PUBLIC HEARING

STATE OF NEW MEXICO

OIL CONSERVATION COMMISSION

Pecos Hall, 1st Floor, Wendell Chino Building

1220 S. Saint Francis Drive

Santa Fe, New Mexico

IN THE MATTER OF:

PROPOSED AMENDMENTS TO 19.15.2, 19.15.5 19.15.8, 19.15.9 and 19.15.25 NMAC

TRANSCRIPT OF PROCEEDINGS

November 4, 2025

HEARD BEFORE:

HEARING OFFICER FELICIA ORTH

COMMISSION MEMBERS:

ALBERT CHANG, Chair

GREGORY BLOOM, Member (virtual)

DR. WILLIAM AMPOMAH, Member

COUNSEL TO THE COMMISSION:

MR. ZACHARY SHANDLER, ESQ.

A P P E A R A N C E S

FOR THE APPLICANTS:

Western Environmental Law Center
409 East Palace Ave., #2
Santa Fe, New Mexico 87501
BY: Tannis Fox
fox@westernlaw.org
Kyle Tisdel
tisdel@westernlaw.org
Matt Nykiel
nykiel@westernlaw.org

FOR NEW MEXICO OIL CONSERVATION COMMISSION:
NM ENERGY, MINERALS AND NATURAL RESOURCES DEPT.
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
BY: Jesse K. Tremaine
jessek.tremaine@emnrd.nm.gov
Michael Hall
michael.hall@emnrd.nm.gov

FOR INDEPENDENT PETROLEUM ASSOC. OF NM:

HINKLE SHANOR, LLP
P.O. Box 10
Roswell, New Mexico 88202
BY: Andrew J. Cloutier
acloutier@hinklelawfirm.com
Ann Tripp
atripp@hinklelawfirm.com

FOR OXY USA, INC.:
HOLLAND & HART, LLP
P.O. Box 2208
Santa Fe, New Mexico 87504
BY: Adam G. Rankin
agrankin@hollandhart.com
Aaron Tucker
atucker@hollandhart.com

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

FOR NM OIL & GAS ASSOCIATION:
BEATTY & WOZNIAK, PC
500 4th Street, NW, Suite 1,000
Albuquerque, New Mexico 87102
BY: Miguel A. Suazo
msuazo@bwenergylaw.com
Jacob Everhart
jeverhart@bwenergylaw.com

FOR EOG RESOURCES, INC.:

BRADFUTE SAYER, PC
P.O. Box 90233
Albuquerque, New Mexico 87199
BY: Jennifer L. Bradfute
jennifer@bradfutelaw.com
Matthias Sayer
matthias@bradfutelaw.com

EOG RESOURCES, INC.
125 Lincoln Ave., Suite 213
Santa Fe, New Mexico 87501
BY: Jordan Kessler
jordan_kessler@eogresources.com

FOR THE NM COMMISSIONER OF PUBLIC LANDS:
NEW MEXICO STATE LAND OFFICE
P.O. Box 1148
Santa Fe, New Mexico 87504
BY: Richard H. Moore
rmoore@nmslo.gov
Ari Biernoff
abiernoff@nmslo.gov

I N D E X

I N D E X (Cont'd)

(On the record at 9:00 a.m.)

TRANSCRIPT OF PROCEEDINGS

HEARING OFFICER ORTH: All righty. Good morning. We are on the 12th day of hearing in OCC 24683 on well plugging and financial assurance. My name is Felicia Orth, hearing officer appointed by the Commission.

We have come to another public comment opportunity. I do see three names on the list for this morning. Just a few things about public comment. I will ask you to spell your first and last name. I will ask you, pursuant to Commission rules, to swear or affirm to tell the truth.

And I will ask you to keep your comments to three minutes. If you have more to say to the board, please put those comments in writing and send them to Sheila Apodaca, the Commission administrator.

So do we have Bob McGonigle on the platform? Mr. McGonigle, can you unmute yourself?

MR. MCGONIGLE: Can you hear me now?

HEARING OFFICER ORTH: Yes. Thank you. Would you spell your first and last name for the transcript, please.

MR. MCGONIGLE: My name is Robert McGonigle. It's R-O-B-E-R-T. My last name is M-C, capital

G-O-N-I-G-L-E.

HEARING OFFICER ORTH: Thank you. Do swear or affirm to tell the truth?

MR. MCGONIGLE: I do swear, so help me God.

HEARING OFFICER ORTH: Thank you. I will start your time.

MR. MCGONIGLE: Good morning. And, again, thank you for letting me speak at this Commission today. My name is Bob McGonigle. I'm a native of Las Cruces, New Mexico.

My mother's family goes back to the mid-1800s here in the Mesilla Valley. Actually, my great-grandfather, born in Mesilla, was able to obtain a physician's license. His name was Anthony Montero. They called him Mateo. He was known as a stagecoach doctor because he was able to obtain a physician's license. He actually worked on Billy the Kid in Mesilla in the late 1800s.

But as for me, I'm a graduate of NMSU. I'm a retired small business owner of an independent insurance agency called McGonigle Insurance, here in Las Cruces. I spent about 40 years in the business. And my father actually started here as an Allstate agent in 1955.

But we're here today to talk about the

oil industry, which provides three essentials of life: food, water, and shelter. The industry provides direct revenue to my state, which helps fund teachers, first responders, infrastructure, food, water, and home heating.

The oil and gas industry employs over 15 percent of New Mexico's population. This helps the growth of our gross domestic product. Also, these employees spend their paychecks right here in New Mexico.

As a retired small business owner who employed seven to ten people, I want to keep small business in New Mexico strong. My small business would not have survived being overregulated and assessed, such as the oil industry would be required to pay.

Education, travel expenses are a common cost of small business, not to mention insurance costs. The oil and gas well owners already have a big expense, especially commercial general liability insurance. Liability insurance protects small business owners and me. It would pay should the oil rig operation have a mishap. It would pay bodily injury, death, or property damage caused by their operations. Plus, it's not getting any cheaper to pay for the cost of insurance.

The oil industry does not want to cause any harm to anyone and already are taking precautions as they do not want any claims. Regulators want to charge an additional assurance fee, which I don't understand when they're already paying insurance fees -- insurance premiums, I should say. As the insurance policy premium and adding more assessments, testing regulations will not be beneficial for New Mexico. And New Mexico depends on oil and gas revenue. And adding additional overhead to this industry would most definitely cause a decline in our GDP.

But I want to thank the Commission for your understanding that oil and gas production needs to remain high here in New Mexico. I want to thank you again for your time.

HEARING OFFICER ORTH: Thank you, Mr. McGonigle.

Next we have Candy Ezzell. Would you unmute yourself, Ms. Ezzell. I think I can hear you.

SENATOR EZZELL: Good morning. My name is, yes, my name is Candy Spence Ezzell, C-A-N-D-Y, E-Z-Z-E-L-L.

HEARING OFFICER ORTH: Thank you. Do you

swear or affirm to tell the truth?

SENATOR EZZELL: Yes, I do.

HEARING OFFICER ORTH: Thank you. Please go ahead.

SENATOR EZZELL: Again, my name is Candy Spence Ezzell. I am a rancher, I am a farmer and I'm a New Mexico State Senator representing District 32 in Chaves and Eddy counties.

This is an attempt to end-run the legislative process. In the 2024 session, House Bill 133 tried to do much of what these proposed rule changes would do. House Bill 133 and the two committee substitutes were rejected by the legislature. You cannot amend legislation by regulation.

This Commission is charged with preventing waste, and the adoption of these amendments will cause waste. The applicants are not trying to protect the taxpayers of New Mexico, as they claim. Instead, this is a scheme to achieve: Leave it in the ground.

In 1959, the New Mexico Legislature had the wisdom to create the oil and gas conservation tax in order to have the industry fund its regulators.

In 1977, the New Mexico Legislature had

the wisdom to create the reclamation fund, which is funded by the conservation tax. Unfortunately, not all of the conservation tax goes to its intended use.

The oil and gas industry pays over $100 million a year in conservation tax. Applicants argue that the industry should clean up its own mess. If we used the conservation tax for its intended purpose, industry would be cleaning up its own mess.

Thank you for the chance to be able to speak to you all today.

HEARING OFFICER ORTH: Thank you, Senator Ezzell.

Next we have Jonny Heins. Mr. Heins.

MR. HEINS: Yes. Jonny Heins, J-O-N-N-Y, H-E-I-N-S.

HEARING OFFICER ORTH: Do you swear or affirm to tell the truth?

MR. HEINS: I do.

HEARING OFFICER ORTH: Thank you very much. Go ahead.

MR. HEINS: Commissioners, thank you for the opportunity to provide comments. My name is Jonny Heinz and I'm the vice president of corporate affairs at Permian Resources Operating, LLC.

Permian Resources is the seventh largest oil and gas operator in New Mexico based on barrels of oil equivalent produced per day, paying nearly half a billion dollars annually in state taxes and royalties with approximately 1,250 producing wells operated by our company in the state of New Mexico, all of which are in Eddy and Lea counties.

Permian Resources opposes WELC's rulemaking petition. As one of the state's top oil and gas operators and benefactors to the state's economy, for the following reasons, we are extremely concerned about the near-term and long-term impacts these unprecedented changes sought by WELC would create.

First, as noted in NMOGA and IPANM's motion to dismiss, the proper avenue for such reforms is through legislation, not a regulatory rulemaking proceeding. Simply put, substantive changes to the Oil and Gas Act should not be made without legislative input.

Various bills have been proposed at the legislature over the past several years, seeking to increase bonding requirements and restrict well transfers, and each has failed. This rulemaking is a transparent attempt by WELC to circumvent the legislative process, where they and other environmental organizations have previously failed to find traction for their initiatives.

Second, Permian Resources and other New Mexico operators already pay substantial taxes each year that go into the oil and gas reclamation fund, which was established by the legislature for the explicit purpose of plugging and reclaiming orphaned wells.

The OCD currently has over $60,000 [sic] in the reclamation fund and should deploy these funds for their intended purpose.

Third, the considerable and unnecessary increases to statewide bonding requirements proposed by WELC will have the unintended consequence of creating more orphan wells in the state. $150,000 bonds on individual wells will drive smaller, independent operators out of business, thereby increasing the number of orphaned wells throughout the state, eliminating quality jobs and reducing taxes and royalties that would otherwise be paid to the state.

Last, and perhaps most importantly to our company, the proposed rulemaking changes would grant OCD the extraordinary authority to deny well transfers in the event an applicant is out of compliance with federal and state oil and gas laws and regulations.

While we are confident that the current OCD staff will not abuse this new authority, the language as currently proposed in WELC's petition could be broadly interpreted by future OCD staff to deny almost any proposed well transfer. Regulatory certainty is critical for all businesses. And creating a new subjective framework for denying well transfers is untenable, especially when applied to the industry that is most critical for the New Mexico state economy.

For these reasons, we urge you to deny WELC's petition. WELC and other environmental organizations are free to pursue their sweeping reforms through legislative processes. Allowing them to implement drastic policy changes through the back door of a rulemaking proceeding is a dangerous precedent and would be catastrophic for the state's economy. Thank you.

SENATOR EZZELL: Thank you, Mr. Heins.

Next we have Melissa Troutman.

MS. TROUTMAN: Yes. Good morning.

HEARING OFFICER ORTH: Hello. Would you spell your first and last name, please.

MS. TROUTMAN: Sure. It's M-E-L-I-S-S-A, T-R-O-U-T-M-A-N.

HEARING OFFICER ORTH: Do swear or affirm to tell the truth?

MS. TROUTMAN: I do.

HEARING OFFICER ORTH: Please go ahead.

MS. TROUTMAN: Good morning, Chair and Commissioners. My name is Melissa Troutman and I represent the Permian Basin Coalition, which is a group of over 20 organizations dedicated to reducing the pollution and other harms from intensified oil and gas operations in the Permian.

Our organizations include staff and members and volunteers who live and work and recreate in the Permian. And I'm here today to strongly support the proposed bonding and cleanup rule changes on behalf of the coalition.

Those of us who have lived in oil country know what the industry means to communities. But we also see the mess that some companies are leaving behind, abandoned wells, leaking equipment, and pollution that's creeping closer and closer to people and their homes and water supplies.

Right now, oil and gas companies are making billions off the land, but when the wells deteriorate or stop producing, too many are walking away. And they can because even where there are protective laws in place, like the spill rule, penalties and fines are so rarely issued that it costs them nothing to just pollute and walk away. They leave behind aging, leaking infrastructure, and it's New Mexicans living in the front lines, mostly, who are left paying for it and assuming risk.

Members of our coalition have been monitoring well sites in Loco Hills and other parts of the Permian for years, and often, the same older, non- or low-producing wells are leaking. The equipment is so corroded that the tanks and the joints have collapsed, and we've witnessed many recurring spills, some of which are never cleaned up.

For example, a company named Poco Resources has several aging and dilapidated well sites in Loco Hills that were observed leaking in 2023, 2024, and again, just a few weeks ago on October 9th. Oil and waste fluids pooled inside the unlined containment of two tank batteries, also around a spurting leak in a flow line, and around the wellhead of a partially dismantled pump jack that clearly has not operated in years.

I've included photos, photo evidence and

GPS coordinates of this spill, these spills in my written version of these comments, so that will be added to the record for anyone who wants to take a look.

Over 700 wells have already been flagged for public cleanup in New Mexico, but more than 4,000 are at risk of being abandoned and orphaned soon. And we are concerned that these spill sites of Poco Resources are among them.

Oil and gas lobbyists want us to believe that the reclamation fund can replace corporate responsibility, but the fund holds just 66 million, while state data shows that New Mexico's cleanup liability ranges between 700 million and 1.8 billion.

That means the public could be on the hook for over a billion dollars in cleanup costs, while oil and gas companies walk away with the profits off of natural resources that are owned by everybody.

Moreover, the number of abandoned wells will increase as oil and gas production slows, and we need to be prepared for that inevitability.

Families in Loving and across southeastern New Mexico are surrounded by pipelines in their backyards, frac sites down the road. And they've been left to live in a toxic cloud, whether they know it or not, while corporations walk away with the profits. And we can't let this continue.

These rule updates are commonsense fixes to the problem of an unfair system. They require bonding of $150,000 per high risk or inactive well. That's still less than the total cleanup cost. They stop bad actors from inheriting wells they can't afford to clean up. And they close the loophole that lets companies call wells "temporarily abandoned" for eight years or more with no action and no cleanup.

HEARING OFFICER ORTH: Ms. Troutman, please wrap up.

MS. TROUTMAN: Sure. If you drill it, you clean it. That's the promise we need these rules to enforce. So we encourage you to vote to adopt these long overdue bonding reforms. Thank you.

HEARING OFFICER ORTH: Thank you very much.

Next we have Liliana Castillo.

MS. CASTILLO: Can you hear me?

HEARING OFFICER ORTH: Yes, I can now. Thank you. Would you please spell your first and last name.

MS. CASTILLO: Liliana, L-I-L-I-A-N-A, Castillo, C-A-S-T-I-L-L-O.

HEARING OFFICER ORTH: Do swear or affirm to tell the truth?

MS. CASTILLO: I do.

HEARING OFFICER ORTH: Thank you. I'll start your time.

MS. CASTILLO: Thank you. Good morning, Commissioners. Thank you so much for your service and the opportunity to give public comment today.

I'm one of the many New Mexicans who believe oil and gas operators, regardless of size, should be held responsible for cleaning up after themselves. Some small operators claim that if bonding is increased, they'll walk away from their wells.

That argument is quite concerning. Does that mean that they never intended to clean up after themselves to begin with, despite that responsibility being part of what they agreed to when they bought a well or drilled a new well? This argument to me is exactly why these reform are urgently needed.

Bonding is about prevention. It's how we make sure wells don't get abandoned in the first place. Because once they do, the cleanup costs skyrocket and the risks to our health and water grows.

In addition, we can keep hearing that the reclamation fund should be, you know, handling this issue. But here's the truth. The reclamation fund is only part of the solution. We need both a robust reclamation fund and right-size bonding. Right-size bonding ensures the state has sufficient funds funded by oil and gas corporations when corporations walk away from their plugging responsibilities. The reclamation fund is a backup if the state doesn't have enough funding for plugging and cleanup. We need both.

A broken plugging system makes it even more important to get bonding right now. A broken system only amplifies the risk when bonds are insufficient. We cannot afford to underfund risk, especially when the cost of inaction falls on our communities.

If we wanted to scale up the reclamation fund, it would require, in my mind, a completely new significant fee on industry, rather than just shuffling around tax revenues. That would result in pulling dollars away from other public needs, like schools and healthcare, just to clean up oil and gas wells that corporations should be responsible for.

Bottom line is, if you drill it, you

clean it 100 percent of the time at your own expense. That's what we expect as New Mexicans. Regulators should not need to chase companies down to fulfill this responsibility.

Please adopt these reforms and make sure the people who profit from drilling also pay for cleanup. Thank you.

HEARING OFFICER ORTH: Thank you, Ms. Castillo.

Next we have Roland Glenn.

MR. GLENN: Good morning.

HEARING OFFICER ORTH: Good morning. Would you spell your first and last name, please.

MR. GLENN: Yes. My first name is Roland R-O-L-A-N-D, last name Glenn, G-L-E-N-N.

HEARING OFFICER ORTH: Do you swear or affirm to tell the truth?

MR. GLENN: Yes, I do.

HEARING OFFICER ORTH: I'll start your time. Thank you.

MR. GLENN: Good morning, Commissioners. Thank you for your time this morning.

Like I said earlier, my name is Roland Glenn. I hold a master's degree as a geological engineer. I retired out of Colorado and moved down here to New Mexico for a little peace of mind. I retired back in 2017. I'd like to slow down here away from the oil field here in New Mexico. I enjoy the beautiful scenery.

The oil field does support many different kinds of jobs, especially here in my community, such as the plastic injection molding company, semi-truck drivers, the power industry here in New Mexico. It brings a constant charge to the electrical grid. It also helps, like I said, the plastic molding injection company, which supports roughly 150 jobs here Rio Communities.

And if these regulations continue to go through, the loss of experienced workers and the tragedy for the State of New Mexico, for many different reasons, such as the loss of income for schools and other state jobs, would be detrimental to the State of New Mexico. So I'm asking you to consider the effect on the State of New Mexico that we all call home.

I truly thank you for your time and your consideration.

HEARING OFFICER ORTH: Thank you, Mr. Glenn.

Now we have Kendra. I don't know the last name.

MS. PINTO: Thank you. It's Kendra Pinto.

HEARING OFFICER ORTH: Hello. Would you spell your first and last name, please.

MS. PINTO: K-E-N-D-R-A, P-I-N-T-O.

HEARING OFFICER ORTH: Do you swear or affirm to tell the truth? Hello? I think you've re-muted yourself, Ms. Pinto.

Sheila, can you send her a prompt that she can unmute herself again?

MS. PINTO: There we go. It turned off on me when I was talking.

HEARING OFFICER ORTH: Okay. Do you swear or affirm to tell the truth?

MS. PINTO: I do.

HEARING OFFICER ORTH: I'll start your time.

MS. PINTO: Thank you. My name is Kendra Pinto and I'm the Four Corners indigenous community field advocate and a certified optical gas imaging thermographer with Earthworks. I grew up on the Navajo Nation surrounded by oil and gas development.

This work is personal to me. I've seen the impacts of these operations my whole life on the land, the air and the people who live near them.

Last month, I joined my colleague, Mandy Sackette, on a field trip to the San Juan Basin. We visited dozens of oil and gas sites to document pollution and see firsthand what's happening in this aging and declining oil infrastructure. What we found is deeply troubling. What I always find, having done thermography work for four years, is deeply troubling.

So many of these wells are old, drilled in the early '90s, and poorly maintained. Communities have to live with that, the smells, the noise and the health risk, while companies often walk away as production in the San Juan Basin continues to decline.

Last week my colleague Mandy mentioned the low producing Hilcorp site that is less than 900 feet from Dzilthnaodithle Community School. I have visited that site several times and we have filed a total of three complaints, yet it still has continuous emissions from three different sources on site.

There's another Hilcorp site near Herfano that is 0.6 miles from the Hanaa Dli Community School that has three points of continuous emissions. We filed a complaint last month.

These sites aren't isolated incidents. They're part of a pattern, low-producing, neglected wells that keep polluting long after the profits have dried up. We reported multiple emissions to the New Mexico Environmental Department, and what I see in the field clearly makes it clear the system is not working.

You've heard a lot about the potential impacts on small operators, but really, when wells like these are left to decline without proper oversight or bonding, it's my community, my neighbors and my family that pay the price.

Oil wells leak toxic chemicals like benzene and hydrogen sulfide into our air and water and pose a threat to everyone living in close proximity. And most of us who live on tribal lands do live in close proximity.

This rule is not about punishing small operators. It's about fairness and accountability and protecting human lives and communities. Every company that drills in New Mexico should be prepared to take full responsibility for its wells. Our communities deserve to breathe clean air and taxpayers shouldn't be left holding the bill when industry fails to act.

Please adopt this rule to protect our land, our people and our climate. Thank you.

HEARING OFFICER ORTH: Thank you, Ms. Pinto.

Next we have Blythe Maunders.

MS. MAUNDERS: Hello.

HEARING OFFICER ORTH: Hello. Would you spell your first and last name please.

MS. MAUNDERS: Sure. It's B-L-Y-T-H-E, M-A-U-N-D-E-R-S.

HEARING OFFICER ORTH: Do swear or affirm to tell the truth?

MS. MAUNDERS: I do.

HEARING OFFICER ORTH: Thank you. Go ahead.

MS. MAUNDERS: Hello. My name is Blythe Maunders. I'm a concerned citizen. I'm here in support of our public lands and a more responsible use of New Mexicans tax dollars.

The oil industry, which makes millions of dollars in profit each year, should be held accountable for cleaning up the wells they leave once they're done profiting from the land.

I'm speaking in support of the New Mexico Oil Conservation Commission's new bonding and cleanup rules to hold the oil industry accountable for cleaning up their mess.

It's a shame in Mexicans even have to make these comments trying to get the wealthy oil industry to do the bare minimum, by cleaning up their wells.

If New Mexicans are paying to clean up the mess from the oil industry, are we really profiting from having them here in the first place? These new rules will ensure that corporations, not communities, pay to plug their wells. Thank you.

HEARING OFFICER ORTH: Next we have Kelly Francisco. Would you spell your first and last name, please.

MS. FRANCISCO: Yes. Kelly, K-E-L-L-Y, Francisco, F-R-A-N-C-I-S-C-O.

HEARING OFFICER ORTH: And do you swear or affirm to tell the truth?

MS. FRANCISCO: I do.

HEARING OFFICER ORTH: Thank you. Go ahead.

MS. FRANCISCO: Good morning, Chair and Commission. My name is Kelly Francisco and I'm speaking as a resident of New Mexico and a concerned citizen of the Navajo Nation in strong support of the proposed bonding rule changes.

I believe that no matter the size of an oil or gas operator they should clean up after themselves. That's the law, their responsibility, and it is just common sense.

Right now, there are nearly 700 wells that oil and gas corporations have abandoned and another 4,400 that could be abandoned in the future, which threatens our health and drinking water unless we make them clean up.

New Mexico's are paying the price when corporations walk away from their responsibilities. Nearly 100 million in public funds have been used to clean up abandoned wells in just the last five years. That's money that could have gone to our schools, our roads, and our clean energy future.

The truth is, most wells in New Mexico are owned by wealthy corporations that can afford to do the right thing. If a corporation can't afford to clean up, then maybe they shouldn't be drilling in the first place. Fair rules make a fair playing field. Responsible operators already plug their wells. This rule will make sure the rest do, too. Thank you.

HEARING OFFICER ORTH: Thank you, Ms. Francisco.

Next we have Brian Sweeney.

MR. SWEENEY: Morning.

HEARING OFFICER ORTH: Good morning. Would you spell your first and last name please.

MR. SWEENEY: B-R-I-A-N, S-W-E-E-N-E-Y.

HEARING OFFICER ORTH: Thank you. Do you swear or affirm to tell the truth?

MR. SWEENEY: Yes.

HEARING OFFICER ORTH: Thank you, go ahead.

MR. SWEENEY: Good morning, Chair and Commissioners. I want to speak in favor of the proposed bonding rule changes because I'm a big fan of fairness.

The law requires oil and gas companies to plug wells when they're done with them, and there's a growing problem of companies not following that law. Bankruptcy has become an irresponsible part of the business plan.

But if you make a mess, you should clean it up a hundred percent of the time. This is not grade school and 95 percent is not an A. 95 percent in this case results in 702 abandoned wells in New Mexico, with over 4,000 about to be abandoned at a cost of $700 million to $1.6 billion of public money. That is not right.

Non-plugged wells present risks to public health, clean water, and the environment, so they should be plugged. The law says that the companies who have profited from these wells should pay to close them up and clean up the area.

When people rent apartments, they have to put down a security deposit proportional to the costs to repair any damage. For decades, oil and gas companies have put down bonds that don't come close to covering plugging and cleanup costs, causing the very expensive and growing abandoned-well problem. This is the wealthiest industry in the history of the world. They can afford to follow the law.

People in this hearing have complained that the reclamation fund is adequate for that purpose, but at $66 million, it doesn't come close to covering the $700 million to $1.6 billion price tag for plugging. That fund was created, quote, for use by the Oil Conservation Division in carrying out the provisions of the Oil and Gas Act. That is to say, not just plugging wells. So that fund is too small to address the problem. The reason that fund is growing is because New Mexico received federal money for plugging that if we didn't use it, we would lose it.

Don't be distracted by the oil and gas industry's many deflections. They want to talk about anything but how inherently fair it is to require adequate bonding and how unfair it is for the state to use hundreds of millions of dollars of public money to pay to cleanup industry's messes that companies have profited from. Cleaning up after yourself is a cost of doing business, not a public liability. Thank you.

HEARING OFFICER ORTH: Thank you, Mr. Sweeney.

Do we have anyone else on the platform would like to offer -- let's see, Robert Briani.

Sheila, do you see the RB there?

MS. APODACA: Yes, I'm admitting him right now.

HEARING OFFICER ORTH: If you called the platform using your phone, you can raise your hand by dialing star 5, by the way.

Mr. Briani, can you unmute yourself? Mr. Briani may have stepped away. Mr. Briani, if you can hear me, you have permission to unmute. You're not unmuted. Perhaps you could submit your comments and writing, or perhaps you could join us Thursday morning when we are certain we will have another public comment session.

Sheila, do you want to unmute the 575-993 number? I don't know who this is.

MS. APODACA: I've given them the

permissions to unmute themselves.

HEARING OFFICER ORTH: Okay. Let's see. I think unmute on the phone.

Oh, I think you're unmuted. Can you hear me?

MR. PATTERSON: Yes, I can hear you. Can you hear me?

HEARING OFFICER ORTH: Yes, now I can. Would you tell us your name and spell it for the transcript, please.

MR. PATTERSON: Yes. David Patterson, D-A-V-I-D, P-A-T-T-E-R-S-O-N.

HEARING OFFICER ORTH: Thank you. Do you swear or affirm to tell the truth?

MR. PATTERSON: I do.

HEARING OFFICER ORTH: All right. I'll start your time.

MR. PATTERSON: Thank you for the opportunity to speak to this Commission. It's been fascinating listening to all the comments.

Mine is that I would like to say my grandfather was the most influential person in my life. He had a fifth grade education. He lived through a Great Depression and two World Wars and had some strong views that were developed out of those life experiences. One was that you don't waste anything and the other one was that if you make a mess, you clean it up. I had to apologize for some of the messes I created as a rebellious teen and I had to clean them up.

Sadly, we do not live in such a simple, naive world. Everyone on this Commission knows that fossil fuels over the past 250 years have brought some of the greatest advancements civilization has ever known. I love the quality of life that fossil fuels have provided.

Everyone on this Commission also knows that we, collectively, have made a mess and we know we must clean up the mess. We also know that the fossil fuel companies have known since at least 1986 from reports by their own scientists that continuing to burn these fuels would heat the atmosphere. Their response has been to spread disinformation instead of just being honest. Sadly, that's why this Commission exists, to make sure these companies clean up their mess.

We know that methane and other toxic gases are leaking from oil and gas wells all over New Mexico, around the country, and around the world. We can't make everyone clean up their mess, but we can do it in New Mexico.

The job description for the director of the Oil Conservation Division says, in part, it enforces the state's oil and gas statutes, ensures abandoned wells are properly plugged, and that the land is properly restored once production activities are completed.

I think my grandfather with his fifth grade education refined everything into one sentence, "If you make a mess, clean it up." Thanks again for the chance to speak today. Let's clean it up.

HEARING OFFICER ORTH: Thank you very much, Mr. Patterson.

I see Mr. Briani has raised his hand again. Let's see if he's able to unmute himself this time.

Mr. Briani, it might help to press control-shift-M to unmute.

I believe there are some folks in the room.

Again, Mr. Briani, I'm sorry that you're not able to unmute yourself at your end.

But we do have some folks in the room, and I'm going to turn to them. Yes, ma'am, in the white cap. Right over here. You would share your first and last name.

MS. BROOKINS: Lura Brookins, L-U-R-A, B-R-O-O-K-I-N-S.

HEARING OFFICER ORTH: Thank you. Do you swear or affirm to tell the truth?

MS. BROOKINS: I'm sorry?

HEARING OFFICER ORTH: Do you Swear or affirm to tell the truth?

MS. BROOKINS: I still didn't understand.

HEARING OFFICER ORTH: Do you swear or affirm to tell the truth?

MS. BROOKINS: Oh yes.

HEARING OFFICER ORTH: Thank you. Go ahead. I'll start your time.

MS. BROOKINS: Being a resident for Santa Fe for 30 years as a landscape designer, artist, I've become an ardent protector of our beautiful landscape. I've also come to see that we citizens of our land must speak now to defy corporate misuse of our land or resources and our precious water.

Without adequate remediation we're witnessing cynical disregard of our land and waters. The oil and gas industries have also avoided their obligation to clean up the damages they inflicted on our land.

Increasing number of wells have expired and temporarily abandoned and others are out of compliance. That can mean a possible 1.6 billion cost for this state to plug and remediate orphaned wells in the future. These costs must be borne or shared by the operators of these wells to pay for the cleanup. It has been their profit to capture our oil resources using our scarce water.

We need guaranteed assurances from these oil and gas companies that they will honor and guarantee environmental safeguards to protect our waters and land and to set up funds for all cleanup costs. There needs to be guardrails to hold these companies accountable for damages and remedial costs. It is our land, our air, and our sacred water that must be protected.

