. AMPOMAH: So, in your Item B, you
4 strike down 90 to 30 days?

5 THE WITNESS: Correct.

6 DR. AMPOMAH: Is there any problem with
7 60 days?

8 THE WITNESS: Not really.

9 DR. AMPOMAH: Now, have you reviewed or
10 are you familiar with OCD normal enforcement
11 timelines? Have you reviewed that?

12 THE WITNESS: No.

13 DR. AMPOMAH: So you did not review
14 that prior to more or less suggesting the 30 days?

15 THE WITNESS: We're just trying to
16 compress the time, but like I said, I wouldn't be
17 averse to 60. I wouldn't be averse to 90; let's just
18 get it done.

19 DR. AMPOMAH: So, if we leave it as 90,
20 because I do know that, based on some of the other
21 hearings that I've been through, normally the timeline
22 for enforcement is mostly 90 days through some of the
23 documentations. And OCD can respond to that during
24 the time. So you say that you do not have any problem
25 if we still keep it at 90?

1 THE WITNESS: I personally don't.

2 DR. AMPOMAH: Okay. Thank you. Now,
3 let's go to Slide Number 9, still on your direct, on
4 the presumptions of no beneficial use. Now, so, on
5 the first one, A, the last sentence, or the last part,
6 "The well has not produced for at least 90 days and
7 has not produced at least 90 barrels of oil
8 equivalent."

9 Now, let me ask; so you said that the
10 industry was not involved in drafting the rule, the
11 proposed rule. So how did you come up with a 90
12 without industry input for this particular statement?

13 THE WITNESS: First of all, this entire
14 slide came from OCD; we adopted it. All right? And
15 second of all, we asked industry on a number of
16 occasions to engage, "Let's talk about this," and they
17 never did.

18 DR. AMPOMAH: So then I presume the
19 same response will be for the B, when you talk about
20 the SWD?

21 THE WITNESS: Correct.

22 DR. AMPOMAH: Thank you. Now, let's
23 look at D, Number 1, "Documentation demonstrating that
24 the well is reasonably projected to produce in paying
25 quantities." So my question to you is that, based on

1 all the back and forth today, do you still stand by
2 the statement?

3 THE WITNESS: I do.

4 DR. AMPOMAH: So how then do we -- how
5 are we going to be able to determine, let's say, one
6 particular well producing in paying quantities? Is
7 there any metrics that OCD is going to be able to use
8 to more or less ascertain that?

9 THE WITNESS: I think it'd be incumbent
10 upon the operator who's coming before OCD to rebut.
11 That's the whole -- the whole purpose of item D is the
12 process by which the rebuttal is forwarded. They need
13 to produce the evidence.

14 DR. AMPOMAH: And will this one be
15 purposely targeting, like, primary recovery wells?

16 THE WITNESS: No.

17 DR. AMPOMAH: Now, so then help me
18 understand; how does this provision also applies to,
19 let's say, a well that is not producing significantly
20 high, but, in actual production profile of a field, we
21 go from primary, and then once the well is not able to
22 produce at its own energy, then it goes down.

23 So we cannot operate that well until we
24 make a decision to start pressure maintenance or at
25 least start injection above the bubble point pressure,

1 and we can start producing again. And at some point,
2 irrespective of any water that you inject into the
3 well, we are not going to be able to produce this
4 well, and that gets to the residual oil status.

5 And at some point, we have to inject
6 CO2 to be able to get this up. So I'm trying to
7 understand how this provision takes into consideration
8 all these various cycles in our typical petroleum
9 recovery process?

10 THE WITNESS: Well, when I discussed
11 that earlier today, there are two elements of this:
12 paying quantities as it applies to a single well,
13 should say a single well is holding a lease. That's a
14 pretty straightforward matter. How much is the well
15 making? How much does it cost? And if it's making
16 more than it costs, it's in paying quantities.

17 The other part that NMOGA, I believe it
18 was, brought up about the lease level, and that gets
19 into the EOR. And that's a more complicated
20 situation, sir. I agree with that a hundred percent.

21 But again, I think that, in the
22 presentation to OCD, if you're in an EOR project, and
23 you're waiting on fronts to hit or whatever, and you
24 produce evidence that says, you know, "This well is
25 not making any oil. We understand that, but here's

1 why, and here's why we still need to keep it," I think
2 that all comes into the presentation to address the
3 wells that are in question.

4 DR. AMPOMAH: Yeah. Then, but you
5 still cap the, let's say, the TA status to about eight
6 years. And even on that one, my question to you is,
7 where in your proposed rule do we have the eight
8 years?

9 THE WITNESS: Have the what?

10 DR. AMPOMAH: The eight-years cap?

11 THE WITNESS: ATS?

12 DR. AMPOMAH: Eight.

13 THE WITNESS: Oh. Eight-years cap?
14 Okay. The eight-year cap is the proposal, and then
15 extensions of that we talked about, we -- we think are
16 reasonable based upon, you know, a time limit, a
17 scope, economics, you know, a reasonable presentation
18 of technical data, and OCD review. So we're not
19 objecting to that at all.

20 DR. AMPOMAH: So that is not actually
21 part of the rule itself?

22 THE WITNESS: Not yet. They are
23 principles that we understand the concern of some
24 parties about, especially on EOR projects.

25 DR. AMPOMAH: So let's go to Slide

1 Number 11 of your direct, entitled "Approved Temporary
2 Abandonment." Yeah. So when I read through all of
3 this, I'm still concerned about how these proposed
4 rules, you know, takes into consideration all the
5 entire production cycle of a typical field.

6 Now, you said that, and I'm reading
7 from how the well will be put to beneficial use in the
8 future, including supporting technical and economic
9 data. So I'm wondering, let's say, what are the
10 metrics, you know, as to how an operator needs to be
11 able to prove the economic data, when, for instance, a
12 well is TA, and it's going to be used during, let's
13 say, secondary recovery or a tertiary recovery is way
14 far ahead?

15 You know, so how is a -- you know, how
16 is a company going to -- or, let's say, what is the
17 metrics that OCD is going to be able to judge, you
18 know, whether that economic data or, let's say,
19 especially the current economic data, how accurate is
20 that, or how accurate would that be?

21 THE WITNESS: Well, in the case of an
22 EOR project -- and again, I -- I have to admit I've
23 never been involved with that, but I would think it'd
24 be a fairly straightforward procedure for the operator
25 to demonstrate to OCD that these wells, although they

1 are in TA, you know, we're going to change the
2 injection pattern or change the production pattern or
3 change from water to CO2, whatever the case may be,
4 and provide them good evidence, based on the rocks,
5 injection profiles, production profiles, this is what
6 we expect to happen in X number of years.

7 DR. AMPOMAH: Yeah. So that is where
8 my concern is because a normal primary recovery is
9 going to be about ten years, five to ten years. And
10 the secondary recovery is going to be about 30 years.
11 And then you have tertiary also going to be about 30
12 years, 20 to 30 years.

13 So assuming we are in the primary
14 recovery, and then well is producing so low based on
15 the threshold that you have provided, you know, right
16 in the primary recovery time, but how is the company
17 going to be able to prove the technical and economics
18 of how this well is going to be useful, you know,
19 let's say for tertiary recovery?

20 THE WITNESS: Well, I -- I would put it
21 this way. You know, if there's, you know, substantial
22 evidence of nearby fields or whatever, in a particular
23 reservoir, that they have been successful after
24 primary into secondary and into tertiary, and the rock
25 properties and the arrangements of the wells and the

1 geology all tend to be similar to something that
2 actually does work, you got a good deal on your hand.

3 DR. AMPOMAH: So, sir, in your proposed
4 rule, where do we have these exceptions rightly stated
5 in the rule?

6 THE WITNESS: It's not there currently.

7 DR. AMPOMAH: And are you able to
8 provide a proposed statement to this effect?

9 THE WITNESS: I believe we could do
10 that.

11 DR. AMPOMAH: And I will appreciate
12 that. So down in your Number 11, it's Topic 11, you
13 said, "Including the current and complete wellbore
14 diagram." You went on and on to describe some of the
15 logs that -- and it's just that some of the logs that
16 has been suggested here. So my question to you is, is
17 it a recommendation or a requirement?

18 THE WITNESS: It's a for example.
19 These would be the kinds of information that need to
20 be evaluated or that the Division may want to look at,
21 any other information the Division determines
22 appropriate to include, current, complete, et cetera.

23 DR. AMPOMAH: So would there be any
24 problem if we just to make that statement "as the
25 Division determines appropriate"?

1 THE WITNESS: I suppose you could do
2 that, but I think it gives guidance if you list some
3 of the typical things that would be expected by the
4 Division.

5 DR. AMPOMAH: Yeah, but it's still,
6 it's just an example. It's not exhaustive. So even
7 it's still at the discretion of OCD; is that correct?

8 THE WITNESS: It's going to be at their
9 discretion. And the operator can come with whatever
10 pile of evidence they have, and OCD may ask for more
11 or say this is plenty; it's up to them.

12 DR. AMPOMAH: So let's go to Page
13 Number 12 of your direct, in the slides. So if I read
14 from last but four -- the last four, and so you said,
15 "The operator has adequate monitoring procedures in
16 place to ensure such requirements will be met." And
17 my comment on that is that I do appreciate that
18 provision, which is really great, you know, at least
19 to keep the operators in compliance, which I
20 appreciate that.

21 Now, when you go to the last one, you
22 said, "An extended term shall not exceed two years,
23 upon which time the operator shall return the well to
24 a beneficial use, under a plan the Division approves,
25 or permanently plug and abandon the well and restore

1 and remediate the location."

2 So my question is the same thing back
3 to the tertiary or, let's say, the secondary, but I do
4 appreciate that you are willing to at least provide
5 some guidance to the Commission with regards to a
6 statement to really take care of that. So I think
7 you've already answered that. So let me proceed. Let
8 me proceed.

9 So on your Slide Number 13, I just want
10 to ask, so you've provided, you know, a typical life
11 cycle of a well, and then you're saying that probably,
12 after eight years, there's probably not going to be
13 anything done with the well.

