

1 PUBLIC HEARING
2 STATE OF NEW MEXICO
3 OIL CONSERVATION COMMISSION
4

5 Pecos Hall, 1st Floor, Wendell Chino Building
6 1220 S. Saint Francis Drive
7 Santa Fe, New Mexico
8

9 IN THE MATTER OF:

10 PROPOSED AMENDMENTS TO 19.15.2, 19.15.5
11 19.15.8, 19.15.9 and 19.15.25 NMAC
12
13

14 TRANSCRIPT OF PROCEEDINGS

15 November 4, 2025
16
17

18 HEARD BEFORE:

19 HEARING OFFICER FELICIA ORTH

20 COMMISSION MEMBERS:

21 ALBERT CHANG, Chair
22 GREGORY BLOOM, Member (virtual)
23 DR. WILLIAM AMPOMAH, Member

24 COUNSEL TO THE COMMISSION:

25 MR. ZACHARY SHANDLER, ESQ.

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

2 TRANSCRIPT OF PROCEEDINGS

3 HEARING OFFICER ORTH: All righty. Good
4 morning. We are on the 12th day of hearing in OCC
5 24683 on well plugging and financial assurance. My
6 name is Felicia Orth, hearing officer appointed by
7 the Commission.

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

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

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

20 MR. MCGONIGLE: Can you hear me now?

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

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

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

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

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

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

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

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

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

25 But we're here today to talk about the

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

6 The oil and gas industry employs over
7 15 percent of New Mexico's population. This helps
8 the growth of our gross domestic product. Also,
9 these employees spend their paychecks right here in
10 New Mexico.

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

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

1 pay for the cost of insurance.

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

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

18 HEARING OFFICER ORTH: Thank you,
19 Mr. McGonigle.

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

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

25 HEARING OFFICER ORTH: Thank you. Do you

1 swear or affirm to tell the truth?

2 SENATOR EZZELL: Yes, I do.

3 HEARING OFFICER ORTH: Thank you. Please go
4 ahead.

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

9 This is an attempt to end-run the
10 legislative process. In the 2024 session, House Bill
11 133 tried to do much of what these proposed rule
12 changes would do. House Bill 133 and the two
13 committee substitutes were rejected by the
14 legislature. You cannot amend legislation by
15 regulation.

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

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

25 In 1977, the New Mexico Legislature had

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

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

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

11 HEARING OFFICER ORTH: Thank you, Senator
12 Ezzell.

13 Next we have Jonny Heins. Mr. Heins.

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

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

18 MR. HEINS: I do.

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

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

25 Permian Resources is the seventh largest

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

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

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

20 Various bills have been proposed at the
21 legislature over the past several years, seeking to
22 increase bonding requirements and restrict well
23 transfers, and each has failed. This rulemaking is a
24 transparent attempt by WELC to circumvent the
25 legislative process, where they and other

1 environmental organizations have previously failed to
2 find traction for their initiatives.

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

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

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

22 Last, and perhaps most importantly to
23 our company, the proposed rulemaking changes would
24 grant OCD the extraordinary authority to deny well
25 transfers in the event an applicant is out of

1 compliance with federal and state oil and gas laws
2 and regulations.

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

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

21 SENATOR EZZELL: Thank you, Mr. Heins.

22 Next we have Melissa Troutman.

23 MS. TROUTMAN: Yes. Good morning.

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

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

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

5 MS. TROUTMAN: I do.

6 HEARING OFFICER ORTH: Please go ahead.

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

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

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

24 Right now, oil and gas companies are
25 making billions off the land, but when the wells

1 deteriorate or stop producing, too many are walking
2 away. And they can because even where there are
3 protective laws in place, like the spill rule,
4 penalties and fines are so rarely issued that it
5 costs them nothing to just pollute and walk away.
6 They leave behind aging, leaking infrastructure, and
7 it's New Mexicans living in the front lines, mostly,
8 who are left paying for it and assuming risk.

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

16 For example, a company named Poco
17 Resources has several aging and dilapidated well
18 sites in Loco Hills that were observed leaking in
19 2023, 2024, and again, just a few weeks ago on
20 October 9th. Oil and waste fluids pooled inside the
21 unlined containment of two tank batteries, also
22 around a spurting leak in a flow line, and around the
23 wellhead of a partially dismantled pump jack that
24 clearly has not operated in years.

25 I've included photos, photo evidence and

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

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

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

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

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

23 Families in Loving and across
24 southeastern New Mexico are surrounded by pipelines
25 in their backyards, frac sites down the road. And

1 they've been left to live in a toxic cloud, whether
2 they know it or not, while corporations walk away
3 with the profits. And we can't let this continue.

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

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

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

18 HEARING OFFICER ORTH: Thank you very much.

19 Next we have Liliana Castillo.

20 MS. CASTILLO: Can you hear me?

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

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

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

3 MS. CASTILLO: I do.

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

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

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

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

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

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

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

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

25 Bottom line is, if you drill it, you

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

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

8 HEARING OFFICER ORTH: Thank you,
9 Ms. Castillo.

10 Next we have Roland Glenn.

11 MR. GLENN: Good morning.

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

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

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

18 MR. GLENN: Yes, I do.

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

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

23 Like I said earlier, my name is Roland
24 Glenn. I hold a master's degree as a geological
25 engineer. I retired out of Colorado and moved down

1 here to New Mexico for a little peace of mind. I
2 retired back in 2017. I'd like to slow down here
3 away from the oil field here in New Mexico. I enjoy
4 the beautiful scenery.

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

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

21 I truly thank you for your time and your
22 consideration.

23 HEARING OFFICER ORTH: Thank you, Mr. Glenn.

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

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

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

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

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

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

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

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

14 MS. PINTO: I do.

15 HEARING OFFICER ORTH: I'll start your time.

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

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

24 Last month, I joined my colleague, Mandy
25 Sackette, on a field trip to the San Juan Basin. We

1 visited dozens of oil and gas sites to document
2 pollution and see firsthand what's happening in this
3 aging and declining oil infrastructure. What we
4 found is deeply troubling. What I always find,
5 having done thermography work for four years, is
6 deeply troubling.

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

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

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

24 These sites aren't isolated incidents.
25 They're part of a pattern, low-producing, neglected

1 wells that keep polluting long after the profits have
2 dried up. We reported multiple emissions to the
3 New Mexico Environmental Department, and what I see
4 in the field clearly makes it clear the system is not
5 working.

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

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

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

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

1 HEARING OFFICER ORTH: Thank you, Ms. Pinto.

2 Next we have Blythe Maunders.

3 MS. MAUNDERS: Hello.

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

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

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

10 MS. MAUNDERS: I do.

11 HEARING OFFICER ORTH: Thank you. Go ahead.

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

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

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

24 It's a shame in Mexicans even have to
25 make these comments trying to get the wealthy oil

1 industry to do the bare minimum, by cleaning up their
2 wells.

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

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

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

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

15 MS. FRANCISCO: I do.

16 HEARING OFFICER ORTH: Thank you. Go ahead.

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

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

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

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

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

20 HEARING OFFICER ORTH: Thank you,
21 Ms. Francisco.

22 Next we have Brian Sweeney.

23 MR. SWEENEY: Morning.

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

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

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

4 MR. SWEENEY: Yes.

5 HEARING OFFICER ORTH: Thank you, go ahead.

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

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

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

22 Non-plugged wells present risks to
23 public health, clean water, and the environment, so
24 they should be plugged. The law says that the
25 companies who have profited from these wells should

1 pay to close them up and clean up the area.

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

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

22 Don't be distracted by the oil and gas
23 industry's many deflections. They want to talk about
24 anything but how inherently fair it is to require
25 adequate bonding and how unfair it is for the state

1 to use hundreds of millions of dollars of public
2 money to pay to cleanup industry's messes that
3 companies have profited from. Cleaning up after
4 yourself is a cost of doing business, not a public
5 liability. Thank you.

6 HEARING OFFICER ORTH: Thank you,
7 Mr. Sweeney.

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

10 Sheila, do you see the RB there?

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

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

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

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

25 MS. APODACA: I've given them the

1 permissions to unmute themselves.

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

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

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

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

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

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

15 MR. PATTERSON: I do.

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

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

21 Mine is that I would like to say my
22 grandfather was the most influential person in my
23 life. He had a fifth grade education. He lived
24 through a Great Depression and two World Wars and had
25 some strong views that were developed out of those

1 life experiences. One was that you don't waste
2 anything and the other one was that if you make a
3 mess, you clean it up. I had to apologize for some
4 of the messes I created as a rebellious teen and I
5 had to clean them up.

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

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

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

1 can do it in New Mexico.

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

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

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

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

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

19 I believe there are some folks in the
20 room.

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

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

1 first and last name.

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

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

6 MS. BROOKINS: I'm sorry?

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

9 MS. BROOKINS: I still didn't understand.

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

12 MS. BROOKINS: Oh yes.

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

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

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

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

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

17 I would like to close with a quote from
18 N. Scott Momaday, a member of the Kiowa tribe, a poet
19 and novelist and resident of Santa Fe, who passed
20 last year, from his book Earthkeeper. "We humans
21 must revere the Earth, for it is our well-being.
22 Always the Earth grants us what we need. If we treat
23 the Earth with kindness, it will treat us kindly. If
24 we give our belief to the Earth, it will believe in
25 us. There is no better blessing than to be believed

1 in. There are those who believe that the Earth is
2 dead. They are deceived. The Earth is alive. It is
3 possessed of spirit. Consider the holy tree. It can
4 be allowed to thirst. It can be cut down. Worst of
5 all, it could be denied our faith and our belief.
6 But if we speak to it, we pray it will thrive."