I would like to close with a quote from N. Scott Momaday, a member of the Kiowa tribe, a poet and novelist and resident of Santa Fe, who passed last year, from his book Earthkeeper. "We humans must revere the Earth, for it is our well-being. Always the Earth grants us what we need. If we treat the Earth with kindness, it will treat us kindly. If we give our belief to the Earth, it will believe in us. There is no better blessing than to be believed in. There are those who believe that the Earth is dead. They are deceived. The Earth is alive. It is possessed of spirit. Consider the holy tree. It can be allowed to thirst. It can be cut down. Worst of all, it could be denied our faith and our belief. But if we speak to it, we pray it will thrive."

Thank you.

HEARING OFFICER ORTH: Thank you Ms. Brookins.

Is there anyone else in the room who would like to offer public comment during this session? We're certain we will have another session this Thursday morning at 9:00.

Your first and last name, please.

MS. TSOSIE-HARVEY: Alicia Tsosie-Harvey.

HEARING OFFICER ORTH: And would you spell that.

MS. TSOSIE-HARVEY: A-L-I-C-I-A, T-S-O-S-I-E dash H-A-R-V-E-Y.

HEARING OFFICER ORTH: Thank you. Do you swear or affirm to tell the truth?

MS. TSOSIE-HARVEY: Yes.

HEARING OFFICER ORTH: I'll start your time.

MS. TSOSIE-HARVEY: Good morning, Chair, Commissioners. My name is Alicia Tsosie-Harvey, and

I'm speaking on behalf of Concerned Citizens of New Mexico and the Navajo Nation and as a representative of Dine Care and in strong support to the proposed bonding rule changes.

I believe that no matter the size of an oil or gas operator, they should clean up after themselves. That's the law and their responsibility.

I have firsthand witnessed the lasting impacts of oil and gas corporations on and near the Navajo Nation. Right now, there are nearly 700 wells that oil and gas corporations have abandoned and others that could be abandoned in the future, which threatens our health and drinking water unless we make them clean up.

Please vote to adopt stronger bonding rules. Let's protect our air, water, and land and make sure no one gets to profit while leaving the rest of us with a mess. Thank you.

HEARING OFFICER ORTH: Thank you.

Anyone else in the room? Yes. Come on up. Your first and last name, please.

MS. ANTONIO: My name is Cheyenne Antonio. C-H-E-Y-E-N-N-E, Antonio, A-N-T-O-N-I-O.

HEARING OFFICER ORTH: And do you swear or affirm to tell the truth?

MS. ANTONIO: I swear.

HEARING OFFICER ORTH: Thank you.

MS. ANTONIO: Good morning, Chair, Commissioners. My name is Cheyenne Antonio and I am speaking on the behalf of the Check Board Navajo Nation community and also with Dine Care in support of the proposed bonding rule changes.

I heard the argument that we shouldn't be changing bonding requirements because our well-plugging system is broken, but I think that is exactly backwards. Within the community that I'm from, there are idle wells, sleeping wells. It's crazy that wells can be asleep, idle and abandoned. And we do see leaks in our desert area where I live in the checker board region.

The reclamation fund is there for emergencies. Not for the corporations to rely on as a backup plan when they walk away. If we don't fix the bonding system now, the problem only gets bigger and more expensive. And you can ask impacted communities for those systems and see if it works, because it doesn't.

The rule is about preventing the future risk of more abandoned wells. If we require fair bonding now, we don't need to drain public funds later. That's not just smart government, it's basic risk management. A broken system doesn't mean we wait to act. It means we act now to keep things from getting worse.

Please adopt the proposed rules and protect my future, the checkerboard area of New Mexico and the Navajo Nation for our future. Thank you.

HEARING OFFICER ORTH: Thank you, Ms. Antonio. Is there anyone else in the room who would like to offer public comment during this session? No? All right.

I saw one more person on the platform, Sheila. I think GH, perhaps? Gene Harbaugh. Mr. Harbaugh, can you unmute yourself? Control-shift-M might work. No? All right.

And Mr. Briani has -- I'm sorry if I'm mispronouncing your name, Briani -- has his hand up, so we'll try one more time.

MR. BRYANT: Good morning, Commissioners.

HEARING OFFICER ORTH: Oh, good morning. Would you state and spell your first and last name, please.

MR. BRYANT: Okay. My name is Robert Bryant, spelled R-O-B-E-R-T, B-R-Y-A-N-T.

HEARING OFFICER ORTH: Thank you. Do you swear or affirm to tell the truth?
MR. BRYANT: I do.
HEARING OFFICER ORTH: Thank you. I'll start your time.
MR. BRYANT: My name is Robert Bryant. I reside in Corrales, Mexico with my wife, Karen, who is a retired RN, and she is a second-generation New Mexican. And we have four children, six grandchildren and six great grandchildren.
I was from Virginia originally and I served in the U.S. Navy over 30 years, and then I became a New Mexico State Trooper. I retired from there. I was stationed at Kirtland Air Force Base, went into the Navy. When I retired, I had a rental business at one time in Corrales which sold because of irritants with tenants.
And my reason for keeping the oil and gas industry growing in the U.S. is, number one, it's national security. At this point, we are buying oil from countries that are not friendly to us and they can shut off supply at any time.
The cost of fuel has raised prices for everything from groceries to clothing and everyday items. And it's because of shipping with the oil

prices for semis. People are losing jobs as businesses are shutting down due to the high cost of fuel. And people can't afford to put fuel in their vehicles to go to work anymore. It's either food or gas.

And cutting back on or curtailing drilling in New Mexico also cuts out many needed jobs in New Mexico and also revenues from oil and gas for education in New Mexico.

When the wells are shut down, it takes time and money to re-drill. And the communities in the drilling areas are struggling economically and it's stressing our agricultural industry due to the cost of fuel.

Thank you, Commissioners, for listening to me this morning.

HEARING OFFICER ORTH: Thank you, Mr. Bryant.

Anyone else at all on the platform? I don't see any other hands.

We will go back to our technical case then. Mr. Ezzell would you join us up at the front.

MR. CLOUTIER: Madam Hearing Officer, while Mr. Ezzell is taking the stand, IPANM has Exhibits 37, 38 and 39, which were sponsored by Mr. Cantrell, who we withdrew as a witness. We just ask that those three exhibits be treated as part of his written public comment which was his former testimony.

Second we have IPANM Exhibit 45, which I used in cross-examining Mr. Powell. We will not be using it in our case.

And the declaration of Ms. Johnson, which is 45, simply authenticates certain documents. We received in the request for the department, and we move the admission of Exhibit 45.

HEARING OFFICER ORTH: All right. I'll pause for a moment in the event there are objections to the Cantrell Exhibits 37, 38 and 39, with them becoming public comment. No?

All right. They're admitted.

(Admitted: IPANM Cantrell Exhibits 37, 38 and 39.)

HEARING OFFICER ORTH: And now Exhibit 45, this documented receipt of documents through IPRA. Any objections?

All right. Exhibit 45 is admitted.

(Admitted: IPANM Exhibit 45.)

HEARING OFFICER ORTH: Thank you Mr. Cloutier.

MR. TREMAINE: Madam Hearing Officer as

another housekeeping and threshold matter. I did just circulate this morning to all of the parties proposed OCD Rebuttal Exhibit 34. I'm sure people have not had a chance to review that yet. It directly rebuts the testimony which arose on cross-examination by Mr. Armstrong yesterday.

I think it's imperative for the Commission to see this. I'm happy to take it up at a later time. I just want it on the record that we need to discuss that. I will be moving for its admission. I do think it is appropriate as rebuttal or surrebuttal as the point made by Mr. Armstrong only came up yesterday afternoon.

I do have alternative bases that I believe would achieve its admission, but I prefer not to get into those if not necessary.

HEARING OFFICER ORTH: All right. Let's take that up when we have finished with Mr. Ezzell.

All right. So when we broke last night, Mr. Ezzell had completed his testimony. And we move now to cross-examination, which is limited to 45 minutes. And we'll start with Ms. Fox or Mr. Tisdel.

MS. FOX: Thank you, Madam Hearing Officer. I have a few questions for Mr. Ezzell.

THE WITNESS: Good morning.

MS. FOX: Good morning.

CALDER EZZELL,

having first been previously

duly sworn, testified as follows:

CROSS-EXAMINATION

BY MS. FOX:

Q. Mr. Ezzell, my name is Tannis Fox. I'm a lawyer with Western Environmental Law Center, and I represent applicants in this proceeding.

In your testimony yesterday, Mr. Cloutier referred you to a part of the definition of underground waste in Section 70-2-3A of the Oil and Gas Act, which includes the language I'm showing on the screen, that when operating or producing of any well or wells in a manner to reduce -- which requires when operating or producing of any well or wells in a manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from any pool.

You relied on this language, correct?

A. Yes, Madam.

Q. And Mr. Cloutier asked you something to the effect of how much waste is allowed under the statute, and you said zero waste, correct?

A. Yes, madam.

Q. In order to comply with the standard of zero waste, does that mean that an operator must produce a well to its very last hydrocarbon, without regard to the economics of that well?
A. No, madam.
Q. And why is that?
A. Because no well ever produces the last molecule of hydrocarbon. You cannot recover 100 percent of the oil or gas in a reservoir.
Q. Then under your --
A. Hopefully we will have the technology to later with the help of New Mexico Tech.
Q. Then under your formulation, that waste means zero waste, does that mean that the operator must produce a well to the very last hydrocarbon that that operator can produce without regard to well economics, that is physically possible, technologically possible to produce?
A. No. There is an economic limit, and we all know that.
Q. And what's that economic limit?
A. When a well is no longer capable of producing in paying quantities. And of course that varies from operator to operator.
Q. In your testimony yesterday, you raised

concerns about applicant's proposed provisions in 19.15.9.8 and 19.15.9.9 regarding operator registration and change of operator, correct? And that citation at the beginning for operator registration --
A. Yes.
Q. -- has an incorrect 1 at the very end. I don't know how that popped up, but there it is.
Anyway, you gave testimony on these provisions yesterday, correct?
A. I don't believe I did give testimony on it. It's in my direct, in my written.
Q. You gave testimony on it when you were discussing slide 38 in your --
A. I don't know what --
Q. Do you want me to pull it up for you? Let's see here.
A. Oh, yes, have, I did give testimony. Because, if I remember correctly, I was concerned with the unresolved adjudications.
Q. And applicants at OCD propose in these provisions that the operator be required to provide certain information to OCD prior to registration or well transfer, correct?
A. Yes.

Q. And part of that information is a certification by the authorized official of the operator that the operator, as you noted, does not have unresolved adjudicated orders or unresolved settlement agreements for any state or federal violations in any domestic jurisdiction, correct?

A. That's what it says, yes, ma'am.

Q. Yesterday, and maybe this is just mistaken testimony, but yesterday you testified that the OCD doesn't have authority to require another state to provide that authority to OCD, correct? That was your testimony?

A. Yes, it was.

Q. But doesn't this provision provide that it's the authorized official from the operator that provides the information to OCD, not another state?

A. So the authorized official is intended to be a representative of the entity that wants to be the operator?

Q. Correct. And the operator registration provision, it says the certification by an authorized official that the new operator is not blah, blah, blah.

A. Right.

Q. S refers to the authorized official of the operator, correct?

A. Correct.

Q. Yesterday, you testified that applicants in OCD's proposals at 19.15.8.9A NMAC, which I have up on the screen for you, regarding financial assurance, attempts to require operators to, quote, bond just to negotiate acquisition, correct? That was from your slide 40?

A. Repeat your question, please.

Q. You testified regarding this provision that it was requiring operators to, quote, bond just to negotiate acquisition, correct?

A. Yes.

Q. So do you appreciate that this provision was the subject of a motion to dismiss filed by IPANM and NMOGA and to dismiss this particular provision on the ground that it regulates the sale of wells between operators?

A. Yes.

Q. And are you aware that IPANM and NMOGA made this argument in their motion to dismiss, even though Peter Morgan, our expert, explained in both his direct and rebuttal testimony that the intent of the redline language was simply to clarify current OCD practice and simply require financial assurance prior to acquisition of operating authority? Are you aware of that testimony by Mr. Morgan?

A. I'm embarrassed to say no. And I have not read the motion to dismiss either.

Q. Well, the motion to dismiss was -- the subject or your testimony was also the subject of the motion to dismiss. And perhaps not having read the pleadings, that motion to dismiss, are you aware that in IPANM and NMOGA's reply in support of their motion to dismiss that they suggested, quote, an easy fix to the problem and that was to -- and this is language from the motion to dismiss here in front of you, and that was to modify any time the words "acquire acquisition" came up in the rule, to modify that using the terms operating authority?

I'll let you read all that.

A. I see that, but I don't know that I agree that that's an easy fix. I think even with that amended language, that it would still have a chilling effect on the ability for an operator to sell its assets. And I think I testified that it is quite common to hire a broker that will create a data room for you and basically hold an auction online. But an auction and think requiring financial assurance prior to proceeding with any proposed acquisition is chilling on the freedom to exchange properties.

Q. But you understand that the intent of this is to clarify current practice and just require financial assurance to be in place before an operation begins, correct?

A. Then take the word "acquisition" out.

Q. Well, the hearing officer -- interesting you say that about wordsmithing this, because this language was offered by your counsel and the hearing officer -- are you aware that the hearing officer in her recommendation asked applicants at OCD to address this language in their presentations?

A. I have not been involved with anything other than my direct testimony.

Q. Okay. Well, I have the hearing officer's language up here and she suggested that applicants and OCD be asked to address the suggested insertions by the moving parties. And are you aware that we did exactly that through Mr. Morgan's testimony and exhibit? And she asked us to do that to attempt to avoid the wordsmithing that I think was just going on right now.

A. That's what we do.

Q. She asked us to address that and that we submitted the proposed language, the language proposed by IPANM as Exhibit 88 through Mr. Morgan's testimony. Are you aware of all that?

A. No. As I say, I have not been involved in any of the procedural aspects of this, especially not -- I'm a transactional lawyer. I can't spell motion to dismiss.

Q. Well, I guess this wasn't as easy a fix as we were led to believe.

In your surrebuttal testimony, you disagreed with Mr. Alexander's testimony that virtually all inactive wells were reactivated within eight years, correct?

A. Yes.

Q. And you testified yesterday something to the effect of, "I don't know what he based that representation on," correct?

A. That is correct.

Q. So are you familiar with applicant's Exhibit 13, which shows that 99 -- and this was an exhibit developed by the Environmental Defense Fund, which shows that 99.5 percent of reactivations of inactive wells occur within eight years of activity?

A. That's what it says. Yes.

Q. Are you familiar with this exhibit at all?

A. No, Ma'am.

Q. So you don't have any data to the contrary, correct?

A. Only in my personal experience with helping clients for secondary recovery units.

Q. So you have anecdotal experience, but you don't have any data looking at the whole of reactivations and inactive wells over --

A. No ma'am, I do not.

Q. Correct? And you don't have a basis to dispute the data before you in applicant's Exhibit 13, correct?

A. Not without studying it independently.

Q. Okay. I'm going to bring up your slide 5 from your surrebuttal. Now, yesterday you testified -- now slide 5 from your surrebuttal is up, Mr. Ezzell. And yesterday you testified that federal wells are no longer exempt from the Commission requirements for financial assurance because applicants and OCD had proposed to delete a reference in this section here to 19.15.8.9A, correct?

A. Can you put them up on the same screen.

Q. I can't do two screens, but this is your slide that you testified from yesterday, where you stated that because of the deletion of 19.15.8.9A in this section, that that deleted the exemption for federal wells from OCD rules for financial assurance.

MR. CLOUTIER: I think Ms. Fox is overstating the testimony. I think he testified that it eliminated for the wells that are subject to Subparagraph E, not all wells.

MS. FOX: For federal wells.

MR. CLOUTIER: For federal wells that would be subject to Subparagraph E.

MS. FOX: So you think his testimony was that inactive and TA federal wells are exempted.

MR. CLOUTIER: Are not exempted --

MS. FOX: Are not exempted.

MR. CLOUTIER: -- because of the strike. That, I think, was the intent of the testimony.

MS. FOX: Fair enough.

BY MS. FOX:

Q. Do you do you agree with your counsel's --

A. That's the way I interpret --

Q. Maybe wait till I finish my question.

A. Sorry.

Q. Yeah. It's hard for the court reporter. I don't mind so much, but the court reporter does.

A. Absolutely.

Q. Okay. So you agree with what your counsel just said in terms of what your testimony is, correct?

A. Yes.
Q. Okay. So can we stop sharing and go back to my slides.
Okay. So the provision that you referred to where the federal well exemption lives is 19.15.8.9A, correct? That's what you said in your slide? This is the provision that exempts federally -- essentially exempts federal wells from the Commission's rules on financial assurance, correct?
A. Yes. The language, unless the well is covered by a federally required FA.
Q. And you see that that language has not been proposed to be deleted by applicants or OCD, correct, the language that exempts federal wells from the state's financial assurance requirements?
A. That is correct. But the proposed amendment deletes the reference to that. And I think that is problematic.
Q. Do you think that reference was deleted just in order to clarify that all wells in inactive and TA status, not just those that have been TA status under two years are subject to that particular financial assurance requirement in Subpart E? Isn't that what that language -- why that language was deleted?

Because the language exempting federal wells is left unchanged.

A. That may be how it was intended. I don't think it was done very artfully.

Q. We can agree to disagree on that.

Yesterday you testified in surrebuttal that Mr. Morgan was incorrect that OCD can release a bond if a well is no longer deemed a marginal well, correct?

A. Yes.

Q. And you cited to the Oil and Gas Act at 70-2-14A for that proposition, correct?

A. Probably.

Q. Let me read it to you. You'll probably recognize it. That provision provides all financial assurance shall remain in force until released by the Oil Conservation Division, blah, blah, blah.

A. Right. But that goes to the issue of whether a bond is cancelable. And I think Mr. Morgan said it was, that they are, and I disagree.

Look at the OCD bond form.

Q. Mr. Morgan testified that the bonds are not cancelable and that that makes good policy sense.

A. Releasable --

Q. Isn't that correct?

A. Releasable and cancelable are the same to me.

Q. Let me just continue here.

A. I keep forgetting --

Q. In support --

A. -- I don't' get to ask the questions.

Q. Okay. But you don't recall his testimony in support of the idea that surety bonds should be non-cancellable? You don't recall that testimony?

A. No.

Q. Okay. But your testimony yesterday was that he was wrong, that you -- that OCD can release a bond if a well is no longer in marginal status. That was your testimony yesterday, correct?

A. Yes.

Q. Okay.

A. And I stand by that.

Q. But looking at the Commission's rules at 19.15.8.12, which I have up here, doesn't it clearly state in those rules that financial assurance can be removed if it's covered by another financial assurance that the Division has approved so that an operator can replace financial assurance if needed?

A. But doesn't the statute say that the financial assurance cannot be released until the well has been plugged, since that was the condition upon which the financial assurance was entered into and issued?

Q. But that wouldn't preclude the Commission from passing rules that says that a financial assurance needs to be replaced, for whatever reason. The financial assurance requirements could go up. They could go down. An operator might want to use a different company for financial assurance. That provision in the statute doesn't preclude OCD from approving replacement financial assurance, correct, which is what this provision allows?

A. I would agree with that.

Q. And so then isn't it also true that applicants specifically, specifically for marginal wells, don't applicants and OCD propose that an operator, and this is the second language down here --

A. Okay.

Q. -- on that slide, that an operator with a marginal well or wells must annually review the number of marginal wells that that operator has and shall update the one-well plugging financial assurance of May 1st of each year? Isn't that what applicants and OCD propose?

A. Yes. But, again, I don't like the language because it implies to me that the only thing they can do is add marginal wells to their list and come up with more bonding, rather than saying that -- there's nothing in that language that -- what if an operator plugs one of the marginal wells? Then he should be able to take that off the list, right?

Q. This language says that -- it doesn't say that the number of wells is -- it only applies when wells are increased. It says that the operator shall update the one-well plugging financial assurance after an annual review of the number of wells.

So it's neutral as to whether the number of wells increases or decreases, correct?

A. It has no express language that it covers both, and that's what I'd like to see.

Q. And you're aware, because this is highlighted language, that this is language that was negotiated with Oxy, correct?

A. No. I have no idea what was negotiated with Oxy.

MS. FOX: That's all the questions I had, Ms. Ezzell. Thank you very much for your testimony.

THE WITNESS: Thank you, ma'am. Nice to meet you.

MS. FOX: You, too.

HEARING OFFICER ORTH: Thank you, Ms. Fox.
Mr. Tremaine?
MR. HALL: It's going to be Mr. Hall, Madam Hearing Officer.
HEARING OFFICER ORTH: Thank you.
MR. HALL: Thank you.

CROSS-EXAMINATION

BY MR. HALL:
Q. Good morning, Mr. Ezzell. Good morning. My name's Michael Hall. I don't think we've had occasion to meet. I'm a lawyer with the Oil Conservation Division. How are you this morning?
A. I am well. How are you.
Q. Good. I wanted to respond, first of all, to your gratitude. It's Mr. Tremaine that you should thank for pointing out that you had cited a statute that doesn't exist.
A. No, it exists. I just misquoted it.
Q. Well, I guess we'll have a chance to explore that a little bit. Let me go ahead and ask you about that. Are you saying that the statute you cited is law in New Mexico?
A. Yes.
Q. Okay. Well, let's go ahead and just start there. I'm looking at -- and I'll pull it up. This

is page 3, the bottom of page 3 of your rebuttal.

A. Yes.

Q. And would you agree it continues on to page 4?

A. Yes, sir.

Q. Okay. And I'm going to highlight some language here. You would agree that that part is operative law in New Mexico?

A. Yes.

Q. So you think the statute states shall be set by rule at amounts not to exceed --

A. No.

Q. -- $50,000?

A. No, I corrected that in my mea culpa errata statement yesterday. It is the blanket bond for those wells cannot be less than $50,000.

Q. I understand. I just took what you had said as quibbling over whether that's a real statute or not. Would agree that parts of it are real and parts of it aren't, correct?

A. The printed version or --

Q. The printed version, yes, sir.

A. Look, I really don't care. I amended it to make it correct.

Q. Okay. And you would agree you're under oath here today?

A. Correct.

Q. And so you're under obligation to continue with your amendments and not claim that this is the law? Because it's actually the opposite of that provision, isn't it?

A. Until I corrected it, yes.

Q. Okay. Now, in what capacity are you testifying here today?

A. I am here because I am the only witness that is a licensed attorney in New Mexico.

Q. Are you here as a partner of Mr. Cloutier? Are you here as a witness? Are you here --

A. I am here as a witness. And it's not Cloutier, it's Cloutier.

Q. Mr. Cloutier is your partner, correct?

A. Yes.

Q. And so you are profiting from representation of IPANM in this matter?

A. I will admit to that. Although I want to say you haven't seen our firm's compensation plan.

Q. Nor do I want to. I'm simply exploring possible bias here. The gentleman is a gentleman, so are you. But you are profiting as an attorney and a witness in this matter? I just want that to be clear.

Is that right?
A. Yes.
Q. Okay. Now, yesterday you made several references to standard JOAs. A JOA and a COPAS agreement, those are contracts, correct?
A. Yes.
Q. They are easily modified, changed, or left in place?
A. Yes.
Q. Your familiarity is because people need a lawyer to look at those and change them, correct?
A. Exactly.
Q. The form almost never works as it stands, right?
A. I would disagree with that.
Q. Okay.
A. I mean, the AAPL took great pride in each of its forms, so that it could be executed without alteration. They did, however, in each of them have an Article 15, which is blank on the form and allows people to make any additional amendments that they want.
Q. And in your experience, these are arm's-length transactions between sophisticated parties, correct?

A. Normally. Although, with the -- in the wells that I've participated in, there's not a lot of room for negotiation because the lay operator wants to have the language that the operator likes. And so, if there is Oxy and XTO, yeah, there's a lot of arm's-length negotiation. But for a shoe clerk going in to a drilling deal, you pretty much -- it's take it or leave it.

Q. Correct me if I'm wrong. Your testimony, the crux of your testimony about JOAs and COPAS is that it's going to cause a lot of problems, correct?

A. My testimony was that I don't think that under any of those forms, an operator can pass along the cost of the financial assurance.

Q. However, that's something an operator or anyone else who's a party to those contracts could have contemplated, correct?

A. No. Because every non-operator in the world will swear on a Bible that bonding costs should be covered by administrative overhead.

Q. I see. So there's disagreement in the industry about the effect of these agreements?

A. I don't know that there's disagreement because I don't know that operators -- none of my operators have ever attempted to pass along the cost of bonding.

Q. But my question is really simple. A provision to contemplate bonding and how those risks and costs are borne by the parties to the contract, that's always been possible, hasn't it?

A. Always.

Q. Now, I'm going to jump around just a touch. Did I hear you claim that an operator has to have more than zero percent property interest in a well yesterday? That's what I wrote down, and if that's not what I heard --

A. No. An operator can have no interest.

Q. Okay.

A. If they're contract operators or under the JOAs, I think I gave the example of an operator resigning but being forced to continue to operate the well.

Q. Fair enough. And an operator may or may not own a property interest, a mineral interest, et cetera, correct?

A. Or leasehold. Yes.

Q. So the idea that regulating operators necessarily regulates property interest would be incorrect, wouldn't it?

A. If an operator owned no interest in the real

property, then I would agree with that. But if an operator owned any interest, then I stand by it.
Q. And once again, that's an agreement between the parties as they see fit, correct?
A. Yes.
Q. And so the corollary to that is -- is it your claim that New Mexico does not have the right, OCD does not have the right to regulate operators and who can be an operator?
A. I think it is OCD's job to regulate operators, but I don't think it's their job to choose who gets to be one.
Q. Well, who would do that?
A. Well, I'm a free-market guy. I think you have the right to enter into a business and fail.
Q. Sure. So you think extremely non-compliant -- I don't think of some -- Cano. You think Cano should be an operator and OCD should have no say in that because of your free market beliefs?
A. Well, in hindsight. But we did allow to be an operator and we did accept their bonds, and so they were. It turns out they were lousy.
Q. Do you think, as you sit here today, OCD should have no right to regulate Cano, for instance, as an operator?

A. I think they have the right to regulate and enforce, but not to pick who isn't worthy. It's not like an operator has to apply for a permit to be an operator.

Q. Well, they do, don't they?

A. Well, they do, but not to be able to even enter into a negotiation to buy a property. That's just not the OCD's business.

Q. You do some work in Texas oil and gas; is that right?

A. No.

Q. Are you familiar with the language Ms. Fox put up about acquisition of operatorship? Does that comport with your understanding of what the railroad commission does in Texas?

A. I'm not licensed in Texas, and I've never even participated in oil.

Q. What is problematic about that language?

A. As I've already stated, I think it is chilling on the free exchange of real property interest.

Q. You would agree that that proposed rule does not, in any way, inhibit or regulate the transfer of real property? It only regulates who may be an operator, correct?

A. I didn't say it regulated. I said it chilled the free-market ability to enter into negotiations to potentially buy properties.

Q. You have to read some language in there about owning property for that to be accurate, though, correct?

A. Say that again, please.

Q. Sure. You have to read some language that's not there in the rule for that to be regulating real property.

A. No, I don't think you have to imply any language. I think it says you can't -- you have to promise not to even negotiate the acquisition of a property unless you posted a bond.

Q. Of operatorship, not property, correct? It doesn't say property?

A. But it still has the chilling effect on the free exchange of real property interest.

Q. At any rate, the rule says what it does, right? It doesn't say property; can we at least agree on that?

A. The word "property" is not in it.

Q. Thank you. Now, in some of your testimony, is it your position that OCD has not considered depth in these proposed rules, depth of wells?

A. Yes. There is nothing in it that -- in the proposed rules that refers back to the statute which says the OCD shall consider these things.

It's just the proposed rules say here's the amount of the blanket, here's the amount of the single well. The only remaining discretion that the rules give to the OCD is on the blanket bonds not to be less than 50,000 and on a single-well bond for an active well that has to be in an amount equal to the cost of plugging.

Q. It says consider the depth, correct?

A. Yes.

Q. It doesn't say you have to -- you have to make financial assurance attached to depth. This says that should be a factor considered. Can we agree on that?

A. Yeah. That is what the statute requires.

Q. And you surrebutted Mr. Powell's testimony -- was part of that testimony that you heard that it was considered and it wasn't found to be correlated to -- depth wasn't correlated to plugging costs in the manner that age did, for instance?

A. Would you restate that.

Q. Sure. Did you hear Mr. Powell say that depth was considered, but it did not really correlate

to the cost of plugging?
A. I heard -- I heard that. I disagree with it.
Q. Sure. So, at any rate, we agree that it was considered?
A. I don't know that it was considered in the manner required by the statute. You cannot say a 900 foot San Andres well is going to need $150,000 bond. That's just reality of the business.
Q. But my question was, would you agree it was considered, Mr. Powell's testimony makes clear it was considered? You don't agree with how he considered it, but it was considered. Can we at least agree on that?
A. I will agree that he claims it was considered.
Q. Fair enough.
A. Isn't it fun?
Q. Much like you claim it wasn't, right?
A. Yeah.
Q. Now, speaking of the statute, you would agree that it's OCD's costs that bonding needs to cover, not industry's, correct?
A. That's the way it's written, and I think that's the biggest problem with it in the beginning.

The OCD they've got wonderful experts, but industry can plug any well cheaper than the OCD.

Q. But an orphaned well hasn't been plugged, correct, by industry?

A. That's right. And I would love to see the reclamation fund be adequately funded and then have the OCD have the ability to say --

Q. Fair enough. Would you agree to just answer my questions? Only at 45 minutes. I know you'll have your opportunities to say what you think should happen with the reclamation fund.

A. You can't blame me for trying to kill your time.

Q. Well, I kind of do blame you for that.

Now, your testimony also stated that reclamation was part of the 163,000 average costs for OCD's well plugging. Do you still maintain that.