14 I want to ask, this information that
15 you're providing to the Commission as part of your
16 testimony, was this based on a typical entire
17 production cycle analysis on an actual oil field?

18 THE WITNESS: To my knowledge, yes.

19 DR. AMPOMAH: Then why is it not
20 capturing the, let's say, the secondary and the
21 tertiary recovery process? Because most of, let's
22 say -- then let me back up.

23 So, but does this also account for,
24 let's say, some operations that might have occurred in
25 secondary or tertiary?

1 THE WITNESS: It's my understanding
2 that this is all inclusive of any well operation.
3 This data was pulled together from OCC -- OCD data,
4 off the website. Can I look at this bar graph and
5 determine whether some of this is EOR or not? No, I
6 can't.

7 DR. AMPOMAH: Thank you, sir. So there
8 was a discussion about 95 percent of all wells plugged
9 in the state mostly done by operators. So my question
10 to you is that, for such an important issue, don't you
11 believe that the Commission should hold highly of the
12 proposed changes that the industry folks are making?

13 THE WITNESS: Yes.

14 DR. AMPOMAH: Sir, I do appreciate your
15 time. I do not have any further questions for you.
16 Thank you.

17 THE HEARING EXAMINER: All right.
18 Thank you.

19 Other commission questions?

20 MR. BLOOM: All right. Thank you,
21 Madam Hearing Examiner.

22 Good afternoon, Mr. Alexander. Yeah,
23 just a threshold question here. I think there
24 might've been some surprise about the new language in
25 Exhibit 72-E. That is the proposal from the

1 Applicants, now, based on your conversations or your
2 negotiations with OXY; is that correct?

3 THE WITNESS: Yes.

4 MR. BLOOM: Okay. So -- okay. I have
5 a threshold question, and I don't know, Mr. Alexander,
6 if you're the person to answer this, based on some of
7 the questions we heard from Mr. Rankin. But one thing
8 that I'm very interested in hearing, across the course
9 of testimony over the coming days or weeks, is where
10 does the OCC hang its hat in terms of authority during
11 this process?

12 You know, I think looking at
13 correlative rights and relationships, to, you know,
14 financial assurances could be a stretch. You know, I
15 saw, in Mr. Tremaine's reply to the motion to dismiss,
16 that public health and the environment are certainly
17 one of our charges here at the OCC. But again, any
18 thoughts about how this relates to our charge to
19 prevent waste?

20 THE WITNESS: I don't think that I'm
21 really the right person to ask that. That's getting
22 into statutory and legal and legislative issues that
23 I'm not prepared to address.

24 MR. BLOOM: And I'll hold that for
25 later and come back to it in the future. You know,

1 one thing that would occur to me would be -- no, I'll
2 hold on that.

3 All right, Mr. Alexander, let's just
4 review the big picture again. So you found some
5 74,500 wells in New Mexico on state and fee lands;
6 correct?

7 THE WITNESS: I didn't, the -- the
8 person with EDF that pulled this data together --

9 MR. BLOOM: Okay. That was part of
10 your testimony; correct?

11 THE WITNESS: Yeah. Yeah.

12 MR. BLOOM: Okay. And if this rule, as
13 proposed now, went into effect, how many wells at this
14 time would have to bond at \$150,000 each? Do you
15 know?

16 THE WITNESS: I -- I don't know the
17 specific answer to that. I'm sorry.

18 MR. BLOOM: Okay. Looking at your
19 Exhibit 13, which my colleague, Commissioner Ampomah,
20 just was looking at as well and asking you about.

21 THE WITNESS: Yep. Got it.

22 MR. BLOOM: I -- I believe those are
23 just wells that are not in production; correct?

24 THE WITNESS: Correct.

25 MR. BLOOM: Okay. So they would not

1 include any wells that were -- I guess they could be
2 wells not in production, they're in secondary units,
3 for example?

4 THE WITNESS: They could be. Yes.

5 MR. BLOOM: Okay. So, at eight years,
6 you have 99.5 percent of inactive wells won't return
7 to production; correct?

8 THE WITNESS: Have returned.

9 MR. BLOOM: I'm sorry?

10 THE WITNESS: Have returned.

11 MR. BLOOM: I'm sorry. 99.5 percent
12 of --

13 THE WITNESS: -- percent probably, you
14 know, won't.

15 MR. BLOOM: Okay. It's six years
16 that's 98.5 percent; right?

17 THE WITNESS: 98.5 have -- one and half
18 won't. Yeah.

19 MR. BLOOM: How did you arrive at that?
20 I mean, why not have a six-year limit here versus
21 eight? How did you come to that eight-year number?

22 THE WITNESS: Well, we just thought it
23 was a reasonable cutoff, to be honest with you. And
24 if you -- if you think about the six-year point, what
25 does that entail? That entails one year of

1 inactivity, and then plus or minus two or three months
2 where the operator has the opportunity to apply for
3 T&A. And then we stuck with the increments that New
4 Mexico already has: five-year increments for TA. So
5 then you get six years.

6 So what's happening after six years?
7 And you take a look at the data, as it plots out;
8 well, gee, you know, only about one and a half percent
9 of the wells at this point and beyond ever reactivate.
10 That's a pretty low number.

11 And rather than just stopping it at
12 five years, we extended it for another two. And that
13 it's even a more compelling argument that, at that
14 point, it's highly likely that the wells will not be
15 reactivated. Now, I'm not saying that I know that
16 whatever percentage of that half of 1 percent is EOR.
17 Some of those may be even beyond, and we've discussed
18 that at length about principles for potential
19 extension.

20 MR. BLOOM: Okay. Thank you.

21 THE WITNESS: Mm-hmm.

22 MR. BLOOM: I was going to ask you
23 about that provision at 19.15.25.9(D) about giving
24 operators 30 days to submit an application for
25 administrative review. Commissioner Ampomah asked you

1 about that as well. You know, could this be 90 days,
2 which is -- and I believe you said that you were okay
3 with that?

4 THE WITNESS: Yes, sir.

5 MR. BLOOM: Okay. I would agree with
6 that.

7 Ms. Fox. I couldn't find it. Could
8 you or could anybody pull up the language about
9 speculation?

10 MS. FOX: It's in the definition of
11 "beneficial use" in 19.15.2.

12 THE CHAIR: I actually have it on my
13 screen. I'm happy to share.

14 MR. BLOOM: If you could, thank you.
15 Oh, there it is. Thank you.

16 THE CHAIR: I think this is what you're
17 talking about.

18 MR. BLOOM: Yes.

19 There's been a good bit written and
20 what I've read about some issues with "speculative
21 purposes," that that could be unclear. If we ended
22 this definition after the word "monitoring," would
23 this still work for the Applicants? And I know that
24 you can ask this again in the future if people have
25 had -- you give some people some time to think about

1 it.

2 THE WITNESS: What we want to guard
3 against -- and in some of the testimony from NMOGA and
4 IPANM, and I don't remember exactly who, but you know,
5 the -- the notion that, you know, there's yet to be
6 discovered technologies; there's ideas that nobody's
7 thought about. You know, I get that, but if you don't
8 have some fence around this, then you're going to wind
9 up having a bunch of wells out there that are just
10 waiting for, as I put it earlier, some widget to come
11 down the road in 20 years, and you'd have a -- a --
12 just a mess.

13 And the longer these wells are in an
14 inactive state and not, for example, part of a viable
15 EOR project, going from primary to secondary and
16 tertiary, what's going to likely happen? You know,
17 these wells and the operators are likely to get, you
18 know, they may become less and less able to take care
19 of their financial responsibilities. So I really
20 think it's important. We think it's important to
21 stick with this.

22 MR. BLOOM: Okay.

23 THE WITNESS: Now, if "speculative
24 purposes" needs a definition, let's get after it.

25 MR. BLOOM: Thank you. Mr. Alexander,

1 I think this will be a question for somebody else, but
2 one of I think it was IPANM'S witnesses had the
3 question, "Why not allow a bond to be dropped if a
4 well leaves marginal status?" Why require that well
5 to remain bonded? Perhaps it has to do with it being
6 uncancellable. But do you have any thoughts on that?

7 THE WITNESS: I'm not the one to ask;
8 I'm not the expert in that.

9 MR. BLOOM: Okay.

10 THE WITNESS: Sorry.

11 MR. BLOOM: Yep. It's just a bit of
12 information I was looking for, and I think this might
13 be a question for someone else as well, maybe OCD if
14 no one else knows. But if an operator has, say, eight
15 bonds, but one well cannot be P&A'd for that \$150,000,
16 can other of the operator's bonds be taken to help
17 with the cleanup of the first well?

18 THE WITNESS: I'm -- again, I'm not the
19 expert on that. There's someone following me that can
20 answer that.

21 MR. BLOOM: Very good.

22 THE WITNESS: I think.

23 MR. BLOOM: All right. Those are all
24 my questions. Thank you, Mr. Alexander.

25 THE HEARING EXAMINER: Thank you.

1 Anything further from the commissioners?

2 (No response.)

3 No? All right. Let's take a break,
4 before we resume the technical case, and come back
5 around a little before 3:30.

6 (Off the record.)

7 THE HEARING EXAMINER: And as I
8 understand it, NMOGA would like to offer its opening
9 statement. Again, each party has an opportunity to
10 offer an opening statement. Let me go through the
11 list though, first.

12 MR. SUAZO: We've actually reconsidered
13 and we'd like to actually make it the start of our
14 case in chief instead.

15 THE HEARING EXAMINER: Okay. So let me
16 go through the list first but thank you for that
17 clarification, Mr. Suazo.

18 So any other party has the opportunity
19 to make an opening statement right now, or they can
20 reserve until immediately prior to the presentation of
21 their own witnesses.