7 Thank you.

8 HEARING OFFICER ORTH: Thank you
9 Ms. Brookins.

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

14 Your first and last name, please.

15 MS. TSOSIE-HARVEY: Alicia Tsosie-Harvey.

16 HEARING OFFICER ORTH: And would you spell
17 that.

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

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

22 MS. TSOSIE-HARVEY: Yes.

23 HEARING OFFICER ORTH: I'll start your time.

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

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

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

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

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

19 HEARING OFFICER ORTH: Thank you.

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

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

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

1 MS. ANTONIO: I swear.

2 HEARING OFFICER ORTH: Thank you.

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

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

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

23 The rule is about preventing the future
24 risk of more abandoned wells. If we require fair
25 bonding now, we don't need to drain public funds

1 later. That's not just smart government, it's basic
2 risk management. A broken system doesn't mean we
3 wait to act. It means we act now to keep things from
4 getting worse.

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

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

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

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

20 MR. BRYANT: Good morning, Commissioners.

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

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

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

3 MR. BRYANT: I do.

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

6 MR. BRYANT: My name is Robert Bryant. I
7 reside in Corrales, Mexico with my wife, Karen, who
8 is a retired RN, and she is a second-generation
9 New Mexican. And we have four children, six
10 grandchildren and six great grandchildren.

11 I was from Virginia originally and I
12 served in the U.S. Navy over 30 years, and then I
13 became a New Mexico State Trooper. I retired from
14 there. I was stationed at Kirtland Air Force Base,
15 went into the Navy. When I retired, I had a rental
16 business at one time in Corrales which sold because
17 of irritants with tenants.

18 And my reason for keeping the oil and
19 gas industry growing in the U.S. is, number one, it's
20 national security. At this point, we are buying oil
21 from countries that are not friendly to us and they
22 can shut off supply at any time.

23 The cost of fuel has raised prices for
24 everything from groceries to clothing and everyday
25 items. And it's because of shipping with the oil

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

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

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

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

17 HEARING OFFICER ORTH: Thank you,
18 Mr. Bryant.

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

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

23 MR. CLOUTIER: Madam Hearing Officer, while
24 Mr. Ezzell is taking the stand, IPANM has Exhibits
25 37, 38 and 39, which were sponsored by Mr. Cantrell,

1 who we withdrew as a witness. We just ask that those
2 three exhibits be treated as part of his written
3 public comment which was his former testimony.

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

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

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

15 All right. They're admitted.

16 (Admitted: IPANM Cantrell Exhibits 37,
17 38 and 39.)

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

21 All right. Exhibit 45 is admitted.

22 (Admitted: IPANM Exhibit 45.)

23 HEARING OFFICER ORTH: Thank you
24 Mr. Cloutier.

25 MR. TREMAINE: Madam Hearing Officer as

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

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

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

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

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

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

25 THE WITNESS: Good morning.

1 MS. FOX: Good morning.

2 CALDER EZZELL,

3 having first been previously

4 duly sworn, testified as follows:

5 CROSS-EXAMINATION

6 BY MS. FOX:

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

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

20 You relied on this language, correct?

21 A. Yes, Madam.

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

25 A. Yes, madam.

1 Q. In order to comply with the standard of zero
2 waste, does that mean that an operator must produce a
3 well to its very last hydrocarbon, without regard to
4 the economics of that well?

5 A. No, madam.

6 Q. And why is that?

7 A. Because no well ever produces the last
8 molecule of hydrocarbon. You cannot recover
9 100 percent of the oil or gas in a reservoir.

10 Q. Then under your --

11 A. Hopefully we will have the technology to
12 later with the help of New Mexico Tech.

13 Q. Then under your formulation, that waste
14 means zero waste, does that mean that the operator
15 must produce a well to the very last hydrocarbon that
16 that operator can produce without regard to well
17 economics, that is physically possible,
18 technologically possible to produce?

19 A. No. There is an economic limit, and we all
20 know that.

21 Q. And what's that economic limit?

22 A. When a well is no longer capable of
23 producing in paying quantities. And of course that
24 varies from operator to operator.

25 Q. In your testimony yesterday, you raised

1 concerns about applicant's proposed provisions in
2 19.15.9.8 and 19.15.9.9 regarding operator
3 registration and change of operator, correct? And
4 that citation at the beginning for operator
5 registration --

6 A. Yes.

7 Q. -- has an incorrect 1 at the very end. I
8 don't know how that popped up, but there it is.

9 Anyway, you gave testimony on these
10 provisions yesterday, correct?

11 A. I don't believe I did give testimony on it.
12 It's in my direct, in my written.

13 Q. You gave testimony on it when you were
14 discussing slide 38 in your --

15 A. I don't know what --

16 Q. Do you want me to pull it up for you? Let's
17 see here.

18 A. Oh, yes, have, I did give testimony.
19 Because, if I remember correctly, I was concerned with
20 the unresolved adjudications.

21 Q. And applicants at OCD propose in these
22 provisions that the operator be required to provide
23 certain information to OCD prior to registration or
24 well transfer, correct?

25 A. Yes.

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

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

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

13 A. Yes, it was.

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

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

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

24 A. Right.

25 Q. S refers to the authorized official of the

1 operator, correct?

2 A. Correct.

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

9 A. Repeat your question, please.

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

13 A. Yes.

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

19 A. Yes.

20 Q. And are you aware that IPANM and NMOGA made
21 this argument in their motion to dismiss, even though
22 Peter Morgan, our expert, explained in both his direct
23 and rebuttal testimony that the intent of the redline
24 language was simply to clarify current OCD practice
25 and simply require financial assurance prior to

1 acquisition of operating authority? Are you aware of
2 that testimony by Mr. Morgan?

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

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

16 I'll let you read all that.

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

1 chilling on the freedom to exchange properties.

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

6 A. Then take the word "acquisition" out.

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

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

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

23 A. That's what we do.

24 Q. She asked us to address that and that we
25 submitted the proposed language, the language proposed

1 by IPANM as Exhibit 88 through Mr. Morgan's testimony.
2 Are you aware of all that?

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

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

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

13 A. Yes.

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

17 A. That is correct.

18 Q. So are you familiar with applicant's Exhibit
19 13, which shows that 99 -- and this was an exhibit
20 developed by the Environmental Defense Fund, which
21 shows that 99.5 percent of reactivations of inactive
22 wells occur within eight years of activity?

23 A. That's what it says. Yes.

24 Q. Are you familiar with this exhibit at all?

25 A. No, Ma'am.

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

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

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

8 A. No ma'am, I do not.

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

12 A. Not without studying it independently.

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

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

22 Q. I can't do two screens, but this is your
23 slide that you testified from yesterday, where you
24 stated that because of the deletion of 19.15.8.9A in
25 this section, that that deleted the exemption for

1 federal wells from OCD rules for financial assurance.

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

6 MS. FOX: For federal wells.

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

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

11 MR. CLOUTIER: Are not exempted --

12 MS. FOX: Are not exempted.

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

15 MS. FOX: Fair enough.

16 BY MS. FOX:

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

18 A. That's the way I interpret --

19 Q. Maybe wait till I finish my question.

20 A. Sorry.

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

23 A. Absolutely.

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

1 A. Yes.

2 Q. Okay. So can we stop sharing and go back to
3 my slides.

4 Okay. So the provision that you
5 referred to where the federal well exemption lives is
6 19.15.8.9A, correct? That's what you said in your
7 slide? This is the provision that exempts
8 federally -- essentially exempts federal wells from
9 the Commission's rules on financial assurance,
10 correct?

11 A. Yes. The language, unless the well is
12 covered by a federally required FA.

13 Q. And you see that that language has not been
14 proposed to be deleted by applicants or OCD, correct,
15 the language that exempts federal wells from the
16 state's financial assurance requirements?

17 A. That is correct. But the proposed amendment
18 deletes the reference to that. And I think that is
19 problematic.

20 Q. Do you think that reference was deleted just
21 in order to clarify that all wells in inactive and TA
22 status, not just those that have been TA status under
23 two years are subject to that particular financial
24 assurance requirement in Subpart E? Isn't that what
25 that language -- why that language was deleted?

1 Because the language exempting federal wells is left
2 unchanged.

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

5 Q. We can agree to disagree on that.

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

10 A. Yes.

11 Q. And you cited to the Oil and Gas Act at
12 70-2-14A for that proposition, correct?

13 A. Probably.

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

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

21 Look at the OCD bond form.

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

24 A. Releasable --

25 Q. Isn't that correct?

1 A. Releasable and cancelable are the same to
2 me.

3 Q. Let me just continue here.

4 A. I keep forgetting --

5 Q. In support --

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

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

10 A. No.

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

15 A. Yes.

16 Q. Okay.

17 A. And I stand by that.

18 Q. But looking at the Commission's rules at
19 19.15.8.12, which I have up here, doesn't it clearly
20 state in those rules that financial assurance can be
21 removed if it's covered by another financial assurance
22 that the Division has approved so that an operator can
23 replace financial assurance if needed?

24 A. But doesn't the statute say that the
25 financial assurance cannot be released until the well

1 has been plugged, since that was the condition upon
2 which the financial assurance was entered into and
3 issued?

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

13 A. I would agree with that.

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

18 A. Okay.

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

25 A. Yes. But, again, I don't like the language

1 because it implies to me that the only thing they can
2 do is add marginal wells to their list and come up
3 with more bonding, rather than saying that -- there's
4 nothing in that language that -- what if an operator
5 plugs one of the marginal wells? Then he should be
6 able to take that off the list, right?