A. I don't know that I said that.

Q. Okay. Well, we can pull it up.

A. Because I don't -- I don't agree with that number in the first place.

Q. All right. Okay. Can you see the top of the page there? Could you read that paragraph for me, please?

A. Starting with fourth.

Q. Yes sir.
A. "Fourth, the proposal is based on a supposed average of OCD's cost to plug, abandon, and reclaim individual oils. Under the Oil and Gas Act, only 'plugging' costs can be considered."
Q. Do you still maintain you didn't say that?
A. No. I put it in my direct testimony.
Q. Would you like to change that testimony?
A. No.
Q. You do think that part of the 163,000 was to reclaim wells?
A. I don't know anything about the 163,000 other than what's been said here. I also know that if you look at the annual reports from the department to the legislature and the governor, and this was in Morgan's testimony, I guess, from 2019 to 2024, the OCD extended 15.5 million to plug 93 wells --
Q. So --
A. -- at an average cost --
Q. -- let me ask you a different way. What is the basis for your statement that the proposal is based on a supposed average of OCD's cost to plug, abandon, and reclaim individual wells?
A. Well, the word "supposed" is -- was there because --

Q. What's your basis for that statement, sir, in your testimony?
A. The basis for it is that the Oil and Gas Act does not talk about reclamation costs in the financial assurance.
Q. What evidence makes you think that the proposal is based upon that?
A. Because that's the figure that the applicants have been using, that it is 163,000 and that it's etched in stone and it doesn't matter on the depth of the well or the age of the well or anything else.
Q. Would you agree that that 163,000, the testimony is solely that that is plugging cost and not a reclamation cost?
A. Yes.
Q. You'd dispute that?
A. No. You asked me if I agreed. Now you're killing your time.
Q. Okay. Now we're going to get to the part where your statute -- that had parts that don't exist, and some of your testimony relies on that as opposed to just single words.
Do you maintain that under the proposed definitions, marginal wells will be bonded at

300 percent, the maximum amount authorized by statute?
A. No. That's the minimum amount as -- we're going back to what I've already corrected.
Q. Well, 300 percent is incorrect, too, isn't it?
A. Oh, I don't think so.
Q. Okay. That's 300 percent of the minimum amount?
A. This is just --
Q. We can take that whole sentence.
A. Three times 50 is 150.
Q. Do you agree that when you make the maximum TA 50,000 instead of the minimum 50,000, the entire crux of this entire paragraph changes?
A. It doesn't matter other than -- I mean, the statute is what the statute is.
Q. I very much agree with that.
A. The fact that we got the wrong word on the page does not change the statute. It does not make the statute not exist.
Q. The statute does exist, just not as you stated it in your rebuttal testimony, correct?
A. It exists as I stated in my correction to typographical errors.
Q. Just so the record is clear, your testimony

is based upon that faulty understanding of the statute, correct?

A. No.

Q. It's not?

A. My testimony is based on the statute.

Q. Okay. The statute I cited in your rebuttal testimony, correct?

A. The statute as in the book.

Q. Okay. Now, down here on page 9, line 18 --

A. Of what? Oh, okay.

Q. Of your rebuttal testimony. Would you agree that you don't know why the legislature did or did not take actions?

A. Because they could agree on -- the parties couldn't agree on what -- the proponents of House Bill 133 could not agree. And anytime the industry tried to comment, it was basically flatly ignored. The fact that --

Q. Well --

A. -- there were two -- I'm talking.

The fact that there were two committee substitutes, one in energy, one in --

Q. Well, hold on. You're talking, but you're not answering my question. My question should be yes or no. Do you agree that you don't know why the

legislature did or did not act a certain way, that
you're not the arbiter of that?
A. No. But I was there and witnessing it, and
they didn't act --
Q. Would you agree that --
A. -- because it was a bad bill?
Q. Would you agree --
MR. CLOUTIER: Mr. Hall keeps interrupting
the witness. He's entitled to answer, even if
Mr. Hall wants a yes or no.
HEARING OFFICER ORTH: All right. So,
Mr. Ezzell, if you would please bring more focus to
the question that's being asked. And, Mr. Hall,
please don't step on the end of his sentences.
BY MR. HALL:
Q. At any rate, it could have been that the
legislature, like the LFC, thought that the statutes
weren't necessary because the rules already allowed
what's happening here today, for instance, correct?
A. I cannot speak to that. I do not know.
Q. Fair enough. That's what I wanted us to
agree on.
Okay. I'm going to go to a couple of
comments in your surrebuttal. If I can find it.
Excuse me.

Mr. Ezzell, now, on your surrebuttal, it's slide 10, and I'll pull it up here in a sec. But would you agree that based on 180 days of production, this proposed rule is not requiring low producers to simply plug? It's requiring low producers to produce or take appropriate actions.

A. I don't understand why the 180 days comes into your question, so...

Q. Well, would you agree that the definition of -- proposed definition of marginal will includes both days of production and volumes?

A. Yes.

Q. Okay. And I believe your testimony was that these rules are going to require people to plug wells?

A. I think it will, that is the effect. Yes.

Q. And so --

A. It won't require them to. It will force them to.

Q. What's the difference between forcing and requiring?

A. Requiring is a regulatory action or a legal action. Forcing is a businessman making a decision that he's got to plug.

Q. Well, at any rate, an operator producing less than 180 days could go above 180 and that well

wouldn't be marginal, correct?
A. That is correct.
Q. There was some discussion about a release of financial assurance. Would you agree the Oil and Gas Act does allow and, in fact, requires OCD to release bonds at the appropriate time, and not only in the event that they're plugged?
A. That's the only time the statute says that the OCD can release a bond, is after the plugging has been performed according to the rules then in effect.
HEARING OFFICER ORTH: Mr. Hall, you still have 15 minutes. But I'm wondering if this would be a good time for a break.
MR. HALL: Whatever pleases the Commission is fine with me.
HEARING OFFICER ORTH: All righty. Let's come back at 11:00. And, again, you have 15 minutes left.
(Recess held from 10:50 to 11:00 a.m.)
HEARING OFFICER ORTH: All right. When we broke, Mr. Hall had 15 minutes left of his 45.
Go ahead, Mr. Hall.
MR. HALL: Thank you, Madam Hearing Officer.
BY MR. HALL:
Q. Ezzell, I think we were starting to talk

about financial assurance a little bit. Is it your contention that OCD cannot release a bond unless a well is plugged?

A. I believe that's what the statute says.

Q. Okay. Which statute?

A. The Oil and Gas Act.

Q. Just wondering if you had one in mind, because I think what you're talking about is 70-2-14 relating to financial assurance?

If I could, I'm going to highlight this last sentence there and ask if you could please read that.

A. The Oil Conservation Division shall release financial assurance when it is satisfied that the conditions of the financial assurance have been fully performed.

Q. So that doesn't mention plugging, does it?

A. Not directly, No.

Q. Okay. So is there another statute that you're getting -- that you're referring to?

A. Well, on a plugging bond, that is the condition of the financial assurance, is that the well be plugged.

Q. Right. But that wasn't my question, was it? I didn't limit that to the plugging bonds. I said bonds. And so if you'd like to correct your understanding, that's fine?

A. My understanding of what.

Q. Do you still stand by your statement that a bond can only be released in the event a well is plugged? That was my question, and you said yes, that that's what the statute requires. So I'm asking --

A. And of a condition of the bond was the plugging of the well --

Q. Okay. Did you understand my question? Just please pay attention to my question. It does not have the words "plugging bond." Okay?

A. That is correct.

Q. All right. My question is, do you maintain that OCD can only release a bond of any kind in the event that a well is plugged?

A. They can only release a plugging bond after the well has been plugged. What other bonds are you talking about?

Q. Do you maintain -- can OCD release a bond when a well is transferred amongst operators?

A. The bond is generally transferred in the well. I guess -- I think the OCD probably has the authority to enter into a new bond if the selling party was under a blanket bond and the buying party was going to be a one-well bond. That would require a new bond.

Q. Did you understand my question?

A. I think I answered your question.

Q. Does OCD release bonds when operatorship of a well is transferred?

A. They have the authority to, especially if the bond is not transferred.

Q. And so that's an example of a bond being released even when a well is not being plugged, correct?

A. It's not so much being released, as it is being replaced.

Q. Do you agree this highlighted sentence here does not say anything about plugging?

A. I agree.

Q. Okay. So would you agree that in the event a marginal well rule is passed, that if the conditions of that bond are satisfied, regardless of plugging, it can be released? Reading that line right there, that would be compliant with that statutory authority?

A. If it is a plugging bond.

Q. Would you agree with that -- okay?

Now, Ms. Fox asked you a little bit about waste. I think your testimony focused on

underground waste. Would you agree with that?
A. No.
Q. I'm sorry, I didn't understand?
A. No.
Q. No, that's not what you focused on?
A. Economic waste, the drilling of unnecessary wells, specifically underground waste in -- caused by premature plugging. But no, there is more than one definition of waste.
Q. My question was, you would agree your testimony focused on underground waste, correct?
A. I talked about economic waste as well.
Q. Well, let's just pull it up. 70-2.3, correct, that's the waste statute you're referring to and citing there?
A. That's the definition of underground waste, yes.
Q. And so you have to point to me in your testimony, and I'm happy to shift it around, where you talked about all these other kinds of waste.
A. I talked about the economic waste and the drilling of unnecessary wells yesterday in my live testimony, not in my written.
Q. Do you agree the statute also defines surfaced waste?

A. Oh, yeah.
Q. Do you agree that excess production beyond the reasonable market demand may be waste?
A. Yes.
Q. Are you aware that unauthorized venting or flaring of natural gas is prohibited as waste?
A. Yes.
Q. Are you aware that 60 percent of orphaned wells observed by OCD are venting natural gas?
A. I cannot answer that.
Q. Do you have any reason to dispute that?
A. I assume I could confirm it with independent research, but...
Q. Do you have any reason to dispute that, sir?
A. I have no reason to dispute it or agree with it.
Q. So that would be 60 percent of orphaned wells are wasteful, committing waste under the statute, correct, if --
A. Correct.
Q. -- that percentage is correct?
A. Yes.
Q. And so you would agree that waste is a little more complicated than just produce all you can, wouldn't you?

A. Oh, absolutely.
MR. HALL: I'll pass the witness.
Thank you, Mr. Ezzell.
HEARING OFFICER ORTH: Thank you, Mr. Hall, Mr. Biernoff or Mr. Moore.
MR. BIERNOFF: Good morning, Madam Hearing Officer. Ari Biernoff here for the commissioner of public lands and the State Land Office.

CROSS-EXAMINATION

BY MR. BIERNOFF:
Q. Good morning, Mr. Ezzell?
A. How are you.
Q. I'm well. How are you today?
A. Good. Thanks.
Q. Okay. I wanted to just follow up on some of Mr. Hall's questions?
You're not testifying in this proceeding on behalf of the Hinkle Law Firm, are you, Mr. Ezzell?
A. No. I'm testifying on behalf of IPANM.
Q. Okay. You're not speaking as a representative of Hinkle, you're giving your own personal opinion; is that right?
A. Yes.
Q. Okay. You're not here on behalf of any particular client of you or your firm, are you?

A. I am here on behalf of IPANM, of which I am a member.
Q. Okay. Not any particular oil and gas operator or producer?
A. No.
Q. Okay. Just wanted to clear that up?
You've talked in your oral testimony and also written in your pre-filed testimony about joint operating agreements. And you've provided a lot of detail on specific forms that the American Association of Professional Landmen have developed, right?
A. Yes.
Q. Generally speaking, who are the parties to a joint operating agreement?
A. The operators and the non-operators.
Q. The OCD is not a party to joint operating agreements, right?
A. No.
Q. The OCD does not approve or disapprove joint operating agreements, right?
A. No, it does not.
Q. Okay. And the OCD as a non-party is not bound by the terms of joint operating agreements, right?
A. Absolutely. Correct.

Q. Okay. In your written testimony, your direct testimony, you make an observation that I want to review and discuss with you. This is from page 46 of your written direct testimony?

You state that: On an overall basis, this. And I think you're referring to beneficial use is a brand-new legal concept as applied to oil and gas wells and operations. Beneficial use is a concept that is used and well developed in water law in New Mexico and other western states. It has never been a concept in oil and gas law in New Mexico statutes, regulations, common law, or contracts. And that's the end of the quote.

Do you stand by that testimony, Mr. Ezzell?

A. I think the term "beneficial use" is in the administrative code for maybe the definition of an inactive well. I can't remember. But I think the term "beneficial use" or "beneficial purpose" appears somewhere.

Q. Okay. And, in fact, the term beneficial use is in statute, isn't it?

A. I could not point you to the statute other than the water law.

Q. The term beneficial use is in the Oil and

Gas Act, section 70-2-3, isn't it?
A. Probably.
Q. Do you want to look at it together?
A. I don't have it in front of me, but I believe you.
Q. Okay. And it's also, I think you noted, in NMAC provisions, in Title 19, Chapter 15, regulatory provisions that apply to the OCD, right?
A. Yes.
Q. Okay. Thank you. Mr. Ezzell, in your written direct testimony, you state the following. This is from page 50 of your testimony: We all know the handful of operators out there who are giving industry a bad name in this regard. There must be other regulatory means of cracking down on these abuses. End of the quote?
Mr. Ezzell, how many operators are out there, approximately, giving industry a bad name in New Mexico?
A. I couldn't put a number on it.
Q. Okay. You used the phrase "a handful." How many is that, more or less?
A. I can't give it a number.
Q. Mr. Ezzell, if there were 50 or 100 bad operators flagrantly out of compliance with OCD rules

and perhaps other obligations, would you consider that to be just a handful?

A. If there were a hundred, probably -- no, I wouldn't consider that a handful.

I use that term just to say that most of industry is responsible, and that there should be a better way than to punish good operators with this rule. There should be a better way to get the enforcement done on the bad operators.

Q. Okay. Well, so before we move on from this point, I know you said that you don't think 100 would be a handful. Do you think 50 is a handful? Would you consider that to be a handful?

A. Yeah, probably. I think there was testimony there's over 600 operators in the state. I don't know. I don't know that for a fact. I thought there was testimony to that somewhere.

Q. Okay. It doesn't trouble you if there's in the neighborhood of 8 or 10 percent or more operators in New Mexico who are out of compliance with OCD rules?

A. Well, it troubles me. But that's why we have the OCD and they have the enforcement powers they do to get 'em.

Q. Okay. Good, good. Well, that's good to hear. The passage that I read from your direct ends with the following statement: There must be other regulatory means of cracking down on these abuses?

What are those other regulatory means? Have you given any thought to that?

A. Well, all the tools that the OCD has in the toolbox. The notice of violations. You know, you can get the attorney general to go after them. You've got a lot -- OCD has lots of tools to regulate the industry.

Q. Is claiming bonds, financial assurance held by non-compliant operators, one of those tools?

A. It should be. I don't know how often it's done. I think there's been testimony that it's problematic to get them collected.

Q. Okay. Well, do you happen to know how many clients of the Hinkle law firm, your law firm, have had their bonds pulled by the State Land Office for their pervasive environmental non-compliance? Do you know what that number is?

A. I have no idea.

Q. Okay. Mr. Ezzell, do you support additional legislative appropriations to give OCD the ability to develop additional alternative means of cracking down on the abuses that you describe committed by a minority of oil and gas operators on page 50 of your direct testimony?

MR. CLOUTIER: Objection. Vague.

HEARING OFFICER ORTH: What was vague about it? I'm sorry.

MR. CLOUTIER: He's asking about legislation solutions generally. There's no specific legislation that Mr. Ezzell is being asked whether he supports or -- assuming this is even remotely relevant. But I think he's entitled to know what the proposal is that he's supposed to support or not support.

HEARING OFFICER ORTH: Mr. Biernoff, I thought you described it, which was to get OCD more resources. But if you want to be a little more specific, perhaps Mr. Ezzell can answer it.

Q. Well, so I'm not a legislator. I know that we have at least one legislator who was on the call, on the hearing this morning, who happens to be married to Mr. Ezzell. And so I'm not in that position. I don't introduce legislation. I did think the question was clear and I'll restate it?

BY MR. BIERNOFF:

Q. Mr. Ezzell, you reference other regulatory means of cracking down on abuses by bad operators. And I'm asking you, do you support additional resources through the legislature for OCD to identify and implement alternative regulatory means of cracking down on the abuses that you've referenced?

A. I think in your original question you said appropriations, and I don't necessarily agree with just appropriating money. I would support legislation, and hope I get a chance to in January, I would support legislation that uses the conservation fund and funds the reclamation fund and not a dime is diverted to the general fund, which is what the legislature did years ago to balance the budget.

I think the conservation fund needs to be used for its intended purpose, and that's funding the OCD and funding the reclamation fund.

Q. Mr. Ezzell, are you in favor of, do you support additional FTE, that is additional staff for the Oil Conservation Division, to develop and implement other regulatory means of cracking down on operators' abusive conduct?

MR. CLOUTIER: Objection. Relevance.

MR. BIERNOFF: Madam Hearing Officer.

HEARING OFFICER ORTH: Go ahead, Mr. Biernoff.

MR. BIERNOFF: Yeah, I think it's very appropriate, since Mr. Ezzell has mentioned that there are alternatives to dealing with the bad operator problem, to explore what those might be, and that's what I'm doing here.

HEARING OFFICER ORTH: That's what I thought. Please go ahead.

A. It's not my job or my place to tell the OCD how to do their business. I assume that the director knows the capabilities of his staff. And if they are not enforcing compliance because they don't have enough staff, they need to hire more people. And that's what --

Q. -- what I'm asking you --

A. -- the budget is.

Q. Mr. Ezzell, I'm asking you if you would support such an effort, since you have identified alternatives to this proposed rule. You're saying you don't support the rule. I think we've all heard you loud and clear on that score. And you're saying -- you recognize that there's a bad operator problem, and you're saying there's alternatives. So I'm asking you, would you support additional staff resources for OCD to implement your proposed alternatives?

A. If I were a litigator, I'd say asked and answered. But I think I just answered that.

Yes, if the OCD cannot do the compliance it wants to because of lack of staff, they need to get more staff.

Q. And you would support such an effort; is that right?

A. I just said that, yes.

Q. Okay. Good. Now it's been asked and answered?

Mr. Ezzell, let's keep moving through your direct testimony. I'm not going to read all of it because there's a lot of text. But on page 56, you are discussing the ability of OCD to consider regulatory violations by operators in other jurisdictions. And now I'll start reading it.

As written, these provisions seem to suggest that the Division in the first instance is empowered to decide whether the applicant or proposed new operator is out of compliance with some other state's or federal law. The suggested provisions do not require that, for instance, state or federal regulatory agency charged with enforcing those laws have found the applicant or new operator to be out of compliance, just that they are out of compliance.

I do not know of any expertise within the Division, and would be surprised if it existed, to interpret another state's laws and regulations or most federal oil and gas laws and regulations. I also question what resources would have to be devoted to that issue.

Okay. I have a few questions for you about that testimony. And The first is, is it your position here in this proceeding that the oil conservation Division should ignore compliance violations that a particular operator, a New Mexico operator, may have encountered in another state or with the United States government?

A. I think that is certainly a factor that the OCD could consider. But the way the proposed rule is written, it does not address the severity of the violation, whether the violation has been corrected. That's the problem I had with the unresolved adjudications issue that we talked about yesterday.

Yeah, I absolutely think that it is within OCD's interest to investigate. But I don't think it's in the OCD's purview to be able to just thumbs up or thumbs down someone that wants to do business in New Mexico.

Q. Well, let's explore that a little bit further. You said that it's a factor that's reasonably considered by OCD, the compliance or non-compliance of companies in other states or with respect to the federal government. And then you also said, but it's not something that OCD should give a thumbs up or thumbs down?

Help me understand that gap between it being a factor, non-compliance in other jurisdictions being a factor, but not being something that OCD can take any action on.

A. Well, to the extent that the OCD is determining a bond amount on the blanket, on the plugging bond for the TA wells, then I would think the OCD would certainly want to investigate the operator's history elsewhere.

I do not want to see a situation created when all of our environmentalist friends will start running around the country trying to find violations so they can turn them into the OCD to get OCD to try to come down on somebody.

Q. Mr. Ezzell, is it your view that anyone who wants to operate oil and gas wells in the State of New Mexico should be allowed to do so regardless of their compliance track record?

A. If they are adequately bonded, yes. As I told Mr. Hall, I'm a free-market guy and I don't think -- you know, bad operators will be bad operators and they will fail. But I don't think that the government should be able to say, "You cannot do business, this business, in our state."

Q. Okay. So just to be clear, an operator like Cano Petro that leaves behind scores or more of inactive wells, if it comes back from bankruptcy or finds new venture funding, can resume operating in New Mexico from your point of view, that's not a problem?

A. If they are adequately bonded and the OCD has the ability to enforce their compliance rules, then yes --

Q. Well, so --

A. -- they should be.

Q. Okay. And I'm sorry for interrupting you. I didn't realize you were still answering?

Mr. Ezzell, what does adequate bonding look like for a company like Cano Petro? Your testimony from a minute ago is that a company that's left behind a very large number of inactive wells unplugged should still be allowed to operate as long as there's adequate financial assurance. So, what is adequate?

A. 250,000 statewide bond, or just the bonds that are in the statute.

Q. Okay. A $250,000 statewide bond. Cano

Petro operated scores of wells, and let's say that it wants to do so again. And you're aware of what average plugging costs are, according to your own testimony and other IPANM witnesses' testimony, right?

A. I have learned that there is no agreement on average plugging costs. But I know that the 250,000 bond would not cover all of the Cano wells.

But if they came back -- well, they're not going to come back into the state because you guys would be able to do your enforcement against them. And so I don't really think that that's a good example to use.

Q. Well, do you have another example in mind of an operator who has left behind a large number, and let's say for purposes of discussion, we're talking about a few dozen or more inactive wells unplugged and their sites unremediated? Do you have an alternative example that you'd like to discuss?

A. Well, in that situation, again, we've already discussed the fact that the conservation tax has been collected from even the bad operators, because you can't dodge the tax that is withheld basically at the wellhead.

And so, if that money were used as it was intended, there would be adequate funding to cover the type of wells you're talking about when an operator disappears.

Q. Okay. So I just want to make sure that I understand you, Mr. Ezzell. Whether we're talking about Cano Petro or another non-operator, if you think of an example, let me know. I will do the same? Whether we're talking about Cano or somebody else, a company, as you see it, can leave behind a multi-million dollar compliance problem, reconstitute or emerge from bankruptcy or find new investment, return to active operations in New Mexico, operate scores of wells or more, and that's okay as long as there's a $250,000 bond in place because money is collected through the tax that you described? The conservation tax that you referenced will pick up the difference? Is that right?

A. I think that is the best scheme. I think it is unfortunate that situations like Cano even occurred in the first place, because they just -- all of their wells didn't just become out of compliance overnight.

And that's why I have testified that I would support the OCD in vigorously enforcing the rules. And I think the rules that we have in place now are adequate.

Q. Well, okay, thank you. That was actually a question I had for you and you've answered it. So thank you for reading my mind?

We can look at page 58 of your direct testimony and you state the following: If this Commission determines it has the authority to adopt such a policy, and in parentheses, and I do not think it does, and agrees that some risk-based approach is needed, arbitrary numbers like 15 percent marginal wells do not assess any risk. That can only be done by looking at individual operators. That's the end of the quoted passage.

My question for you, Mr. Ezzell, is do you support OCD undertaking an analysis of the risk profile of individual operators? You say here that can only be done by looking at individual operators. Do you support that kind of an operator-by-operator individualized analysis?

A. On existing operators or prospectives?

Q. Let's start with existing operators. Do you support an analysis of individual operator's risk, compliance history, whatever else you have in mind when you say that a risk-based approach is possible?

A. So I'm sorry. I thought you were through.

Q. Go ahead and answer?

A. If the OCD is doing its job and has the manpower to do its job, then that is already occurring. That's what they do. That's an assessment of the risk. They look -- you know, the field inspectors do what they do. They go and inspect.

And if it is a minor violation, generally fixed with a phone call. If it's more serious, then hopefully the OCD is able to pursue it. And that operator will not turn into a Cano.

Q. But, again, to be clear, your view is that $250,000 is the most that any operator, regardless of compliance behavior, that's the most that they should be required to bond with OCD, right?

A. That's what the statute says.

Q. But I'm asking you about what your view is of what's adequate. Because we've been talking about what's adequate. Is $250,000 adequate for any operator?

A. I think -- yes.

Q. Okay. And would you, Mr. Ezzell, would you support -- you mentioned manpower as a consideration. If OCD needed additional staff resources to undertake this very granular risk assessment, would you support OCD receiving those additional resources from the legislature?

A. As I've already stated, I would support them that they reset receipt of those additional funds from the use of the conservation tax. Everybody has said that time and time again that the oil and gas industry needs to clean up its own mess. The oil and gas industry by paying the conservation tax for the life of a productive well is repaying a fund to clean up its mess.

Q. And what if there's not enough -- okay, Mr. Ezzell. What if there's not enough money in the fund to pick up and cover the cost of outstanding plugging, remediation and reclamation activities?

We heard in public comment this morning from one commenter who said that there's a significant shortfall Between what's in the fund and what's needed to actually do the work. If there is such a shortfall Let's assume the commenter is right for the time being, what then? Where do those additional resources come from?

MR. CLOUTIER: Madam Hearing Officer, I ask that the witness be allowed to complete his answer before Mr. Biernoff interrupt and pose a new question.

HEARING OFFICER ORTH: All right. Thank you.

Go ahead, Mr. Ezzell.

A. The only gas industry pays over $100 million a year in conservation tax. If it all was funneled to pay for the operations of the OCD and to fund the reclamation fund, that's over a billion dollars in ten years. The --

Q. Okay. Mr. Ezzell, you're not --

A. There's plenty --

Q. -- answering my last question?

A. There's plenty of money.

Q. Mr. Ezzell, you've made this point several times, and it's not responsive to my question, so I am going to need to interrupt you. And I'm going to remind you of what my actual question was and ask you to answer it?

My question was, assume for the moment -- I'm not asking you to agree that it's true, but assume for the discussion that what the commenter this morning said is true, and that there is indeed a shortfall between what is available in the fund and the total cost of addressing inactive wells, remediation that needs to be done, et cetera, cleanup. How does the shortfall get filled? Where does that money come from?

A. I think I've answered that.

HEARING OFFICER ORTH: I haven't heard an

answer, Mr. Ezzell.
A. I want it to come from the collection of the conservation tax and the appropriate use -- I don't want to dime of the conservation tax going to the general fund, which is what's happening to it now. That's why there is a shortfall.
If the shortfall continues -- the conservation tax is collected every month. And the reason the result of having a shortfall will not be that wells won't get plugged and sites remediated. It will just mean they won't get that done as fast. It will cause a delay.
Q. I want to make sure I understand your answer. Are you testifying, Mr. Ezzell, that money that should be going to well-plugging and spill remediation and related activities is instead from the conservation tax that's collected, is instead going to the general fund, and you believe that to be a problem? Is that your testimony?
A. That is my testimony.
Q. Okay. Mr. Ezzell, on page 58 of your direct testimony, you're discussing the 15 percent threshold. That's the context. And here's the statement that you make: In my testimony already, I have described situations why an operator might want to have inactive

wells or marginal wells in their portfolio because of future development plans?

Do you have any idea, do you have either a precise number or an approximate number of how many of the oil and gas companies that are out of compliance with OCD rules who have made this argument? Do you have any idea of the number or, let's say, the percentage of oil and gas companies who say in response to a compliance demand, "We have future development plans for these wells"?

A. I have no idea how many or what percentage.

Q. Okay. Do you have, you reference here -- I don't know if you have a specific company in mind, because you go on to say, I'll quote: You may be looking at an operator with a very strong balance sheet and has a significant portion of highly productive wells in its portfolio, but has marginal wells for reasons of, for instance, forming a unit. That operator does not seem to pose any danger of default to the State of New Mexico. End of the quote.

Do you have a specific operator or operators in mind, that is, when you refer to companies that have a lot of inactive or marginal wells, but that don't seem to pose a risk to the state? Who are you thinking of there?

A. I was not thinking of anyone in particular. I was describing a situation where an operator was well-funded, had lots of capital, and good wells and bad wells. And they might want to hang on to the bad wells when secondary recovery and tertiary recovery come back in to vogue.

Q. There's not secondary and tertiary recovery happening now?

A. There is, but I think most of the activity is in the shale place.

Q. How does the Oil Conservation Division make a determination if an operator has a number of inactive wells or marginal wells? How does the Oil Conservation Division discern between an operator that has a great balance sheet and real bonafide assets versus an operator that is just blowing smoke at everybody and trying to avoid plugging or other cleanup obligations? Do you have any thoughts on that?

A. Well, I think the OCD should have the ability to use a little bit of discretion in its enforcement. And again, depending on the severity of the violation. But the OCD already knows who the good guys are and who the bad guys are.

Q. Mr. Ezzell, you referenced balance sheets and I agree that that's a significant -- can be a significant piece of information. Do you think a company's and operator's balance sheets should be made public so that OCD or other parties who have a vested interest in whether that company operates here in New Mexico have an understanding of the company's financial strength?

A. Well, in the public companies, it already is published in annual reports, things like that. As far as a small independent, I do not think that the public should be able to see their balance sheets or financial information.

Q. What about the OCD?

A. Same answer. No.

Q. So if the balance sheet is a secret that only the operator and its investors, if there is any debt to know about, how can oil conservation Division or any other interested party determine whether an operator with a lot of inactive or marginal wells has a strong balance sheet or doesn't?

A. Well, that's where the discretion in enforcement would come in, because if they have all these inactive wells, the OCD has the tools to cite them for violations. And you will almost immediately know their financial capability if they comply with the enforcement actions or pay their fines on time, whatever is done. The OCD will know that.

MR. BIERNOFF: Okay. Mr. Ezzell, I appreciate your time and your testimony today.

Madam Hearing Officer, I don't have any more questions for Mr. Ezzell this morning.

HEARING OFFICER ORTH: Thank you very much, Mr. Biernoff.

Let's see. I don't believe we have Ms. Nanasi with us.

Mr. Maxwell is at the polls today.

Mr. Rankin, do you have questions?

MR. RANKIN: Nothing for me. Thank you, Madam Hearing Officer.

HEARING OFFICER ORTH: All right. EOG is monitoring.

Mr. Suazo, do you have questions?

MR. SUAZO: Just a couple of questions, Madam Hearing Officer.

CROSS-EXAMINATION

BY MR. SUAZO:

Q. Mr. Ezzell, good morning?

A. Good morning.

Q. Mr. Biernoff with the land office asked you, and don't let me misstate your testimony, but I think generally speaking, you stated that generally, you're not opposed to bonds in excess of $250,000 for certain operators that are problematic under the blanket bond structure, correct?

A. Yes.

MR. HALL: Objection. Leading.

HEARING OFFICER ORTH: Yeah. Please avoid that, Mr. Suazo.

MR. SUAZO: I'll move on.

BY MR. SUAZO:

Q. But it is your testimony in this proceeding that the Commission and the Division do not have the statutory authority to increase bonds beyond 250,000 correct?