22 So Mr. Tremaine, would you like to
23 offer an opening statement at this time?

24 MR. TREMAINE: Madam Hearing Officer,
25 we will wait until directly before our case in chief.

1 THE HEARING EXAMINER: Thank you.

2 MR. TREMAINE: Mr. Moore for the State
3 Land Office.

4 MR. MOORE: Madam Hearing officer, we
5 will also wait until the presentation of our case in
6 chief.

7 THE HEARING EXAMINER: All right.
8 Thank you.

9 Mr. Rankin, for OXY?

10 MR. RANKIN: We'll reserve. Thank you.

11 THE HEARING EXAMINER: Thank you.

12 Mr. Suazo for NMOGA has already said
13 reserve.

14 And Ms. Bradfute -- let's see -- no.
15 sorry. IPANM, Mr. Cloutier?

16 MR. CLOUTIER: Thank you, Madam Hearing
17 Officer. We're going to reserve as well.

18 THE HEARING EXAMINER: All right.

19 And Ms. Bradfute?

20 MS. BRADFUTE: Thank you, Madam Hearing
21 Officer, we will not be making an opening statement.

22 THE HEARING EXAMINER: I just realized
23 that. So thank you very much.

24 All right, let's return then to Ms. Fox
25 and her next witness.

1 MR. NYKIEL: Applicants will call
2 Dwayne Purvis to the stand.

3 THE HEARING EXAMINER: All right, thank
4 you.

5 Mr. Purvis, if you would spell your
6 first and last name?

7 THE WITNESS: Thank you. My name is
8 Dwayne Purvis. D-W-A-Y-N-E P-U-R-V-I-S.

9 WHEREUPON,

10 DWAYNE PURVIS,
11 called as a witness and having been first duly sworn
12 to tell the truth, the whole truth, and nothing but
13 the truth, was examined and testified as follows:

14 THE HEARING EXAMINER: Thank you very
15 much.

16 Go ahead.

17 DIRECT EXAMINATION

18 BY MR. NYKIEL:

19 MR. NYKIEL: Thank you, Mr. Purvis.
20 Thanks for being here. My name's Matt Nykiel, Counsel
21 for Applicants. Did you submit direct testimony in
22 this matter, Applicants' Exhibit 30?

23 (Applicant Exhibit 30 was marked for
24 identification and received into
25 evidence.)

1 THE WITNESS: Yes, I did.

2 MR. NYKIEL: And is your testimony
3 accurate to the best of your knowledge, and do you
4 adopt it?

5 THE WITNESS: Yes, I do.

6 MR. NYKIEL: What is your current
7 employment?

8 THE WITNESS: I am principal advisor
9 and founder of Purvis Energy Advisors.

10 MR. NYKIEL: What is your educational
11 background?

12 THE WITNESS: I earned a Bachelor of
13 Science degree in petroleum engineering from Texas
14 A&M, class of 1994. Whoop. Spent a year of study
15 abroad. And then, in 2023, I graduated from Johns
16 Hopkins School of Advanced International Studies with
17 a degree in sustainable energy.

18 MR. NYKIEL: And you are a registered
19 professional engineer in Texas; correct?

20 THE WITNESS: That's correct.

21 MR. NYKIEL: Can you please describe
22 your work background?

23 THE WITNESS: When I started work in
24 '95, I worked for a major third-party reserves
25 engineering firm called Cawley Gillespie. Three years

1 later, I was partner. Three years later, the firm
2 split.

3 I co-founded the Strickland Group,
4 where we offer consulting services to oil and gas
5 operators, owners, investors, federal governments, and
6 litigants.

7 I spent two years working as the head
8 of reservoir engineering for a large private company
9 in Fort Worth. And then I founded my present firm,
10 where I've continued my consulting practice.

11 MR. NYKIEL: Your curriculum vitae is
12 Applicants' Exhibit 29?

13 (Applicant Exhibit 29 was marked for
14 identification and received into
15 evidence.)

16 THE WITNESS: Yes, it is.

17 MR. NYKIEL: And is it accurate?

18 THE WITNESS: One error. As I wrote in
19 my testimony, I am no longer a professor at Texas
20 Christian University.

21 MR. NYKIEL: You developed a lot of
22 data, charts, graphics in support of your testimony.
23 In general terms, can you please tell the Commission
24 how you went about developing that data?

25 THE WITNESS: Sure. Data is the raw

1 material for a reservoir engineer like me. At the
2 beginning of the assignment, I collected all the
3 information I could from all the sources I could find,
4 including: I looked at New Mexico Tech; I looked at
5 the OCD; I looked at the Legislative Finance
6 Committee; did general web searches; made calls; used
7 the OCD interface; and I used also a data vendor. So
8 I collected all the data I could. Also tried public
9 investor presentations to collect all the information
10 I could to -- to build a case one way or the other.

11 MR. NYKIEL: Okay. Do you have any
12 changes or additions to make to your direct testimony
13 or exhibits?

14 THE WITNESS: No.

15 MR. NYKIEL: Okay. Mr. Purvis, would
16 you please provide a summary of your direct testimony?

17 THE WITNESS: Certainly. My discipline
18 is reservoir engineering, which is concerned with the
19 strategic direction of an oil company. The job of a
20 reservoir engineer is primarily how much is going to
21 be produced in the future, how can we produce more,
22 and how much is it worth. And that's the work I've --
23 I've done for 30 years for small and large companies.

24 And my -- my testimony here is to try
25 to apply those skills to the issue facing the

1 Commission. What I'm going to do first is outline the
2 overall structure, the architecture of the issue, then
3 the nature of the industry in New Mexico from a
4 statistical standpoint, then a way to think about the
5 issue of paying for decommissioning. Then we'll talk
6 about the specifics of the proposal and how they apply
7 to -- to the situation in New Mexico.

8 So I'm -- I'm showing now Applicants'
9 Exhibit 30, which is a schematic of the full scope of
10 decommissioning. We often talk about plugging and
11 abandonment, but technically speaking, plugging is a
12 downhole process. The full process of decommissioning
13 involves surface removal of equipment, remediation of
14 pollution, and restoration back to native conditions
15 in all parts of New Mexico.

16 And there's one layer of work for --
17 that defines scope. That defined scope includes much
18 more than, but does include the downhole work of
19 plugging, which is the subject of the rulemaking.

20 There's a second layer though that must
21 be considered, and that is contingency. This is --
22 these are the known unknowns. It's the nature of a
23 project like this that we will see significant
24 overruns in a minority of the cases that will move the
25 average to something higher than the mean and higher

1 than the mode of a distribution; fully normal, fully
2 to be expected.

3 And then after a well is plugged a site
4 decommissioned, there continued to be possible costs
5 associated with a legacy liability. A company, in my
6 experience, retains liability for anything that might
7 be discovered to be in error, be a problem in the
8 future, such as is happening across the border to the
9 south at Antina Ranch, for example, now.

10 So the -- the contingency, the full
11 scope, tends to be multiples of the cost of the
12 downhole work alone. This graphic is a combination of
13 Plaintiffs' -- Applicants' Exhibit 31 and 32.

14 (Applicant Exhibit 31 and Applicant
15 Exhibit 32 were marked for
16 identification and received into
17 evidence.)

18 It shows a map of the state with
19 plugged wells shown in gray, unplugged wells in
20 colors, and a count of the wells. Approximately
21 63,000 wells stand today unplugged in the State of New
22 Mexico.

23 Two very minor basins, but the vast
24 majority of the wells reside in the Permian Basin or
25 the San Juan Basin, about two thirds/one third, except

1 that when we consider federal lands, to which these
2 rules do not apply, about 71 percent of the wells
3 affected by the financial insurance requirements fall
4 in the Permian Basin.

5 As you see in the lower right, in the
6 bar chart, I've color-coded and grouped wells by their
7 production rate. And by far, the largest well count
8 in the state are stripper wells. There's a large
9 disconnect between the number of -- wells and the
10 production that they contribute.

11 This graphic puts in context the total
12 cost that the State and the Commission need to
13 consider.

14 (Applicant Exhibit 34 was marked for
15 identification and received into
16 evidence.)

17 This is a work published in March of
18 2021 by an environmental contractor called Vertex
19 Resources for the State Land Office.

20 And they figured, they calculated over
21 \$20 billion worth of liability related to midstream,
22 but more to the point, \$22 billion of upstream
23 liability, which will come due for the infrastructure
24 as it exists today in the State of New Mexico.

25 And the 12.5 billion of that is on

1 federal lands and subject, in the first order, to a
2 different set of rules. But 9.8 billion is the
3 liability that falls directly to the -- to the
4 Commission.

5 But only 2.4 billion of that is subject
6 to the rulemaking today, which is to say the scope of
7 what the Commission and the state need to consider is
8 much broader. But what's at risk right now, what
9 the -- what the commission needs to manage is a
10 liability that was measured at \$2.4 billion with a 50
11 percent probability being greater five years ago
12 before significant inflation.

13 This next graphic is Applicants'
14 Exhibit 39.

15 (Applicant Exhibit 39 was marked for
16 identification and received into
17 evidence.)

18 And it shows the context of what's been
19 happening in the world of decommissioning and how
20 costs have been changing. All of this data comes from
21 publications that have data from the OCD. So it's a
22 information prepared by the OCD about the cost that
23 they are incurring as they're plugging walls. And
24 what we see is a dramatic increase. I've seen this in
25 reports I've published other places. It's not

1 surprising, but it is meaningful.

2 The red line, with the dashes for --
3 for markers, represents the range of single-well
4 plugging costs as analyzed by Vertex in 2021, which is
5 to say, Vertex's estimate, in 2021, of the per-well
6 costs of downhole plugging were significantly higher
7 than the actual observed per-well cost by OCD. But
8 all evidence points to significant increase in time
9 over those costs -- of those costs.

10 Now, to look a little bit more closely
11 at what's going on in New Mexico, this Applicants'
12 Exhibit 33 breaks the production in the state down
13 into six more homogenous categories: four basins, and
14 within the two major basins, vertical separate from
15 horizontal.

16 (Applicant Exhibit 33 was marked for
17 identification and received into
18 evidence.)

19 And it shows the same data in all four
20 graphs, but on different y-axis scales. On the top
21 left, we have the largest scale, and what looks like a
22 rocket taking off is the production of oil from
23 horizontal wells in the Permian Basin. It has risen
24 dramatically and quickly and now constitutes 89
25 percent of the production in the state.