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

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

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

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

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

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

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

25 MS. FOX: You, too.

1 HEARING OFFICER ORTH: Thank you, Ms. Fox.

2 Mr. Tremaine?

3 MR. HALL: It's going to be Mr. Hall, Madam
4 Hearing Officer.

5 HEARING OFFICER ORTH: Thank you.

6 MR. HALL: Thank you.

7 CROSS-EXAMINATION

8 BY MR. HALL:

9 Q. Good morning, Mr. Ezzell. Good morning. My
10 name's Michael Hall. I don't think we've had occasion
11 to meet. I'm a lawyer with the Oil Conservation
12 Division. How are you this morning?

13 A. I am well. How are you.

14 Q. Good. I wanted to respond, first of all, to
15 your gratitude. It's Mr. Tremaine that you should
16 thank for pointing out that you had cited a statute
17 that doesn't exist.

18 A. No, it exists. I just misquoted it.

19 Q. Well, I guess we'll have a chance to explore
20 that a little bit. Let me go ahead and ask you about
21 that. Are you saying that the statute you cited is
22 law in New Mexico?

23 A. Yes.

24 Q. Okay. Well, let's go ahead and just start
25 there. I'm looking at -- and I'll pull it up. This

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

2 A. Yes.

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

5 A. Yes, sir.

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

9 A. Yes.

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

12 A. No.

13 Q. -- \$50,000?

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

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

21 A. The printed version or --

22 Q. The printed version, yes, sir.

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

25 Q. Okay. And you would agree you're under oath

1 here today?

2 A. Correct.

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

7 A. Until I corrected it, yes.

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

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

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

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

16 Q. Mr. Cloutier is your partner, correct?

17 A. Yes.

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

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

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

1 Is that right?

2 A. Yes.

3 Q. Okay. Now, yesterday you made several
4 references to standard JOAs. A JOA and a COPAS
5 agreement, those are contracts, correct?

6 A. Yes.

7 Q. They are easily modified, changed, or left
8 in place?

9 A. Yes.

10 Q. Your familiarity is because people need a
11 lawyer to look at those and change them, correct?

12 A. Exactly.

13 Q. The form almost never works as it stands,
14 right?

15 A. I would disagree with that.

16 Q. Okay.

17 A. I mean, the AAPL took great pride in each of
18 its forms, so that it could be executed without
19 alteration. They did, however, in each of them have
20 an Article 15, which is blank on the form and allows
21 people to make any additional amendments that they
22 want.

23 Q. And in your experience, these are
24 arm's-length transactions between sophisticated
25 parties, correct?

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

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

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

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

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

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

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

1 of bonding.

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

6 A. Always.

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

12 A. No. An operator can have no interest.

13 Q. Okay.

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

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

21 A. Or leasehold. Yes.

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

25 A. If an operator owned no interest in the real

1 property, then I would agree with that. But if an
2 operator owned any interest, then I stand by it.

3 Q. And once again, that's an agreement between
4 the parties as they see fit, correct?

5 A. Yes.

6 Q. And so the corollary to that is -- is it
7 your claim that New Mexico does not have the right,
8 OCD does not have the right to regulate operators and
9 who can be an operator?

10 A. I think it is OCD's job to regulate
11 operators, but I don't think it's their job to choose
12 who gets to be one.

13 Q. Well, who would do that?

14 A. Well, I'm a free-market guy. I think you
15 have the right to enter into a business and fail.

16 Q. Sure. So you think extremely
17 non-compliant -- I don't think of some -- Cano. You
18 think Cano should be an operator and OCD should have
19 no say in that because of your free market beliefs?

20 A. Well, in hindsight. But we did allow to be
21 an operator and we did accept their bonds, and so they
22 were. It turns out they were lousy.

23 Q. Do you think, as you sit here today, OCD
24 should have no right to regulate Cano, for instance,
25 as an operator?

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

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

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

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

11 A. No.

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

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

18 Q. What is problematic about that language?

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

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

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

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

7 A. Say that again, please.

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

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

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

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

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

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

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

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

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

11 Q. It says consider the depth, correct?

12 A. Yes.

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

17 A. Yeah. That is what the statute requires.

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

23 A. Would you restate that.

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

1 to the cost of plugging?

2 A. I heard -- I heard that. I disagree with
3 it.

4 Q. Sure. So, at any rate, we agree that it was
5 considered?

6 A. I don't know that it was considered in the
7 manner required by the statute. You cannot say a 900
8 foot San Andres well is going to need \$150,000 bond.
9 That's just reality of the business.

10 Q. But my question was, would you agree it was
11 considered, Mr. Powell's testimony makes clear it was
12 considered? You don't agree with how he considered
13 it, but it was considered. Can we at least agree on
14 that?

15 A. I will agree that he claims it was
16 considered.

17 Q. Fair enough.

18 A. Isn't it fun?

19 Q. Much like you claim it wasn't, right?

20 A. Yeah.

21 Q. Now, speaking of the statute, you would
22 agree that it's OCD's costs that bonding needs to
23 cover, not industry's, correct?

24 A. That's the way it's written, and I think
25 that's the biggest problem with it in the beginning.

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

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

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

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

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

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

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

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

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

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

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

25 A. Starting with fourth.

1 Q. Yes sir.

2 A. "Fourth, the proposal is based on a supposed
3 average of OCD's cost to plug, abandon, and reclaim
4 individual oils. Under the Oil and Gas Act, only
5 'plugging' costs can be considered."

6 Q. Do you still maintain you didn't say that?

7 A. No. I put it in my direct testimony.

8 Q. Would you like to change that testimony?

9 A. No.

10 Q. You do think that part of the 163,000 was to
11 reclaim wells?

12 A. I don't know anything about the 163,000
13 other than what's been said here. I also know that if
14 you look at the annual reports from the department to
15 the legislature and the governor, and this was in
16 Morgan's testimony, I guess, from 2019 to 2024, the
17 OCD extended 15.5 million to plug 93 wells --

18 Q. So --

19 A. -- at an average cost --

20 Q. -- let me ask you a different way. What is
21 the basis for your statement that the proposal is
22 based on a supposed average of OCD's cost to plug,
23 abandon, and reclaim individual wells?

24 A. Well, the word "supposed" is -- was there
25 because --

1 Q. What's your basis for that statement, sir,
2 in your testimony?

3 A. The basis for it is that the Oil and Gas Act
4 does not talk about reclamation costs in the financial
5 assurance.

6 Q. What evidence makes you think that the
7 proposal is based upon that?

8 A. Because that's the figure that the
9 applicants have been using, that it is 163,000 and
10 that it's etched in stone and it doesn't matter on the
11 depth of the well or the age of the well or anything
12 else.

13 Q. Would you agree that that 163,000, the
14 testimony is solely that that is plugging cost and not
15 a reclamation cost?

16 A. Yes.

17 Q. You'd dispute that?

18 A. No. You asked me if I agreed. Now you're
19 killing your time.

20 Q. Okay. Now we're going to get to the part
21 where your statute -- that had parts that don't exist,
22 and some of your testimony relies on that as opposed
23 to just single words.

24 Do you maintain that under the proposed
25 definitions, marginal wells will be bonded at

1 300 percent, the maximum amount authorized by statute?

2 A. No. That's the minimum amount as -- we're
3 going back to what I've already corrected.

4 Q. Well, 300 percent is incorrect, too, isn't
5 it?

6 A. Oh, I don't think so.

7 Q. Okay. That's 300 percent of the minimum
8 amount?

9 A. This is just --

10 Q. We can take that whole sentence.

11 A. Three times 50 is 150.

12 Q. Do you agree that when you make the maximum
13 TA 50,000 instead of the minimum 50,000, the entire
14 crux of this entire paragraph changes?

15 A. It doesn't matter other than -- I mean, the
16 statute is what the statute is.

17 Q. I very much agree with that.

18 A. The fact that we got the wrong word on the
19 page does not change the statute. It does not make
20 the statute not exist.

21 Q. The statute does exist, just not as you
22 stated it in your rebuttal testimony, correct?

23 A. It exists as I stated in my correction to
24 typographical errors.

25 Q. Just so the record is clear, your testimony

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

3 A. No.

4 Q. It's not?

5 A. My testimony is based on the statute.

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

8 A. The statute as in the book.

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

10 A. Of what? Oh, okay.

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

14 A. Because they could agree on -- the parties
15 couldn't agree on what -- the proponents of House Bill
16 133 could not agree. And anytime the industry tried
17 to comment, it was basically flatly ignored. The fact
18 that --

19 Q. Well --

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

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

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

1 legislature did or did not act a certain way, that
2 you're not the arbiter of that?

3 A. No. But I was there and witnessing it, and
4 they didn't act --

5 Q. Would you agree that --

6 A. -- because it was a bad bill?

7 Q. Would you agree --

8 MR. CLOUTIER: Mr. Hall keeps interrupting
9 the witness. He's entitled to answer, even if
10 Mr. Hall wants a yes or no.

11 HEARING OFFICER ORTH: All right. So,
12 Mr. Ezzell, if you would please bring more focus to
13 the question that's being asked. And, Mr. Hall,
14 please don't step on the end of his sentences.

15 BY MR. HALL:

16 Q. At any rate, it could have been that the
17 legislature, like the LFC, thought that the statutes
18 weren't necessary because the rules already allowed
19 what's happening here today, for instance, correct?

20 A. I cannot speak to that. I do not know.

21 Q. Fair enough. That's what I wanted us to
22 agree on.

23 Okay. I'm going to go to a couple of
24 comments in your surrebuttal. If I can find it.

25 Excuse me.

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

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

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

12 A. Yes.

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

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

16 Q. And so --

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

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

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

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

1 wouldn't be marginal, correct?

2 A. That is correct.

3 Q. There was some discussion about a release of
4 financial assurance. Would you agree the Oil and Gas
5 Act does allow and, in fact, requires OCD to release
6 bonds at the appropriate time, and not only in the
7 event that they're plugged?