MR. HALL: Objections. Leading.

HEARING OFFICER ORTH: Would you turn those into questions.

BY MR. SUAZO:

Q. I'm confirming his testimony, what he said? And he can say yes or no.

HEARING OFFICER ORTH: That's true.

A. I do not think that the Division or the Commission has the authority to increase bonds outside of the limitations of the Oil and Gas Act.

Q. And to do that, your testimony is an act of the legislature would be required, correct?

A. Yes.

MR. SUAZO: No further questions.

HEARING OFFICER ORTH: All right. Thank you.

Mr. Cloutier, do you have redirect?

MR. CLOUTIER: Just a couple, Madam Hearing Officer. If we could pull up the Alexander exhibit. Was it 13? Ms. Tripp, if she could have authority share. All right. We'll go with this question first. OK. There we go.

REDIRECT EXAMINATION

BY MR. CLOUTIER:

Q. There's a sentence below the phrase: Years before return to activity. Can you read that sentence?

A. The one beginning with histogram.

Q. Yes, sir?

A. Histogram of length of time inactive prior to return to activity, across a sample of wells that reactivated following 12 plus months of no production.

Q. Do you know what that sample of wells was that Mr. Alexander used?

A. I have no idea.

Q. Did you hear Mr. Alexander testify that he knew what the sample of wells was?

A. I did not hear that testimony.

Q. Thank you. Now if we could just go to the statute that Mr. Hall was asking you about?

You see the highlighted language at the top talks about the instruments of financial assurance being conditioned that the well be plugged in abandoned?

A. That is correct.

Q. Do you understand section 70-2-14 to require any other sort of bonding besides the financial assurance for plugging and abandoning a well?

A. No. It is just plugging bonds.

MR. CLOUTIER: All right. That's all my questions, Madam Hearing Officer.

HEARING OFFICER ORTH: All right. Thank you, Mr. Cloutier.

Commissioner Ampomah, do you have questions of Mr. Ezzell.

COMMISSIONER AMPOMAH: Yes, I do have a few.

EXAMINATION

BY COMMISSIONER AMPOMAH:

Q. Mr. Ezzell, thanks so much for your testimony today. So I'm Dr. Ampomah from New Mexico Tech. So I do have a few questions for you. So if we

can bring up your slides, your direct slides. And I'll start from slide Number 5. Yeah, right there?
So in here, you're talking about -- let's put aside whether the Commission do not have authority.
A. Right.
Q. I mean, the lawyers will take care of that. Yeah. So in here, you describe the factors that need to be considered when the Commission or the OCD is more or less making a rule for a bond or financial assurance. Can you tell the Commission how you will quantify the cost associated with the age of the well?
A. The age of the well will directly affect the cost to plug, and it also will directly affect the ease with which plugging can occur. Because older wells are more likely to suffer from corrosion and all sorts of other types of damage. Until you get into one -- and I'm not an engineer, so I don't know why I'm telling this to you, because you know way better than I do, but you don't know whether rods are parted, you don't know whether there are holes in the casing. But with older wells, that's more likely than with newer ones.
Q. Yeah. So let's go to slide number 7 and then I'll ask you, can you provide to the Commission

the range of age of wells, you know, the range of age of wells that you will classify as a high risk?

A. Are you asking the age.

Q. Yes. Age range. Because you said newer and then older. Now, when you say newer and older, what is the range for the older which you were saying that those could be a high risk that we should pay more attention to?

A. I've not really given that much thought. But I would say if the well was drilled before 1970, then it's probably going to have a much greater chance of being a high risk.

Q. So you can see how difficult the Commission's job is, right? Because when all these three factors are provided and if we have to more or less quantify them and use that to come up with a single number or, let's say, risk-based, you can imagine how difficult that is?

So 1970, then you're saying that a well that has probably been in operation for about 55 years?

A. Yes.

Q. One witness from my IPANM I believe said 40 years?

A. Like I said, it's not something that I had given much thought to. But I'm happy that I was that close to what IPANM said.

Q. So let's go to slide Number 28. Yeah, so slide Number 28, my question to you is, so you're saying that everyone -- you know: If produce to avoid bonding?

Now, your first point, you're saying everyone, including state, gets less revenue over life of the world?

Have you done independent analysis to support this claim, or is just based on a hypothetical situation?

A. I have not done any independent analysis. That is just my opinion based on my experience.

Q. Based on your experience. Okay. So there has been a lot of discussions, even with regards to the marginal wells, if the Commission can consider some exceptions to the marginal wells?

In your testimony, you describe how, let's say, if a well is producing and the commodity price is so low, you made an argument whether the well is going to produce or not.

Now, can you quantify the impact of economics, let's say, can you give some suggestions with regards to how that description of the commodity prices can be incorporated as an exception into the marginal definition?

A. In general, I think that other royalty owners, state, federal, fee, understand that they will benefit more if production is decreased in times of poor price and brought back on later.

I mean, that's been manifested by -- we had a statute that is no longer -- I don't know if it's statute or not, but we had a policy in New Mexico on state trust lands that it was decided that they would rather, in low price environments, they would rather have the revenue later, even though it would cause hardship up front.

A stripper well royalty rate is the federal effort to continue to produce. We have similar activity in New Mexico where you can apply to the land commissioner to reduce your rate if your wells are approaching uneconomic status.

So I think it is in everybody's interest to get all the production you can out of every wellbore, especially in times when -- yeah, I kind of lost my train of thought.

Q. I think I'm good. I think your point is well made. So you believe that the Commission can include something in terms of economics to give OCD the flexibility to make that determination when that instance happens?

A. I would not disagree with that. Yeah.

COMMISSIONER AMPOMAH: Thank you for your time. No for the questions.

HEARING OFFICER ORTH: Thank you.

Commissioner Bloom, do you have questions?

COMMISSIONER BLOOM: I do, Madam Hearing Officer. Thank you.

EXAMINATION

BY COMMISSIONER BLOOM:

Q. Good morning. It's still just morning here for a little bit longer, Mr. Ezzell. Thank you for your time on the stand today?

I love history and appreciated hearing from you on the development of JPAs over the decades. I heard something similar at the annual conference of the National Association of Petroleum Accountants in Dallas this year, and this filled in some of the other pieces. So I appreciated that.

I also just wanted to thank you and your family for your service to the state. I know that having a state legislator in the family is a sacrifice of time and money.

I've come in front of your wife before, and as you know, she is thorough and tough?
A. Welcome to my world.
Q. Mr. Ezzell, did you read the, much discussed here, LFC report that was part of the applicant's pre-hearing statement?
A. No, I did not.
Q. Okay. I'll read you something from it. It says, quote: The Federal Environmental Protection Agency estimates annual methane emissions from the nation's inactive and unplugged oil and gas wells are comparable to adding an additional two million gas-powered cars to the road. End quote?
Is that methane a wasted resource?
A. Yes.
Q. We heard from the OCD, and you and Mr. Hall discussed this as well, but the OCD has said that 60 percent of inactive wells in New Mexico leak methane. Is that fugitive methane a waste?
A. Yes.
Q. Does the OCC regulate waste?
A. Yes.
Q. Does proper plugging stop methane leakage in waste?
A. Proper plugging would stop leaks, yes.

Q. And would it stop the waste that is associated with fugitive methane emissions?

A. Yes.

Q. Mr. Ezzell, the LFC study goes on to say the following, quote: A 2011 study by the Groundwater Protection Council, an organization whose members are state groundwater regulators, found inactive and unplugged wells responsible for 22 percent of oil and gas-related groundwater contamination incidents in Ohio and 14 percent in Texas over a 16-year study period. Improperly plugged or unplugged wells have also been implicated in surface contamination incidents, including recently near the Texas/New Mexico border, where the wells have served as conduits for large leaks of produced water and hydrocarbons. Unplugged or improperly plugged wells can also leak gases, including hydrogen sulfide, which is toxic and highly corrosive, and methane, which is both a potent greenhouse gas and explosive. End quote?

Mr. Ezzell, it's my understanding that the OCC is also charged with protecting the environment, water and public health. Do you agree with that?

A. Yes.

Q. I just wanted to get through some of these questions about does the OCC have the ability to and the authority to regulate here. And of course I believe given issues of methane waste and threats to the environment, public health and water, that we do?

Mr. Ezzell, I believe that your rebuttal spends time looking at the relationship between the OCC and the legislature. Correct?

A. Yes.

Q. When I looked at the first document filed in this case, I see June of 2024. That's when the applicants made their application. Does that sound right to you?

A. Yes.

Q. So that was last year, about 16 months ago. And during that time, from mid January to mid March of this year, 2025, the state had a 60-day legislative session, correct?

A. Yes.

Q. So our legislators had six months to introduce a bill on this topic, if they'd chosen, correct?

A. Yes.

Q. So the legislature could have, for example, stopped cold this effort here by, say, passing legislation that would have prohibited the OCC from

setting any new bonding levels; is that right?
A. That is correct, they could have.
Q. The legislature did not legislate in this area in 2025, did it?
A. No.
Q. The three commissioners here were designated by the governor and/or her administration; in my case, the commissioner of public lands. Would you agree that these two duly elected officials, the governor and the commissioner of public lands can pass their administrations to pursue rulemaking?
A. Yes, they can.
Q. And that our duties include rulemaking on the OCC?
A. The Oil and Gas Act gives the OCD and the OCC limited authority to do rulemakings, I agree.
Q. Do you also agree or have knowledge that the public has the right to petition the OCC to do rulemaking?
A. I don't know where that authority comes from, but I agree with the public.
Q. Yes. That's the basis, of course, of the applicants coming from the public and doing this?
And would you agree that they have the right to do this, regardless of what the legislature

is doing?

A. Yeah, they have the right to do anything. They're not restricted by the legislature at all.

Q. Yes. Thank you. You mentioned the land office and the permanent fund in your surrebuttal. And yeah, I agree with you, sir, that land grant permanent fund moneys can't be spent directly on well plugging and reclamation?

But my initial comments were meant to be more along the lines that the land office has worked for over 100 years to generate funds for its beneficiaries, and that ultimately money for the beneficiaries in the state. And it would be unfair and unjust for the state to have to spend a large percentage of that sum on cleaning up orphaned and/or unplugged, inactive wells throughout the state. Does that make sense?

A. I agree with that wholeheartedly. That's why I would like to see the conservation fund used for its intended purpose.

Q. Mr. Ezzell, are you aware of the Land Office's land maintenance fund?

A. Generally, yeah. I know there is one. I have no idea how it's funded or how it's spent.

Q. Yeah. So this gets kind of arcane. But the land grant permanent fund, as you know, collects the royalties from oil and gas for the state and it's invested by the state investment council. And then the legislature can spend 6 percent of the five-year rolling average?

The land maintenance fund is money that comes in from renewable resources. That includes renewable energy, rights-of-ways, and oil and gas lease sales. We can continue leasing land as leases come back to us. And so that money goes into the maintenance fund, and it's immediately distributed to the beneficiaries.

This year, we're four months into the fiscal year, and we've already earned close to half a billion dollars for this fund. Do you know that the State Land Office has a reclamation fund that takes money from the maintenance fund to clean up messes on state trust land?

A. That is my understanding, yes.

Q. The land office will continue to spend beneficiary money to clean up messes made by its lessees, correct?

A. Yes.

Q. Would you agree with me if I told you that the land grant permanent fund is somewhere between $34 billion and $36 billion today, somewhere in that area?

A. Yes.

Q. Are you aware of the Center for Applied Research's 2021 bonding financial assurances gap study?

A. No, I am not.

Q. I believe applicants may have mentioned that or the VERTEX study that went into it in their prehearing statement?

But that study by the Center for Applied Research said that in 2021, there was a bonding gap of $5 billion on state trust lands. So today we have inflation and the higher inflation we have seen in the oil patch, I think, then higher, higher than -- certainly higher than the other inflation elsewhere.

I believe we are looking at a bonding gap of probably closer to $7 billion. You compare the $7 billion to $35 billion and that would be about 20 percent or one-fifth of everything that the permanent fund has done over the past hundred years; is that right?

A. That's correct.

Q. So this is where my concerns come from with the relationship to the permanent fund and the liabilities that are out there. So I just wanted to spend a little time on that?

I think just lastly, I believe you're aware that the land office has instituted, right about four years ago, an accountability and enforcement program to get orphan wells and inactive wells P&A'd on state trust land. Are you aware of that?

A. Yes, I am.

Q. I think you may have represented some companies that have been involved with the land office related to some of these issues, correct?

A. Not to plugging, no.

Q. Unrelated to their bonds?

A. I have been involved in a case where a couple of state leases were terminated. And the reason for the termination being that the lessee had not posted a surface damage bond as required by the statute. The statute and the State Land Office regs say that that damage bond is supposed to be posted prior to the lessee doing anything on the lease. And in the case I was in, that portion of the lease had never been drilled, and the lessee had never set foot on it.

Q. Okay. Okay. But --

A. Yeah, I --

Q. Yeah, sorry. Go ahead. I didn't want to

cut you off?
A. Oh, no. I was through.
Q. Yeah. I think as you know, as well, the commissioner asked us to review all 6,000 leases at the time on state trust land, to see if they were bonded. And we found that about on-eighth, some 800 wells, were not bonded. And I think as you know, ultimately we only canceled less than a couple dozen. And we worked with companies and gave some people a little bit extra time to actually get their binding in place?
If you don't know if you've seen any of the news releases or stories in the press. But, you know, we've had to work with and sometimes sue operators and lessees on state trust land to get them to plug what is now 750 wells P&A'd under this program. Are you aware of that?
A. Not the number, I did not know that.
Q. Are you aware that we still have maybe that many wells left to get cleaned up on state trust land?
A. I did not know that, but I do not dispute it.
COMMISSIONER BLOOM: Mr. Ezzell, thank you for your time. I don't have any further questions for you.

HEARING OFFICER ORTH: All right. Thank you, Commissioner Bloom.

So, Chair Chang, we are past time when we usually take a lunch.

CHAIR CHANG: I do not have any questions anyway.

HEARING OFFICER ORTH: You do not. All right.

CHAIR CHANG: So there you go.

HEARING OFFICER ORTH: So we can excuse Mr. Ezzell, it sounds like. Thank you very much, Mr. Ezzell.

Let's come back at 1:15 from lunch.

(Lunch recess held from 12:11 to 1:15 p.m.)

HEARING OFFICER ORTH: Ms. Tripp, are you calling the next witness?

MS. TRIPP: Madam Hearing Officer, I believe we may need to address the surrebuttal exhibit from OCD, if we need to do that. We planned to do it before lunch but did not get to it.

HEARING OFFICER ORTH: Was that OCD exhibit 34, I believe, surrebuttal for Armstrong.

MS. TRIPP: Yes, Madam Hearing Officer. And so I know that the surrebuttal has been filed in response to Mr. Armstrong's testimony during cross-examination yesterday.

Mr. Armstrong was able to speak with his staff again to clarify -- I think there was a miscommunication or misunderstanding. So it's our position first that the objection -- the objection was not made during his cross-examination, but we're not opposed to withdrawing or otherwise addressing the record.

MR. CLOUTIER: Yeah, we're not going to rely on that testimony for any purpose in this rulemaking, Madam Hearing Officer. And we stipulate to the admission of the exhibit, if that's what OCD wants to do. And Mr. Tremaine and I visited, but if there's some other suggestion that they have, I'm happy to listen to it.

MR. TREMAINE: I really appreciate the meaning of the minds on this from Ms. Tripp and Mr. Cloutier.

I do have to quibble because I did object to the foundation of his statement, but it was to Commissioner Ampomah. So just for clarity in the record, we're not fighting over that or the result.

I don't think it matters whether the exhibit comes in. What I want for the Commission is if they have questions about OCD's instructions related to production reporting, that they're able to take notice of OCD's instructions, which are on the website and referenced in that e-mail.

So if it's beneficial to the Commission, we'll admit it. No need to belabor the point with the stipulation.

HEARING OFFICER ORTH: All righty. I mean it does seem like the kind of thing the Commission could take notice of and so it would not usually be objectionable as an exhibit either, just for convenience sake.

Are there objections to OCD 34? No? All right. Let's admit it. It'll just make it more convenient, I think, for the Commission to refer to it.

MR. TREMAINE: Thank you.

(Admitted: OCD Exhibit 34.)

HEARING OFFICER ORTH: Mr. Cloutier, are you going to call your next witness?

MS. TRIPP: Madam Hearing Officer, IPANM calls Representative Mark Murphy to the stand.

HEARING OFFICER ORTH: All right, thank you. Representative, would you please spell your first and last name for the transcript.

THE WITNESS: Yes, Madam Commissioner. My name is Mark, M-A-R-K, Murphy, M-U-R-P-H-Y. I'm president of Strata Production Company and also providing comments on behalf of IPANM.

HEARING OFFICER ORTH: Thank you. Do you swear or affirm to tell the truth?

THE WITNESS: I did.

HEARING OFFICER ORTH: Thank you.

Go ahead, Ms. Tripp.

MARK MURPHY,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. TRIPP:

Q. Representative Murphy, if you could just introduce yourself to the Commission, tell us about your education and experience?

A. Sure. I served in a number of capacities, and with respect currently, I'm president of Strata Production Company, which was formed in 1988 by my former father-in-law and business partner, Frank Morgan, who has since passed.

It began with a small volume of -- or a small number of low-volume producing wells, also known as stripper wells. At the time we had eight employees. They had eight employees. I purchased the majority of the company in 1991, and we're now at 23 employees.

We made 11 field discoveries. That early stripper production basically allowed us to begin an exploration and leasing effort that led to those Delaware, primarily Delaware Formation discoveries, but also Bone Spring, Wolfcamp and deep oil and gas.

We currently are operating some 15 -- well around 20,000 acres, 15,000, which is the main project in Eddy County. Strata drilled the first lateral well, long-reach lateral in 1990. We drilled the first permitted horizontal well in the state in 2001.

We currently operate 72 wells. At the time of this, we're actually up to 75 now. We've got an active drilling program going. And so we're pleased to report that that's happening.

Experience in New Mexico I think is the next slide perhaps. It says I'm fourth generation in the oil and gas industry. I am a fourth generation producer, second generation for New Mexico.

Grandfather, great grandfather were very active in the early east Texas boom and the discoveries in Arkansas, northern Louisiana, and so forth. During the 1920s my father remembers an early -- well, actually early '30s, very vividly staying on top of the Gardner Denver store in Kilgore, Texas, because his uncle ran that store.

And so I have 40 years of experience in operations, geoscience, management. We've actively acquired and divested properties. I've served as a board member and past officer and I'm a current board member of IPANM and past officer, president of IPANM; past treasurer and board of directors of New Mexico Oil and Gas Association; industry advisor to Mexico Tech Petroleum Recovery Research Center; served as project manager for numerous joint national laboratory university of private company partnerships.

I've also served as an advisor to the United States Department of Energy, secretary of energy under the Clinton administration, that was Hazel O'Leary; informally under the George H.W. Bush administration, with Michael T. Halbouty and later Admiral Watkins. And then lastly, under the Clinton administration, with Hazel O'Leary. I've also served as an advisor to the United States Department of Interior, Secretary of Interior Manuel Lujan, during the Bush administration.

I've led Strata for the past 34 years

and I've testified numerous times in front of both the U.S. House and Senate energy committees, primarily.

I think now maybe to concerns.

Q. Well, I also wanted to -- you mentioned how many wells that Strata is operating. Does Strata also plug wells?

A. We do plug wells. According to numbers that I've looked at, we plugged 38 wells.

Q. And so have you had a chance to review the proposed rules in this proceeding?

A. I have.

Q. Okay. And do you have any concerns with those?

A. I have quite a few concerns with them. The proposed rule really ignores that 95 percent of the wells are plugged by industry. The other 5 percent are paid for and essentially plugged by industry. So we plug 100 percent of the wells. We may pay private contractors 100 percent or 95 percent, but we pay the state the other 5 percent, and then they pay contractors.

So this notion that we're not plugging the wells, we're not cleaning up our messes, is simply incorrect. It's just not factually correct, and it shouldn't continue to be stated in these proceedings, because it's not right. 3.

And so, you know, when we contribute to the conservation fund, that fund kicks off some 100- to $130 million a year. Between the Senate and the House process during the legislative session, the OCD makes a budget request, and that's typically somewhere in the $20 to $25 million range. That's all they can spend. And the reason is mainly because of procurement issues and process issues.

I break this into a three-legged stool. We've got payment to plug the wells. That's not a problem. You've got hundreds of millions of dollars coming in; over $630 million that's been swept in the last five years into the general fund. So payment is not the problem. Procurement's the problem and process is the problem.

This notion -- somebody said this morning, and I take real issue with it, that this is not grade school and 95 percent isn't a passing grade.

I would say this. We're not asking for 95 percent. We plug 100 percent. And so my question to the WELC people and to this Commission and so forth is, how many times does industry have to pay for this?

We post our individual well bonds, and then we plug our wells. And for those in the industry, either through misfortune or bad actors or bad intentions or whatever else, leave a portion of wells behind.

And those of us that are good operators, we pay for those, too. Although it's really paid through the oil coming from those wells. Every well, in essence, is paying for some amount of its own plugging. But as an industry, we pay for it all. So I really would like to make that point.

The single-well bonding, $150,000, will not solve this problem because it's not a funding problem. And it also, I think, shifts the analysis from a traditional analysis of, okay, what is the proper bonding amount, whether you do it by individual wells or you do it by tiers of wells or whatever, to an economic analysis?

And it's an arbitrary economic analysis. They basically are proposing, I believe, 750 BOE per year and 180 days as being outside the realm of marginal.

In my experience, I can show you 2,000-foot wells that will not make money at 750. And I can show you 7,000-foot wells right now in my portfolio that do. And so when you shift this analysis over to where the OCD and the OCC is now supposed to make this risk assessment, it's really arbitrary. It's very, very arbitrary. Because at the end of the day, it's really, as Mr. Ezzell commented before, that the standard in the industry has always been paying quantities and the economics of the operator. And they make that decision.

And if that is taken over by an outside party, I can guarantee you there will be waste. And I also guarantee you there will be takings. Because you'll prematurely force wells to be plugged, which will hurt the state beneficiaries and also hurt the owners of those wells. So these arbitrary limits make no sense to me.

The reality is, OCD is ill-equipped to plug wells. They've demonstrated that. And that's not necessarily through their own fault. It's because of the procurement procedures in some cases and what I call process. The ability -- in some cases they have it -- in my opinion, have not expeditiously used the tools they've had. In other cases, they haven't used the tools at all. They've tried to collect a few bonds. We're told it costs more than it's worth.

But they haven't, to my experience or knowledge, really utilized the court systems to the degree that they have to pursue these bad operators.

Now there's some testimony this morning on who are the bad actors and how many are there and who are they. Well, as a state legislator, I have the benefit of hearing a lot of information from the OCD. And from last week's testimony, during the water and natural resources committee, we were told, and we've been told many times, we know who, OCD knows who are the bad actors.

Ten companies are causing 80 to 90 of the problem. I've heard it time and time again. And so go after those ten. You've got legal avenues. If you need additional powers from the legislature, I can tell you the industry would support those, as long as they're reasonable and constrained so you don't begin getting into taking private property rights.

But I believe that everybody wants to solve this problem. I believe the regulators want to solve this problem, but they're approaching it from a payment standpoint and not from a process of procurement standpoint.

And at the end of the day, bonds don't plug wells, operators do. And that's what we have to remember, is that we shouldn't throw the baby out with the bath water. And that is really critical.

I have a couple other points, and one is the TA limits. Now, early in my career -- I've been involved in numerous secondary and tertiary -- well, secondary recovery projects primarily, and also have looked at EOR projects, tertiary -- primarily CO2 projects.

These are very, very complicated and long-term projects to put together. And for those of you that don't understand the process, let me give you a quick explanation. Somebody goes in and discovers a field. Well, most likely, they're not going to own that entire field. There's going to be multiple leases. There's going to be fee leases, federal leases, state leases. The field is developed and it goes through its primary production phase.

Not all that happens at the same time. In other words, not all those wells are coming online and producing the same volumes and the same -- in complete sync. So towards the end, towards the point where the field is becoming marginally economic across the board, the negotiations are usually started amongst the operators and the owners of that field to see if there's anything else that can be done.

Now, let's keep in mind -- you know, I heard keep in mind what the New Mexico oil reservoirs generally look like. Very few are water driven.

There's some exceptions, but they're solution gas drive, and they lend themselves very well to pressure projects, such as waterflooding and CO_2 flooding. And when the well reaches that end of its primary life, it still has somewhere between -- depending upon the nature of the reservoir, somewhere between probably 60 and 80 percent of the original oil in place is still there.

And if we don't go after that oil, we've wasted it. And this is the problem with the policy, is that the best way to clean up an old oil field is to make it a new oil field. And if you go from primary recovery to secondary recovery, all of that infrastructure is replaced, the production comes back up to state. Many times secondary recovery projects perform as well as the primary production. And you can sometimes get one to two times the amount of oil you got on primary.

So the problem is, and this relates to the TA portion of it, the eight-year hard TA. I have been involved in the formation of secondary recovery units that took in excess of ten years. My father started them, my sister and I and others picked them up, and some of them went on 12 or 15 years. And it is a very laborious and difficult process because you have to get a lot of people together, you got to form an operating committee, there's always discussions about who is going to operate, what's the formula going to be for unitizations. You know, all of these things. And that those meetings occur many times over years and over multiple management changes.

So the idea of a hard deadline to a TA is I think really going to be policy-wise very, very bad for the state. And let me give you some perspective on this.

I was born in 1959. My father and family came to Artesia, New Mexico, in 1960s. He implemented the first commercial water flood project in New Mexico. I implemented the first horizontal drilling project in New Mexico. The only reason I'm here is because he was here. And he came in and he formed these secondary recovery projects that added hundreds of millions of dollars and billions of dollars to the state.

The Grayburg Jackson field, for example, between Artesia and Loco Hills and Maljamar is one that he was responsible for flooding on behalf of Newmont Mining Corporation, a company we don't even hear about around here.

So that technology basically allowed a second life to that field, to all those fields, decades and decades of life, and hundreds and hundreds of millions of dollars to the state.

Now, many of those fields have since declined. They are probably very good tertiary candidates, CO_2 candidates. We have CO_2 sources, and yet there's no real policy push to try to get that.

Now, one of the reasons is that we've seen the dominance of capital flow to the shale revolution since about 2015. There was a slide that was put up, and maybe we can address it later, on this eight-year life, and I can tell you that once you read the disclaimers at the bottom, you need to discount that slide. But let me give you another point.

If that slide was taken at a point in time, which it has to be, and then looked back, you would not see any secondary recoveries or tertiary recovery projects in this period. If that point, zero was taken in, I don't know, either 1965, '75, or '85, you would see a huge number in that 10- and 12-, 15-year period.

So, from a first glance, I haven't talked to the analyst about this, but from my first glance, I don't believe this is telling you, the policymakers, and deciders what they're telling you it's telling you. Right?

And so, this is what's going to happen, in my opinion, from 50 years of prospective in the oil and gas industry. We have gone through now -- we are now going through a major shale boom. These wells are going to decline, and they are going to recover less crude in place than previous reservoirs because they're naturally tight reservoirs. However, that leaves us a huge resource to go after, right?

And there's only the beginnings of a discussion about how to do that, because this is going to be -- it's a technological challenge that the industry has not ever met before.

When secondary recovery was originally initiated, it was pretty well understood. There were basically two types of patterns, line drive and five spot. And there's other alternatives to that, but those were the typical ones utilized in New Mexico.

So, a lot of the question now is going to become, how do we basically utilize horizontal wells for enhanced recovery, and what do we do with this? And if we don't preserve those well bores in that production, we're going to leave -- there's even going to be a bigger waste. So, there's the challenge, but there's also the opportunity.

Now, we have some 27,000 stripper wells, and we've heard testimony that they don't really mean much, right? That they don't contribute much here, they don't contribute much there, we're maybe talking about 8 million, 10 million. The problem with the analysis is that it only considers taxes, right, production taxes, a fraction of the economic value that these wells contribute to the society.

And the other part, which is typically two to three times that much, is the royalties. And yet it still doesn't -- it also doesn't take into account the 3,000 jobs it supports, the fact that those payments go to local vendors. The economic impact of these wells and the companies that operate them is huge to this state. So, don't be misled by the LFC report that says this is nothing.

And speaking of the LFC report, the LFC report is one that I've studied in some detail. And the reason I have is because it is so inherently flawed. And I will start off by telling you about my experience with the LFC report.

In late May, I was approached by members of the New Mexico Oil and Gas Association and IPANM as a member of the state legislature. As has been mentioned here, I represent District 59, Roswell, Chaves County. And they had heard a rumor, that LFC had developed a report and that the report calls for massively increased bonding. And they had arranged for a meeting with director Sallee of the LFC. And the director gave them very limited information, only said that it was something that they were looking at, but it mainly had to do with procurement and bonding processes.

They weren't satisfied with that, so they came to me and asked me to arrange a meeting with him. And so I called him. He came over to my office on June 3rd. And I'll read you my notes from that meeting.

No member requested an internal LFC group looking at the -- looking for this. It was an internal LFC group that was concerned about the inflow of federal plugging and abandonment dollars. The federal plugging and abandonment dollars were the dollars that were allocated either through the Investment Recovery Act or the Inflation Reduction Act. I don't care which one, but it's been mentioned here.

He told me that it was some $90 million, which is consistent with my understanding, and that it was allocated, I believe what he told me, over a three-year period.

But they were getting concerned because they couldn't meet the standards. They can't meet the standards and that the money might get cut off. And so that was the purpose -- the standards of the federal grants, right? That was the purpose of the study, as it was stated to me.

And I said, "Director Sallee," I said, "this seems to me to be a procurement issue. I mean, if you're talking about not being able to meet these standards, it's because you're not plugging wells fast enough or you're not plugging them right."

And he goes, "Well, there's a number of issues."

And so I took it to mean that they weren't plugging them fast enough. And the reason I took that is I also had conversations in D.C. where people were beginning to voice that perhaps the program wasn't as robust as it should be, could it be expanded.

I then said, "Well, this doesn't really add up from what I've heard on the street, because I've heard about all this increased bonding."

And he said, "Well, there is a portion

of the report that deals with that. We're pretty concerned about one-barrel-a-day wells."

And I said, "Why are you concerned about one-barrel-a-day wells? What's the threshold there?"

He goes, "Well, there's just a lot of one-barrel-a-day wells out there, and we're concerned about them."