1 On the upper right, I've zoomed in to
2 about a sixth of the scale, and now we can begin to
3 see the nature of the next two largest groupings:
4 vertical wells in San Juan and vertical wells in the
5 Permian. And what we observe importantly is that they
6 peaked over 20 years ago.

7 The basins began exploration and
8 production many decades before, but they peaked more
9 than 20 years ago. They are now producing at rates in
10 aggregate about 20 percent of their peak. They are
11 continuing decline -- to decline, and each one
12 constitutes only about 4 percent of production in the
13 state.

14 Lower left zooms in again, where we can
15 see, in the orange color or brown color, the
16 horizontal wells in the San Juan Basin, which do show
17 some interesting increases, significant increases in
18 the last couple of years.

19 To put those in context, you can look
20 at the same line on the previous two graphs and see
21 that what is significant for that subcategory is
22 insignificant in the grand total. And then for the
23 minor basins, you see many years and significant
24 overall decline.

25 So the shale revolution, as it was

1 described before, represented the opening of a new
2 class of resources. There is no more shale revolution
3 to be had because there is no more class of resources
4 like that.

5 Instead, what we have -- what we see
6 are two life cycles occurring. First, the primary
7 production; I -- I won't call it unconventional
8 because most of the San Juan Basin falls under the
9 category of unconventional but call it vertical
10 instead and the new horizontal.

11 The older legacy production is deep
12 into its lifecycle. It is not a steady-state system.
13 It's instead a non-renewable resource that depletes,
14 declines, and ultimately dies. Inside this ecosystem
15 of producing companies, we have widely divergent
16 strategies, companies, operating companies of very
17 different nature.

18 This graphic, Exhibit 35, measures
19 those differences on three different -- four different
20 dimensions.

21 (Applicant Exhibit 35 was marked for
22 identification and received into
23 evidence.)

24 First, it divides every operating
25 company in the state into one bin or the other, on two

1 dimensions: from left to right, based on the number
2 of unplugged wells for which the company is
3 responsible; from front to back, whether or not that
4 company is focused more on vertical wells in the front
5 or horizontal wells in the back.

6 So the different strategies and
7 different sizes are represented in different places on
8 the bar chart. Now, in the upper left-hand quadrant,
9 the height of the bar corresponds to the number of
10 legal entities that exist. And by far, the largest
11 number of companies in the state have fewer than a
12 hundred wells.

13 And I've divided this into zero to ten
14 or one to ten, ten to a hundred, and then at the far
15 end, more than 500 wells, I figure by the time a
16 company has more than 500 wells, it's clearly a
17 sophisticated company.

18 In the upper right-hand quadrant, the
19 height of the bar measures, instead, the number of
20 unplugged wells. Every company is represented in the
21 same bin, but instead of totaling the number of legal
22 entities, I've totaled the number of unplugged wells,
23 which is a proxy for the plugging liability. And what
24 we see is that the bulk of the plugging liability, the
25 decommissioning liability lies in large companies

1 focused on vertical wells.

2 In the lower right, the height of the
3 bar corresponds to the volume of daily production in
4 recent time periods. Here, we see that in -- that
5 production in the state is dominated by companies,
6 dominated by horizontal wells. There is some
7 production certainly associated with all of the bars,
8 but by -- but the largest portion of production is not
9 in the same place, not in the same companies; it's not
10 in the same portfolios as the largest concentration of
11 liabilities.

12 Now, we move to the lower left, and
13 this bar shows the recent new production, that is to
14 say the new drilling. And 99.8 percent of all new
15 production, as measured by peak rate over the last
16 five years, has come from horizontal wells. And
17 companies of fewer than ten wells have contributed
18 0.05 percent of new production, which is to say that
19 the new production, the new drilling is even more
20 concentrated in large horizontal companies than
21 liabilities -- or than production.

22 So the -- the system, the industry in
23 New Mexico is so heterogeneous that you cannot assume
24 that the number of companies affected translates to
25 the amount of volume affected or any other dimension.

1 For ease of comparison, Exhibit 36 from Applicants
2 subtotals the same information, but only on one
3 dimension.

4 (Applicant Exhibit 36 was marked for
5 identification and received into
6 evidence.)

7 So the -- it uses the same four
8 measures of significance: number of companies;
9 unplugged wells; current production and recent
10 production ads, new drilling. The colors correspond
11 to the nature of the portfolios as in the last
12 exhibit. Zero -- less than 20 percent of wells being
13 vertical -- or being horizontal is represented in
14 brown. And fewer than 20 percent vertical are
15 represented in purple.

16 And again, a tremendous disparity: 89
17 percent of companies are dominated by vertical wells,
18 and they bear responsibility for 73 percent of wells
19 to be plugged, but they're contributing only 16
20 percent of production and only 1.9 percent of recent
21 production additions. But this is companies of all
22 size, just of that nature.

23 The next exhibit, 37, looks at --
24 subtotals the information by size, looking again at
25 number of companies, unplugged wells, production in

1 recent production.

2 (Applicant Exhibit 37 was marked for
3 identification and received into
4 evidence.)

5 But the companies are divided into --
6 into ten divisions by percentile rank based on their
7 production volume in this case, not their unplugged
8 wells. And the disparity by size is more apparent
9 here.

10 The top 10 percent of companies in the
11 state by production account for 97.5 percent of
12 production and 99.7 percent of new production. So to
13 the extent that the Commission is concerned about
14 maintaining production from the state, the vast
15 majority of the issue is the top 10 percent of the
16 companies.

17 This graphic, Applicants' Exhibit 38,
18 offers a way to begin to think about the issue of the
19 \$9.8 billion of decommissioning that are concentrated
20 in companies with very low producing wells.

21 (Applicant Exhibit 38 was marked for
22 identification and received into
23 evidence.)

24 The graphic shows a schematic cash flow
25 from an example project published by the Society of

1 Petroleum Engineers for the purpose of understanding
2 the application of reserve definitions and economic
3 evaluation criteria.

4 Each bar represents a cash flow,
5 negative or positive. I have added the colors and the
6 labels. And of course, the cash flow here is smooth,
7 indicating a smooth price, and price does oscillate.
8 But -- but functionally, this is, in a schematic form,
9 this is what happens. We invest at the beginning. We
10 get our money back. We start earning new money. We
11 cruise through a long period of production. At the
12 end of life, we have a big lump sum that comes due.

13 At some point in life, there -- there
14 comes a time when the undiscounted cash flow is
15 remaining in that project, whether it be a well or a
16 lease or a field or in the whole company, becomes
17 equal to the asset retirement obligation that's due at
18 the end of life. When we evaluate projects, and
19 indeed when we operate projects, we push those costs
20 out into the future as late as possible; there's no
21 economic incentive to bury your money in the ground.

22 But because all of those costs are
23 pushed out farther in life than all of the income,
24 then the discount rate reduces the appearance, the
25 present value of those hard, legal, moral, ethical

1 obligations more than they reduce all of the uncertain
2 cash flow that's projected to be earned.

3 So there's a point in time when the
4 net -- when the remaining cash flow is equal to the
5 remaining obligation, and at that point in time, the
6 net present value will always be positive. In this
7 example that you've got 13 years of life left to
8 operate -- thin production, very small, especially at
9 the end by comparison to early life. But the cash
10 flow in this example, \$600,000 a month, net present
11 value is \$25 million, 13 years of life. But if you
12 paid \$25 million to purchase this field, then you
13 would get your \$25 million back. You'd get back
14 another \$12 million in profit. And then you'd turn
15 around and pay \$37 million. And at the end of the
16 day, you would have traded your dollars except that
17 you would have paid out more than you got in, or at
18 that point in time, paid out exactly what you got in.
19 Right? At the end of the day, you have no more
20 dollars than you had at the beginning.

21 Now, the reserve -- the Petroleum
22 Resource Management System, published by the Society
23 of Petroleum Engineers, recognizes that, in an
24 economic evaluation, in this condition, when the
25 undiscounted remaining cash flow is not positive, then

1 the project is not economic, as they define it. And
2 if it's not economic, it's not commercial.

3 It is economically recoverable. It
4 makes economic sense to operate each month when I'm
5 still making a profit. But in aggregate, at that
6 point, it's even, and at every point after that, the
7 project's in an upside-down condition. No doubt about
8 it, the project's worth most at the beginning, and
9 it's worth negative at the cost of decommissioning at
10 the end.

11 There's a break point here in the
12 middle that I've identified and called holdback as a
13 useful yardstick to understand how and when the risk
14 becomes especially significant. Now, it's true that
15 orphaning occurs at a portfolio level, not at a well
16 level. But any one well that's past the point of
17 holdback is, in aggregate, a net cost on an
18 undiscounted basis through its life. Therefore, it's
19 a drag on the portfolio . It's -- it is an
20 incremental risk. And a portfolio concentrated in
21 late-life wells is an especially risky proposition.

22 Historically, the industry has plugged
23 wells, and they -- and they've paid it out of cash
24 flow that has been from other wells, sometimes
25 reinvesting. But as I showed in the previous slides,

1 there is one group of companies that are focused on
2 drilling, and there's a separate group of companies
3 that are focused on depleting. Those are separate
4 portfolios.

5 There is some reinvestment, some
6 attempts to abate the decline, but a late-life
7 strategy is primarily an operational strategy meant to
8 generate returns and return -- and give yield to
9 investors. The money is leaving the company, not
10 being reinvested.

11 With that framework of what's going on
12 at a large scale. Let's look at the proposals that
13 are offered. And my focus is on these terms: the --
14 the change in financial assurance related to current
15 wells, and then some about the plans for transfers.

16 Summary here, but let me walk through
17 each one with a little bit more detail. First, I note
18 that there is a change in the blanket bonding status,
19 that that change is -- the more important change is
20 the change to individual-well financial assurance and
21 then to portfolio-level financial assurance.

22 So the -- the changes create three
23 break points, one around defined term of "marginal."
24 We must discriminate the defined marginal from the
25 generic meaning of the word "marginal" because, as

1 I'll show you in a minute, the defined term is much
2 more conservative than, in fact, the general meaning.

3 The second breakpoint that's created is
4 "no beneficial use." The third breakpoint or series
5 of breakpoints has to do with "temporary abandonment."
6 At each one of those junctures that are created, the
7 operators have choices about what they're going to do:
8 continue, improve production, go into temporary
9 abandonment status, or plug.