8 A. That's the only time the statute says that
9 the OCD can release a bond, is after the plugging has
10 been performed according to the rules then in effect.

11 HEARING OFFICER ORTH: Mr. Hall, you still
12 have 15 minutes. But I'm wondering if this would be
13 a good time for a break.

14 MR. HALL: Whatever pleases the Commission
15 is fine with me.

16 HEARING OFFICER ORTH: All righty. Let's
17 come back at 11:00. And, again, you have 15 minutes
18 left.

19 (Recess held from 10:50 to 11:00 a.m.)

20 HEARING OFFICER ORTH: All right. When we
21 broke, Mr. Hall had 15 minutes left of his 45.

22 Go ahead, Mr. Hall.

23 MR. HALL: Thank you, Madam Hearing Officer.

24 BY MR. HALL:

25 Q. Ezzell, I think we were starting to talk

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

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

5 Q. Okay. Which statute?

6 A. The Oil and Gas Act.

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

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

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

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

18 A. Not directly, No.

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

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

24 Q. Right. But that wasn't my question, was it?
25 I didn't limit that to the plugging bonds. I said

1 bonds. And so if you'd like to correct your
2 understanding, that's fine?

3 A. My understanding of what.

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

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

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

13 A. That is correct.

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

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

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

22 A. The bond is generally transferred in the
23 well. I guess -- I think the OCD probably has the
24 authority to enter into a new bond if the selling
25 party was under a blanket bond and the buying party

1 was going to be a one-well bond. That would require a
2 new bond.

3 Q. Did you understand my question?

4 A. I think I answered your question.

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

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

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

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

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

16 A. I agree.

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

22 A. If it is a plugging bond.

23 Q. Would you agree with that -- okay?

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

1 underground waste. Would you agree with that?

2 A. No.

3 Q. I'm sorry, I didn't understand?

4 A. No.

5 Q. No, that's not what you focused on?

6 A. Economic waste, the drilling of unnecessary
7 wells, specifically underground waste in -- caused by
8 premature plugging. But no, there is more than one
9 definition of waste.

10 Q. My question was, you would agree your
11 testimony focused on underground waste, correct?

12 A. I talked about economic waste as well.

13 Q. Well, let's just pull it up. 70-2.3,
14 correct, that's the waste statute you're referring to
15 and citing there?

16 A. That's the definition of underground waste,
17 yes.

18 Q. And so you have to point to me in your
19 testimony, and I'm happy to shift it around, where you
20 talked about all these other kinds of waste.

21 A. I talked about the economic waste and the
22 drilling of unnecessary wells yesterday in my live
23 testimony, not in my written.

24 Q. Do you agree the statute also defines
25 surfaced waste?

1 A. Oh, yeah.

2 Q. Do you agree that excess production beyond
3 the reasonable market demand may be waste?

4 A. Yes.

5 Q. Are you aware that unauthorized venting or
6 flaring of natural gas is prohibited as waste?

7 A. Yes.

8 Q. Are you aware that 60 percent of orphaned
9 wells observed by OCD are venting natural gas?

10 A. I cannot answer that.

11 Q. Do you have any reason to dispute that?

12 A. I assume I could confirm it with independent
13 research, but...

14 Q. Do you have any reason to dispute that, sir?

15 A. I have no reason to dispute it or agree with
16 it.

17 Q. So that would be 60 percent of orphaned
18 wells are wasteful, committing waste under the
19 statute, correct, if --

20 A. Correct.

21 Q. -- that percentage is correct?

22 A. Yes.

23 Q. And so you would agree that waste is a
24 little more complicated than just produce all you can,
25 wouldn't you?

1 A. Oh, absolutely.

2 MR. HALL: I'll pass the witness.

3 Thank you, Mr. Ezzell.

4 HEARING OFFICER ORTH: Thank you, Mr. Hall,
5 Mr. Biernoff or Mr. Moore.

6 MR. BIERNOFF: Good morning, Madam Hearing
7 Officer. Ari Biernoff here for the commissioner of
8 public lands and the State Land Office.

9 CROSS-EXAMINATION

10 BY MR. BIERNOFF:

11 Q. Good morning, Mr. Ezzell?

12 A. How are you.

13 Q. I'm well. How are you today?

14 A. Good. Thanks.

15 Q. Okay. I wanted to just follow up on some of
16 Mr. Hall's questions?

17 You're not testifying in this proceeding
18 on behalf of the Hinkle Law Firm, are you, Mr. Ezzell?

19 A. No. I'm testifying on behalf of IPANM.

20 Q. Okay. You're not speaking as a
21 representative of Hinkle, you're giving your own
22 personal opinion; is that right?

23 A. Yes.

24 Q. Okay. You're not here on behalf of any
25 particular client of you or your firm, are you?

1 A. I am here on behalf of IPANM, of which I am
2 a member.

3 Q. Okay. Not any particular oil and gas
4 operator or producer?

5 A. No.

6 Q. Okay. Just wanted to clear that up?

7 You've talked in your oral testimony and
8 also written in your pre-filed testimony about joint
9 operating agreements. And you've provided a lot of
10 detail on specific forms that the American Association
11 of Professional Landmen have developed, right?

12 A. Yes.

13 Q. Generally speaking, who are the parties to a
14 joint operating agreement?

15 A. The operators and the non-operators.

16 Q. The OCD is not a party to joint operating
17 agreements, right?

18 A. No.

19 Q. The OCD does not approve or disapprove joint
20 operating agreements, right?

21 A. No, it does not.

22 Q. Okay. And the OCD as a non-party is not
23 bound by the terms of joint operating agreements,
24 right?

25 A. Absolutely. Correct.

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

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

14 Do you stand by that testimony,
15 Mr. Ezzell?

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

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

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

25 Q. The term beneficial use is in the Oil and

1 Gas Act, section 70-2-3, isn't it?

2 A. Probably.

3 Q. Do you want to look at it together?

4 A. I don't have it in front of me, but I
5 believe you.

6 Q. Okay. And it's also, I think you noted, in
7 NMAC provisions, in Title 19, Chapter 15, regulatory
8 provisions that apply to the OCD, right?

9 A. Yes.

10 Q. Okay. Thank you. Mr. Ezzell, in your
11 written direct testimony, you state the following.
12 This is from page 50 of your testimony: We all know
13 the handful of operators out there who are giving
14 industry a bad name in this regard. There must be
15 other regulatory means of cracking down on these
16 abuses. End of the quote?

17 Mr. Ezzell, how many operators are out
18 there, approximately, giving industry a bad name in
19 New Mexico?

20 A. I couldn't put a number on it.

21 Q. Okay. You used the phrase "a handful." How
22 many is that, more or less?

23 A. I can't give it a number.

24 Q. Mr. Ezzell, if there were 50 or 100 bad
25 operators flagrantly out of compliance with OCD rules

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

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

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

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

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

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

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

25 Q. Okay. Good, good. Well, that's good to

1 hear. The passage that I read from your direct ends
2 with the following statement: There must be other
3 regulatory means of cracking down on these abuses?

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

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

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

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

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

21 A. I have no idea.

22 Q. Okay. Mr. Ezzell, do you support additional
23 legislative appropriations to give OCD the ability to
24 develop additional alternative means of cracking down
25 on the abuses that you describe committed by a

1 minority of oil and gas operators on page 50 of your
2 direct testimony?

3 MR. CLOUTIER: Objection. Vague.

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

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

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

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

22 BY MR. BIERNOFF:

23 Q. Mr. Ezzell, you reference other regulatory
24 means of cracking down on abuses by bad operators.
25 And I'm asking you, do you support additional

1 resources through the legislature for OCD to identify
2 and implement alternative regulatory means of cracking
3 down on the abuses that you've referenced?

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

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

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

20 MR. CLOUTIER: Objection. Relevance.

21 MR. BIERNOFF: Madam Hearing Officer.

22 HEARING OFFICER ORTH: Go ahead,
23 Mr. Biernoff.

24 MR. BIERNOFF: Yeah, I think it's very
25 appropriate, since Mr. Ezzell has mentioned that

1 there are alternatives to dealing with the bad
2 operator problem, to explore what those might be, and
3 that's what I'm doing here.

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

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

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

13 A. -- the budget is.

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

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

25 Yes, if the OCD cannot do the compliance

1 it wants to because of lack of staff, they need to get
2 more staff.

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

5 A. I just said that, yes.

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

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

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

23 I do not know of any expertise within
24 the Division, and would be surprised if it existed, to
25 interpret another state's laws and regulations or most

1 federal oil and gas laws and regulations. I also
2 question what resources would have to be devoted to
3 that issue.

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

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

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

22 Q. Well, let's explore that a little bit
23 further. You said that it's a factor that's
24 reasonably considered by OCD, the compliance or
25 non-compliance of companies in other states or with

1 respect to the federal government. And then you also
2 said, but it's not something that OCD should give a
3 thumbs up or thumbs down?

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

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

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

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

22 A. If they are adequately bonded, yes. As I
23 told Mr. Hall, I'm a free-market guy and I don't
24 think -- you know, bad operators will be bad operators
25 and they will fail. But I don't think that the

1 government should be able to say, "You cannot do
2 business, this business, in our state."

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

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

12 Q. Well, so --

13 A. -- they should be.

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

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

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

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

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

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

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

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

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

24 And so, if that money were used as it
25 was intended, there would be adequate funding to cover

1 the type of wells you're talking about when an
2 operator disappears.

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

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

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

25 Q. Well, okay, thank you. That was actually a

1 question I had for you and you've answered it. So
2 thank you for reading my mind?