And I said, "Well, let's talk about that."

And he said, "I'm sorry, I can't talk to you about it anymore until the LFC reviews our study and approves our findings."

And so I got no more information.

Now, I had known a little bit about the money that was available to the state; I believe it was back in either -- I want to say 2022, but it could have been as early as 2021, whenever those acts were passed and it was clear that there was money in there for the state to plug wells.

And when we heard about that, it was, okay, if there's really this big, large volume of wells out there that need to be plugged, why aren't they getting plugged? Well, the OCD can't seem to plug more than about 50 of them a year. There's been some times that they could, but that's generally the number.

And so I thought of it as an incredible business opportunity. Because if the OCD is saying that there's all these wells need to be plugged, most of which are federal, I think this body understands that, there's very few state that the state is going to be responsible for, and there's federal dollars to do it -- I know from experience that we have trouble even scheduling P&A operations.

There is, you know, greatly limited -- there's not very many contractors that do this. The ones that do it for the state are almost all in the northwest. We have principally two in the southeast that will do this.

And so me and several of my company people contacted -- and I don't recall who it was. It was dealing with the OCD plugging issue. But there was a gentleman there and he basically explained.

I said, "We understand that there's going to be all this money coming in to plug all these wells. How are you going to deal with that?"

And he said, "Well, we're still evaluating it. But we plan to just give these wells out in groups of small numbers, five, ten, 25 at a time," which is a real problem if you're if you're trying to build a company off of plugging a lot of wells. Right?

And so one of the things that we looked at was standing up a plugging company, and started designing very high tech, self-contained rigs that would do this quickly, cheaply and effectively.

But when it became clear that the procurement issues were not going to change, that we might or might not -- if we got a contract, it's going to be very small. And that's fine. But at least if you have the chance at a big contract, you have a chance. And just decided that it -- that, combined with the fact of how they were being bid out.

In my business, we have what's called an authority for expenditure, AFE. It's just basically a budget. It basically says we're going to spend X, Y and Z going through these wells, you know, so much for drilling, so much for this. So it's a line item.

For example, the top line item is usually the most expensive and it would probably be a pulling unit or plugging rig, right? And there will be a price for that. And then we'd have another one that would say cement and rental tools and all the various categories of equipment, materials, supervision, all the things that we need.

Well, what the procurement officer explained to us is that they would basically pick and choose. So you might get the rig on one well and the trailer on the other and the lights and the porta potty on the other. But you weren't getting a turnkey operation to turn even that one well into a plugged well, much less 100, when they're stating that there's thousands to be plugged.

So there's a procurement issue here. And I think industry would love to see that solved.

Now, the role of the independent operator. Now, it's been mentioned that 60 percent of the production in 2024 was by eight companies. Okay? I would venture that seven, and possibly all eight of those companies were not New Mexico producers 15 years ago.

XTO re-entered the basin when we sold them our NAS project. Chevron, Exxon, Oxy, all of the major companies left New Mexico in the late 1980s and early 1990s. They returned through acquisition in the shale boom. So when people sit here and say, well, we really don't need independents because we have eight companies are producing 60 percent of the production. Well, guess what? Those eight probably wouldn't have been here without the independent.

I've talked about what our company does. We also have been very involved, and I suspect we can get into this when we talk about some of the individual wells that my company operates, but not only have we been very involved in exploration and new plays, as have other witnesses in front of you.

You heard from my friend, Jeff Harvard. His dad, Lee Harvard, was a well-known exploration geologist and made numerous discoveries. Jeff is now second generation. And while he has operations, as I do, in New Mexico, I don't think either one of us anticipate that we'll have very many more.

You heard from the Hannigans, Michael Hannigan, he's a second generation. His father was very involved, and also his brother Robert and son Rob.

And so you're seeing an exodus of companies like mine, and I think from a policy standpoint, you really need to ask, not only what does the impact have today, but what will impact will it have five years from now, ten years from now.

We've also been, as I've described, really interested in the new technology that has implemented horizontal drawing. And one very underutilized one and one I'm very familiar with because of my work at New Mexico Tech, is CO_2. But some of that work needs to be done in terms of how do we utilize these resources to maximize production and prevent waste, and now a new type of geometry, if you will, with respect to wells.

The other thing that we do, and I think this is critical for people to understand, is during the down times and the exits of the majors, we maintain the infrastructure. Now, the pipes may not be as full as they are during boom times, but they still have crude oil and natural gas running through them, and they're being maintained. The electrical lines, the road systems, but also the company infrastructure.

It's not Chevron that's paying Baker Hughes to log their wells at low prices. It's not Exxon that's paying Halliburton. Those shops and those offices and those yards, as we call them in many cases in the oil field, are there because the independents are still using them. And then when things ramp back up, those yards typically ramp back up. But we preserve them, and that's critically important.

I don't think most people realize that you just can't turn things on and off. Sometimes it's a little more difficult than that.

Q. Representative Murphy, while we're speaking about independent operators, what is it about the proposed rules and how do they disproportionately impact independents or smaller operators when it comes to financial assurance burdens?

A. Well, I think that the entry into the business, any time that you create obstacles of entry into a business through regulation, it's difficult; it's going to discourage business, right?

And so if you have a relatively new operating company with not a lot of history coming in, it's going to be very difficult for them to get surety bonds.

Now, my company is very well established. We have 40-year relationships. So, you know, it's not necessarily going to be my company that's going to be impacted, but it sure could have been. And in the early days, it would have.

And the main thing is, is that I think it ties up a lot of unnecessary capital that could better be utilized for either redevelopment of the field, a new exploration idea, or something else.

I think that these -- I think what's going to happen is -- from my experience, the security market is rapidly exiting the financial assurances realm, and all natural resources, but particularly in oil and gas. The bonds are getting much tougher to get. They're getting more expensive. They're getting more restrictive.

And so the small operator, in many cases, is either going to have to pay a much higher rate, or if they can even get a bond, or they're going to have to put up cash. And in my experience, that's generally what has to happen. Or letter of credit, which is the same thing.

Q. Thank you. And I think you hit on it earlier, but if you could expand on the reclamation fund and the conservation tax and how those two things work together.

A. Sure. You know, it's been well described about how the conservation tax is collected and then a forcing us into a reclamation fund. And the reclamation fund, stated here, is actually -- is 60 -- is as stated 66 million.

Last week at Water and Natural Resources, we were told it's 76 million. So in the last few months, it's gone up almost 20 percent. So it's grown $10 million in just a matter of months.

Senator Pat Woods made a really

interesting statement. He sits on Senate finance during last week's committee meeting, and he said, you know, "We only send to the OCD what they can spend." And that's been my experience, too. I don't sit on finance, but that's simply what I've seen as a legislator.

And their request is typically -- as a matter -- and last week, OC requested -- said their request was going to be for another $21 million, the same as the year before, about the same as the year before.

That doesn't tell me that they're going to plug any more wells, and the fund has grown. And so I think there's some real attention that ought to be given there as to why that's occurring. Why send more money to an agency that can't spend what they have? So let's collectively figure out how to fix that.

Over -- about 80 to 90 percent of that fund is swept into the general fund because the legislature can't see it effectively utilized. Since 2019 about just shy of $400 million has been collected. The numbers I have seen is that -- has been collected and swept. Excuse me. The numbers I typically see on any given year average reach between

100- and $137 million that the industry pays on this tax, and the OCD spends about 20.

So when there's testimony to the fact that these are taxpayer dollars, they're not. The oil and gas industry has paid these in for a specific purpose, and they are not being utilized for that purpose. And I see no reason to raise more money for an agency that can't spend what they've got.

Now, what I would do and what I'm working on currently is making sure that that's protected better than it has been in the past. And just as I -- along with -- just as there was bipartisan legislation introduced last session regarding this issue, there's going to be bipartisan legislation, assuming it makes the governor's call this session, on this issue. And it's going to have protection mechanisms in there that will make it much more difficult for that to happen and for that fund to build as it was intended.

And the last bullet point I think is one that was raised, and that is that we would see -- I think in -- we calculate in ten years it'll be a billion dollars. I think it'll be a billion and seven probably, but that's my personal opinion.

Q. Have you had a chance to look at any of the orphaned wells statistics or the abandoned wells information that's presented in this rulemaking? Do you have any opinions?

A. I have. And I understand there's about 350 orphaned wells that need to be plugged. I think there's some 1,450, something that totals up to 1,350 perhaps, totals up to 1,700 that are federal wells.

Now, those federal wells are, of course, being plugged with federal dollars, so they don't impact the state dollars. They're given -- that's part of the grant money and other money that routinely comes to the state and has for decades from the federal government, who contracts with the state to plug those federal wells.

So there's a relatively small number. I know it was mentioned today about Cano, and it'll probably be discussed some more. But my recollection of this, and it's totally a recollection, is of those 299 wells or so that Cano operated, only a very small fraction were state and fee wells. The vast majority of those were federal wells. So once again, they're not going to fall on the state taxpayer.

So at 150,000 we need about 52 million to plug those 349. I think I rounded to 350, excuse me. And we currently have 75 in the fund with a hundred plus coming in every year.

MS. TRIPP: Thank you. And that concludes Mr. Murphy's direct testimony. We do have some points to raise on surrebuttal, Mr. Murphy -- I'm sorry, Representative Murphy.

HEARING OFFICER ORTH: Thank you.

BY MS. TRIPP:

Q. And so Exhibit 82 of the applicant's, Mr. Adam Peltz, he explained in response to your testimony, this is at page 2, lines 5 through 21, that any number of steps can be taken to avoid increased bonding for an operator. And he provided examples like plugging idle wells, or simply producing more than 180 days, or reducing an operator's populations of idle and marginal wells to below the 15 percent threshold.

Do you see any problems with these three recommended approaches and the effect of the proposed rules on operators?

A. I do. And let me comment. I've read Mr. Peltz's testimony, and I noted that he really focused on about the last four or five years that he's been looking at this issue.

Now, I've always been told it takes about 10,000 hours to master anything; that's about ten years of work. So I'm going to forgive him because he only has about half of that work in.

I've got about four times that amount of that work in. And so I'll tell you, the first one has to do the secondary recovery projects where you're plugging idle wells. I think I went through that example on TA status. And my recommendation there would be that the OCD keep its existing TA status of five years, that you allow at least another TA status. Because I can tell you, it's going to take ten years, and you probably need some discretion beyond that.

So this eight-year hard number is very problematic in my opinion. It's going to take a long time to get not only a lot of these projects developed, but also unitized and up and running.

And so let's just call that effect on secondary and tertiary recovery projects. Reduced populations of idle and marginal wells to below the 15 percent threshold. Well, you can't always produce a well in 180 days. And the reason being is that these wells -- see I started my career as a roustabout. I was hoeing weeds and working the shovel. The next promotion up there is a relief pumper. And after that you go to the pumper.

And so as a relief pumper, one of the

things that you've learned is that every well almost has its own personality. You can have a well right here and if you produce it three hours a day, it'll make the most production. You have a well right next to it and you can shut that well in for five days and produce it for two days. And that's the way it makes the most production.

Now, people will say, "That doesn't make any sense to me. I mean, these wells are in the same field and they're close together and everything else." Well, that's because everybody thinks this is a big pool of oil, and it's not.

There's the thing called heterogeneity in the rock. And that means that different areas of the rock react differently and the fluids in them react differently. Some maybe more fractured, some may be more naturally permeable. So that's the answer to that, is that's another hard deadline that, from a practical standpoint, makes no sense.

I could shut a gas well in for 200 days and make more gas in a month than I would if I produced it every day. So that's just the reality of the world that we live in.

Let's see here. And the last one, reduce populations below the 15 percent threshold.

Well, I think the only way to do that is to either plug or divest. And once again, if you plug prematurely, you're wasting. And divesting of a single, low-volume well is probably not practical. And then once again, I think they tied back to a 15 percent threshold, which is, in my opinion, like the two-barrel a day, as arbitrary as you can get.

Let's say you have a company that has a number of high volume wells and all of a sudden they hit this threshold and they've got to put up this bond for every well. That makes no sense to me. So these are arbitrary, and that's a problem.

And I think the biggest problem that independent operators, and I suspect all operators in the state, have is regulatory certainty. And we've seen none of that in this state in a long, long time. And that's why you're seeing the -- and that's why you're seeing some of the reaction to this proposal.

Q. So Mr. Peltz, at pages 15 to 16, he also referenced House Bill 133 as a multi-stakeholder process in the fall of 2023 and raised in the 2024 legislative session. Were you familiar with that effort?

A. I was very familiar with that effort. I wasn't directly involved in negotiations, but as one of the gray hairs in the room, I was consulted a lot from IPANM and NMOGA's position about what sort of things might make sense.

And, you know, some of the factors that -- well, some were discussed this morning. But let me just characterize that as, those negotiations were probably some of the most frustrating I've ever seen in either policy, regulatory or business because the OCD and the other parties would consistently move the goal post.

Come in, we'd explain something, and we would say, okay, all right, well, how about this, this might work for these operators, let's try this. We'd put that forward.

Okay, we'll consider it. And then the next week, the next two weeks, wherever the next meeting came up, not only had they rejected our proposal, they'd moved their proposal even further as being more punitive.

And sometimes after a while of that, you get really frustrated and say, what's the point, right? What's the point?

And I'll tell you the other time that it happened, and this is probably what will explain a lot, is during the methane. Industry showed up to the methane rule, negotiated in good faith, had negotiated a number of exemptions. And let me tell you, let me start with this. We were told that the methane rule was designed to only target the biggest emitters, we got to take care of the big problems first. We're not worried about the little guys. We want to take care of this. We want to do that.

And so we came up with a series, both on an operator-based basis and a production-based basis, that we provide some exceptions, be able to provide a little more time to comply, to do all of these things.

The majority of those were accepted and in the draft until the final draft. The environmental community went to the OCD, convinced them that they shouldn't have the exceptions, and they were deleted.

Now, that is not good faith negotiation. That is not fair rulemaking. That is not the development of good policy. And when I talk about policy, I have some experience there at the national level and some at the state level, too. And you don't take and author a report against an industry without ever consulting them.

When I talked to Mr. Sallee and asked for input in or some questions into this report and was told they couldn't talk about because the findings weren't quite finished, what, we know from Mr. Peltz's testimony, he was in the LFC in April working on this report.

So you have no industry input to this report and you've got the environmental community basically writing it. Wild Earth Guardians was allowed in there, from what I've been told. I know for a fact. Mr. Peltz swear to it in his own testimony. In April he made presentations and began working on this report. No industry input.

Now, you cannot take a report like this, in my opinion, and create good policy.

Q. Thank you, Representative Murphy. I just have one more question, and this is in response to Mr. Purvis as Exhibit 74, page 51, lines 5 through page 53, line 6.

And he referred to your testimony regarding the effects of these proposed rules on small operators and the state to be a common trope. And he used Exhibit 79 which reflected that 90 percent or something of production produced by 10 percent of the top operators. Do you have any response to that?

A. Somewhat. I guess what I would say is that you don't get that 97 percent without the small operator starting to play, or, you know, whatever it may be, whether it's exploration, the new technology.

And I think that's part of the problem, is that many of the young staff that are involved in the development of not only the report I just mentioned, but also in the discussions regarding this policy, have never seen a downtime. They've only known the booms.

If you have primarily been involved in analysis and worked on this since 2015, you've never known what it looked like in 1986 or '87 or the early '90s or any of the downtime. And so it's really easy to sit here and say, "Well, geez, you know, we got to pin these few small" -- "big operators. Let's toss everybody aside." Well, what happens when they leave? You'll have no industry left.

And then finally, he's talked about -- talking about production. And I think at one point peaking and so forth. And I know that it's difficult for people to sometimes come up with empirical data. But I can tell from Mr. Peltz's testimony and other testimonies that they really only need to look at one place to understand how this industry works and to get a really good historical perspective on it.

A good friend of mine, Pulitzer winning prize author, Dan Yergin, has written a series of books. The first one is called "The Prize," and it talks about the oil and gas industry from the 1850s up until about the early 1990s. That will show you historically how this industry works, being the independence going back all the way to Oil Creek in 1859 in Pennsylvania. It wasn't a big guy that made the discovery, it was a small guy. And every one of the discoveries after that were small independent companies.

The big companies, John D. Rockefeller and Standard Oil and so forth, acquired those companies. And then at some point, they had to divest of it. But it's difficult for someone with so little experience in the industry and such a limited perspective to really be able to understand this. But hopefully my testimony today will be helpful to the Commission to understand some of it.

MS. TRIPP: Thank you Representative Murphy.

That completes his direct testimony and surrebuttal. I'll proffer his direct testimony for admission to the record.

HEARING OFFICER ORTH: Thank you, Ms. Tripp and Representative Murphy.

I'll pause for a moment in the event there are objections.

MS. TRIPP: I apologize, Madam Hearing Officer, also submitting his demonstrative slides.

HEARING OFFICER ORTH: All right. Thank you. Another moment. All right. They're admitted.

MS. FOX: I'm sorry, Madam Hearing Officer.

Were you offering your demonstratives as exhibits? I thought they were demonstratives. That was my understanding. That's what I'm asking.

MR. CLOUTIER: Some have, for the record.

MS. FOX: Yeah, that's not my understanding.

HEARING OFFICER ORTH: All right.

MS. FOX: We did not add ours on that.

HEARING OFFICER ORTH: To Mr. Cloutier's point, I think some haven't and some haven't.

All right. They're admitted. Thank you.

(Admitted: IPANM Murphy Direct Testimony and Demonstrative slides.)

HEARING OFFICER ORTH: Let's see, Ms. Fox, do you have questions of Representative Murphy?

MS. FOX: Yes. Thank you, Madam Hearing Officer.

CROSS-EXAMINATION

BY MS. FOX:

Q. Hello Representative Murphy. My name is

Tannis Fox. I'm a lawyer with Western Environmental Law Center and I represent applicants in this proceeding.

You had stated in your testimony that you thought there were about 350 wells that OCD is online to plug; is that correct?

A. That's the number, as I understand it, yes.

Q. And I know you're very familiar with the LFC report, and in that report, on page 4, LFC says currently, OCD has -- oh, and also you said most of the wells -- something to the effect of that most of the wells that need to be plugged are federal wells, something along that line, correct?

A. I believe the numbers -- I understand there's 1700 wells that are slated to be plugged. 350 are state and fee, and 1350 then would be federal. So the vast majority of them, about a quarter state, three-quarters federal.

Q. Okay. Well, let me read to you from the LFC report and ask what you think about that. So on page 4, LFC says, currently, OCD has plugging authority for roughly 700 wells on state and private, that is, fee lands. The state likely will need to plug an additional 1400 inactive wells, for which OCD has not yet pursued plugging authority. On top of that, there are more than 3,000 wells on state or private land producing extremely small quantities of oil and gas, whose expected cleanup costs far exceed their predicted future revenues, increasing their risk of being orphaned.

And so isn't it correct that the LFC report is identifying wells for which OCD has authority or may need authority to be plugged for wells on state and private lands and not federal lands?

A. It is true. But my point is that no matter how many wells that is, there's ample funding to plug those wells. But perhaps that's another discussion. Please continue.

Q. No, and you had estimated that there are 350 wells that OCD needs to plug. But my point is that LFC is estimating there are approximately 5,000 on state and federal land; is that correct?

A. They're estimating that, but I take issue with it. So there is the wells that we know that they have authority to plug, those we know.

Q. Those 700.

A. And the other is pure speculation. Because industry has historically plugged 95 percent of the wells, and we don't need a perspective LFC study to try to say, "Well, this might happen."

We have 100 years of history, Ms. Fox, in this state of operators plugging wells. And we plug 95 percent of them. So for them to come in and say, "Oh, there may be all these others," the history doesn't support. That is pure speculation.

Q. And just to correct the record on Mr. Peltz's testimony, so, Mr. Peltz -- did you hear his testimony or only read his testimony?

A. I read all of it, heard some of it.

Q. And so, if you heard some of it, you might recall that LFC contacted him in April and he gave a presentation to LFC in May. Is that correct?

A. That is correct.

Q. And that was the extent of his involvement with the LFC report, correct? He didn't, quote, unquote, write the report, help write the report, correct? He never testified that he had any involvement in writing the report, only that he gave a presentation to LFC. Correct?

A. The reason -- that's correct in terms of the written testimony. But the reason that I believe there were multiple meetings is I confronted director Sallee over that issue, and he would not deny it.

So in terms of your written testimony,

I'm reading it, it says he was contacted in April, producing a well, gave a presentation in May, and then has also worked comprehensively with the applicants through this process.

But I was -- it was at least intimated to me that there were multiple meetings, not only with the Environmental Defense Fund, but with other WELC participants.

Q. Well, the only testimony we have before you is Mr. Peltz's, and that is that he was contacted in April and gave a presentation in May; is that correct?

A. That's correct.

Q. And then, did you hear Mr. Peltz's testimony that he specifically asked LFC if industry was being requested to participate in the analysis, and LFC said that industry was? Did you hear that testimony from him?

A. I did not hear that testimony. But he was misled.

MS. FOX: Thank you for your testimony.

THE WITNESS: Thank you.

HEARING OFFICER ORTH: Mr. Tremaine or Mr. Hall.

MR. TREMAINE: Mr. Tremaine. Thank you, and Madam Hearing Officer.

CROSS-EXAMINATION

BY MR. TREMAINE:

Q. Good afternoon, Representative Murphy. My name is Jesse Tremaine. Good to meet you.

A. Nice to meet you, as well.

Q. I'm the legal director for the Oil Conservation Division, and I do have a number of questions for you today.

A. Sure.

Q. You just testified that industry is plugging 95 percent of wells, and I just want to clarify that. By that, you mean that number refers to the number of wellbores that are actually plugged by the registered operators?

A. I believe that -- the basis of the number, the way I understand it, and I believe I got this from IPANM, was that you take the total number of wells that are plugged in in a year, and you look at how many OCD or some other agency plugged, and how many the operator plugged. And we plugged -- the operator, the industry, plugged 95 percent. So that's how I get to the math.

Q. Thank you for that. That's really helpful. Because I think we're working -- yeah, so you're working backwards from how many you've been able to review that OCD plugged. So I just wanted to clarify that.

A. Not federal wells, by the way.

Q. Well, we're going to get to that. We'll get there.

The 5 percent number is after a review of how many wells were plugged pursuant to the state's orphan plugging program, whether that's the rec fund or something else, right?

A. Correct.

Q. Okay. Would you agree that there's approximately 63,000 wells in New Mexico right now?

A. That's my understanding.

Q. So you have represented some different numbers. But, you know, if the status quo of 5 percent of wells getting plugged pursuant to a state plugging program persists, we're looking at about 3,150 wells that would be plugged on the program based on the existing portfolio of active and producing wells. Would you agree?

A. I would agree with that.

Q. Okay. Just a few minutes ago, you clarified that you -- and I don't want to misstate your testimony representative, but I want to paraphrase here. I think you said that the production thresholds for either marginal wells or the presumption of no beneficial use or both were arbitrary. Is that accurate?

A. It is.

Q. Okay. So you're testifying that production thresholds as a definition or the criteria to define different categories of wells is not acceptable or appropriate?

A. I believe it's arbitrary. I don't think it's reflective of the reality. And I can tell you, when I saw that number, I pulled our production. We have four wells that might fall in that number, depending upon what period you average. Both were less than, I think both were, or excuse me, four were all in the 700 BOE range. Those wells would not meet -- well, they produced more than 180 days, so it wasn't an "and," right?

But under that definition, you would say, okay, these are -- we have two federal wells, two state wells, part of a ten-well package, ten-well field. Those four would qualify from a production standpoint as being marginal, yet they are not marginal. They make money every -- well, make money every month, yeah.

Q. I understand.

A. But my point is, is that we have real-world examples of production below those thresholds being economically viable, and I've got real-world examples of a shallow well that would exceed that and not be -- you know, that would be uneconomic, and a deep well that would be less than that, that would be economic. So I believe it's quite arbitrary, yes.

Q. Okay. Quite arbitrary. Thank you for that.

So, Representative, would you agree, however, that using production thresholds are acceptable or not arbitrary when they're used as a sole criteria to define stripper wells for the purposes of tax incentives?

A. I think it's a different matter. Because on one hand, you're creating a policy that's encouraging production and preventing waste, and on the other hand, you're creating a policy that's encouraging waste and preventing profits. So they're not the same at all.

Q. Representative, I didn't ask you about the end-point policy, I asked you about the use of the production threshold as the sole criteria for defending a category of wells.

A. I don't know -- I don't how the tax -- IRS drafts all that. I know what the numbers are, but I don't know all the...

Q. Well it's TRD, so it's New Mexico, and it's under New Mexico Statutes Annotated 7-29B-2L(1) and (2), which defines, for the purposes of tax incentives, in certain instances for stripper wells, that stripper wells are defined as those wells producing less than ten BOE per day.

A. And I'm sorry, I'm not an attorney, but the citation you're making, is that under the Oil and Gas Act?

Q. No, sir. It's under the tax code.

A. Okay. Well, I --

Q. I can show it to you, but I'm not going to belabor it.

A. Okay. I'm not a tax expert, so that would be a waste of time.

Q. Just trying to get the distinction of that. It's a common use in New Mexico to define categories of wells. Thank you.

Representative, do you agree that legislatively approved funds in the reclamation fund, specific to plugging expenditures, have increased substantially from approximately $3.5 million in Fiscal Year 20 to almost 18 million in Fiscal Year 25?

A. Yeah, I think I've seen numbers similar to

that. I'll say I can't swear to those numbers, but the trend is probably right.
Q. And would you agree with me that OCD's related expenditures for well plugging have kept pace with those approvals?
A. I'm sorry. Repeat that.
Q. Would you agree that OCD's expenditures for well plugging through use of the reclamation fund have kept pace with those approvals in their respective fiscal years?
A. So what you're saying, is OCD proportionately plugging the same number of wells relative to the dollars? Has their plugging program grown along with the resources that were available?
Q. That's one paraphrase, sure, yes.
A. Okay. Then yes, I would agree with that. But they seem to be capped at that level.
Q. Representative, can we agree that OCD should focus its enforcement efforts on those operators that are substantially out of compliance?
A. Yes.
Q. Okay. On page 12, lines 8 through 10 of your direct testimony, you testified that New Mexico does not have an orphaned well problem. I want to make that as a foundational statement. Do you agree?

A. I'm sorry. On page 12?

Q. Page 12, lines 8 through 10.

A. Yes, I agree. That's my testimony.

Q. And do agree that, in part, you support that statement by pointing out that New Mexico does not have a definition of "orphaned well"?

A. Yes.

Q. Okay. And further, Representative, you distinguish inactive wells from orphaned wells?

A. Yes.

Q. Would you agree with me that once a well has been inactive for more than 12 months, it must be plugged within 90 days, according to OCD's current rule?

A. I don't know the answer to that.

Q. Okay. Do you dispute it?

A. I would, in a sense. Because I think there's other -- I mean I think we've had wells that have gone longer than that, either because we had -- it may not have been under temporary abandoned status, but we -- we had a retrievable bridge plug in there and so maybe it did go a period. Maybe we were talking to the OCD inspector about why we were doing what we were doing.

So there could be a lot of exceptions to that just from a practical experience standpoint. I don't have any way to dispute what the rule says, but I can only describe what happens.

Q. Okay. So you're testifying that there could be reasons why there would either be enforcement discretion or perhaps wells placed in approved temporary abandonment or something else that's going on.

A. Sure.

Q. Okay. Can I show you the existing rule? Looks like I have lost permission to share screen. If I could request that again, I'll come back to this.

Representative, would you agree that OCD may issue what's called a notice of violation, under the existing rule, for any wells that are required to be plugged by the rule, but the operator has failed to plug them?

A. I would agree with that, yes.

Q. So, Representative Murphy, I just want to highlight here that 19.15.25.8B states that the operator shall either properly plug and abandon a well or place the well in approved temporary abandonment in accordance with 19.15.25 NMSA within 90 days after. And here it says, under (2), a determination that a well is no longer usable for beneficial purposes or

(3), a period of one year in which a well has been continuously active.

So, I just wanted to clarify, as a foundation for my question, that under the existing rule, that requirement exists, notwithstanding the clarifications or exceptions that you highlighted. Would you agree?

A. Sure. I would.

Q. Okay. Thank you. So, Representative, if the division issues a notice of violation and brings an enforcement action for inactive wells, do you know generally what happens to the wells that are referenced in that notice of violation?

A. Only generally.

Q. Would you agree that it's possible that they could be plugged by the operator?

A. I would.

Q. They could also be plugged by a third party?

A. Yes.

Q. And they could be plugged by the Division?

A. Correct.

Q. Have you reviewed any of OCD's inactive well NOVs or settlements?

A. No. I think only the ones that may have been in the media. But no, I've not gone into the OCD records.

Q. Okay. So as you sit here today, are you able to testify as to a percentage or number of the wells that, after the necessary enforcement action, end up getting plugged by the Oil Conservation Division?

A. Do I know that percentage?

Q. That's not my question.

A. No.

Q. And similarly, again, not to belabor the point, but likewise, you wouldn't be able to testify as to the number or percentage of wells after a necessary enforcement action that are plugged by a third party, pursuant to a plugging demand made by another agency, such as the State Land Office or BLM?

A. No, I don't know those percentages. But I guess I would have to say that whatever they are, those funds are being provided by the reclamation fund to plug. Just as the 3,100 wells that you mentioned earlier, some potentially $450 million in a worst case, would also be plugged by the reclamation fund. And it would generate enough money to do that in less than four years.

Q. So, I understand the distinction, Representative Murphy, but I have to ask, is it within this Commission's power to increase the appropriation from the reclamation fund for use by the Division?

A. It is not. But it is within the power of the Commission to direct the OCD to request a higher budget amount. And if they can demonstrate that that budget amount would be utilized, they would get it.

Q. Thank you. Thank you for that.

Representative, did you hear the testimony of deputy director Brandon Powell?

A. No.

Q. You were traveling, I take it.

A. I believe I was, yeah.

Q. Okay. So have you had an opportunity to see what is listed and admitted into the record as OCD Surrebuttal Exhibit No. 33? Have you seen it?

A. You know, I believe I've seen a version of this somewhere, yes.

Q. Okay. And this is a list of all operators. And this is in the records, so there's no attempt at trickery here, Representative. But Mr. Powell testified that he pulled this list and it represents operators who have submitted no production reports since August of 2024.

So I guess what I'm getting at here is that, according to Mr. Powell's data and testimony, we have 113 operators and 2,318 wells for which there is no production reported for over a year?

Will you accept that as a premise?