10 Historically, there were not the same
11 break points. The first term is to change the overall
12 blanket bonding so that 150,000 is required for a
13 company of one well, and there are plenty of those.
14 I'm not sure company's is the right term, maybe
15 hobbyist. But anybody, any entity with two wells or
16 more is \$250,000. So it's a -- not a -- not much to
17 those tiers.

18 But then we get into the -- the new
19 break points that are created. The -- when a well is
20 classified as "marginal" under two criteria, then it
21 must put up additional financial assurance.
22 Similarly, it creates a category called "no beneficial
23 use," again with a dual criteria, both of which must
24 be met. And then -- and then finally, "temporary
25 abandonment."

1 And on all of these slides, what you
2 see highlighted in yellow represents the changes made
3 in Exhibit 72, which the text in red is revision made
4 in 72 or before. So it's the overall revisions, and
5 then, again, with approved and expired temporary
6 abandoned wells. And all of those provisions, as I
7 understand it, don't come into effect until early
8 2028, which provides three years of -- between the
9 time of notice and the time of implementation, at
10 least two years.

11 So then the -- "blah, blah, blee, blah,
12 bluh." Who's trying -- who's trying to transcribe?
13 So then the -- the question, to me, becomes to what do
14 these new break points, do these new terms apply? And
15 I have a series of -- of exhibits to explain what they
16 apply to. The first is Applicants' Exhibit 40.

17 What I've shown here is a cross plot of
18 every well in the State of New Mexico that has 12
19 months of production or injection during calendar year
20 2024. On the x-axis is the first criterion, the
21 number of days reportedly active, and on the y-axis,
22 the volume of hydrocarbons reportedly produced.

23 Now that y-axis is a logarithmic scale
24 covering six orders of magnitude, so it's extremely
25 broad. But I've color coded the areas to which the

1 terms apply. Now, the -- the term -- the defined
2 term, "marginal," would, at the end of 2024, apply to
3 2200 wells. Defined "no beneficial use" would apply
4 to 1700 wells. And there are other wells that are not
5 active. So it's a minority of the wells affected by
6 these single-well break points. It's hard to see the
7 proportions in this exhibit because so many of the
8 points overprint.

9 But this graphic, Exhibit 40, shows the
10 same information where the area corresponds to the
11 number of wells affected. The wells that are not
12 affected represent 99.95 percent of production in the
13 state, but it represents only about 89 percent of the
14 wells. It affects about 11 percent of the wells, but
15 a vanishingly small percentage of production.

16 That is not to say that the state does
17 not have very many marginal wells in the general
18 meaning of that term, as I demonstrated on my earlier
19 slide that showed the proportion of wells in stripper
20 status. If I break down the wells that are not
21 affected by the -- by well -- single-well assurance,
22 by their rates, we see that over half the wells in the
23 state are already in stripper status but are not
24 affected by the single-well rules. But many of those
25 are not affected by the single-well rules.

1 (Applicant Exhibit 41 and Applicant
2 Exhibit 42 were marked for
3 identification and received into
4 evidence.)

5 THE HEARING EXAMINER: Mr. Tisdell, I'm
6 sorry, and Mr. Purvis, for the interruption, we had
7 said we would break at four to accept public comment.
8 I don't want to interrupt your train of thought.

9 THE WITNESS: This is a fine place.

10 THE HEARING EXAMINER: Okay. Thank you
11 very much. And you can wait there to see if we have
12 anyone in the room who's going to offer public
13 comment.

14 Let me, though, call first on the two
15 persons who signed up ahead of time for the public
16 comment session here. Just a few things about public
17 comment. We are making a transcript, so I will ask
18 you to spell your first and last name. The Commission
19 rules provide that comment and testimony be provided
20 under oath. So I will ask you to swear or affirm that
21 what you'll say is true.

22 Please collect your thoughts. I can
23 invite your oral comment only once, and it should be
24 limited to three minutes. If you have more to say
25 than can fit into three minutes, you have a couple of

1 weeks really to submit written public comment, which
2 will be weighed the same. You would send that to
3 Sheila Apodaca, the commission administrator.

4 So the two folks who signed up early
5 for a spot here are Marlene Parrot [ph], Sister
6 Marlene, and Joan Brown, also Sister Joan. Are you in
7 the room or online?

8 MS. APODACA: Joan Brown is online, but
9 she will need to unmute herself. I've given her
10 permission.

11 THE HEARING EXAMINER: Oh. Thank you.

12 Would you unmute yourself, please?

13 Joan Brown, you have permission to unmute yourself. I
14 can see you on the camera. Now, just hit your
15 microphone.

16 MS. BROWN: Oh, okay. Can you hear me
17 now?

18 THE HEARING EXAMINER: Yes, I can.
19 Thank you.

20 MS. BROWN: Okay. Just -- just so you
21 know, it doesn't work by just clicking the microphone.
22 It didn't -- I had to do Control-Shift-M.

23 THE HEARING EXAMINER: Thank you very
24 much for that.

25 MS. BROWN: So it was a little -- a

1 little cumbersome there.

2 THE HEARING EXAMINER: Okay. Thank
3 you. I'll try to mention that to future commenters.
4 So if you would please spell your first and last name.

5 MS. BROWN: Yes, Joan, J-O-A-N, Brown,
6 B-R-O-W-N.

7 THE HEARING EXAMINER: Thank you. And
8 do swear or affirm to tell the truth?

9 MS. BROWN: I affirm. Yes.

10 THE HEARING EXAMINER: All right.
11 Thank you. I will start your time.

12 MS. BROWN: Thank you.

13 Good afternoon, Chair and
14 Commissioners. I am Joan Brown, and I'm a Franciscan
15 Sister. And I'm a community advocate with New Mexico
16 and El Paso Interfaith Power & Light. I live in
17 Albuquerque, but I have been to the Permian Basin,
18 working with communities there for well, well over a
19 decade, under my previous role as executive director
20 of Interfaith Power & Light.

21 And we started doing that because of
22 concerns for people's health and just the magnitude of
23 the oil and gas, and as people of faith, concerned for
24 care of our sacred land, water, air, and climate and
25 the future.

1 I'm here today in strong support for
2 bonding and cleanup rule changes, which actually
3 should have been done long ago, considering that, so
4 far, New Mexicans have already spent nearly a hundred
5 million dollars of public funds to plug abandoned oil
6 and gas wells just in the last five years. And this
7 is not fair and it is immoral.

8 I just was recently to Loco Hills in
9 the Permian Basin, on one of the immersion retreat
10 experiences that we do. And we were in Loco Hills,
11 and without even looking, we came across a lot, a lot
12 of abandoned equipment of -- we even came to a -- a
13 new oil leak in an old pipe that apparently had been
14 fixed and fixed again and was leaking and leaking.

15 So, right now, the oil and gas
16 corporations can drill dozens or even hundreds of
17 wells in New Mexico, while posting bonds that cover
18 only a fraction of the cost, and this is a concern.
19 The Legislative Finance Committee found plugging to
20 cost an average of \$163,000 per well, and some cost
21 over 700,000. And I had heard previously, from
22 someone with OCD, that they had spent a million on
23 one.

24 The natural resources here belong to us
25 all. When we let oil and gas corporations make

1 millions from wells in our state, they have a
2 responsibility as a business to clean up the wells, to
3 prevent leaks to our drinking water and methane
4 pollution that harms our health, air quality, and is a
5 contributor to climate change. We can't afford to
6 underfund risk, especially when the cost of inaction
7 falls upon our communities.

8 Pope Leo the 14th recently said,
9 "Nature itself is reduced, at times, to a bargaining
10 chip, a commodity to be bartered for economic or
11 political gain." My concern, as a woman of faith,
12 comes from an ethical and moral stance to care for our
13 sacred land, water, air, communities, and the future.
14 We, our land, water, air, and our communities are not
15 commodities to be used what is wanted, to be left a
16 mess, to be dirty, and then to abandon.

17 We all know there are ways to take care
18 of this immense and growing problem of abandoned and
19 orphaned wells in our state. We just need to be
20 leaders enough to do what is right, no matter what
21 criticism might come from certain political entities
22 or from certain companies or industries. We cannot be
23 bargaining chips. Eighty percent of new Mexicans
24 support strong leadership on these actions.

25 So I thank you for your serious

1 discernment and consideration of all these facts, and
2 that you might choose the common good and the ethical
3 and moral action on this growing and immense issue in
4 our state. Thank you so much.

5 THE HEARING EXAMINER: Thank you very
6 much, Sister.

7 Sheila. Is Sister Marlene on the
8 platform?

9 MS. APODACA: I don't see her on here.

10 THE HEARING EXAMINER: All right. If
11 she joins us for another public comment or reaches out
12 otherwise, I'd be happy to accept it.

13 There's an LS on the platform. Larry,
14 let's see, Larry Scott. Mr. Scott, can you unmute
15 yourself?

16 MR. SCOTT: Yeah. Thank you, Madam
17 Examiner, for the opportunity to speak. I am State
18 Senator Larry Scott from District 42.

19 THE HEARING EXAMINER: Oh, thank you
20 very much. I believe your name is spelled L-A-R-R-Y
21 S-C-O-T-T?

22 MR. SCOTT: That is exactly correct.
23 Thank you, Madam Examiner.

24 THE HEARING EXAMINER: Do you swear or
25 affirm to tell the truth?

1 MR. SCOTT: I do, in fact, so swear.

2 THE HEARING EXAMINER: Thank you. Go
3 ahead Senator.

4 MR. SCOTT: Okay. I have some fairly
5 significant personal experience with this subject
6 matter. I spent the better part of 40 years as one of
7 the very smallest independent oil and gas producers,
8 almost exclusively in Southeast New Mexico, in Lea and
9 Eddy Counties.

10 At one point our little company was
11 managing, I think, close to 60 wells, counting
12 producers and injectors. And I can assure you that
13 all of these calculations that I am listening to do
14 not take into account having to set aside, if you
15 will, \$150,000 per marginal well as, effectively,
16 unproductive capital. That process would've driven me
17 to bankruptcy in fairly short order.