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

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

18 A. On existing operators or prospectives?

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

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

24 Q. Go ahead and answer?

25 A. If the OCD is doing its job and has the

1 manpower to do its job, then that is already
2 occurring. That's what they do. That's an assessment
3 of the risk. They look -- you know, the field
4 inspectors do what they do. They go and inspect.

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

9 Q. But, again, to be clear, your view is that
10 \$250,000 is the most that any operator, regardless of
11 compliance behavior, that's the most that they should
12 be required to bond with OCD, right?

13 A. That's what the statute says.

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

18 A. I think -- yes.

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

25 A. As I've already stated, I would support them

1 that they reset receipt of those additional funds from
2 the use of the conservation tax. Everybody has said
3 that time and time again that the oil and gas industry
4 needs to clean up its own mess. The oil and gas
5 industry by paying the conservation tax for the life
6 of a productive well is repaying a fund to clean up
7 its mess.

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

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

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

23 HEARING OFFICER ORTH: All right. Thank
24 you.

25 Go ahead, Mr. Ezzell.

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

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

7 A. There's plenty --

8 Q. -- answering my last question?

9 A. There's plenty of money.

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

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

24 A. I think I've answered that.

25 HEARING OFFICER ORTH: I haven't heard an

1 answer, Mr. Ezzell.

2 A. I want it to come from the collection of the
3 conservation tax and the appropriate use -- I don't
4 want to dime of the conservation tax going to the
5 general fund, which is what's happening to it now.
6 That's why there is a shortfall.

7 If the shortfall continues -- the
8 conservation tax is collected every month. And the
9 reason the result of having a shortfall will not be
10 that wells won't get plugged and sites remediated. It
11 will just mean they won't get that done as fast. It
12 will cause a delay.

13 Q. I want to make sure I understand your
14 answer. Are you testifying, Mr. Ezzell, that money
15 that should be going to well-plugging and spill
16 remediation and related activities is instead from the
17 conservation tax that's collected, is instead going to
18 the general fund, and you believe that to be a
19 problem? Is that your testimony?

20 A. That is my testimony.

21 Q. Okay. Mr. Ezzell, on page 58 of your direct
22 testimony, you're discussing the 15 percent threshold.
23 That's the context. And here's the statement that you
24 make: In my testimony already, I have described
25 situations why an operator might want to have inactive

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

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

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

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

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

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

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

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

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

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

25 Q. Mr. Ezzell, you referenced balance sheets

1 and I agree that that's a significant -- can be a
2 significant piece of information. Do you think a
3 company's and operator's balance sheets should be made
4 public so that OCD or other parties who have a vested
5 interest in whether that company operates here in
6 New Mexico have an understanding of the company's
7 financial strength?

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

13 Q. What about the OCD?

14 A. Same answer. No.

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

21 A. Well, that's where the discretion in
22 enforcement would come in, because if they have all
23 these inactive wells, the OCD has the tools to cite
24 them for violations. And you will almost immediately
25 know their financial capability if they comply with

1 the enforcement actions or pay their fines on time,
2 whatever is done. The OCD will know that.

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

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

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

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

11 Mr. Maxwell is at the polls today.

12 Mr. Rankin, do you have questions?

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

15 HEARING OFFICER ORTH: All right. EOG is
16 monitoring.

17 Mr. Suazo, do you have questions?

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

20 CROSS-EXAMINATION

21 BY MR. SUAZO:

22 Q. Mr. Ezzell, good morning?

23 A. Good morning.

24 Q. Mr. Biernoff with the land office asked you,
25 and don't let me misstate your testimony, but I think

1 generally speaking, you stated that generally, you're
2 not opposed to bonds in excess of \$250,000 for certain
3 operators that are problematic under the blanket bond
4 structure, correct?

5 A. Yes.

6 MR. HALL: Objection. Leading.

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

9 MR. SUAZO: I'll move on.

10 BY MR. SUAZO:

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

15 MR. HALL: Objections. Leading.

16 HEARING OFFICER ORTH: Would you turn those
17 into questions.

18 BY MR. SUAZO:

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

21 HEARING OFFICER ORTH: That's true.

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

25 Q. And to do that, your testimony is an act of

1 the legislature would be required, correct?

2 A. Yes.

3 MR. SUAZO: No further questions.

4 HEARING OFFICER ORTH: All right. Thank
5 you.

6 Mr. Cloutier, do you have redirect?

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

12 REDIRECT EXAMINATION

13 BY MR. CLOUTIER:

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

17 A. The one beginning with histogram.

18 Q. Yes, sir?

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

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

24 A. I have no idea.

25 Q. Did you hear Mr. Alexander testify that he

1 knew what the sample of wells was?

2 A. I did not hear that testimony.

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

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

9 A. That is correct.

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

13 A. No. It is just plugging bonds.

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

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

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

20 COMMISSIONER AMPOMAH: Yes, I do have a few.

21 EXAMINATION

22 BY COMMISSIONER AMPOMAH:

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

1 can bring up your slides, your direct slides. And
2 I'll start from slide Number 5. Yeah, right there?

3 So in here, you're talking about --
4 let's put aside whether the Commission do not have
5 authority.

6 A. Right.

7 Q. I mean, the lawyers will take care of that.
8 Yeah. So in here, you describe the factors that need
9 to be considered when the Commission or the OCD is
10 more or less making a rule for a bond or financial
11 assurance. Can you tell the Commission how you will
12 quantify the cost associated with the age of the well?

13 A. The age of the well will directly affect the
14 cost to plug, and it also will directly affect the
15 ease with which plugging can occur. Because older
16 wells are more likely to suffer from corrosion and all
17 sorts of other types of damage. Until you get into
18 one -- and I'm not an engineer, so I don't know why
19 I'm telling this to you, because you know way better
20 than I do, but you don't know whether rods are parted,
21 you don't know whether there are holes in the casing.
22 But with older wells, that's more likely than with
23 newer ones.

24 Q. Yeah. So let's go to slide number 7 and
25 then I'll ask you, can you provide to the Commission

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

3 A. Are you asking the age.

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

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

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

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

22 A. Yes.

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

25 A. Like I said, it's not something that I had

1 given much thought to. But I'm happy that I was that
2 close to what IPANM said.

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

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

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

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

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

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

23 Now, can you quantify the impact of
24 economics, let's say, can you give some suggestions
25 with regards to how that description of the commodity

1 prices can be incorporated as an exception into the
2 marginal definition?

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

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

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

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

23 Q. I think I'm good. I think your point is
24 well made. So you believe that the Commission can
25 include something in terms of economics to give OCD

1 the flexibility to make that determination when that
2 instance happens?

3 A. I would not disagree with that. Yeah.

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

6 HEARING OFFICER ORTH: Thank you.

7 Commissioner Bloom, do you have
8 questions?

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

11 EXAMINATION

12 BY COMMISSIONER BLOOM:

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

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

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

1 I've come in front of your wife before,
2 and as you know, she is thorough and tough?

3 A. Welcome to my world.

4 Q. Mr. Ezzell, did you read the, much discussed
5 here, LFC report that was part of the applicant's
6 pre-hearing statement?

7 A. No, I did not.

8 Q. Okay. I'll read you something from it. It
9 says, quote: The Federal Environmental Protection
10 Agency estimates annual methane emissions from the
11 nation's inactive and unplugged oil and gas wells are
12 comparable to adding an additional two million
13 gas-powered cars to the road. End quote?

14 Is that methane a wasted resource?

15 A. Yes.

16 Q. We heard from the OCD, and you and Mr. Hall
17 discussed this as well, but the OCD has said that
18 60 percent of inactive wells in New Mexico leak
19 methane. Is that fugitive methane a waste?

20 A. Yes.

21 Q. Does the OCC regulate waste?

22 A. Yes.

23 Q. Does proper plugging stop methane leakage in
24 waste?

25 A. Proper plugging would stop leaks, yes.

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

3 A. Yes.

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

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

24 A. Yes.

25 Q. I just wanted to get through some of these

1 questions about does the OCC have the ability to and
2 the authority to regulate here. And of course I
3 believe given issues of methane waste and threats to
4 the environment, public health and water, that we do?

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

8 A. Yes.

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

13 A. Yes.

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

18 A. Yes.

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

22 A. Yes.

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

1 setting any new bonding levels; is that right?

2 A. That is correct, they could have.

3 Q. The legislature did not legislate in this
4 area in 2025, did it?

5 A. No.

6 Q. The three commissioners here were designated
7 by the governor and/or her administration; in my case,
8 the commissioner of public lands. Would you agree
9 that these two duly elected officials, the governor
10 and the commissioner of public lands can pass their
11 administrations to pursue rulemaking?

12 A. Yes, they can.

13 Q. And that our duties include rulemaking on
14 the OCC?

15 A. The Oil and Gas Act gives the OCD and the
16 OCC limited authority to do rulemakings, I agree.

17 Q. Do you also agree or have knowledge that the
18 public has the right to petition the OCC to do
19 rulemaking?

20 A. I don't know where that authority comes
21 from, but I agree with the public.

22 Q. Yes. That's the basis, of course, of the
23 applicants coming from the public and doing this?

24 And would you agree that they have the
25 right to do this, regardless of what the legislature

1 is doing?

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

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

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

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

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

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

25 Q. Yeah. So this gets kind of arcane. But the

1 land grant permanent fund, as you know, collects the
2 royalties from oil and gas for the state and it's
3 invested by the state investment council. And then
4 the legislature can spend 6 percent of the five-year
5 rolling average?

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

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

19 A. That is my understanding, yes.

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

23 A. Yes.

24 Q. Would you agree with me if I told you that
25 the land grant permanent fund is somewhere between \$34

1 billion and \$36 billion today, somewhere in that area?