A. Sure.

Q. Okay. And so based on my earlier questions in our discussion about the current rule, 100 percent of these wells are out of compliance. Do you accept that? Okay. And so --

A. Sure.

Q. -- every -- and as a caveat here, I just want to be clear about what the record says and what it doesn't. This includes federal wells and this includes some operators that are already on OCD's master reference spreadsheet. Okay? So it is over-representative of what OCD may take enforcement actions for. Nevertheless, there's still close to 100 operators on here who are 100 percent non-compliant.

Representative, would you dispute Mr. Powell's testimony that approximately 40 percent of inactive wells are what OCD classifies as private wells?

A. No, I wouldn't dispute that. I assume he means they're on private lands.

Q. Yes, private lands or private minerals or both. Okay. Thank you.

A. Yeah. And by "private lands," that's what I meant.

Q. Private. Then we're good, yeah.

I want to show you -- all right. So there's been a lot of discussion about the reclamation fund, and I just want to clarify here, particularly with your experience as a representative, that when we look at what the reclamation fund may be used for, that the statute indicates, in part, that the Division may use the reclamation fund for the purposes of employing the necessary personnel to survey and abandon wells, well sites and associated production facilities, and preparing plans for administering and performing the plugging of abandoned wells that have not been plugged or that have been improperly plugged, and for the restoration and remediation of abandoned well sites and associated production facilities that have not been properly restored and remediated.

So just, as a foundation. So, Representative, do you agree that the reclamation fund may be used to plug and abandon both wells and associated production facilities?

A. Yes.

Q. And it may be used for surface reclamation and remediation activities, correct?

A. Yes.

Q. Okay. I also want to point you down here to -- I'm going to highlight the section here, and among other things, 70-2-38B states that the Division may order wells plugged and well sites and associated production facilities restored and remediated on federal lands, on which there are no bonds running to the benefit of the state, in the same manner and in accordance with the same procedure as with wells drilled on state and fee land, including using funds from the oil and gas reclamation fund to pay the cost of plugging.

So, Representative, is my understanding of the legislature's language and intent here that OCD may order wells plugged and may plug wells, regardless of their surface or mineral type, if they exist within the geographical boundaries of the state of New Mexico?

A. Once again, I'm no lawyer, but that's the way it appears to read, yes.

Q. And I just want to be clear that we just talked about remediation and reclamation. Is it consistent with your understanding that neither the petitioner nor OCD are proposing to base financial assurance for the single-well financial assurance on

either reclamation or remediation costs?
A. That was not clear to me, actually.
Q. Okay. If I clarify that to you and the record reflected that the average cost proposed to the Commission was based solely on wellbore plugging, would you accept that?
A. Yeah, I would accept that in the sense that if you tell me that they only plugged the wells and didn't do the reclamation, then I have no reason to dispute that. But I would still reject the premise that an arbitrary $150,000 bond is the way to cure this problem. But, proceed.
Q. Okay. Would you also agree that, similarly, reclamation and remediation of associated production facilities is not factored into that average wellbore plugging cost?
A. I've heard testimony to that effect. But I'd also add that the cost of plugging federal wells has historically -- and remediation has historically been reimbursed to the state.
Q. Okay. Yes. Understood. Thank you, Representative.
So I want to, I'm going to backtrack a little bit here, just loop back. So I had asked you about 70-2-38B. In your direct testimony, you also

distinguish the orphan well problem by pointing out that many of the inactive wells are federal. But we've just gone over the statute, so I just want to see if we can reach an agreement that those federal wells are actually potentially orphaned and are a problem under the use of the reclamation fund. Would you agree with that?

A. I would agree that -- well, here is where I think you have to make the distinction.

OCD may very well have the authority to go plug those wells, and it sounds like they do, and they should. What the difference is, when I make the distinction, I'm talking about who pays for it, right? And if it's a state or fee, then a state or fee well is typically paid for with the reclamation fund. But apparently, even if it's a federal well and the federal government didn't pay for it, the reclamation fund would pay for that too.

But historically, and we know recently, the state has received as much as $90 million to plug federal wells. So that's where I am.

Q. Okay. Thank you, Representative.

Representative Murphy, are you aware that OCD does and has, in fact, engaged in plugging of federal wells by either agreement or consultation with the Bureau of Land Management?

A. It's my understanding that the vast majority of federal wells are plugged by OCD under contract with the BLM, or some sort of arrangement.

Q. So I want to distinguish here. So there's -- would you agree that there are different sources of funding which OCD can use to plug, quote, unquote, orphaned wells, including the state reclamation fund, the bipartisan infrastructure law grants, and more specific, discrete grants from the Bureau of Land Management? Would you agree with that?

A. Yes, I would.

Q. I believe the ones that you were referring to just now were specific wells that were plugged using OCD contractors, after the BLM had called federal bonds and then awarded that to the OCD for plugging by agreement or contract. I'm not sure which. But by agreement, OCD plugged those wells using that more discrete grant. Is that accurate?

A. I don't know the details. I understand there's federal dollars, including the 90 million, that are going to this issue. That's the only point I will make.

Q. Yeah, and that's the distinction, Representative Murphy, that I'm trying to make.

Because you had testified that the BIL grant money may be used on federal wells. So, have you reviewed the specific terms of the BIL grants?

A. I have not. I was only familiar with it from my conversations with Mr. Sallee.

Q. Okay.

A. And some media reports.

Q. Okay. If I told you that that was inconsistent with the legal analysis and the understanding of the Division, that those BIL grant funds may only be used on non-federal wells, would that change your concern or your testimony?

A. No, it really wouldn't. Because money is fungible, right? I mean, if they gave you $90 million to plug whatever wells, you've got $137 every year to plug the rest of them.

So once again, I mean, coming back to this as being a revenue or payment, as I say, funds problem, it just doesn't wash with me. And the reason being is, I think the proof is in the pudding. You've got a $75 million balance you can't spend, and you've got $100 million a year that also you can't spend.

And I apologize, Mr. Tremaine. I mean the OCD. I don't mean you personally.

Q. No, certainly.

A. The Oil Conservation Division.

Q. Sir, I've been in-house, so to speak, for so long that I dip into the weeds too much.

So, Representative Murphy, in your direct testimony, you had talked about a couple different numbers, the 56 million, the 66.7 million, and you just referred to a more recent number of 70, I believe it was 76, but that same material. So, there's a lot of money in the quote, unquote, reclamation fund, you would agree?

A. Yes.

Q. Okay. But we ran through an analysis here on cross that, you know, the status quo of plugging might be 3,150 wells plugged under an orphaned program. And, you know, using your analysis of 66.7 million could plug either 800 to 1,000 wells. That looks like -- if you're plugging 1,000 wells, you think that there should be a per-well plugging cost averaging $66,700, that would mean that there would have to be $210 million over -- to plug those 3,150 wells. And if we're using those OCD's average cost from FY24 of $163,000 for the well-bore plugging, that would be $513 million, in excess of $513 million. Would you agree with that?

A. Yes, I would agree with it. But I think here's the point, and I think it's easy to get people confused about these numbers, and sometimes I even get a little bit confused.

So let's just agree, for sake of agreement, that we have 3,000 wells that the OCD is worried about, and $150,000 seems to be the number, that's $450 million. You went back just now between 210 on the low estimate and 00 on a high estimate. So let's just take your number. Let's take 500 million. All right. That's what's been swept out of that fund in the last four years. That's what that fund will generate over the next four or five years.

So I keep coming back to the point, Mr. Tremaine, that this is not a funding problem, and I don't know why it's being described that way. Even at 3,000 wells, which I don't begin to accept for a moment, but let's just do that, $500 million, 137-, $125 million a year coming into the reclamation fund, how long does it take to pay that $500 million?

Q. That's fine. Well, I understand the point you're trying to make, Representative. I have kind of a different -- a little different analysis I want to examine with you.

So even if the reclamation fund were dramatically increased, as I think you're

suggesting --
A. Actually, I'm not suggesting that. I'm suggesting that the balance be moved into a protected fund, that you all be given whatever you can spend. So no, I mean let's be clear about what I'm suggesting.
I'm suggesting that the OCD be given the resources that it needs and the funding that it needs to plug these wells. And I don't care if there's 350 of them, I don't care if there's 3,000 of them. You've got the money to do it. You spend 20 -- you've got a balance of $75 million, you spend about 25 a year. You've got three years of plugging fund in your balance right now.
This year, industry will generate another 100 and to 125 million, none of which you'll need to plug wells. And next year.
Q. So I think what you're saying, Representative Murphy, is that there are funds being utilized or appropriated by the legislature to other purposes, which would need to be placed into the reclamation fund. That would be step one, right? And then step two, would require --
A. Well, it's a little different than that.
Q. -- an approval or appropriation by the

legislature for OCD to actually spend the funds. Is that accurate?

A. I'm sorry I interrupted you. But let me see if I can answer it. Is that the legislature, by nature, is not going to give any agency more money than they can spend, because there are so many perceived needs for that money. So when you submit a budget for roughly $21 million a year and say, "This is what we need to plug wells," that's what they're going to give you and that's what you've gotten.

Now, you say over a period of some years, you're going to need roughly another $425 million. And that will be there in that fund because historically it's been generating that, and there's no reason to believe that it won't continue to generate that.

And so I'm not sure -- I'm not sure where we're miscommunicating here, but maybe --

Q. No, sir, we're not. I don't believe we're miscommunicating. I think it's different perspectives and I'm trying to get at something else.

So let's talk about -- let's say that hypothetically there are no procurement problems, there are no recruitment problems, we can get every staff that is necessary to administer the increased fund.

And let's say that tomorrow, the Division went from -- I believe your number was plugging an average of 50 wells per year. Say tomorrow, the Division went to plugging 200 wells per year like that. All right? There's no other problems.

If we're talking about 3,150 wells, that's going to take us what, 12 to 15 years to plug all of those wells, assuming that OCD was able to instantaneously ramp up everything to the point of where everything that you're asking us to do was entirely possible with no restrictions.

A. Mr. Truman, I think he can plug 500 wells a year with a robust plugging industry. And that's what I was trying to get to before. We were hoping to be part of that industry. But that opportunity doesn't exist because of these procurement issues.

So, I mean, we designed our rigs -- what I recall is, we figured one would plug 50 wells a year. About one -- a little less than one per week, or a little more than one per week, given holidays and so forth. And we planned for a minimum of two and up to four rigs. So we'd be able to, just my company, we'd be able to plug 200 wells a year.

Assuming that there are other companies out there that would do the same thing we were doing, which there would be, then you would be up to probably 400 or 500 wells a year, and you'd have your problems solved very rapidly.

Q. Representative, I greatly appreciate the vote of confidence and being able to plug 500 wells a year.

A. Well, that's what happens when you engage industry. And when you ignore it, we end up in a room like this.

Q. Well, Representative, how is that going to work? I mean, where are those OCD staff coming from?

A. Well, you know, we talked about this in committee, and I was assured that you all could get it because of all the federal employees that are going to be laid off. As a matter of fact, that was a direct quote from -- I don't know if it was Ben Shelton or one of the representatives at OCD. I'm not going to mischaracterize it. But I asked that question, "Can you ramp up?" "Oh, yeah, we can ramp up." So there's your answer.

Q. Well, Representative, I would submit that there's a distinction between ramping up, even aggressively ramping up, and multiplying the current capacity as you stated it by 10 times over a short period of time.

A. Well, I can only speak to what we plan, right? And so from our company business plan, we would have ramped you up four times. And I have a hard time believing that once somebody sees that opportunity, we wouldn't have a lot of competition.

And so it goes back to process. And that's -- we've talked about procurement, but we haven't talked about process. And I don't -- once again, I'm not a lawyer, I don't know what your constraints are within the legal framework, but I know this. You've sued companies before, you've won a district court. You've taken over their wells, I believe you've plugged them.

And my question is, why hasn't the OCD done that more aggressively? Why haven't they done it sooner? And why aren't they doing it more?

And if that's not adequate, if you need more authority from the legislature, then please come to us and tell us what you need. I don't know if you need some sort of emergency power -- once again, I'm not a lawyer -- you need some sort of emergency powers to expedite things. But that's the process problem.

You don't have a pool of wells big

enough to really be very concerned about. And that's why I say you don't have an orphaned well problem. What you've got is speculation that you might have an orphaned well problem, which runs into a hundred years of industry history, which says that you won't have an orphaned well problem. But if you do have an orphaned well problem, you're going to have $125 million a year to solve it.

Q. Do you agree that we have an inactive law enforcement problem?

A. I can't speak to that really. I mean, I look at your list, it appears that you did. You know, I can't -- we don't have any inactive wells -- well, we may have one that we're waiting to be plugged. NM3, I believe, may be inactive. But it'll be plugged soon. So we don't -- I don't have a lot of direct experience with that. But according to your numbers, it does appear you did.

Q. Representative Murphy, I greatly appreciate the vote of confidence and the blessing to more aggressively pursue an active well-enforcement. I guess I am struggling with apparent presumption that if we more aggressively pursue an active well enforcement, that we won't simply be adding wells, a substantial number of wells to the orphaned well list.

A. Well, you will --
Q. Because that's been the history.
A. You will be, but you'll have the funds to do it, Mr. Tremaine. But here's the other thing, and this is something that I'd hoped to talk to the LFC about.
They talked a lot about the Colorado experience, and this goes directly to what you just asked me. In Colorado -- and this is one thing I want to talk to them about. It's interesting they mentioned the Colorado experience, but they failed to include the impact of that experience. Right? They failed to include the fact that 2,000 wells were added to the inactive well list immediately or the orphan list or whatever it was.
And so under your numbers, the state immediately, immediately picked up $300 million of liability at $150,000 per well. So if you pursue the $150,000 per well, you're absolutely -- and maybe that's your point, is that that is your process, is that you want to force these people out of compliance so you can expedite the process to get it.
All I would say to that, if that's where you're headed, there's a lot easier ways to do it, and the legislature can probably help you with that.

Because we want this process solved as well, and the industry wants this process solved as well. Because quite frankly, as an oil and gas operator, I'm sick and tired of hearing about how we're not cleaning up our own messes when we pay to clean up our own messes. That's insulting to me, and it's not true.

Q. So, Representative Murphy, the reason you say that is because of the existence of the reclamation fund?

A. Correct.

Q. Okay. And so, again, last question here. Representative Murphy, I think the sum total of our discussion today and my understanding of your recommendations, is that you think that the OCD or Commission should wait for the legislature to take action in one of the future sessions; is that fair?

A. I would welcome -- as a legislator, I would welcome a dialogue. OCD's never come to me and said, "Will you help us fix this problem?" And I know the legislature feels very strongly, both sides of the aisle, that this issue needs to be addressed.

There will be a bill. I don't know if it'll make it up on the call or not, but it will be bipartisan, as the past bills have been. I can't predict what that will do, but I will say this. We should have some optimism. Because when Meredith Dixon and myself and Rob Montoya and a few others, proposed 403 in committee, it came out unanimous. Matthew McQueen, the chairman, worked closely with me in making that bill a good bill. Vice Chairman Sarinana did the same thing. And for those of us that are familiar with the energy and natural resource committee, that's a pretty rare feat, to have a bill come out unanimously.

Unfortunately, it came out late and we couldn't get it in front of the finance, Representative Lente's committee in time. But there seems to be a lot of bipartisan support for this approach.

And I also feel like it's the proper venue. And I'm, once again, not a lawyer and don't mean to get into whether you have the jurisdiction or you don't. I personally believe you don't, I'm not a lawyer.

But I will say this, is that I think the people, the early leadership of New Mexico, recognized how important oil and gas is to our economy and put some real constraints on what can be done to this industry, and largely retained a lot of that power within the legislature. And I believe that this is such an important issue and it could have such a huge impact on this day, that that's the body that should be debating this.

And it bothers me that an applicant who has a mission statement of working to end oil and gas leasing and drilling on our public lands, that is on the website, and the environmental defense fund, had so much influence in the report that's driving this hearing and driving this action. And I think that from a policy standpoint, that's a very dangerous thing.

Q. Representative Murphy, the legislature has, despite bipartisan support, not taken any action to address this issue or finalize any action to address this issue in the last several years. Would you agree?

A. I disagree. We've been -- legislative process moves at the pace of legislative process. There was a lot of -- there was a lot of discussions and everything under 403, and there were there was a lot of movement.

If you take that what happened at 403 to my bill, our bill, in this year, I mean, it made it through a hearing. We had a similar bill that advanced on the Senate side. I think there's a lot of legislative process that's being done and there's a lot of debate. And quite frankly, there's a lot of thought going in to how to solve this problem without jeopardizing a very, very important industry.

MR. TREMAINE: Thank you, Representative Murphy. No further questions.

HEARING OFFICER ORTH: Thank you, Mr. Tremaine. Mr. Biernoff, do you have questions?

MR. MOORE: Good afternoon, Madam Hearing Officer. I'll be representing the commissioner this afternoon, at least for a little while longer. Chris Grazer should be joining later. Our schedules are in flux. I just have a couple of questions for Representative Murphy.

CROSS-EXAMINATION

BY MR. MOORE:

Q. Good afternoon, Representative Murphy. My name is Richard Moore. I represent the commissioner of public lands and the State Land Office.

A. Nice to meet.

Q. Nice to meet you as well, and thank you for your testimony this afternoon.

In testifying about the number of orphaned or inactive wells on federal versus state or private land, you used Cano Petro as an example; is that correct?

A. Actually, I was referring to previous testimony by the commissioner, I believe, because Cano came up. And so yes, I was referencing that.

Q. But I believe that you testified that Cano Petro only has a handful of wells that are not on federal land; is that correct?

A. My understanding is there were roughly 299 wells, somewhere around 300 wells of Cano, and the vast majority of those were federal. That's been what I've been told.

Q. I'm just going to share my screen here quickly. Are you familiar with the inactive well list? I know that's come up.

A. I am.

Q. So having then searched for inactive wells on Cano Petro, this is the results. Would you characterize -- so you mentioned that you're familiar with the list. You're familiar with what the F and the P stand for under lease-type and surface owner, correct?

A. Yes.

Q. Looking at this inactive list for Cano Petro, would you characterize the number of wells that are indicated as private lease or surface owner as merely a handful?

A. No, I wouldn't. I would say that there's -- just glancing at it, I haven't counted it, but to be fair, it would probably be a mix of mostly federal and private. I see very little state on there.

However, I would also note there -- well, we're getting down to quite a few of the federal. But regardless of whether they're federal and they're paid for federal, even if they're private, federal or state, as was established earlier, the recommendation fund is available to plug them. So whatever number of wells there were or are, there's ample funding.

MR. MOORE: Well, thank you for your answers and your testimony today.

That is all the questions that I have and I'll pass the witness.

THE WITNESS: Thank you, Mr. Moore.

HEARING OFFICER ORTH: Thank you, Mr. Moore.

Let's see. I don't believe we have Mr. Nanasi. Mr. Maxwell --

CHAIR CHANG: May I recommend a mid-afternoon break at this point, before we move on?

THE COURT: Oh, yes. Absolutely. Thank you so much for the reminder, Mr. Chair. Let's come back at 3:00.

(Recess held from 2:48 to 3:00 p.m.)

HEARING OFFICER ORTH: Again, I think we do not have Ms. Nanasi. I believe Mr. Maxwell is at the polls.

Mr. Rankin, do you have questions?

Mr. RANKIN: I have no questions for Representative Murphy. Thank you very much.

All right. EOG is monitoring.

Mr. Suazo, do you have questions of Representative Murphy?

Mr. SUAZO: No questions.

HEARING OFFICER ORTH: All right.

Ms. Tripp, do you have redirect?

MS. TRIPP: Yes, Madam Hearing Officer, just very briefly.

REDIRECT EXAMINATION

BY MS. TRIPP:

Q. So, Representative Murphy, you went through some math with Mr. Tremaine, and the figures that were used were 63,000 wells at 5 percent, being 3,150 wells potentially that would be orphaned; is that right?

A. That's my recollection, yes.

Q. Okay. About how long would you estimate a well's lifespan?

A. 30 to 50 years.
Q. In the 63,000, that 63,000 is composed of all active wells. Was that your understanding?
A. That's correct.
Q. So do you have any expectation that there will be 3,000 or 3,150 wells orphaned next year?
A. No.
MS. TRIPP: No further questions.
HEARING OFFICER ORTH: All right. Thank you very much, Ms. Tripp.
HEARING OFFICER ORTH: Commissioner Ampomah, do you have questions?
COMMISSIONER AMPOMAH: Yes, I do.

EXAMINATION

BY COMMISSIONER AMPOMAH:
Q. Representative Murphy, thanks so much for your testimony today. I'm Dr. Ampomah from New Mexico Tech, so nice for meeting you.
A. Nice meeting you.
Q. I do have a couple of questions if we can bring up the slides and walk through that the direct.
Let's start from slide number 3. I thank you once again for the testimony. Here, item Number 4 is showing that your company has blocked 38 wells in New Mexico.

Can you share with the Commission the average cost of the plugging?

A. The average cost, typically these wells vary between 5,000 and 8,500 feet. Principally, Delaware wells, but there are probably some exceptions.

Our actual plugging and reclamation costs would be somewhere around 100,000 to 120,000, on average. We've had some higher and some lower. And it might be a little bit more if you include reclamation on some sites. But it'd be somewhere in that range, 100,000, either way.

Q. So we heard the same from Armstrong, as well, averaging 120, but his wells were much deeper. But it sounds like you are combining a little bit of the reclamation to it.

A. Yes.

Q. So it's a little bit difficult to distinguish between how much is actually for the well plugging?

A. That's right, Commissioner. And the other thing I would say is that many of his wells, they're deeper, but they're single horizon or single zone.

In the Delaware Formation, where we operate, there's many times 15 to 17 individual sands, not necessarily all present at the same time. But we might have multiple sets of perforations, so there's differences.

Q. Thank you. Let's go to slide Number 4. So slide Number 4, based on your discussion, you said that it will not solve -- let's say you're talking about a single well bonding of 150,000 per well limit. You're saying that it will not solve this problem.

But I'm asking you, will it not make sure that OCD has enough bonding to support the plugging for companies that are bonding their wells?

A. Respectfully, Mr. Commissioner, not in my opinion. And I tell you why, is that the problem, people are not going to be able to come up with 150,000, and so they're going to simply -- and this is the Colorado experience -- they're going to simply walk away. And when many of those wells might have been plugged by them over a course of time.

They just can't -- think they can deal with the plugging of wells periodically, two or three wells a year, or whatever their plans are for over a period of years. But to be hit with $150,000 bond that they have to meet immediately is not going to make economic sense to them. So the ones that can pay it, are the ones that you don't need it from; and the ones that can't pay it, that you need it from, can't pay it.

And so I don't think -- I think you'll collect very little of that, especially amongst the, quote, unquote, problem operators. Even if you go to a good operator, if you came to me and you said, "All right. Your well is" -- you know, "You either have to put this $150,000 bond up, or plug it," I think I'd be inclined to plug it, because I eliminate all regulatory, you know, dangers. At a low-volume well like that I'd have to see the payout. You know, I'm going to put up $150,000 bond and then I'm going to have to plug it, too.

I mean, it doesn't make economic sense to me. Because when you think about the categories of operators, the real problem ones are not going to be able to come up with the money. Especially when the money is already there through the reclamation fund. So that's the basis of that comment.

Q. But if you're looking at your average well plugging cost, and in the same as what Armstrong Energy, more or less presented to the Commission, it sounds like the actual plugging cost can probably not be less than 120,000?

A. Excuse me, Mr. Commissioner. You asked me what the average was. So we have many, many wells that are less than 125. So if I have a well -- if I look at a well, and it's going to cost me $50,000 to plug it, and I have to put up 150, I think the decision is pretty clear.

Q. So then on that one, do you know if IPANM or NMOGA has presented to the Commission a quantified risk-based way of assigning the bonds for the Commission's consideration? Do you know?

A. I do not know. But I approach it a little bit differently. And the reason I have is that I've looked at it mainly, how does New Mexico compare to adjoining states? For example, we are competing primarily with Texas and Oklahoma, less so with Colorado. So I look at it from an economic competitive standpoint, is that it's going to impact that. And I hope that answers your question.

Q. Okay. Yeah. So I'm sure you understand the situation the three of us, you know, Commissioner Bloom on the platform, that we are in. Because we need to make all these difficult decisions. And the industry, I mean, you guys have plugged over 95 percent, yeah. And we've heard about risk based, risk based, risk based. You know, the applicant is putting their case direct, direct.

So are IPANM and NMOGA going to go back

and try to help us quantify the risk base, you know, as it is stated in the application for our consideration?

A. You know, I can't speak for them, Commissioner. I would say that history is the best, you know, past is prologue, right? We've got a hundred years of history in this state, 1926 to 2000 almost 26 of producing oil and gas wells. And historically, we've seen somewhere between 2 and 5 percent of those wells being orphaned, over a hundred-year period. And there's no reason, in my mind, for there to be a lot of speculation about what the future may hold.

As you know, in the oil and gas industry, we have what's called a decline curve. And that curve, that forward-looking curve, is based upon past performance. And it's a pretty solid scientific method of judging future performance as well. So that's how I'd answer that question.

Q. And I appreciate that. Let's go to slide Number 5. So when we started the hearing, you know, the TA issues were something that I also was concern with because of the production cycles, primary, secondary and tertiary. And I did not -- based on the experience, I don't feel like put in the eighth year, you know, where -- I mean, we're probably not going to be able to go through secondary, not even to tertiary without really having premature plugging.

You know, so there have been a lot of discussions here where there is a potential where the applicant, even -- that was Mr. Alexander who provided some exceptions, you know, for the beneficial use. And that is definitely going to handle -- if the applicant brings that back, that is definitely going to help on the premature plugging in terms of the beneficial use.

But I want to talk to you about the TA status. So the TA status, too, I do like what the applicant put forward, because they do have the approved and then the expired TA status.

So let's focus on the approved TA status, for instance. Based on the current rule, if enacted, it sounds like approved TA will still need it to be borne at 150,000. Is that your understanding?

A. That's my understanding.

Q. Now, on that one, don't you believe that, let's say, an approved TA status means that OCD has inspected this well to know that the mechanical integrity of this well is so good? Is there any -- you know, should that approve TA also, more or less, be in the same category as expired TA in terms of the bonding?

A. No, I don't believe so. I mean, the industry practice with respect to temporary abandon is to set a cast iron bridge plug and usually some volume of cement above it to circulate the well with inert fluids and to pressure test. And if I recall the rule, it's required, I think, every five years unless otherwise notified by the Commission. But it's at least a five-year test. That pretty well ensures the mechanical integrity of that well.

And we've got to remember what we're looking at in terms of wells. These are wells whose bottom hole pressure is essentially zero. I mean, right, you've got a fluid that can only -- if you've got a 3,000-foot well, your bottom hole pressure might be 200 or 300 pounds. So what does that mean? The fluid can only migrate up 300 or 400 feet. It can never get to the surface because there's not enough bottom hole pressure at the bottom to push it all the way up.

Now, some gas can migrate, you know, if not TA'd. But if it's TA'd, everything is sealed down there. And so to me, it's really -- in many ways, when you think about the future potential of that well, it's much better to leave a well in that sort of status if it has future potential than to plug it.

Now, many of the studies that we did back when I was working primarily on secondary and tertiary recovery projects, and this is also -- I'm going to complicates your policy plate here a little bit -- is that one of the things that we found was that when you take any given reservoir, when you plug out some percentage of those wells, the economic viability of that secondary or tertiary recovery project is no longer there because you have to re-drill those wells.

And the reason you have to re-drill those wells is you have to be able to establish the patterns to get the efficiencies to get the recoveries to get the revenues. And so from a policy standpoint, I am very reluctant to plug wells.

And the reason is, is that I think many policymakers look at them and say, "Well, these things are long-term liabilities." Well, not if they're handled correctly, right? And the way I look at it is they are long-term assets. They are the key strategic petroleum reserve because they allow us access back into the reservoir in order to apply some sort of technology.

And so that's -- I probably took a long way around the barn. And I apologize.

Q. But you believe that the expired TA wells, they have to be bonded because those are wells that probably OCD might be responsible for?

A. I would say that a properly TA'd well and maintained should not be bonded. And in terms of -- whether there's some detail -- I would say, look, an unapproved or a TA'd well that's out of compliance, then I could see where that might require bonding. But I think there's statutory limits as to what that can be.

Q. Well, the applicant, you know, they do have, you know, in the proposed rule -- and you did not go through this rule exactly, so I don't want to really push on that line. But in that they do have the bonding for inactive wells; you know, it includes approved and even expired. But what I'm suggesting is that the approved needs to be dealt with separately.

A. I would agree with that.

Q. Yeah, from the expired. And they are putting 150 bonding on expired because they are non-compliance. And I don't think you disagree with that.

A. I believe -- well, I'm not sure I

understand. Putting a hundred and -- well, putting a single-well bond on, in my opinion, that ought to be something that's looked at very, very carefully.

Because once again, if you've got a well that is out of compliance in whatever way it's out of compliance, then there ought to be a process that that well is put back into compliance. And if the OCD doesn't have the tools to do that, they should have the tools to do that.

But I don't believe bonding is that solution, especially when there's so much money available from other sources and reclamation fund. Now, when you take -- and the reason being it's largely about capital. And capital is pretty precious not only in the oil and gas industry, but in business in general, for investment purposes.

Q. Okay. Let's go to slide Number 6. So slide Number 6, bullet point two, you said propose rules would have chilling effect. Is that based on the details you've provided to us or specifically -- how is the marginal rule? So let's take the marginal definition for instance and then the beneficial use and combine them.

A. Okay.

Q. So how is that going to provide a chilling

effect, you know, to the industry?
A. Okay. So with respect to margin -- well, there's a number of areas. With respect to marginal wells, it'll be clear that they either need to be plugged or a substantial amount of money needs to be put up very quickly.
And that goes back to my point of -- well, and this is going to answer your question, because it really is about what the impact of that would be.
I believe the chilling effect is going to be that we have another example of regulatory uncertainty going to an extreme. And that you also have an expansion of regulatory authority into areas that the industry typically has not seen before, calling for financial records of private companies, for example. That's chilling.
Private companies are private for a reason. And there are metrics on their ability to perform. But in this case, I'd have to agree that as long as they meet the statutory requirements, that diving in and having an agency that is charged with protecting correlative rights, preventing waste, protecting health and the environment, to some degree, that's not exactly a mission that falls very well in

that agency.

Q. So let's talk about -- let's still talk about marginal wells. There has been a lot of discussions about changing the 1,000 to about 750 BOE. Is that something that you will support?