18 Now, in full disclosure, I'm no longer
19 an operator. I still maintain interest as a
20 non-operator in a number of properties. But all of my
21 obligations to the State of New Mexico have been
22 fulfilled, and plugging obligations and those bonds
23 have been released.

24 I have serious concerns. I
25 participated; I've been in the legislature long enough

1 to have participated in the legislation that increased
2 the blanket bonding requirements from 50,000 to five-x
3 of that at 250,000. I'm not aware that that's had any
4 significant impact, either plus or minus, on the
5 obligations of the State or any plus or minus impact
6 on small operators in the state.

7 Now, let's talk about the Reclamation
8 Fund. Our oil and gas producers, over the years, have
9 paid millions of dollars into that Reclamation Fund
10 that have been misappropriated for use, in many cases
11 swept when New Mexico was short of funds, and not
12 utilized for the intended purpose of overcoming the
13 very few operators that have failed to fulfill their
14 plug-and-abandonment operations.

15 I think this -- the -- the increase in
16 bonding requirements that was effected in 2018 was
17 effected after robust debate and -- and votes by both
18 the House and the Senate. And this proposal needs to
19 be vetted through that process rather than as a
20 rulemaking.

21 Thank you, Madam Examiner, for the
22 opportunity to comment and I'll look forward to the
23 rest of the testimony. Thank you very much.

24 THE HEARING EXAMINER: Thank you very
25 much, Senator Scott.

1 Is there anyone else on the platform
2 who would like to offer public comment during this
3 public comment session? There will be many more
4 opportunities. Nine o'clock and four o'clock every
5 day of the hearing.

6 And I forgot to mention, if you have
7 dialed in using a phone, you can use star-5 to unmute
8 yourself. And if you would like to offer your comment
9 in Spanish, we do have an interpreter present. This
10 is one of the four sessions in which we have an
11 interpreter present to interpret between English and
12 Spanish, and Spanish and English.

13 Anyone else on the platform?

14 (No response.)

15 No? All right. Let me ask if there's
16 anyone in the room who would like to offer public
17 comment during this session.

18 (No response.)

19 No? All right. Well, thank you all
20 very much. And our next public comment session will
21 be nine o'clock tomorrow morning. And the next public
22 comment session in which there will be Spanish
23 language translation will be four o'clock tomorrow
24 afternoon.

25 We will return now to the technical

1 case and continue with Mr. Purvis' testimony.

2 Mr. Tisdell?

3 MR. NYKIEL: Excuse me, Mr. Nykiel.

4 That's okay. No worries.

5 THE HEARING EXAMINER: I'm very sorry.

6 Mr. Nykiel.

7 MR. NYKIEL: Mr. Purvis, please
8 continue your summary of direct?

9 THE WITNESS: Exhibit 43, shown on the
10 screen, begins a new line of analysis.

11 (Applicant Exhibit 43 was marked for
12 identification and received into
13 evidence.)

14 The question here is whether or not a
15 well, that qualifies under the definition of
16 "marginal," is in fact marginal in the general meaning
17 of that term, the general meaning, of course, being
18 that it's not making much money. It is making money,
19 but not much.

20 So I examined empirically the rate at
21 which wells ceased to produce in the last 15 years.
22 This graphic is set up in the same way as the previous
23 graphic, but it shows a population of thousands of
24 wells that empirically have ended their lives in the
25 last 15 years: the same x-axis, the same y-axis, the

1 same regions colored.

2 And what I observe is, of course, that
3 the large majority of wells cease being marginal and
4 become economic at rates known empirically to be above
5 the threshold defined for the increased financial
6 assurance.

7 This next exhibit shows that a little
8 bit more quantitatively. Exhibit 44 shows, for each
9 year, the wells which empirically ended their life,
10 whether at the point of the end of their life, they
11 qualified for "as no beneficial use," as proposed,
12 whether they qualified as "marginal," as proposed, and
13 whether they qualified for neither.

14 (Applicant Exhibit 44 was marked for
15 identification and received into
16 evidence.)

17 And what we see is that, on average
18 over the last 15 years, nearly 60 percent of wells
19 that have ended, left the domain of marginal, and
20 become uneconomic, have not begun to qualify for
21 increased financial assurance, which is to say that
22 the terms, the break points as defined, to require
23 additional financial assurance, are conservative. As
24 you saw on my exhibit about holdback, as you -- as you
25 know, the profitability of a well can be low for a

1 long period of time. These -- the wells that ended
2 here probably were -- were in marginal status without
3 protection for many years.

4 Exhibit 45 shows a way to look at the
5 complement of that data set.

6 (Applicant Exhibit 45 was marked for
7 identification and received into
8 evidence.)

9 These are wells that are not yet
10 plugged. I've broken the wells in the state down into
11 the same six categories, for basins, horizontal, and
12 vertical. And I've created a type of graphic here
13 that we can call a peloton graph for easy reference.
14 And it's intended to show how the bulk of wells
15 progress through their lifecycle to the end of life.

16 On the x-axis is the -- I should say
17 first, each bar represents a 12-month average rate of
18 the wells. It's a histogram, but I've divided up
19 those bars and positioned them in a graph. Along the
20 x-axis is the average age of wells in that bin, and on
21 the y-axis, the range of rates that that bin covers.

22 So what we see is an average trajectory
23 of, in this case, all of the horizontal and
24 directional wells in the Permian Basin. And you see
25 the -- the large majority of the wells are, in fact,

1 young. The -- the peloton, the bulk of the bars are
2 on the order of five years old. But we can see the
3 path that older wells have taken and where they stand
4 in their lifecycle.

5 Now, the bottom part of the graph,
6 colored in gray, filled in gray, represents stripper
7 wells. And what we see from this graph is that we can
8 expect -- but it implies is the average life of
9 horizontal wells are on the order of 15 years. And
10 this is not inconsistent with the studies I've made in
11 the Barnett Shale and Marcellus, Fayetteville, any
12 number of other shales: a very high initial rate,
13 quick depletion, short life.

14 These wells are not currently at
15 financial risk. They're still producing at high
16 rates. They will deplete quickly and become -- and
17 enter a condition of stripper status.

18 But this graph shows, more to the
19 point, much larger dataset, 22,000 wells of the
20 vertical wells in the Permian Basin.

21 (Applicant Exhibit 46 was marked for
22 identification and received into
23 evidence.)

24 Of those 22,000, only 113 wells are
25 currently producing more than a hundred barrels a day

1 on average. Instead, the large majority of wells are
2 stripper wells. They have progressed deep into their
3 life and are in the vicinity of the end of their
4 economic life.

5 And this is what I was saying before
6 about the inherent lifecycle of a basin. What you see
7 color coded in purple are those wells affected by the
8 criteria of no beneficial use, and in blue, the wells
9 affected by the definition of "marginal," which are
10 clearly still a subset.

11 Now to put these rates in context,
12 let's look at exhibit 47.

13 (Applicant Exhibit 47 was marked for
14 identification and received into
15 evidence.)

16 THE WITNESS: I've overlain here the
17 statistical information about the last 15 years of
18 wells which have empirically died, looking only at the
19 one criteria, the last 12 months' production.

20 Now, one of IPANM's witnesses testified
21 that sometimes a vertical well in the Permian Basin
22 could produce as low as two barrels a day and still
23 make money. And what we see here is that 75 percent
24 of the wells that ended their life did produce lower
25 than that, which suggests, on the one hand, it's

1 possible that very many wells have been operated below
2 economic limit.

3 But we see that 90 percent of the wells
4 that have ended their life have ended below five
5 barrels a day and that the large majority of the
6 22,000 vertical wells in the Permian Basin are within
7 the window of the end of their economic life, as
8 demonstrated by historical performance.

9 That same kind of idea, that same
10 dynamic is shown here in the San Juan basin.

11 (Applicant Exhibit 49 was marked for
12 identification and received into
13 evidence.)

14 The x-axis here has changed because so
15 many of the wells are more than 30 years old. I did
16 not have a -- an accurate average age. But in the San
17 Juan Basin, out of 19,000 wells, there are nine
18 producing more than a hundred barrels a day on
19 average. The bulk are certainly in stripper status,
20 but -- but the peloton, the concentration are
21 producing a little higher.

22 They continue to deplete. They will
23 approach their economic limit. But the current
24 proposal only affects the purple and the blue. A
25 small minority.

1 This graphic, Exhibit 50, overlays the
2 empirical information on the economic limits of
3 vertical wells in this basin.

4 (Applicant Exhibit 50 was marked for
5 identification and received into
6 evidence.)

7 And we see the numbers turn out to be
8 pretty similar to the average in the Permian. But a
9 very large number of these wells are already in the
10 window, and the -- almost all of them are near the
11 window. Which is to say, again, past is not prologue.
12 There is a large volume of a large liability of
13 decommissioning, plugging, restoration, remediation
14 that will come due in the near future.

15 Now, the proposal from Applicants also
16 includes a provision for single-well bonding for an
17 entire portfolio, in this case, of portfolios with
18 more than 15 percent of the wells that qualify as
19 marginal or inactive. Now, remember, the
20 no-beneficial-use clause triggers an action that
21 something must be done with the well, not additional
22 financial assurance necessarily. And this is critical
23 to the overall effect of the proposal because the risk
24 is primarily at the -- at the portfolio level.

25 To answer the question of the effect, I

1 looked at the history or the -- the 2024 production of
2 the companies in New Mexico, the ones that reported
3 production. There are additional companies
4 responsible for wells that who did not even bother to
5 file a production report. Excluding those, I found
6 the proportion of marginal and idle wells under the
7 proposed definition in each portfolio and created a
8 bar chart of the -- the number of wells in each
9 portfolio. And that's what you see at the top left.

10 There is a clear break in the number of
11 wells at a 15-percent marker/threshold. The majority
12 of wells, 82 percent of the wells in the State of New
13 Mexico fall in portfolios with less than 15 percent
14 marginal or -- or idle wells -- a marginal or inactive
15 wells, as proposed. But then, of course, there's this
16 long tail.