2 A. Yes.

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

6 A. No, I am not.

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

10 But that study by the Center for Applied
11 Research said that in 2021, there was a bonding gap of
12 \$5 billion on state trust lands. So today we have
13 inflation and the higher inflation we have seen in the
14 oil patch, I think, then higher, higher than --
15 certainly higher than the other inflation elsewhere.

16 I believe we are looking at a bonding
17 gap of probably closer to \$7 billion. You compare the
18 \$7 billion to \$35 billion and that would be about
19 20 percent or one-fifth of everything that the
20 permanent fund has done over the past hundred years;
21 is that right?

22 A. That's correct.

23 Q. So this is where my concerns come from with
24 the relationship to the permanent fund and the
25 liabilities that are out there. So I just wanted to

1 spend a little time on that?

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

7 A. Yes, I am.

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

11 A. Not to plugging, no.

12 Q. Unrelated to their bonds?

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

23 Q. Okay. Okay. But --

24 A. Yeah, I --

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

1 cut you off?

2 A. Oh, no. I was through.

3 Q. Yeah. I think as you know, as well, the
4 commissioner asked us to review all 6,000 leases at
5 the time on state trust land, to see if they were
6 bonded. And we found that about on-eighth, some 800
7 wells, were not bonded. And I think as you know,
8 ultimately we only canceled less than a couple dozen.
9 And we worked with companies and gave some people a
10 little bit extra time to actually get their binding in
11 place?

12 If you don't know if you've seen any of
13 the news releases or stories in the press. But, you
14 know, we've had to work with and sometimes sue
15 operators and lessees on state trust land to get them
16 to plug what is now 750 wells P&A'd under this
17 program. Are you aware of that?

18 A. Not the number, I did not know that.

19 Q. Are you aware that we still have maybe that
20 many wells left to get cleaned up on state trust land?

21 A. I did not know that, but I do not dispute
22 it.

23 COMMISSIONER BLOOM: Mr. Ezzell, thank you
24 for your time. I don't have any further questions
25 for you.

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

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

5 CHAIR CHANG: I do not have any questions
6 anyway.

7 HEARING OFFICER ORTH: You do not. All
8 right.

9 CHAIR CHANG: So there you go.

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

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

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

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

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

22 HEARING OFFICER ORTH: Was that OCD exhibit
23 34, I believe, surrebuttal for Armstrong.

24 MS. TRIPP: Yes, Madam Hearing Officer. And
25 so I know that the surrebuttal has been filed in

1 response to Mr. Armstrong's testimony during
2 cross-examination yesterday.

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

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

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

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

24 I don't think it matters whether the
25 exhibit comes in. What I want for the Commission is

1 if they have questions about OCD's instructions
2 related to production reporting, that they're able to
3 take notice of OCD's instructions, which are on the
4 website and referenced in that e-mail.

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

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

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

17 MR. TREMAINE: Thank you.

18 (Admitted: OCD Exhibit 34.)

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

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

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

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

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

7 THE WITNESS: I did.

8 HEARING OFFICER ORTH: Thank you.

9 Go ahead, Ms. Tripp.

10 MARK MURPHY,
11 having first been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. TRIPP:

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

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

22 It began with a small volume of -- or a
23 small number of low-volume producing wells, also known
24 as stripper wells. At the time we had eight
25 employees. They had eight employees. I purchased the

1 majority of the company in 1991, and we're now at 23
2 employees.

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

9 We currently are operating some 15 --
10 well around 20,000 acres, 15,000, which is the main
11 project in Eddy County. Strata drilled the first
12 lateral well, long-reach lateral in 1990. We drilled
13 the first permitted horizontal well in the state in
14 2001.

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

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

23 Grandfather, great grandfather were very
24 active in the early east Texas boom and the
25 discoveries in Arkansas, northern Louisiana, and so

1 forth. During the 1920s my father remembers an
2 early -- well, actually early '30s, very vividly
3 staying on top of the Gardner Denver store in Kilgore,
4 Texas, because his uncle ran that store.

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

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

25 I've led Strata for the past 34 years

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

3 I think now maybe to concerns.

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

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

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

11 A. I have.

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

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

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

1 because it's not right. 3.

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

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

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

20 I would say this. We're not asking for
21 95 percent. We plug 100 percent. And so my question
22 to the WELC people and to this Commission and so forth
23 is, how many times does industry have to pay for this?

24 We post our individual well bonds, and
25 then we plug our wells. And for those in the

1 industry, either through misfortune or bad actors or
2 bad intentions or whatever else, leave a portion of
3 wells behind.

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

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

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

21 In my experience, I can show you
22 2,000-foot wells that will not make money at 750. And
23 I can show you 7,000-foot wells right now in my
24 portfolio that do. And so when you shift this
25 analysis over to where the OCD and the OCC is now

1 supposed to make this risk assessment, it's really
2 arbitrary. It's very, very arbitrary. Because at the
3 end of the day, it's really, as Mr. Ezzell commented
4 before, that the standard in the industry has always
5 been paying quantities and the economics of the
6 operator. And they make that decision.

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

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

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

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

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

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

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

25 I have a couple other points, and one is

1 the TA limits. Now, early in my career -- I've been
2 involved in numerous secondary and tertiary -- well,
3 secondary recovery projects primarily, and also have
4 looked at EOR projects, tertiary -- primarily CO2
5 projects.

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

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

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

1 There's some exceptions, but they're solution gas
2 drive, and they lend themselves very well to pressure
3 projects, such as waterflooding and CO2 flooding. And
4 when the well reaches that end of its primary life, it
5 still has somewhere between -- depending upon the
6 nature of the reservoir, somewhere between probably 60
7 and 80 percent of the original oil in place is still
8 there.

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

19 So the problem is, and this relates to
20 the TA portion of it, the eight-year hard TA. I have
21 been involved in the formation of secondary recovery
22 units that took in excess of ten years. My father
23 started them, my sister and I and others picked them
24 up, and some of them went on 12 or 15 years. And it
25 is a very laborious and difficult process because you

1 have to get a lot of people together, you got to form
2 an operating committee, there's always discussions
3 about who is going to operate, what's the formula
4 going to be for unitizations. You know, all of these
5 things. And that those meetings occur many times over
6 years and over multiple management changes.

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

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

20
21 The Grayburg Jackson field, for example,
22 between Artesia and Loco Hills and Maljamar is one
23 that he was responsible for flooding on behalf of
24 Newmont Mining Corporation, a company we don't even
25 hear about around here.

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

5 Now, many of those fields have since
6 declined. They are probably very good tertiary
7 candidates, CO2 candidates. We have CO2 sources, and
8 yet there's no real policy push to try to get that.

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

16 If that slide was taken at a point in
17 time, which it has to be, and then looked back, you
18 would not see any secondary recoveries or tertiary
19 recovery projects in this period. If that point, zero
20 was taken in, I don't know, either 1965, '75, or '85,
21 you would see a huge number in that 10- and 12-,
22 15-year period.

23 So, from a first glance, I haven't
24 talked to the analyst about this, but from my first
25 glance, I don't believe this is telling you, the

1 policymakers, and deciders what they're telling you
2 it's telling you. Right?

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

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

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

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

1 challenge, but there's also the opportunity.

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

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

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

23 In late May, I was approached by members
24 of the New Mexico Oil and Gas Association and IPANM as
25 a member of the state legislature. As has been

1 mentioned here, I represent District 59, Roswell,
2 Chaves County. And they had heard a rumor, that LFC
3 had developed a report and that the report calls for
4 massively increased bonding. And they had arranged
5 for a meeting with director Sallee of the LFC. And
6 the director gave them very limited information, only
7 said that it was something that they were looking at,
8 but it mainly had to do with procurement and bonding
9 processes.

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

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

24 He told me that it was some \$90 million,
25 which is consistent with my understanding, and that it

1 was allocated, I believe what he told me, over a
2 three-year period.

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

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

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

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

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

25 And he said, "Well, there is a portion

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

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

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

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

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

13 And so I got no more information.

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

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

1 number.

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

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

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

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

22 And he said, "Well, we're still
23 evaluating it. But we plan to just give these wells
24 out in groups of small numbers, five, ten, 25 at a
25 time," which is a real problem if you're if you're

1 trying to build a company off of plugging a lot of
2 wells. Right?

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

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

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

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

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

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

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

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

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

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

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

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

22 We've also been, as I've described,
23 really interested in the new technology that has
24 implemented horizontal drawing. And one very
25 underutilized one and one I'm very familiar with

1 because of my work at New Mexico Tech, is CO2. But
2 some of that work needs to be done in terms of how do
3 we utilize these resources to maximize production and
4 prevent waste, and now a new type of geometry, if you
5 will, with respect to wells.

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

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

24 I don't think most people realize that
25 you just can't turn things on and off. Sometimes it's

1 a little more difficult than that.

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

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

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

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

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

24 I think that these -- I think what's
25 going to happen is -- from my experience, the security

1 market is rapidly exiting the financial assurances
2 realm, and all natural resources, but particularly in
3 oil and gas. The bonds are getting much tougher to
4 get. They're getting more expensive. They're getting
5 more restrictive.

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

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

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

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

25 Senator Pat Woods made a really

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

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

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

19 Over -- about 80 to 90 percent of that
20 fund is swept into the general fund because the
21 legislature can't see it effectively utilized. Since
22 2019 about just shy of \$400 million has been
23 collected. The numbers I have seen is that -- has
24 been collected and swept. Excuse me. The numbers I
25 typically see on any given year average reach between

1 100- and \$137 million that the industry pays on this
2 tax, and the OCD spends about 20.

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

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

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

25 Q. Have you had a chance to look at any of the

1 orphaned wells statistics or the abandoned wells
2 information that's presented in this rulemaking? Do
3 you have any opinions?