A. It's not. And it's because I reject the premise. I do. And with all due respect, Commissioner, the thing is, is that we now have agencies that are getting into economics. And they don't know my wells' economics.

And unless you allow the owner to continue to produce that asset, as long, as it's economic to do so, if you disrupt that system, then you're going to lose waste.

And in my opinion, I think -- and once again, I'm not a lawyer, but in thinking about it, if I have to prematurely plug a well because of the arbitrary either production number or other number, and I lose access to my profits and reserves, that's a taking, in my opinion.

And that's not something that the OCC, with all due respect, should be in the middle of. I think, you know, you set reasonable bonding limits, and we can debate about what those are in terms of blanket bonds, that are consistent with other area states, so that we stay competitive. And then you ensure, through the procurement, through the process of populating, as I think it was described, access to these wells, and then you make sure that there's funding. And we know that there's funding. And so the whole approach to me is, from a public policy standpoint, really poorly thought out.

Q. So, you are not -- so you've described, from an operator standpoint, these marginal worlds, some of them are economic, you know, based on, let's say, from an operator's point of view.

You know, Commissioner Bloom has proposed, or based on the discussion, we've discussed about putting some exceptions with regards to the definition, you know, to make sure that we are really targeting the bad operators that are not really in compliance. So it sounds like you are not in a position to even help us with some of these exceptions.

A. Well, I could be. But under the current framework, I mean, I think I would have to really be convinced that this is the right policy approach, and I just don't see it right now.

I mean, it's -- and when you start thinking about those exceptions, you're not going to be able to catch them all, right? Maybe we'll catch some of them.

But, you know, when I looked at it -- I'll just explain my situation. When I looked at it, I said, Okay, I described the four wells, two federal, two state, both of which are around 700 BOE, all of which produce over 180 days. Okay?

But if you eliminated -- let's say they produced 100 days. They produced 100 days, but they made 1,000 BOE or 750 or whatever that threshold is. Then I wouldn't make that, right? Because it would have to be -- no, I would make that because I hadn't produced the 180 days. But it's economic, right? So I've got an economic well that doesn't produce the 180 days. That's marginal.

Q. No, it's not.

A. Or maybe I had that backwards.

Q. Yeah.

A. Excuse me. Yeah, it at least has to produce 180 days, right?

Q. And less than 1,000.

A. Yeah, less than 1,000. Okay. Well, I was just using numbers. But let's say that -- let's say I have a well, which I do, I have four wells that produce 700 BOE, they produce over 180 days. All right? So they're okay. But what if they produced 100 days? They wouldn't be okay because it's "and." Here, it hurts. Right? Because I can show that well being economic, but it didn't make the 100 days -- or 180 days of production. So it's got to be 750 and 180. I'm 750 and 100. I'm not exempt.

Q. So let's attach on that one. And that is where the Commission is also considering that -- let's say in this instance there could be an issue why the well was not able to produce after the, let's say, 750 or, let's say, 1,000.

So there are some of these issues that could happen that the Commission is looking into to put it as an exception so that you do not really go after a well that because of, let's say, a mechanical issue or some kind of issue, pipeline, whatever, they were not able to meet that criteria.

So we're trying to see if we can come up with some exceptions to make sure that we do not necessarily go after wells that are economical.

A. I'd be interested to hear, you know, how that would go. I think the approach is -- when I began sort of that thought process of what you're talking about, I considered sort of the factors that I could think of that might go into sort of that economic analysis, and they would probably be better than this, but not much better.

And the reason -- here are the facts. We talked about age. I think everybody sort of agreed with that. We talked about depth. I think -- but we also have to talk about location, northwest or southeast. We have to talk about is it primary oil or gas. I mean, is there hydrogen sulfide available? What is the gathering situation? What is the -- what are the natural processes that are going on with the well that might make a 200 BOE well profitable that produces 30 days. It wouldn't meet that either.

And so what I'm saying is, is that when you approach it in that way, you're never going to get it really right.

The way to do it I think historically has been correct, and that is, you leave the owner and the operator in charge of determining the economic benefit, and then you protect yourself and you protect the state through reasonable bonding and through the use of the funds the industry has dedicated to plugging that. And that is the ultimate protection.

Once again, I probably took the long way around the barn. I apologize, Commissioner.

Q. So you talked about funds holdup. You know, you talked, still on this slide, you talked about funds hold up that could have been utilized instead of using to pay high premiums on financial assurance surety bonds.

And Mr. Gilstrap yesterday testified to the Commission presenting two scenarios. And one of the one of the scenarios that he presented here was a situation where an operator has to put up 3.75 million to 5.25 million yearly payments on the surety bond. I mean, there's a lot of numbers.

A. That's a lot of money.

Q. Now, you know, you talked about funds is not the problem, right for the orphan, or let's say for the plugging. Now, with this huge amount of money that is going to be held up to just paying premiums, just paying premiums to the surety companies, I'm not sure how that solve the plugging problem. I don't know.

A. I don't know either, and I'm not familiar with those particular circumstances. I guess this has been -- this is my experience, and that is, even if you had -- let's say that you created a brand-new company and you funded it with a whole lot of money, you just put $100 million into a brand-new company and it's going to come into New Mexico and it wants to explore and buy wells and do all the things, and it needs bonding. Right? It would probably, even with a lot of money in the bank, would have to put that bonding up in cash.

And the reason is, is that, this would have been my experience, the surety companies are not going to write a bond just based upon your assets. They're going to write a bond based upon how long you've been in business, what your track record is and so forth.

So when I say it has a chilling effect or there's all these input -- all these impacts, it's primarily to those people that are entering the business, right? Those of us that are well established in the business are probably paying some of the premiums you heard, 1, 2, 3, 5 percent maybe. But the entrants, many of the companies coming into this, are either going to have to put up a cash bond or they're going to pay a very, very high percentage.

And my point is only this, is that capital is very, very precious. And given that, in my opinion, the orphan-well situation, the reclamation, the plugging is largely addressed through the reclamation fund, is it good policy to take millions or tens or hundreds of millions of dollars and put it into a fund that may be released later, may not, but probably will, when that money could be invested in this state, actually finding and producing oil and gas?

And if you think about that, when a company comes into the state, they're not looking just to get their money back, right? So let's say they have to pay the $5 million in premiums. Well, if they invested that $5 million, they would expect probably $15 million back, two or three to one return, or otherwise they won't stay in business.

That money, a good portion of it, comes right to the beneficiaries, comes right to the state. So where do you want the money? Do you want it sitting in a can under grandma's bed? Or do you want it out drilling wells, producing, paying salaries? I mean, that's the policy argument, I believe.

Q. Yeah. But we all agree that the orphan well could be a problem for our state, right? So based on the discussion that we're having, my question to you is what is the alternative situation?

A. Well, I had this conversation with Mr. Tremaine, and he said there's roughly -- I disagree there's that many wells, but let's take his number. And we'll take a compromise number. He said

3,100. I'll use 3,000 because I'm sitting here. 3,000 times $150, 450 million would be generated in three years from the reclamation fund, if they could spend it.

Now, remember, not all those wells are ready to be plugged. They're worried about them. Some they're somewhat worried about, some they're really worried about. But once again, it's speculation.

We've got, I think, 700 wells, I think was the number that was discussed here. That's, I don't know, what, $15 million, 12 and a half million dollars, something like that. So that's why I say that the money is not a problem, because the money is coming in faster than the activity is happening.

Q. So you don't believe that operators should more or less be asked to put a bond that could be utilized -- or let's say a bond that is almost close to how much it costs to plug the well?

A. I don't believe -- and let me speak to I think what we've all been trying to address, either the bad actors or the unfortunate situations where the state is left with a lot of wells, right? I don't think that's -- and historically we haven't seen that that just drops in our lap; it happens over time and we can deal with it, as we have for 100 years.

And I'll just go back, I think the ones that you want to collect it from, you'll never collect it from. In other words, if you go to the 10 operators that they have talked about being 89 percent of the problem, you're probably not going to collect from them. If you go to the list that was even more expensive than I thought, however many hundreds there are that haven't put up the 150, most of them probably won't either.

So what's going to happen? What's the impact of that? No money collected, huge transfer of wells over to be the plugging fund. When many of those wells might very well have been plugged over time. So I just don't see the policy or economic win, Commissioner.

Q. Yeah, but so assuming those ten companies -- or let's say the companies that are going to earn the most, assuming OCD was able to bond each of these wells, 150, 150, and then they've neglected their responsibility, don't you believe that OCD can go to the surety companies and get the same amount instead of using the state funds to plug these wells?

A. I don't believe so. I don't believe, from my knowledge of the sureties and bonding and the state of the industry, that the operators that you target are going to are going to do that.

Look, how realistic is it to think of an operator having, let's just say, 50 wells and he doesn't report production on them for 12 months. Right? But he's going to come up with seven and a half million dollars in bonds? That's just not realistic to me, Commissioner.

COMMISSIONER AMPOMAH: Yeah. Thank you for your time, sir.

THE WITNESS: Thank you, sir. I really enjoyed the discussion. I think we're fleshing it out a little bit.

UNIDENTIFIED FEMALE: Thank you.

Commissioner Bloom, do you have questions.

COMMISSIONER BLOOM: Yeah, thank you Madam Hearing Officer.

EXAMINATION

BY COMMISSIONER BLOOM:

Q. Good afternoon, Representative Murphy.

A. Hi, Commissioner. How are you?

Q. Fine. Thanks. Yourself?

A. I'm good.

Q. All right. Again, thank you for your

testimony. Thank you for your service as a state legislator. I hear the pay is not great.

A. I've heard that too?

Q. Hey, I appreciate you having mentioned Daniel Yergin' work, "The Prize." It's a fantastic history of oil and gas. And you mentioned Oil Creek. I was born in Oil City and grew up with Oil Creek in the backyard. And my family's worked -- my dad's an attorney, started off doing oil and gas law, finished in oil and gas real estate.

My stepfather worked for Gulf, Mobile, Halliburton over the years. When you talked about downturns, I remember the '80s, I remember the l'90s when he was out of a job for, you know, a year or two at a time, and it was tough times.

Representative Murphy, I'd like to get into some of the issues around OCC's authority and jurisdiction, as you said, and some of the issues that you raised around that.

You stated in your written testimony, Page 7, I quote: From my perspective, WELC is asking the Commission to take steps that far exceed its authority under the Oil and Gas Act. I'm no attorney, but I have lived and worked with the Oil and Gas Act and its regulations for the past 40 years. The

Commission's primary purpose has always been to prevent waste and protect correlative rights. End quote. Did I get that right?

A. Yes. I read along the same, yeah.

Q. So, Representative Murphy, you mentioned engaging with the LFC staff on the well report and being dissatisfied with it. I take it you've read the report in its entirety?

A. I have.

Q. Yeah. Okay. I quoted a section to Mr. Ezzell, and I'll read that again. It says, quote, the federal Environmental Protection Agency estimates annual methane emissions from the nation's inactive and unplugged oil and gas wells are comparable to adding an additional 2 million gas-powered cars to the road. End quote.

Is that methane a wasted resource?

A. If that report is accurate, I would -- I would say yes. And I'm sorry, Commissioner Bloom, I'm not familiar with it, but you said that's a national report, not a New Mexico-focused report; is that correct?

Q. Yeah. That's a federal EPA estimate of annual methane emissions from inactive and unplugged oil and gas wells.

A. I'm sorry. Yes, I accept that.
Q. We heard from the OCD that 60 percent of inactive wells in New Mexico leak methane. If that's true, is this also fugitive methane waste, and then does the OCC regulate waste?
A. Yes. Along with others.
Q. Yeah. Does proper plugging stop methane leakage and waste?
A. It does, but it's not the only method.
Q. You're a long-time --
A. But I think it's important --
Q. Yeah, go ahead. Finish.
A. Yeah, Commissioner Bloom, I also think it's -- to put this in perspective -- and I see where you're headed and I share the concern about methane being vented from unplugged wells.
But I would also note this, is I think we always sort of have to quantify what we're talking about. And plugging the well is one option. We can talk about the pros and cons of that. But the easy option would be to TA the well, or the even easier option is to basically just fix the minor leaks, which should be done.
But in order to quantify this -- because I've really had a question about it. And during last

week's water and natural resources, we were presented with a presentation from the New Mexico Environment Department, and it talked about this very subject. It talks about the New Mexico oil and gas greenhouse emissions inventory for year 2023 for methane and carbon dioxide. And this is a report director Miano, of EPA Division, New Mexico Environment Department, presented in Artesia.

And I find it interesting that we have a number of categories. We have production, gathering and boosting, processing, transportation and storage, and inactive oil and gas wells. Now, all of these colors represent these first four. This red color, inactive oil and gas wells, does not appear on this chart. So I think when we talk about this, we need to quantify the numbers, right? They're so low that the New Mexico Energy Department isn't even graphing them.

So I hope that answered your question.

Q. Yeah, it did. Thank you, Representative Murphy.

So I know you're a long time oil and gas man, and so in terms of those emissions, we'd also be getting some of the volatile organic compounds, the BTEXs, benzene, toluene, ethylbenzene and xylene, correct?

A. Correct.
Q. You know, it's certainly my understanding. I believe it's the Commission's understanding that the Commission is also charged with protecting the environment, water and public health. Do you agree with that?
A. I do agree with that.
Q. I'm not sure where we're going to end up in this rulemaking, but, you know, I am interested in exploring where we have authority, and we wouldn't want to exceed that. And, you know, perhaps from what I'm seeing, this probably ends up in the courts or something, and they can decide.
We've been over some of this. I feel like I'm repeating, you know, questions with the same answers I got from Mr. Ezzell and other, you know, NMOGA witness also. But I guess we're seeing some commonalities in the testimony as well.
A. Representative, if you also talked to us about your legislative work in the last session and for the upcoming session; is that correct?
Q. I mean, at the end of the day, can anyone guarantee what the legislature will do?
A. No. Just like we can't guarantee what the courts would do.

Q. You know sometimes we think our bills are -- you get the promises and it doesn't happen. I mean, I'm sitting here, you know, from the land office perspective. It took us seven years and six attempts to get our royalty rate bill through.
A. Glad you got it done. Well, let me offer this, Commissioner Bloom, that when I present the reclamation bill with the protections in there, I hope that the State Land Office will be there as an expert witness supporting that testimony.
Q. That's actually something to think about.
A. Yeah, maybe the OCD will show up, too.
Q. Finally, I go back to some other questions that I asked Mr. Ezzell about, and that's just related to the land office, you know, feeling the need back at the end of I think it was 2020, to institute an accountability and enforcement program to get orphan wells and inactive wells closed on state trust lands, because the companies weren't doing it.
And, I mean, you've probably seen some of the information we've put out that, you know, so far that program has succeeded in plugging -- you know, really kind of working with and enforcing and sometimes suing operators and lessees on state trust land, to plug 750 wells.

A. Yeah I've heard that testimony, Commissioner Bloom. I'd also -- I've encouraged both the Bureau of Land Management and I would encourage your office to look at issuing leases with unplugged wells as long as the purchaser is willing to take on that responsibility and bond them.

And that would actually eliminate a lot of problems, both on -- at any rate, that's a policy discussion we can have later.

Q. And that's interesting because that might require legislation as our oil and gas lease is set statutorily when we re-lease land to the next lessee, gets that free and clear.

COMMISSIONER BLOOM: All right, I think, Representative Murphy, I'm starting to fade at the end of the day. I'm going to leave it there. Thank you so much for your time and testimony today?

THE WITNESS: I very much appreciate your background there. I hope you're putting on some skis and hitting the Matterhorn or something. It looks good.

COMMISSIONER BLOOM: I'd love to?

HEARING OFFICER ORTH: Thank you, Commissioner.

THE WITNESS: Thank you, Commissioner Bloom.

HEARING OFFICER ORTH: Chair Chang, do you have questions?

CHAIR CHANG: Representative Murphy, thank you very much for joining us here and providing us with your testimony.

I'll just make a brief comment that whatever comes of this current bonding petition, I certainly agree with you that OCD needs to make the best possible use of every dollar in the reclamation fund, and I certainly hope we can work with all the various stakeholders to make that happen in terms of the specifics. I think we've covered it in fairly exhaustive detail, so I think I'll let you go for the afternoon.

THE WITNESS: Thank you very much. I appreciate you.

CHAIR CHANG: Thank you.

THE WITNESS: Thank you, Commission.

HEARING OFFICER ORTH: Thank you, Representative Murphy.

THE WITNESS: I guess that you didn't actually release me, so I spoke a little bit.

HEARING OFFICER ORTH: Is there any reason not to excuse Representative Murphy?

MS. TRIPP: Thank you so much. No.

HEARING OFFICER ORTH: Thank you very much.

Well, it is 3:47. Sheila, do we have -- it looks as though there are a number of names for the 4 o'clock. Do we have some of those folks on the platform already?

MS. APODACA: I haven't seen any, and we had forewarned some of them that we may not be in session this afternoon, so they may not all be in attendance.

HEARING OFFICER ORTH: All right. Thank you. Do you want to take the first 15 minutes?

MR. CLOUTIER: We can introduce Dr. Arscott, and he can start it up. We've discuss that we may need to chop him up a little bit.

MS. APODACA: We do have one in-person commenter, if you'd like to take him down.

HEARING OFFICER ORTH: No. We're going to do 15 minutes of Dr. Arscott, and then we'll go to the public.

MS. APODACA: Very good.

MR. CLOUTIER: IPANM calls Dr. Rob Arscott.

And, Ms. Apodaca, if you could give Mr. Arscott -- would you e-mail him the hearing notice so he can log in to the Teams meeting. Ms. Tripp and I forgot to do that.

Ms. APODACA: He's logged on and he has the permission.

MR. CLOUTIER: Thank you. All right. Appreciate it, Ms. Apodaca.

So we're going to do our best to speed Dr. Arscott up by having me ask a few questions and then get out of the way and let him run through his presentation with fewer questions from me.

HEARING OFFICER ORTH: Dr. Arscott, would you please spell your first and last name.

THE WITNESS: Robert Arscott, R-O-B-E-R-T, A-R-S-C-O-T-T.

HEARING OFFICER ORTH: Do you swear or affirm to tell the truth?

THE WITNESS: I do.

HEARING OFFICER ORTH: Thank you very much.

Go ahead, Mr. Cloutier.

ROBERT ARSCOTT,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CLOUTIER:

Q. Would you please introduce yourself to the three members of the Commission.

A. May I share my screen? There you go.

Yeah, my name is Rob Arscott. I'm here to offer testimony on behalf of the Independent

Petroleum Association of New Mexico.

Currently, my role is as an economist. I do consulting work at a company called Applied Economics in Austin, Texas. Prior to this role, which I've been in for about two years now, I was an assistant professor of finance at Syracuse University, where I taught courses on corporate finance topics and real estate.

And in a previous life, a long time ago, I worked in syndicated lending at an investment bank, and in private equity as an acquisitions associate at a real estate fund in London, England.

My education, I have a bachelor of business administration from Concordia University in Austin. I have an MBA from Oxford University in the UK. And I have an MSBA in applied economics, and a PhD in finance from the University of Rochester.

Q. And very briefly, what do you do at Applied Economics, Dr. Arscott?

A. Yeah, so Applied Economics and I regularly consult on matters related to oil and gas. I would say the majority of my work over the past little over two years now has been with various oil and gas clients, both upstream operations as well as in midstream.

Here's a brief little sample of some clients that I've worked with over the past year. Some of them are fairly large producers. Some of them are not so large. Kraken Resources, for example, would be an example, a private equity backed operator that primarily operates out of the Bakken in North Dakota.

Q. Thank you. And you submitted direct and rebuttal testimony in this matter?

A. I did.

Q. Do you have any corrections to that testimony?

A. I do not.

MR. CLOUTIER: All right. We offer Dr. Arscott's direct and rebuttal testimony into evidence. And then Dr. Arscott is the sponsor of IPA and Exhibits 1 through 9 and 29 through 36, which we also tend to read I'm hearing officer.

HEARING OFFICER ORTH: Thank you. I'll pause for a moment in the event there are objections.

BY MR. CLOUTIER:

Q. And from now on, Dr. Ascott, I'm going to let you take it away. And I may interrupt if I think something needs clarification, but why don't you go ahead and talk to the Commission, at least about the first point you'd like to make.

HEARING OFFICER ORTH: The exhibits are admitted.

MR. CLOUTIER: Thank you. I apologize, Madam Hearing Officer.

(Admitted: Arscott Direct and Rebuttal Testimony, IPANM Exhibits 1 through 9 and 29 through 36.)

A. All right. Well, thank you very much.

So I guess I'll start with this question as to what is the right amount of financial assurance. And so I've been asked to work on this financial assurance aspect of the proposed rule.

And in part of my work in this, I've been doing a lot of research on -- I've been doing research into some of the theoretical, at least in a perfect rule, theoretical amount of financial assurance, how would you determine that.

But it's really based on something known as the judgment-proof problem, which is related to this concept of limited liability, which is very important to our capitalist economy. If it weren't for limited liability, we would likely not have the level of innovation and investment and entrepreneurial activity that we enjoy in this country. It encourages people to take risks.

And the dark side of this is sometimes we run into moral hazard issues, such as this concept known as the judgment-proof problem. The judgment-proof problem arises when you have, in this case, an operator that becomes insolvent. They declare bankruptcy, and through bankruptcy protection, an operator can shirk its responsibility potentially to properly plug and abandon its wells.

And so the duty to plug and abandon the wells then falls to the state, at the state's expense. And this is obviously not an ideal outcome, especially from a social standpoint. And so we have to come up with ways in which we can encourage bad actors, for example, to behave like good actors.

One of the ways that we do this is with a bond. So what the bond does is the bond requires the operator to put up some monetary incentive to provide for the incentive to plug and complete the well according to his obligation.

If the operator fails to plug the well, he'll forfeit the bond. That money will then go to the state to aid in plugging the wells. And in addition to providing an incentive to plug the wells, this actually delivers money to the state to help with the plugging effort. So in that sense, it's an efficient way to deal with this judgment-proof problem.

Now, there is this tension between economic growth and public protection. Obviously, the bond can protect the public from the costs of plugging and abandoning wells that are abandoned by private industry. But if we set the bond amount too high, it will stifle economic growth.

Now, there is a theoretically ideal amount of bond protection. And the economic literature is actually clear on this. It's related to the expected P&A cost of a well. But actually, the P&A cost and expectation for a well is actually the maximum bond amount that, in theory, you should require.

The reason why the ideal bond amount may actually not be equal to expected P&A costs is because operators face a lot of other potential deterrence to defaulting on their obligations to plug their wells. Some of those deterrence are non-monetary. For example, the operator faces a reputational risk if they fail to honor their obligation to plug wells. Aside from non-monetary considerations, operators also have monetary considerations related to lost profit, potentially from continued operations.

You can imagine an operator that, in expectation, might think that they might be able to reap substantial profits from continued operations in the state. But if they fail to plug their wells, they may find that they face permit denials from the regulatory authority, in addition to possibly revocations of their authority to transport oil and gas in the state. That would effectively end that operator's ability to do business in the oil and gas industry in the state and represent a significant monetary cost if he fails to plug his well.

So, in the portfolio of incentives that the operator faces that would lead him to honor his obligation, in some cases, the bond, even a bond in the full amount of the expected plugging and abandonment expense, may not really move the needle much in terms of affecting the operator's decision to honor his obligation.

So, in that case, the bond amount, whatever the cost of that bond is, would be a pure cost and not necessarily have any associated benefit. In that respect, the ideal bond amount might actually be considerably lower than the expected cost of plugging and abandonment.

Because the ideal bond amount is in some ways connected to expected P&A costs, it's important to recognize that there's considerable variation in plugging and abandonment costs in the data. For example, the OCD's plugging costs may not reflect typical costs of plugging wells throughout the state. According to Ben Shelton, the OCD's cost may be anywhere between 10 to 15 percent higher than what private industry's costs are.

Regardless, if we were to set a bond amount at, say, 150,000 per well, if this is somewhere near the average cost for wells in the state, by definition, the median or the average is going to be set higher than about half of the wells in the state.

Now, to the extent that we're talking about wells that, in expectation, have plugging costs that are less than 150,000, for example, a well that maybe costs 50,000 or even, let's say, 100,000, a well that, in expectation, will cost 100,000, we know that, theoretically, the optimal bonding amount should be no more than the expected costs of P&A'ing in the well. So if a well is an expected cost of P&A equal to 100,000, imposing a financial assurance burden in the amount of 150,000 on that well presents an economically unjustified cost.

We're not necessarily talking about forcing operators to fully internalize the costs of their activity at that point. We're now imposing a cost in excess of what is economically justified. Now, this can lead to the premature plugging of wells, which ultimately would lead to waste, reserves that are lost beneath the ground because we plugged the well prematurely.

There are other sources available to address the orphan well problem. We've heard from several people during this hearing. The OCD reclamation fund is one such source. There is a conservation tax of anywhere between .19 percent and .24 percent that is charged on all hydrocarbons severed and sold in the state. Depending on oil prices, either 10 to 20 percent of that revenue is diverted to the reclamation fund.

According to the LFC report that was published earlier this year, the fund had a balance of 60 million as at the end of fiscal year 2024. Although, as we've heard from Representative Murphy, that may be significantly higher. I think he said 76 million.

There are also federal grants that can be used to address the orphan well problem. According to the LFC report, a little over $55 million of such grants have already been used in New Mexico. And New Mexico remains eligible for a further 111.8 million.

So, the proposed rules will lower the incentives to produce oil and gas in New Mexico. And I say that because there is an increase to the cost of production related to the amount of financial assurance that's levied on the operator. To the extent that that financial assurance is economically unjustified, it's too high. And if it's too high, then it increases fixed costs above what's economically justifiable and, therefore, reduces the incentives for operators to continue to produce oil and gas.

The effects will vary by operator depending on the types of wells that they operate in their own financial condition. This one-size-fits-all $150,000 per single well is, I would argue, overly broad because it ignores the default likelihood and cost of default that is unique to each individual well. In some cases, FA costs will be extreme.

And in these cases, I'm going to mention two specifically. One is an instance of a cash bond. The other is this 15 percent threshold that we've heard about many, many times. So the cash bond is, as opposed to a surety bond, this is a bond that requires 100 percent collateralization. The operator that is taking out a cash bond has to put up full $150,000 today. They may not plug the well for years to come, after which they can get the money from their bond back only after the well has been verified as plugged correctly. All the while, the operator is out that capital. If I have to deposit $150,000 today, that's $150,000 that I don't get to deploy for other purposes.

To the extent that we're talking about operators of PDP reserves, or proven develop producing reserves, those typically have a discount rate of about 10 percent per year. So an operator that's setting aside $150,000 on a cash bond actually faces a bonding cost on an annual basis equal to 10 percent of that amount. So these cash bonds are actually quite expensive relative to surety bonds that may have fees ranging between 2 percent and 3 percent.

The other case in which FA costs will be extreme, in my estimation, will be in cases where the portfolio of the operator contains more than 15 percent either marginal or inactive wells as the proposed rules define them. I'll give you two examples after comment.

HEARING OFFICER ORTH: Thank you very much. I thought perhaps before you started your next slide we could do public comment.

So we have reached another public comment session. Is there anyone in the room who would like to -- so, Dr. Arscott, if you would vacate the witness stand.

And, sir, if you would come up. If you would say and spell your first and last name please.

MR. MCQUEEN: My name is Matthew McQueen, M-A-T-T-H-E-W, M-C-Q-U-E-E-N.

HEARING OFFICER ORTH: Do you swear or affirm to tell the truth?

MR. MCQUEEN: I do.

HEARING OFFICER ORTH: Thank you. Go ahead.

MR. MCQUEEN: Thank you, Chair, Members of the Commission. My name is Matthew McQueen. I'm a member of the New Mexico Legislature. And I've been in the legislature for 11 years, and for the past nine years, I've chaired the House energy, environment and natural resources committee.

I'm here today as an individual, as a legislator, to encourage you to adopt a strong and effective bonding rule. I caught a little bit of the testimony and my colleague, Representative Murphy, and he's on the committee that I chair.

I will tell you, I was also at the water and natural resources committee meeting in Artesia last week. And it was interesting to me -- the recommendation fund was discussed at some length. And it was discussed shortly after we discussed the liability in un-remediated uranium mines that exist in New Mexico.

To me, the bonding is -- I describe it as an insurance policy. I think it is a form of insurance. This is what we will draw on if we ever need to. Hopefully, we don't need to. But the State of New Mexico can't continue to leave itself in the position where it has to clean up after industry when industry goes south.

The reclamation fund is being used. I support Representative Murphy's legislation to stop diverting a portion of that fund so we have more of that fund available and that we can ramp up the expenditures of that fund. But the reclamation fund serves a different purpose. It's different than bonding.

The reclamation fund, in my mind, is what we use to plug and abandon wells that have already been abandoned or already been orphaned. And the bonding is what we will use in the future, especially if there is a downturn and a lot of these are orphaned at the same time, whether it's a single company or industry-wide.

And I will say, I hear occasionally that the smaller operators can't afford the bonds. And it sends a shiver down my spine because if they can't afford the bonds, how are they going to plug and abandon their wells?

And those my comments. Thank you very much.

HEARING OFFICER ORTH: Sheila, who do we have on the platform?

Ms. APODACA: I don't see anybody on the platform.

HEARING OFFICER ORTH: If you're on the platform and would like to offer public comment at this time, please raise your virtual hand. If you have dialed in, you would raise your hand by pressing star 5. No one?

All right. Our next public comment session will be at 9 o'clock tomorrow morning. We will also have a public comment session Thursday at 9 o'clock in the morning.

Let's go back to the technical case, Dr. Arscott. Sorry for the interruption. Please go ahead.

A. No. Thank you. Okay. So I'm going to move back one slide. The issue I was discussing is what I think the proposed rules, what effect they'll have on the incentives to produce oil and gas in New Mexico.

And I think in particular this 15 percent threshold may have a barely significant distorted effect on the incentives to produce oil and gas. To illustrate, I'll give you two examples. Both examples will be operators with only ten wells.

This first example we'll call Operator A. Operator A has ten wells, eight of which are highly productive; one with low production, but not marginal, as defined in the proposed rule, and one inactive. Now the 15 percent threshold is, again, if there's 15 percent either marginal or inactive wells in the operator's portfolio. And as it stands, with only one inactive well, this operator is currently at 10 percent.

Under the proposed financial assurance rules, the inactive well will require a single bond in the amount of $150,000. But the other nine would qualify for a blanket bond in the amount of $250,000.