17 So if we -- if we create a break point
18 at a 15-percent threshold, draw that vertically down
19 through the graph, and then look below, these are the
20 same kinds of bar charts as I was showing before.

21 The -- the color corresponds from the
22 top to the bottom. So wells in portfolios of fewer
23 than 5 percent marginal or inactive are shown in dark
24 brown -- fewer than 10 percent, rather, are shown in
25 dark brown.

1 And what we see is that this threshold
2 criteria, separately, affects 18 percent of wells in
3 the state, and it affects 51 percent of the corporate
4 entities that -- that reported production. But it
5 affects only 2.3 percent of the statewide BOE
6 production. And of course, the previous analysis
7 showed that, on the -- in consideration for new
8 production, the -- the percentage would be even
9 smaller. So on the one hand, it -- it does affect a
10 number of legal entities, but it affects fewer wells
11 and very little production.

12 Last, in my summary, is the -- the
13 proposal of an inflation adjustment. And it's
14 important to note here that this is an option that
15 starts several years from now at the discretion of the
16 OCD. It's proposed that they could implement a
17 formulaic increase in the single-well bonding value,
18 up from the 50 -- \$150,000, based on the consumer
19 price index.

20 We -- we've demonstrated what we know
21 to be the case: costs tend to go up, and they have
22 gone up significantly in recent years. There are more
23 than one way -- there is more than one way to deal
24 with increasing costs; you could hold hearings like in
25 2018 or 2012 or whatever else. This option is more

1 efficient. The question becomes then how to set --
2 how to set the formula. The -- the proposal's
3 consumer price index, which is not obvious, but the --
4 the tie -- the formula needs to be something that's
5 available as well as something that's representative.

6 So I -- I have looked at historical
7 inflation in the oil and gas industry -- the -- and --
8 and observed that there -- there are swings up and
9 sometimes down. The best long-term measure is an
10 alternative measure from the Bureau of Labor
11 Statistics, the best I found, and that is the Oil
12 Field Equipment Price Index. It correlates well to
13 other measures which are -- may or may not be
14 available in the future.

15 And in this graph, Exhibit 53, I've
16 overlain the Consumer Price Index and the Oilfield
17 Equipment Price Index at two slightly different anchor
18 points.

19 (Applicant Exhibit 53 was marked for
20 identification and received into
21 evidence.)

22 The -- the point here is not that
23 they're the same; the point is that they trend the
24 same way. There certainly was more volatility in oil
25 and gas, but in the long term, and given the delay,

1 given the availability of data, and given the
2 demonstrative similarity, I think it's a fair
3 solution.

4 Mr. Nykiel, that's -- that's the end of
5 what I had prepared to summarize. Is there anything
6 else that I have overlooked?

7 MR. NYKIEL: Thank you for your
8 summary, Mr. Purvis.

9 THE WITNESS: Oh. Yeah. I'm sorry. I
10 thought -- I thought I might've had another exhibit,
11 but.

12 MR. NYKIEL: Yeah. So Mr. Purvis, did
13 you submit rebuttal testimony in this matter,
14 Applicants' Exhibit 74?

15 (Applicant Exhibit 74 was marked for
16 identification and received into
17 evidence.)

18 THE WITNESS: Yes, I did.

19 MR. NYKIEL: And do you have any
20 changes or additions to make to your testimony or
21 exhibits?

22 THE WITNESS: Yes, I do. On Page 55,
23 Line 10, the word "fewer" should be "other."

24 MR. NYKIEL: And is your testimony
25 accurate to the best of your knowledge, and do you

1 adopt it as amended?

2 THE WITNESS: Yes, I do.

3 MR. NYKIEL: Okay. Would you please
4 provide a summary of your rebuttal testimony?

5 THE WITNESS: Thank you for asking.
6 There was a great deal of discussion on a large number
7 of topics. I -- I identified three themes that were
8 present, that were of particular importance, and one
9 theme that was absent that I thought was especially
10 important.

11 On the one hand, first, there was a --
12 a good deal of discussion about what is done or not
13 done in other states, what the costs are in other
14 states. There's a good deal of discussion about how
15 the changes are implemented, how the concepts are
16 implemented, sometimes too rigid, sometimes too
17 flexible, sometimes too uncertain. And there was a
18 good deal of discussion about the cost to the industry
19 and indirectly the cost to the public.

20 But what I did not observe was a
21 comparison of the costs to industry, to the cost -- or
22 the benefits to the public. So, if I may, there
23 are -- there's a -- a problem, a difficulty in
24 designing policy. On the one hand, it's good to be
25 simple, clear, and efficient to implement. On the

1 other hand, it's also good, beneficial, valuable to be
2 flexible and adaptive. But both of those values also
3 have downsides. They could be called rigid, or they
4 could be called vague, or they could be called
5 burdensome.

6 But the job of the policy maker is to
7 find what is effective. The policy should accomplish
8 its intended purpose both now and in the future.
9 Whether it's simple or complex is a secondary
10 consideration. First issue must always be
11 effectiveness. And to the extent that effectiveness
12 is costly, the question becomes whether the benefit
13 justifies increasing the ability to perform the task.

14 And that's closely related to the
15 second consideration in policy objectives. The -- the
16 goal of policymaker is the greatest public good.
17 Not -- and this is a lot like choosing the spacing
18 between horizontal wells. I can put the wells closer
19 together. I can spend a lot more money. And I can
20 get more oil. But at some point, my economic returns
21 diminish. So I'm going to keep down spacing until I
22 reach a maximum. I'm going to keep adjusting. As
23 long as I have more incremental benefit compared to
24 incremental costs, I'm going to keep dialing until I
25 reach that maximum. So it's not just effective, it's

1 effective for the maximum public good.

2 Now, there was a -- a little bit of
3 discussion from Dr. Arscott about two papers, one by
4 Dachis and one by Boomhower. Now the -- the summaries
5 that he presented with the quotes weren't the most
6 salient, in my mind, but it raises a good point that
7 prior literature, prior studies, and experience lay
8 the groundwork for what to expect.

9 This is not dispositive of what will
10 happen in New Mexico. It does, however, set the basis
11 of expectation by relevant analog. And this -- this
12 slide and the next two summarize the most important
13 excerpts from a series of papers which address all
14 three of the concerns, the thematic concerns from
15 before.

16 First, this -- the -- what has been
17 done before is systematically failing and not an
18 accurate basis for comparison. Similarly, the costs
19 vary significantly from basin to basin and state to
20 state, and the costs historically, before inflation,
21 and the cost in other states are not relevant to the
22 determination of this security that the State of New
23 Mexico needs in 2025.

24 The second, it says that -- one of the
25 papers offers the conclusion that time spent trying to

1 optimize the financial assurance is probably a waste
2 of value that's not worth the benefit it creates. But
3 most importantly, systematically, through these
4 studies, we see that the analysis shows that the
5 changes to financial assurance that have been
6 implemented have been suboptimal. Policies have been
7 biased in favor of production and have created a net
8 loss to social benefit.

9 All that to recommend that a stronger
10 intervention comports better with the established
11 knowledge and science about financial assurance. Not
12 science. Knowledge.

13 There were some other themes in the --
14 in the direct testimony that merited address, I think.
15 Testimony about alternative models, there certainly
16 are other models for financial assurance in other
17 industries. Those are not before us now. If we were
18 going to create a -- a model from scratch, we might do
19 something different. But that's not the relevant
20 question.

21 And there was a good deal of discussion
22 about risk-based variations and about the data that's
23 available to make the judgements on what the cost
24 should be. Most of the arguments are not something I
25 would characterize as risk-based, but rather

1 cost-based.

2 The question is not so much -- the
3 arguments that are being made is not so much whether
4 or not they're likely to be paid, but how much is
5 likely to cost. And bearing in mind that the -- that
6 the average cost to the State is significantly more
7 than the hundred -- than the cost of downhole plugging
8 that's being assured.

9 I looked pervasively, like everywhere I
10 could, for -- for costs, and the OCD's information on
11 the cost that they've spent for plugging is by far,
12 orders of magnitude better, more complete than
13 anything else that's available. It is the best data
14 to work from.

15 But part of the argument pertains --
16 part of the direct from other experts has to do with
17 what they call typical or median costs. And this is a
18 question of what point in the distribution you should
19 pick. Dr. Arscott accepts/agrees in -- in his
20 affirmative testimony that we would expect, a priori,
21 it's the nature of cost estimation that the average
22 will be higher. This is not a normal distribution,
23 it's a skewed-right distribution, and the average will
24 be higher than the median and higher than the mode.

25 What is appropriate as financial

1 assurance for a single well completely on its own --
2 well, I should say it differently. The median cost is
3 the most -- the mode cost is the most likely to be
4 experienced if you're plugging a single well. But if
5 you're plugging a group of wells, whether it's a
6 portfolio of 50 or 60 or a state of 63,000, you will
7 approach the average. It's the nature of the Central
8 Limits Theorem that can -- adding -- probability
9 distribution converges at the mean.

10 So in the discussion of cost-based
11 issues, there was a proposal, persistent theme, that
12 it could be tied to depth. And indeed, in the
13 literature, the depth is one of the stronger among the
14 very weak variables. This is an excerpt from the
15 appendix to the primary paper cited by multiple
16 witnesses, by Raimi, in 2021.

17 (Applicant Exhibit 78 was marked for
18 identification and received into
19 evidence.)

20 This shows seven orders of magnitude of
21 costs correlated to depth. And this is from multiple
22 states, but still the best data to demonstrate.
23 The -- the -- even with incorporating the
24 consideration of depth, the costs vary widely. You
25 might be closer on the average, but you still have a

1 very wide variation. In the case of the Raimi study,
2 the first order variable was the state. Their total
3 model, including six -- five or six variables, gave
4 them a correlation coefficient of 0.67, which is still
5 quite broad. So there's not a situation in which you
6 could incorporate depth and achieve a situation where
7 there's never a number that's too high or too low.

8 This graphic demonstrates the issue of
9 cost overruns and the nature of that uncertainty.

10 (Applicant Exhibit 77 was marked for
11 identification and received into
12 evidence.)