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

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

15 So there's a relatively small number. I
16 know it was mentioned today about Cano, and it'll
17 probably be discussed some more. But my recollection
18 of this, and it's totally a recollection, is of those
19 299 wells or so that Cano operated, only a very small
20 fraction were state and fee wells. The vast majority
21 of those were federal wells. So once again, they're
22 not going to fall on the state taxpayer.

23 So at 150,000 we need about 52 million
24 to plug those 349. I think I rounded to 350, excuse
25 me. And we currently have 75 in the fund with a

1 hundred plus coming in every year.

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

6 HEARING OFFICER ORTH: Thank you.

7 BY MS. TRIPP:

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

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

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

24 Now, I've always been told it takes
25 about 10,000 hours to master anything; that's about

1 ten years of work. So I'm going to forgive him
2 because he only has about half of that work in.

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

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

16 And so let's just call that effect on
17 secondary and tertiary recovery projects. Reduced
18 populations of idle and marginal wells to below the
19 15 percent threshold. Well, you can't always produce
20 a well in 180 days. And the reason being is that
21 these wells -- see I started my career as a
22 roustabout. I was hoeing weeds and working the
23 shovel. The next promotion up there is a relief
24 pumper. And after that you go to the pumper.

25 And so as a relief pumper, one of the

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

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

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

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

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

1 Well, I think the only way to do that is to either
2 plug or divest. And once again, if you plug
3 prematurely, you're wasting. And divesting of a
4 single, low-volume well is probably not practical.
5 And then once again, I think they tied back to a
6 15 percent threshold, which is, in my opinion, like
7 the two-barrel a day, as arbitrary as you can get.

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

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

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

24 A. I was very familiar with that effort. I
25 wasn't directly involved in negotiations, but as one

1 of the gray hairs in the room, I was consulted a lot
2 from IPANM and NMOGA's position about what sort of
3 things might make sense.

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

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

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

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

23 And I'll tell you the other time that it
24 happened, and this is probably what will explain a
25 lot, is during the methane. Industry showed up to the

1 methane rule, negotiated in good faith, had negotiated
2 a number of exemptions. And let me tell you, let me
3 start with this. We were told that the methane rule
4 was designed to only target the biggest emitters, we
5 got to take care of the big problems first. We're not
6 worried about the little guys. We want to take care
7 of this. We want to do that.

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

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

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

23 When I talked to Mr. Saltee and asked
24 for input in or some questions into this report and
25 was told they couldn't talk about because the findings

1 weren't quite finished, what, we know from Mr. Peltz's
2 testimony, he was in the LFC in April working on this
3 report.

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

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

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

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

23 A. Somewhat. I guess what I would say is that
24 you don't get that 97 percent without the small
25 operator starting to play, or, you know, whatever it

1 may be, whether it's exploration, the new technology.

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

8 If you have primarily been involved in
9 analysis and worked on this since 2015, you've never
10 known what it looked like in 1986 or '87 or the early
11 '90s or any of the downtime. And so it's really easy
12 to sit here and say, "Well, geez, you know, we got to
13 pin these few small" -- "big operators. Let's toss
14 everybody aside." Well, what happens when they leave?
15 You'll have no industry left.

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

24 A good friend of mine, Pulitzer winning
25 prize author, Dan Yergin, has written a series of

1 books. The first one is called "The Prize," and it
2 talks about the oil and gas industry from the 1850s up
3 until about the early 1990s. That will show you
4 historically how this industry works, being the
5 independence going back all the way to Oil Creek in
6 1859 in Pennsylvania. It wasn't a big guy that made
7 the discovery, it was a small guy. And every one of
8 the discoveries after that were small independent
9 companies.

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

18 MS. TRIPP: Thank you Representative Murphy.

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

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

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

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

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

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

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

9 MR. CLOUTIER: Some have, for the record.

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

11 HEARING OFFICER ORTH: All right.

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

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

15 All right. They're admitted. Thank
16 you.

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

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

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

23 CROSS-EXAMINATION

24 BY MS. FOX:

25 Q. Hello Representative Murphy. My name is

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

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

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

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

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

19 Q. Okay. Well, let me read to you from the LFC
20 report and ask what you think about that. So on page
21 4, LFC says, currently, OCD has plugging authority for
22 roughly 700 wells on state and private, that is, fee
23 lands. The state likely will need to plug an
24 additional 1400 inactive wells, for which OCD has not
25 yet pursued plugging authority. On top of that, there

1 are more than 3,000 wells on state or private land
2 producing extremely small quantities of oil and gas,
3 whose expected cleanup costs far exceed their
4 predicted future revenues, increasing their risk of
5 being orphaned.

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

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

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

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

22 Q. Those 700.

23 A. And the other is pure speculation. Because
24 industry has historically plugged 95 percent of the
25 wells, and we don't need a perspective LFC study to

1 try to say, "Well, this might happen."

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

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

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

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

14 A. That is correct.

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

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

25 So in terms of your written testimony,

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

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

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

12 A. That's correct.

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

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

20 MS. FOX: Thank you for your testimony.

21 THE WITNESS: Thank you.

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

24 MR. TREMAINE: Mr. Tremaine. Thank you, and
25 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

1 review that OCD plugged. So I just wanted to clarify
2 that.

3 A. Not federal wells, by the way.

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

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

10 A. Correct.

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

13 A. That's my understanding.

14 Q. So you have represented some different
15 numbers. But, you know, if the status quo of 5
16 percent of wells getting plugged pursuant to a state
17 plugging program persists, we're looking at about
18 3,150 wells that would be plugged on the program based
19 on the existing portfolio of active and producing
20 wells. Would you agree?

21 A. I would agree with that.

22 Q. Okay. Just a few minutes ago, you clarified
23 that you -- and I don't want to misstate your
24 testimony representative, but I want to paraphrase
25 here. I think you said that the production thresholds

1 for either marginal wells or the presumption of no
2 beneficial use or both were arbitrary. Is that
3 accurate?

4 A. It is.

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

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

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

25 Q. I understand.

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

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

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

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

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

24 A. I don't know -- I don't how the tax -- IRS
25 drafts all that. I know what the numbers are, but I

1 don't know all the...

2 Q. Well it's TRD, so it's New Mexico, and it's
3 under New Mexico Statutes Annotated 7-29B-2L(1) and
4 (2), which defines, for the purposes of tax
5 incentives, in certain instances for stripper wells,
6 that stripper wells are defined as those wells
7 producing less than ten BOE per day.

8 A. And I'm sorry, I'm not an attorney, but the
9 citation you're making, is that under the Oil and Gas
10 Act?

11 Q. No, sir. It's under the tax code.

12 A. Okay. Well, I --

13 Q. I can show it to you, but I'm not going to
14 belabor it.

15 A. Okay. I'm not a tax expert, so that would
16 be a waste of time.

17 Q. Just trying to get the distinction of that.
18 It's a common use in New Mexico to define categories
19 of wells. Thank you.

20 Representative, do you agree that
21 legislatively approved funds in the reclamation fund,
22 specific to plugging expenditures, have increased
23 substantially from approximately \$3.5 million in
24 Fiscal Year 20 to almost 18 million in Fiscal Year 25?

25 A. Yeah, I think I've seen numbers similar to

1 that. I'll say I can't swear to those numbers, but
2 the trend is probably right.

3 Q. And would you agree with me that OCD's
4 related expenditures for well plugging have kept pace
5 with those approvals?

6 A. I'm sorry. Repeat that.

7 Q. Would you agree that OCD's expenditures for
8 well plugging through use of the reclamation fund have
9 kept pace with those approvals in their respective
10 fiscal years?

11 A. So what you're saying, is OCD
12 proportionately plugging the same number of wells
13 relative to the dollars? Has their plugging program
14 grown along with the resources that were available?

15 Q. That's one paraphrase, sure, yes.

16 A. Okay. Then yes, I would agree with that.
17 But they seem to be capped at that level.

18 Q. Representative, can we agree that OCD should
19 focus its enforcement efforts on those operators that
20 are substantially out of compliance?

21 A. Yes.

22 Q. Okay. On page 12, lines 8 through 10 of
23 your direct testimony, you testified that New Mexico
24 does not have an orphaned well problem. I want to
25 make that as a foundational statement. Do you agree?

1 A. I'm sorry. On page 12?

2 Q. Page 12, lines 8 through 10.

3 A. Yes, I agree. That's my testimony.

4 Q. And do agree that, in part, you support that
5 statement by pointing out that New Mexico does not
6 have a definition of "orphaned well"?

7 A. Yes.

8 Q. Okay. And further, Representative, you
9 distinguish inactive wells from orphaned wells?

10 A. Yes.

11 Q. Would you agree with me that once a well has
12 been inactive for more than 12 months, it must be
13 plugged within 90 days, according to OCD's current
14 rule?

15 A. I don't know the answer to that.

16 Q. Okay. Do you dispute it?

17 A. I would, in a sense. Because I think
18 there's other -- I mean I think we've had wells that
19 have gone longer than that, either because we had --
20 it may not have been under temporary abandoned status,
21 but we -- we had a retrievable bridge plug in there
22 and so maybe it did go a period. Maybe we were
23 talking to the OCD inspector about why we were doing
24 what we were doing.

25 So there could be a lot of exceptions to

1 that just from a practical experience standpoint. I
2 don't have any way to dispute what the rule says, but
3 I can only describe what happens.

4 Q. Okay. So you're testifying that there could
5 be reasons why there would either be enforcement
6 discretion or perhaps wells placed in approved
7 temporary abandonment or something else that's going
8 on.