All in, this is a $400,000 financial assurance amount.

Now, the issue is if the low-producing well declines into marginal status, if that happens, the operator will have 20 percent of his wells in either inactive or marginal status. That will trigger the 15 percent threshold rule, which will increase the required bonding amount to $150,000 on all ten of this operator's wells. As a result, the financial assurance amount will increase from $400,000 to over -- well, to $1.5 million.

And I almost said over, because the actual increase in the cost might be more than, say, three times as much. We've almost tripled the amount of bond required. But there is also a secondary effect in terms of the premiums that this operator may have to pay on those bonds, because all else equal, if we increase the amount of debt or the amount of bonding required that's extended from, say, a surety provider, that increases the risk to that provider. And as you increase the risk, a rational provider of that security will charge a higher premium.

And so what you may have is not only an increase in the bond amounts, but you may also have a concomitant increase in the premiums charged on those bonds.

I'll give you a second example. We'll call this Operator B. Operator B also has ten wells, five of which are highly productive, and five are marginal. Five of these ten wells would be classified as either marginal or inactive, therefore triggering the 15 percent threshold rule.

Under existing financial assurance regulations, this operator could have covered its financial assurance obligation with a $50,000 blanket bond. However, under the proposed rules, all ten of this operator's wells would require $150,000 each. Again, resulting in a financial assurance amount of 1.5 million.

There are two aspects of this that I would like to point out. In reference to Operator A, who had nine -- or rather eight highly productive wells, in comparison to Operator B, which has only five highly productive wells, both of these operators are charged the same amount of financial assurance.

To the extent that marginal wells are argued to be more risky from an orphaned-well perspective, which to be clear, I'm not saying one way or the other, although that is the implication, I believe, we have two portfolios that vary in their risk in terms of producing orphaned wells and yet they have the identical amount of bonding assurance.

I think it's worth asking how we think operators will respond to this 15 percent threshold. As the previous two examples have shown, there is a significant incentive to immediately plug or sell these marginal wells.

In the case of Operator A, who had a low-producing well that was declining into marginal status, incentive to plug that well that is not yet marginal before it gets to marginal status. The increase in financial assurance as a result of the 15 percent threshold presents a very large increase to the fixed cost of operating wells. Therefore, I would expect operators to expend considerable effort in order to plug these wells before they can cause the cost to the operator to skyrocket because of the $150,000 bonding requirement on every single one of the operator's wells.

Ultimately, I think this will lead to premature plugging. Because we have to ask ourselves, how will this operator get rid of these marginal wells? Maybe you could try to sell them. I don't think there would be a market for these wells, because any likely buyer would face the same concerns about the 15 percent threshold. Therefore, it is highly likely that these marginal wells would all be prematurely plugged.

In of why increasing financial assurance would affect the economic life of a well, I'm going to give you guys a picture. This is IPANM Exhibit 2. And what I'm showing here is money on the vertical axis, and time on the horizontal axis.

The declining curve that starts out very high and declines over time becomes very low and the slope becomes shallower, is my sort of rough approximation of the net inflow produced from a well over time. So as the volume of production declined over time at a constant assumed price, we get this curve that captures our net inflow, meaning the amount of hydrocarbons produced multiplied by price minus any variable costs associated with that production.

In addition to this curve that represents the net inflow from the well, I'm also showing a horizontal line that I'm calling fixed outflow. These represent the fixed costs associated with the well. These are the costs that you have to pay every month regardless of how many barrels you produce. So things like labor and electricity and also financial assurance.

To the extent that the financial

assurance that's proposed in this proposed rulemaking would lead the financial assurance costs in this well, in this example, to exceed the economically justified amount of financial assurance, those costs would increase the fixed outflow line up, holding everything else constant. It must be the case at the point at which the net inflow curve crosses below this fixed outflow line would move to the left.

This is an important point, because when this curve, this net inflow curve, falls below the fixed outflow line, the well starts producing at a loss. So it's about that point that the operator would find an economic incentive to plug the well, not necessarily exactly that point because there's some auction value in the well. Who knows? Maybe commodity prices will increase tomorrow. But generally, this is about the time that an operator would find it from a purely economic perspective advantageous to plug the well.

So having established that the economic life of oil and gas wells will be shortened by the proposed rule, I've asked myself this question: What would have happened had we applied this rule several years ago? Because I think, based on what I believe the incentives are for operators in terms of avoiding the 15 percent threshold, I think that it would be highly likely that a lot of marginal wells would be plugged prematurely.

And so I looked at June of 2017 in the data supplied by Enverus. I'm looking at vertical wells only. And in this month, June 2017, I applied the definition for marginal well status to every single one of these vertical wells in New Mexico. And I collected all of the wells that would have been categorized as marginal under the proposed rule, and there is about 7,800 of these, exactly 7,844 of these wells.

A great majority of them are listed in row 1. Row 1 through 6, as you decline down the table, increase in terms of the amount of barrels of oil equivalent produced on a per well basis.

So the top row consists of all marginal classified wells in June 2017 that ultimately went on to produce next to nothing. And there are quite a few of these wells. In fact, there's 6,260 of them. Collectively, these 6,260 wells produced only 418,000 barrels of oil equivalent in the seven years after June 2017. So pretty much none of these return to any sort of meaningful production. Now, a number of these have actually been plugged in the years since. In fact, of those 6,260, 2,561 have already been plugged.

As we move down the table, I'm categorizing wells into buckets according to how productive those wells are. In the second row, this consists of wells that went on to produce between 1,000 and 5,000 barrels of oil equivalent. In total, when you think about aggregating these 892 wells on row 2, they cumulatively, over those seven years, produce almost 2.3 million barrels of oil equivalent.

This gets larger and larger as you move down the table. If we look at the last row, these would be the most prolific of these wells. There's only six of these wells, but these six wells went on to produce over a million barrels of oil equivalent. Again, this all would have transpired after the point at which these wells would have been characterized as marginal.

Given the incentives that I think operators would have with regard to should I plug this well I think that's entering into marginal status, because it has the threat of dramatically increasing the financial assurance burden on the entire portfolio, given the 15 percent threshold, I think there's a strong incentive to plug marginal wells. Had these wells been plugged prematurely, we never would have realized this production.

Some specific examples of the wells in this data set. Here is one, the San Juan 36 Unit 407. You can see here, it's got a fairly -- it almost looks like the classic arc/decline curve. For decades, this well was very, very consistent. You can see there was a brief cessation of production, though, right at the point where -- I think this was about June 2017, in which it was characterized as marginal because there's about a year where it didn't produce anything.

Now, that obviously was a brief cessation in this overall consistent period of production. And it may be that this well would have returned to production and would not have been prematurely plugged. Although you have to consider the fact that the likelihood that it would have been plugged is much higher than it would be absent the 15 percent threshold.

Other examples include the federal G 1 well. This almost looks like a poster child of a well that should be plugged. If you were to look at this in June of 2017, you can see that the production had been declining for a long period of time. In the few years preceding June 2017, not only was the production extremely low, but it was erratic. It may have been determined that this is a well that should have been plugged. And yet, with some stimulation, this well has gone on to become a prolific producer.

Another example, this one is almost certainly involved in a CO_2 flood, but has undergone a couple different rounds of stimulation. You can see at multiple points in its history it would have been classified as marginal and, again, the likelihood of it being prematurely plugged cannot be ignored.

It's something that I think is visually, at least for me, convincing that -- there are a lot of different stories here behind where a well -- a well's individual story in terms of what brought it to marginal status. I don't think it's a uniform categorization. I think there's a lot of variety in the types of wells that you find categorized as marginal.

And certainly in these cases that I'm showing you, these are wells that should not have been plugged at those times. I'll give you one last example. This is the Scott 2A well. This is operated by San Juan Resources, a small independent operator.

San Juan Resources purchased this well right at the bottom of that first hill. Right at the point where it would have been classified as marginal, it had effectively ceased producing entirely, San Juan Resources purchased the well, brought it back onto production, and it's been producing at a stable rate ever since.

So again, examples of marginal wells that have plenty of productive potential in the months and even years after which it would have been classified as marginal. The effects of these proposed rules, I think, will disproportionately affect small operators.

Now, in order to make this a little bit more clear, I'm going to give you guys this table here, which is IPANM Exhibit 8.

In this table, I've taken my Enverus data, which, again, is a subset of vertical wells only. But here, I'm looking only at the vertical wells in my sample that are either on state or private fee lands as of November 2024, which is where my data ends.

Now of these 376 operators identified in the data, I've ranked them according to how many wells each operator operates. So the first row is the very smallest of these operators. There are 61 of these operators, each operating a single well. So in comparison to the total number of wells that we've been talking about here, I know Mr. Purvis has mentioned 63,000 wells, we're talking about a very, very small amount of wells in terms of the grand scheme.

I'm offering this table as a way to illustrate how the proposed rule can be somewhat regressive in terms of actually producing financial assurance burdens that are particularly high on the smallest operators and low for the largest operators.

For these 61 operators that operate a single well, the average bond per well under the existing rules was about $39,000. Under the proposed rules, the average would be $150,000; again, because the rules require a uniform single-well bonding requirement of $150,000 per well. It represents a very significant increase in the actual bonding amount, but again, the costs associated with the bonding proposal here may actually be more than just the multiple increase in the amount of the bond because this may coincide with an increase in the bonding premium charged on those bonds.

As we move down the table, we get to row 2, it's operators that operate between two and ten wells. There are 130 of those operators. You can see their average bond per well increases from almost

28,000 to a little over 100,000.

As you move down the list, you get larger and larger operators in terms of the size of their portfolio. However, I want to remind you that this is only for vertical wells. And the largest operators, take the last row, for example, operators with more than 500 wells, these are some of the largest operators in the state, they almost certainly have large numbers of horizontal wells, for example, that would not be included in this data.

Nevertheless, the table hopefully makes clear that the proposed rules disproportionately affect the smallest of the operators out there.

Continuing on this theme, I'd like to maybe do a little bit of an example, sort of a toy example, thinking about what would be the percentage increase to the fixed operating costs for wells, given various levels of these operating expenses.

Going back to my earlier picture of that straight, flat, fixed outflow line and the declining curve representing net inflows, we know that the decision to plug the well occurs about where the net inflow meets the net outflow.

And so the wells that we should expect to be the most sensitive to increases in the financial assurance costs should be wells that have fixed costs extremely close to their net inflows. So this table provides a sort of toy example for various bond premia and various lease operating costs to show you what the percentage increase would be over the base case lease operating expense that operators would face for these wells.

I'm going to assume an increase in average bond amount per well of 110,000. I'm choosing that because that is the increase associated with the most sensitive of the operators in my previous table. That is the 61 operators, each operating a single well. I'm really asking what would happen to their lease operating expenses if they were to pay the proposed financial assurance burden at various rates of return.

So starting in row 1, I'm going to assume that the bond required rate of return is 10 percent, which, again, would probably be consistent with a cash bond. Again, if we're thinking about an operator that has a 10 percent cost of capital, which is fairly typical, there are studies done by -- sorry, not studies, but surveys done by the Society of Petroleum Evaluation Engineers, annual surveys that ask, amongst other things, what types of discount rates do people assign in valuing various categories of reserves. For proven developed and producing reserves, PDPs, the most common discount rate is 10 percent. And so this is very typical, I think, of what most operators would actually face in terms of the cost of capital.

As you move down the table, the bond premium declines until eventually you get to 1 percent. Now, for most operators that satisfy the financial assurance obligation through a surety bond, they're paying premiums on the order of 2 percent to 3 percent. But again, I want to caution that if we're going to increase the amount of financial assurance, it could be that the bond premium is going to increase along with the amount of bond face value that's required of these operators.

Nevertheless, I want to calculate the percentage increase above the base lease operating expense, assuming three different scenarios. In one scenario, which is column 4, I'm going to assume a lease operating expense of only 1,500 per month. This is extremely low. This is an amount that was quoted to me from one of six operators I interviewed. I also was quoted amounts of 2,500 a month and 5,000 a month.

The lease operating expenses typically

for oil wells will be much higher than this. In fact, there may be gas wells that have higher lease operating expenses as well. But these three give us at least a rough approximation of what the effect would be on the percentage increase above fixed costs for the smallest, most sensitive operators.

At a rate of return of 10 percent in column 1, this amount of bonding increase, given a lease operating expense of $5,000 per month, would represent an 18 percent increase above base case fixed operating costs. If we're talking about an operator that has a margin of 15 to 20 percent, this represents almost all of the profit margin on the well.

Now, as we move down the table, we might think about if this operator is paying a premium between 2 and 3 percent, let's say 2 percent, that same $5,000 a month LOE, the increase in financial assurance, would represent only a 4 percent increase.

And so the point of this table is really to illustrate that the sensitivity in terms of how we think that the -- or how I think the proposed financial assurance will affect operators, it's going to be operators that face very high bond premium, perhaps operators that are only posting cash bonds because their cost of capital then becomes their cost of bonding. Not only is it about the rate of return on the bond, but it's also a function of the well in terms of how costly it is to continue operating that well.

So, the conclusion from all this is that the operators that are going to be the most affected are likely going to be small and potentially financially constrained. Financially constrained operators are highly likely to have no recourse other than a cash bond. They likely do not have the resources required to access the surety bond market. These would be operators that have very little working capital, have very limited access to debt markets, very little collateral with which they can post secure loans and bonds. These are the types of operators that will be facing the highest increase in the financial assurance cost.

And to the extent that these are the most financially sensitive operators in the sample, my concern would be that the proposed rules may push some of these operators into financial distress and possibly bankruptcy. If there is no accommodation for financially constrained operators in the short run, my concern is that responsible operators may be rendered insolvent because of the increased financial assurance demands. This may ultimately, potentially, reduce the amount of private funds available for plugging.

I'm going to pivot here. Number one, I'm amazed that I -- I think I speed ran through that. I was a little thrown. But I would like to get into my rebuttal points at this point.

To begin with, I would like to address this notion of holdback that has been sponsored by Mr. Purvis. Mr. Purvis has talked about this concept of holdback, which he characterizes as when a well reaches a point in its life cycle where the amount of expected cash flow in the future equals the amount of plugging liability that will eventually have to be paid in connection with that well.

And so there are a couple problems with this. They're all rooted in this concept called the "time value of money," which is central in finance. This time value of money concept could be summed up in one sentence, and that's that: A dollar tomorrow is worth less than a dollar today.

And when you think about it, this has to be true. If, for example, you could deposit a dollar into a savings account with no risk, let's say that the savings account pays you 5 percent in a year. In one year's time, your dollar would grow to become a dollar and five cents.

Therefore, a dollar today cannot be worth a dollar tomorrow. It's worth a dollar and five cents. And this idea that money has a time value is critical in how we value assets of all types.

Now, holdback ignores the time value of money because it adds cash flows from various periods in time together without making the proper adjustment to account for the time value of money.

In some sense, it's worthwhile to think about why you can't do this. I've already sort of described intuitively from a mathematical standpoint that a dollar today would be worth a dollar and five cents a year from now. But I would really suggest that you think about it in terms of money having time units.

A dollar a year from now is denominated in time units a year from now. And just like it doesn't make sense to add a U.S. dollar to a Canadian dollar, it doesn't make any sense to add a dollar today to a dollar tomorrow. They simply cannot be added together with any economic sense.

The way to think about plugging decisions in terms of the expected value or the expected future cash flows on a well is actually the net present value, or NPV. I'm going to argue that this is the right way to think about when to time the plugging and abandonment of a well.

And so what I'm showing you here is a plot of the NPV as a function of the time until a well is plugged and abandoned. In this simple example, we're going to assume the plugging cost is normalized at negative 100. And so if you decide to plug the well immediately at time zero, all the way over at the left side of the chart, the NPV is worth negative 100 because you have no cash flows from operating the well. Instead, all you have is the negative 100 in plugging cost.

As you wait to plug and abandon the well, you will operate the well, presumably collecting some positive net inflows from the sale of hydrocarbons, less your fixed cost. And if you do this long enough, the NPV grows and grows and grows until eventually you get to the top of the hill.

If you plug the well before you get to the top of the hill, you're leaving profitable resources out in front of you. You're plugging too early, premature plugging. If you wait too long, you will have entered a state where you start to operate the well at a loss, and this starts to chip away at the net present value of the well.

And so when you're thinking about a valuation exercise to determine mathematically when is the right time to plug and abandon the well, it's not by adding cash flows together inter-temporally without any regard for the time value of money, it's by using the proper time value of money technique to calculate the NPV and find the top of the hill. In this case, the optimal time to plug and abandon the well is about 12 years.

I'm going to work through a few examples. We'll start with the simplest one. And this is actually fairly similar to Mr. Purvis' example in his direct testimony in which we have an asset that produces a positive 25 million and ultimately has a plugging expense of negative 25 million. I'm going to simplify this as much as possible.

So I'm going to say you're going to get positive 25 million today and you're going to plug the well in exactly a year for negative 25 million. So this well would be in holdback because negative 25 million plus 25 million is zero.

I'm also going to assume a return on savings equal to 10 percent, which, when we're thinking about PDPs, operators with PDPs, a 10 percent discount rate again is pretty typical. This well is in holdback, but it doesn't have no value. Mr. Purvis has said that a well in holdback is a liability. I'm going to show you that it's anything but.

Not only is this not a liability, it has considerable value. And it has to be the case because if you take that positive 25 million and you deposit it at your rate of return of 10 percent, in exactly one year, it will grow by 10 percent of 25 million or 2 and a half million dollars.

So at the end of one year, you're going to end up with positive 27.5 million, at which point you pay the 25 million in plugging expense and you're left with a surplus of 2 and a half million dollars. It cannot be the case that this is a liability. This is a valuable asset.

Let's look at a slightly more complicated example, but the same rules apply, the same concepts apply. This, again, is going to add $25 million in positive cash flows, but this time instead of coming at one lump sum at time zero, I'm going to spread this out over time, similar to an oil well where it's declining over time until eventually, in year five, you have to pay the negative $25 million in plugging expense.

This well, again, is in holdback because if you add up the positive 25 million in green cash flows, they equal exactly the negative 25 million in plugging expense. While this well is in holdback, I'm going to show you again that this well actually does have considerable value. And I'm going to show you a couple of these tables, and so I'm going to invest a little bit of time to walk through this table.

This is IPANM supplemental Exhibit 30, and what I'm showing you here is a table that tracks the balance of an investment over time. As you walk down the table on column 1, you're keeping track of which year it is, starting in year one and then eventually ending up in year five at the bottom of the table, our beginning balance, we start at zero dollars. Our growth in savings, because we started with zero dollars, is zero dollars.

But in year one, we get to the third column, or rather the fourth column, where we invest, or withdraw -- in this case we invest the $10 million positive cash flow we received from operating the well.

I'm going to walk back to that picture one more time to show you that 10 million. That's that first green bar over on the left. It's a positive 10 million in year one, then it declines to 7 million in year two, and 5 million in year three, 3 million in year four.

When we go back to this table, you can see in that column where, in row one, we have positive 10 million. If we walk down that column, we see those positive cash flows, 10 million in year one, 7 million in year two, 5 million in year three, 3 million in year four. Then ultimately, at the end of year five, we pay our negative 25 million dollar plugging expense.

The trick here is to notice what happens along the way, because before we have to pay that negative 25 million, we have a series of positive cash flows that we've been able to invest at some positive rate of return; in this case, 10 percent.

So in the first row, we start with a zero balance, we make our first deposit of 10 million, our ending balance is 10 million. At the beginning of year two, we start with the previous year's ending balance, $10 million, and now we have our first instance of a growth in savings. Because we earned 10 percent on our money, we're going to earn $1 million over that year two.

To this $11 million, we're going to add

the $7 million from operating the well, to ultimately end up at $18 million as our ending balance at the end of year two.

That balance carries forward to the next row down, where the beginning balance starts at 18 million. This time our growth in savings is 10 percent times 18 million, or $1.8 million. To that, we add the $5 million from operating the well in that year. Now we get an ending balance of $24.8 million.

And we keep doing this until eventually we get to year five, and in year five, we have a beginning balance of a little over $30 million. We accrue interest or growth in savings of a little over $3 million on that balance. And then we pay the plugging liability of 25 million. But at the end of the day, after we've paid the plugging liability, we end up with a surplus of a little over $83 million.

So again, we have a case in which we have a well in holdback, which Mr. Purvis, again, defines as a liability; by definition, something that has no value. And yet, it has considerable value, in this case over $8.3 million, five years from now. Now that surplus of $8.3 million, that only arrives in exactly five years, right, because we have to get to a point where we actually pay all the cash flows, right, we pay the plugging expense, we've collected the cash flows from operating the well for these five years.

How does this surplus in five years time relate to the net present value that I was trying to convince you is the way to think about valuing the well? Well, it turns out that the net present value is the amount of money that we would have to deposit today in order to end up with exactly $8.3 million five years from now.

I can show you that with another table. So if we start in year one and we deposit the net present value of 5.1 million, and then we make no investments at all -- so we're not thinking about the same example where we have positive cash flows, we deposit into the account over time. This example, we're not making any other investments other than the initial investment of the NPV 5.1 million. If we do that at our 10 percent rate of return, we will end up with $8.3 million in surplus, the exact same surplus from the project we just looked at.

And so that's really what the NPV is. It tells us in today's dollars what the expected surplus is associated with the project.

So again, we've got a project that is

not a liability. In fact, it's an asset that any rational buyer in the market would be willing to pay $5.15 million for.

Staying on this topic, again, sort of using these tables that we sort of invested a little bit of time in figuring out how they work, let's ask some other questions that have to do with the time value of money and the expected plugging expense.

One question might be, how much money do we have to set aside today in order to make sure that we cover that $25 million five years from now? Because if we go back to my original picture with the NPV in terms of what is the optimal time to plug the well, if we have an estimate of when we think that is, we could plan for it. We could set aside money for it.

Question is, how much would we have to set aside today? You have the savings rate of 10 percent. Turns out we would only have to set aside $15.5 million. That's the beginning balance investment in year one in this table, which is IPANM supplemental Exhibit 32. If we deposit that amount, and it grows at a 10 percent rate of return, we will end up with exactly 25 million, the exact amount we will need to make sure we can plug that well.

And as this relates to the optimal or ideal, theoretical ideal, financial assurance bonding amount, again, we see that there is another reason why we would expect that the ideal bonding amount should fall short of the expected cost of plugging and abandoning the well. In this case, our expected P&A cost is 25 million, and yet, because we have a positive rate of return on our savings, we only have to set aside $15.5 million today in order to satisfy that obligation.

Now, I have played a little bit of a trick on you, because 10 percent rate of return is an appropriate cost of capital for a risky business. This assumes that the operator can take that money and redeposit it into his own operations, but those operations are risky. So to the extent that I may be exaggerating somewhat the amount of money you have to deposit today in order to satisfy that future obligation, it could be that I'm ignoring some of the risk inherent in this 10 percent rate of return, and that may be true.

So let's do the same exercise, except this time let's completely remove risk from the equation. What if we, instead of deploying that 15 million into our own operations at a rate of return of

10 percent, let's think about what if we deposit it in treasury bills or a risk-free rate of return. This way our money is going to grow at 4 percent, and I looked this up a couple months ago when I wrote my testimony, and it turns out not much has changed in treasury yield since. The ten-year treasury yield is still about 4 percent. So this is actually a realistic, risk-free rate of return.

If we deposit $20.5 million today risk-free in treasury bills, we will end up with the $25 million we need to plug the well in five years? So again, even absent risk, it is still the case that the optimal amount we need to set aside today to cover future plugging expenses is strictly lower than the expected value of P&A costs. And that's just because of the time value of money.

There is one last example I want to provide because the last example I gave you assumed that we have an operator that actually has $20 million to set aside today to cover that future cost, which as we've heard from numerous people, and as I've tried to suggest as well, that we have a number of operators that are financially constrained. And this means that their financial resources are limited, and we shouldn't expect that they have that type of liquidity that they can pump that amount of money down right now.

So let's relax this even further, again, keeping the risk-free rate of return, so we've got no risk here whatsoever. Instead of having to deposit anything right now, let's just use the cash flow from operating the well to self-finance the plugging liability at the end of five years. We invest the $10 million from operating the well in year one, that then grows. We invest the $7 million that we get from operating the well in year two, that then grows and we keep doing this.

We could self-fund the liability at a risk-free rate of return and still end up with a surplus of $3.1 million at the end of five years. Again, this is a well that would be characterized as a liability, it is in holdback.

And this is emblematic of why this notion of holdback should not be relied on in any matters concerning the value of oil and gas wells. It shouldn't be used as a measure of determining the optimal time to plugging and abandoned well, because it's divorced from fundamental economic principles regarding the time value of money.

I'd like to say a little bit about what

I think would be practical limitations to avoiding the proposed 15 percent threshold. Mr. Purvis has testified that over 52 percent of operators in New Mexico are already in breach of the 15 percent threshold. This strikes me as a lot of operators, and so to the extent that we think that operators would have no trouble in adapting to this policy, half of operators in the state is a large number. I'm not necessarily confident that all of them would be able to adapt in time.

This is to say nothing of the permitting processes that are involved, the availability of plugging services. All of this likely limits the number of wells that could be plugged in short order. And, of course, if we're going to credit operators with an ability to adapt to the proposed rules, I believe they'll do so by prematurely plugging their marginal wells in order to avoid the steep FA cost increase associated with the 15 percent threshold.

All of this should be administratively burdensome, because, of course, plugging wells necessarily means they have to be inspected, and all of this takes time and resources.

Another aspect of the proposed rule that I think might be difficult to implement in terms of feasibility, the definition of marginal well, as you've heard, is a two-pronged inquiry.

It's the number of production days, does it produce less than 180 days a year, and does it produce fewer than 1,000 barrels of oil equivalent in a year. This is a graph showing these two dimensions in Mr. Purvis' testimony. And he's got some color-coding here to identify marginal wells in blue, and in purple we have some no-beneficial-use wells, and so on and so forth. Although the wells in black, presumably, are wells that would not be classified as marginal.

Now, I looked at this picture, and one thing jumped out at me, looked a little bit strange, and I highlighted these, what appear to be vertical lines with some red arrows just to draw your eye. This type of bunching, where we see almost really vertical lines throughout the data, as you move from right to left or left to right, these bunching occur almost exactly at intervals of 30 or 31 days, right?

So 30, 31, 60, 61, 62, they are almost certainly the number of calendar days in a month, which this tells me that there's already considerable leeway in how operators are able to report this data. Now, if you are going to adopt a rule that requires that you need to depend on an accurate measure of the number of production days, this may be quite difficult to monitor.

And this type of bunching tells me that this rule may actually serve to help to weed out honest reporters who will not fudge what they tell the department, the Division, as opposed to bad actors who, by definition, would have less misgivings from misleading the department -- Division, excuse me, along the dimension of the number of production days.

And so my concern is that this may not catch the bad actors we're concerned about, and may actually weed out honest, responsible operators at the same time.

Lastly, this is a chart from -- I know this is credited to the Interstate Oil and Gas Compact Commission, but I believe I pulled this from one of the Department of Interior's annual reports, regardless. The source of the picture is the IOGCC. And what this shows us here is the recent trend in documented orphaned wells.

And I'm going to argue that the recent trend is almost certainly policy-induced as opposed to any real indication of the physical number of orphaned wells in the United States.

So if I can draw your attention all the way to the right side of the plot, in 2024 we have 141,000 and almost 142,000 orphaned wells. If you walk back to the left, the next data point is 131,000 orphan wells, and that's in 2021. So pretty significant increase, right? We're increasing by about 10,000 over a three-year period.

But the real increase occurs between 2019 and 2021. 2019, we have a count of 61,246 orphaned wells, and by the time you get to 2021, only two years later, you're all the way up at 131,000 plus.

Question is, why do we see this steep increase? Again, this is the amount of documented orphaned wells. There is a pretty unfortunate data visualization cardinal sin here which is not making the units of one of your axes consistent.

I want you to look at the leftmost data point, the 49,743. Based on the number of years that elapsed between the 2019 number and the 2024 number, you might expect this leftmost value would be somewhere around 2010, and yet it's 1992. So the x-axis here is not uniform in terms of spacing.

What this graph actually tells us, as opposed to a recent trend, and this is between 1992 and 2019, so almost a 30-year period, the number of documented orphaned wells is relatively flat, fluctuating between 49,000 and 62,000. It's only in the last couple of years, especially between 2019 and 2021, that we've had this large increase in the number of documented wells.

And I'm going to argue the most likely reason for this is it's policy-induced. There are federal grants earmarked toward addressing orphaned wells at this time. If we go back to the passage of the BIL, the Department of the Interior has grants that they're going to award states based on need. And so there is an incentive at the state level to document as many orphaned wells as possible at this time, and that could go a long way toward explaining why we see the recent trend.

And to the extent that people have been citing this trend as an indication of some future continuation of this trend, I would hesitate somewhat. I would argue that, because this is likely policy-induced, there isn't as much reason to expect that this trend is going to continue.

MR. CLOUTIER: Madam Hearing Officer, that concludes Dr. Arscott's direct and rebuttal testimony. We're right at 5 o'clock. I would anticipate he's got about 15 minutes of surrebuttal. So I don't know what we want to do with our time.

HEARING OFFICER ORTH: I think we want a break now.

MR. CLOUTIER: That's what I thought.

HEARING OFFICER ORTH: Well, we've actually been going two hours.

MR. CLOUTIER: Yes. That's fine. I'm just not in charge, so I don't want to presume that I am.

HEARING OFFICER ORTH: Thank you so much.

All right, we'll resume at 9:00 in the morning and we'll start with public comment and then we'll do your surrebuttal.

THE WITNESS: Okay. Thank you very much.

HEARING OFFICER ORTH: Thank you so much.

(Proceedings adjourned at 5:00 p.m.)

AFFIRMATION OF COMPLETION OF TRANSCRIPT

I, Kelli Gallegos, DO HEREBY AFFIRM on November 4, 2025, a hearing of the New Mexico Oil Conservation Commission was taken before me via video conference.

I FURTHER AFFIRM that I did report in stenographic shorthand the proceedings as set forth herein, and the foregoing is a true and correct transcript of the proceedings to the best of my ability.

I FURTHER AFFIRM that I am neither employed by nor related to any of the parties in this matter and that I have no interest in the final disposition of this matter.

Kelli Gallegos
VERITEXT LEGAL SOLUTIONS
500 Fourth Street, NW, Suite 105
Albuquerque, New Mexico 87102

Veritext Legal Solutions
Calendar-nm@veritext.com 505-243-5691 www.veritext.com

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