13 Now this is data that comes from the
14 OCD's experience plugging wells. It's a histogram
15 showing the percentage overrun or underrun of the
16 actual plugging costs by comparison to the estimated
17 costs.

18 In the last few years, costs have
19 changed significantly. So as the baseline is moving,
20 but we do have, as a measure of -- of that contingency
21 variable, how much the -- the actual changed. Now --
22 and there were a number of cases in which the
23 estimated cost in the spreadsheet, in the data of the
24 OCD was clearly not a well-specific data. I've cut
25 that out. This is where we have a clear by-well

1 estimate of cost before the work and after the work.

2 And what we see is that the most
3 likely -- the -- the mode of the histogram is plus or
4 minus 10 percent. Well done. There's -- there are
5 cases where there's savings, but more significant than
6 I expected. But a large number of cases with overruns
7 up to double in light red, and more than double in
8 dark red. The average overrun is 43 percent. That is
9 affected significantly by one sample. But even if you
10 take that out, it's an overrun -- average overrun of
11 25 percent.

12 So the -- the appropriate way to plan,
13 the appropriate way to ask for financial assurance is
14 to get an average cost. Not every well will go that
15 high, but on average, because we are dealing with more
16 than one well, it will.

17 On some of the other more minor themes,
18 there's an argument about the reduction of working
19 capital and the reduced reinvestment. Empirically,
20 I've demonstrated that reinvestment is very small for
21 the company's most affected. It -- certainly
22 reinvestment in the form of drilling.

23 It will -- the provisions about
24 transfers will certainly reduce the number of
25 transfers that occur. That's the objective. Even

1 several of the witnesses for industry acknowledge that
2 wells are transferred in this condition of marginal
3 profitability. And given what we know about the
4 nature of the lifecycle, a well that's barely making
5 money is probably not going to be able to create a
6 lump sum capable of paying for its legal obligations.

7 What's more, transfers are not -- have
8 no inherent value. They have value to the extent that
9 a company can and will do something better with the
10 property. But if someone wants to do that, they can
11 provide the necessary financial assurance. If they
12 want to take the risk, then they have the -- then they
13 need to be able to suffer the downside, the loss of
14 that.

15 There is some discussion about
16 innovation. And here, the -- the problem starts to
17 become a question of the meaning "small" or "smaller."
18 Companies in New Mexico range from one well to 10,000
19 wells. It's five orders of magnitude. So I could
20 say, generally, that a -- a large company is ten times
21 as big as a small company, but then I can say that
22 five times. So a company of one well, or ten wells is
23 certainly small, but a company of 100 or 200 or 500
24 becomes a -- a question of whether or not you mean
25 small. I considered those not -- not small companies,

1 but by the time you get to several hundred wells, you
2 should be operating in a professional manner.

3 The companies and a lot of the
4 testimony, both on both sides has opined that the
5 strategy is cost reduction for the -- the smallest and
6 the latest, the last in the life cycle. And that is
7 not compatible with innovation. That may be ingenious
8 and creative and hardworking and salt of the earth,
9 but that is not the same as genuine innovation.

10 And lastly, there's an argument that
11 the change in -- in rules will drive companies out of
12 the state, with the implication that that state will
13 suffer as a consequence. There is a good deal of
14 literature on the concept of tax competition among
15 states, and that's cited in my testimony. What the
16 literature shows is that tax competition among natural
17 resources is not effective.

18 Oil companies can leave the state, but
19 oil fields cannot. Anyone who wants to develop that
20 property must do so on the terms that New Mexico
21 specifies, and the landowner. Less will be developed
22 in the state only to the extent that the incremental
23 burden changes the returns on a project so that it
24 crosses below the threshold for incremental
25 investment.

1 If a project's producing 45 percent
2 rate of return as horizontal drillers have often said
3 in other basins, and you add some sort of layer of --
4 of burden that decreases the return to 43 percent, you
5 are not going to change the amount of activity that's
6 performed.

7 If you change the economics so that it
8 goes from 11 percent to 9 percent, maybe then that
9 changes what is performed. Maybe another company
10 still thinks it's 11 percent and they'll do it. Or
11 maybe prices cycle back up, it crosses 11 percent, the
12 project gets done -- crosses 10 percent, project gets
13 done and the state is better off for having the
14 project performed and taxes paid at a higher oil
15 price.

16 I -- there was one way that I could
17 examine the consequence or -- or the significance of
18 the number of wells, number of companies operating in
19 New Mexico, and that is Applicants' Exhibit 80.

20 (Applicant Exhibit 80 was marked for
21 identification and received into
22 evidence.)

23 This graph shows two different sets of
24 data. On the left axis, in blue or dark color, is the
25 number of wells that produced oil and gas in the state

1 in that year. And the red line shows the percentage
2 decline of well count each year. It's shown against
3 the scale on the right, and it's shown as positive
4 numbers for the net percent exit. And then at
5 individual years, I have labeled the gross number of
6 exits and the gross number of entries to the State of
7 New Mexico.

8 And what we see is that, in the last 30
9 years, the number of companies active in New Mexico
10 has neatly halved. The pace of exits from the state
11 has increased from around 2 percent to, in 2024, 10
12 percent. Fifty-seven companies stopped producing in
13 New Mexico in 2024, and only 15 companies entered, all
14 while, in the last 10 years, production has
15 skyrocketed.

16 This is not a dispositive graph, but it
17 is indicative; it breaks the paradigm that more
18 companies are necessarily better. There are -- there
19 are still 399 companies for this set of wells in the
20 state, plenty of companies to seize whatever
21 opportunities remain economically viable.

22 There was -- I believe this is my --
23 there was also an assertion that -- or I also examined
24 the question of the historical significance of the
25 small companies. So these two graphics are analogous

1 to the bar charts I presented before. But instead of
2 looking at 2024 production, I looked at production
3 since 1993.

4 (Applicant Exhibit 79 was marked for
5 identification and received into
6 evidence.)

7 The top graph ranks the companies in
8 New Mexico by their cumulative production. And what
9 we see is the top 10 percent of companies have
10 contributed 96.5 percent of cumulative production.
11 The bottom 90 percent have contributed 3.5 percent,
12 which is slightly higher than it was in 2024, but not
13 a significant value still.

14 And -- and the bottom, I have grouped
15 the companies by their, by their absolute size rather
16 than their relative size. The largest companies in
17 dark green and the smallest in brown -- gray. And
18 what we see is, again, the bottom 54 percent of
19 companies made 0.1 percent of all the oil and gas
20 that's contributed -- been produced from the state of
21 New Mexico over the last 30 years.

22 Now there was, there was some
23 discussion in the direct testimony about whether
24 something should be, something might be speculative
25 and what that might mean and that the same issue could

1 apply, same -- same concept applies to the -- to
2 extensions of temporary abandonment status.

3 And what I observed is that you --
4 there is a -- a basis that the Commission could use, a
5 template you could use to define those terms more
6 precisely. The Society of Petroleum Engineers, along
7 with every other major oil and gas organization,
8 endorses the Petroleum Resource Management System,
9 which broadly defines the potential future recovery
10 into three categories: reserves, contingent
11 resources, and prospective resources.

12 (Applicant Exhibit 76 was marked for
13 identification and received into
14 evidence.)

15 Prospective resources, for reference,
16 historically have been called "speculative resources"
17 or characterized as speculative. These are volumes
18 which are not yet proved to exist, but we have reason
19 to believe that there are fish in the lake, we just
20 haven't proved there are fish in the lake.

21 Most of the time we spend our energy
22 focused on reserves. But there is this purgatory
23 category called contingent resources, which is usually
24 a temporary no man's land for things that could
25 happen, but we don't know for sure.

1 But the people who have developed the
2 PRMS have developed a detailed set of -- of criteria
3 and categories for these contingent resources based on
4 the technical and economic justification, the
5 willingness and ability of the company, and the
6 feasibility from a practical and regulatory
7 standpoint. Those concepts, indeed, those specific
8 categories could be used by the Commission to define
9 the thresholds for no beneficial use or perhaps for
10 extension of temporary abandonment. If you want more
11 definition, it could -- it could be there.

12 MR. NYKIEL: Thank you Mr. Purvis.
13 Madame Hearing Officer, we could begin his surrebuttal
14 testimony, but it would probably take us beyond five.
15 And so I was just curious what you would prefer.

16 THE HEARING EXAMINER: How, how long do
17 you estimate it?

18 MR. NYKIEL: I'd say roughly 30
19 minutes.

20 THE HEARING EXAMINER: Oh. All right.
21 I think perhaps we should do that in the morning then.
22 As I understand it, we're not really supposed to be
23 here much past five; correct, Mr. Chair?

24 THE CHAIR: That'd be yes.

25 THE HEARING EXAMINER: All right. So

1 we will see you tomorrow morning at nine when we will
2 begin with public comment.

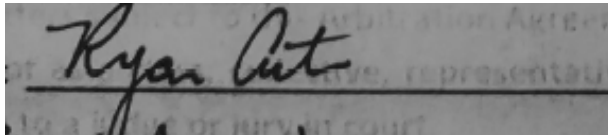
3 Thank you, Mr. Purvis, Mr. Nykiel.

4 MR. NYKIEL: Thank you.

5 (Whereupon, at 4:53 p.m., the
6 proceeding was concluded.)
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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.

A rectangular box containing a handwritten signature in black ink. The signature appears to read "Ryan Auten" and is written over a horizontal line.

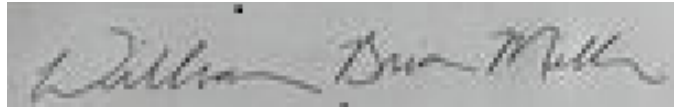
RYAN AUTEN

Notary Public in and for the
State of New Mexico

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CERTIFICATE OF TRANSCRIBER

I, WILLIAM MILLER, 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.

A rectangular box containing a handwritten signature in dark ink. The signature appears to read "William Miller" in a cursive script.

WILLIAM MILLER

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[alexander - anybody]

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[anyway - apply]

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[beneficial - bonding]

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[clarifying - commercial]

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