9 A. Sure.

10 Q. Okay. Can I show you the existing rule?
11 Looks like I have lost permission to share screen. If
12 I could request that again, I'll come back to this.

13 Representative, would you agree that OCD
14 may issue what's called a notice of violation, under
15 the existing rule, for any wells that are required to
16 be plugged by the rule, but the operator has failed to
17 plug them?

18 A. I would agree with that, yes.

19 Q. So, Representative Murphy, I just want to
20 highlight here that 19.15.25.8B states that the
21 operator shall either properly plug and abandon a well
22 or place the well in approved temporary abandonment in
23 accordance with 19.15.25 NMSA within 90 days after.
24 And here it says, under (2), a determination that a
25 well is no longer usable for beneficial purposes or

1 (3), a period of one year in which a well has been
2 continuously active.

3 So, I just wanted to clarify, as a
4 foundation for my question, that under the existing
5 rule, that requirement exists, notwithstanding the
6 clarifications or exceptions that you highlighted.
7 Would you agree?

8 A. Sure. I would.

9 Q. Okay. Thank you. So, Representative, if
10 the division issues a notice of violation and brings
11 an enforcement action for inactive wells, do you know
12 generally what happens to the wells that are
13 referenced in that notice of violation?

14 A. Only generally.

15 Q. Would you agree that it's possible that they
16 could be plugged by the operator?

17 A. I would.

18 Q. They could also be plugged by a third party?

19 A. Yes.

20 Q. And they could be plugged by the Division?

21 A. Correct.

22 Q. Have you reviewed any of OCD's inactive well
23 NOVs or settlements?

24 A. No. I think only the ones that may have
25 been in the media. But no, I've not gone into the OCD

1 records.

2 Q. Okay. So as you sit here today, are you
3 able to testify as to a percentage or number of the
4 wells that, after the necessary enforcement action,
5 end up getting plugged by the Oil Conservation
6 Division?

7 A. Do I know that percentage?

8 Q. That's not my question.

9 A. No.

10 Q. And similarly, again, not to belabor the
11 point, but likewise, you wouldn't be able to testify
12 as to the number or percentage of wells after a
13 necessary enforcement action that are plugged by a
14 third party, pursuant to a plugging demand made by
15 another agency, such as the State Land Office or BLM?

16 A. No, I don't know those percentages. But I
17 guess I would have to say that whatever they are,
18 those funds are being provided by the reclamation fund
19 to plug. Just as the 3,100 wells that you mentioned
20 earlier, some potentially \$450 million in a worst
21 case, would also be plugged by the reclamation fund.
22 And it would generate enough money to do that in less
23 than four years.

24 Q. So, I understand the distinction,
25 Representative Murphy, but I have to ask, is it within

1 this Commission's power to increase the appropriation
2 from the reclamation fund for use by the Division?

3 A. It is not. But it is within the power of
4 the Commission to direct the OCD to request a higher
5 budget amount. And if they can demonstrate that that
6 budget amount would be utilized, they would get it.

7 Q. Thank you. Thank you for that.

8 Representative, did you hear the
9 testimony of deputy director Brandon Powell?

10 A. No.

11 Q. You were traveling, I take it.

12 A. I believe I was, yeah.

13 Q. Okay. So have you had an opportunity to see
14 what is listed and admitted into the record as OCD
15 Surrebuttal Exhibit No. 33? Have you seen it?

16 A. You know, I believe I've seen a version of
17 this somewhere, yes.

18 Q. Okay. And this is a list of all operators.
19 And this is in the records, so there's no attempt at
20 trickery here, Representative. But Mr. Powell
21 testified that he pulled this list and it represents
22 operators who have submitted no production reports
23 since August of 2024.

24 So I guess what I'm getting at here is
25 that, according to Mr. Powell's data and testimony, we

1 have 113 operators and 2,318 wells for which there is
2 no production reported for over a year?

3 Will you accept that as a premise?

4 A. Sure.

5 Q. Okay. And so based on my earlier questions
6 in our discussion about the current rule, 100 percent
7 of these wells are out of compliance. Do you accept
8 that? Okay. And so --

9 A. Sure.

10 Q. -- every -- and as a caveat here, I just
11 want to be clear about what the record says and what
12 it doesn't. This includes federal wells and this
13 includes some operators that are already on OCD's
14 master reference spreadsheet. Okay? So it is
15 over-representative of what OCD may take enforcement
16 actions for. Nevertheless, there's still close to 100
17 operators on here who are 100 percent non-compliant.

18 Representative, would you dispute
19 Mr. Powell's testimony that approximately 40 percent
20 of inactive wells are what OCD classifies as private
21 wells?

22 A. No, I wouldn't dispute that. I assume he
23 means they're on private lands.

24 Q. Yes, private lands or private minerals or
25 both. Okay. Thank you.

1 A. Yeah. And by "private lands," that's what I
2 meant.

3 Q. Private. Then we're good, yeah.

4 I want to show you -- all right. So
5 there's been a lot of discussion about the reclamation
6 fund, and I just want to clarify here, particularly
7 with your experience as a representative, that when we
8 look at what the reclamation fund may be used for,
9 that the statute indicates, in part, that the Division
10 may use the reclamation fund for the purposes of
11 employing the necessary personnel to survey and
12 abandon wells, well sites and associated production
13 facilities, and preparing plans for administering and
14 performing the plugging of abandoned wells that have
15 not been plugged or that have been improperly plugged,
16 and for the restoration and remediation of abandoned
17 well sites and associated production facilities that
18 have not been properly restored and remediated.

19 So just, as a foundation. So,
20 Representative, do you agree that the reclamation fund
21 may be used to plug and abandon both wells and
22 associated production facilities?

23 A. Yes.

24 Q. And it may be used for surface reclamation
25 and remediation activities, correct?

1 A. Yes.

2 Q. Okay. I also want to point you down here
3 to -- I'm going to highlight the section here, and
4 among other things, 70-2-38B states that the Division
5 may order wells plugged and well sites and associated
6 production facilities restored and remediated on
7 federal lands, on which there are no bonds running to
8 the benefit of the state, in the same manner and in
9 accordance with the same procedure as with wells
10 drilled on state and fee land, including using funds
11 from the oil and gas reclamation fund to pay the cost
12 of plugging.

13 So, Representative, is my understanding
14 of the legislature's language and intent here that OCD
15 may order wells plugged and may plug wells, regardless
16 of their surface or mineral type, if they exist within
17 the geographical boundaries of the state of
18 New Mexico?

19 A. Once again, I'm no lawyer, but that's the
20 way it appears to read, yes.

21 Q. And I just want to be clear that we just
22 talked about remediation and reclamation. Is it
23 consistent with your understanding that neither the
24 petitioner nor OCD are proposing to base financial
25 assurance for the single-well financial assurance on

1 either reclamation or remediation costs?

2 A. That was not clear to me, actually.

3 Q. Okay. If I clarify that to you and the
4 record reflected that the average cost proposed to the
5 Commission was based solely on wellbore plugging,
6 would you accept that?

7 A. Yeah, I would accept that in the sense that
8 if you tell me that they only plugged the wells and
9 didn't do the reclamation, then I have no reason to
10 dispute that. But I would still reject the premise
11 that an arbitrary \$150,000 bond is the way to cure
12 this problem. But, proceed.

13 Q. Okay. Would you also agree that, similarly,
14 reclamation and remediation of associated production
15 facilities is not factored into that average wellbore
16 plugging cost?

17 A. I've heard testimony to that effect. But
18 I'd also add that the cost of plugging federal wells
19 has historically -- and remediation has historically
20 been reimbursed to the state.

21 Q. Okay. Yes. Understood. Thank you,
22 Representative.

23 So I want to, I'm going to backtrack a
24 little bit here, just loop back. So I had asked you
25 about 70-2-38B. In your direct testimony, you also

1 distinguish the orphan well problem by pointing out
2 that many of the inactive wells are federal. But
3 we've just gone over the statute, so I just want to
4 see if we can reach an agreement that those federal
5 wells are actually potentially orphaned and are a
6 problem under the use of the reclamation fund. Would
7 you agree with that?

8 A. I would agree that -- well, here is where I
9 think you have to make the distinction.

10 OCD may very well have the authority to
11 go plug those wells, and it sounds like they do, and
12 they should. What the difference is, when I make the
13 distinction, I'm talking about who pays for it, right?
14 And if it's a state or fee, then a state or fee well
15 is typically paid for with the reclamation fund. But
16 apparently, even if it's a federal well and the
17 federal government didn't pay for it, the reclamation
18 fund would pay for that too.

19 But historically, and we know recently,
20 the state has received as much as \$90 million to plug
21 federal wells. So that's where I am.

22 Q. Okay. Thank you, Representative.

23 Representative Murphy, are you aware
24 that OCD does and has, in fact, engaged in plugging of
25 federal wells by either agreement or consultation with

1 the Bureau of Land Management?

2 A. It's my understanding that the vast majority
3 of federal wells are plugged by OCD under contract
4 with the BLM, or some sort of arrangement.

5 Q. So I want to distinguish here. So
6 there's -- would you agree that there are different
7 sources of funding which OCD can use to plug, quote,
8 unquote, orphaned wells, including the state
9 reclamation fund, the bipartisan infrastructure law
10 grants, and more specific, discrete grants from the
11 Bureau of Land Management? Would you agree with that?

12 A. Yes, I would.

13 Q. I believe the ones that you were referring
14 to just now were specific wells that were plugged
15 using OCD contractors, after the BLM had called
16 federal bonds and then awarded that to the OCD for
17 plugging by agreement or contract. I'm not sure
18 which. But by agreement, OCD plugged those wells
19 using that more discrete grant. Is that accurate?

20 A. I don't know the details. I understand
21 there's federal dollars, including the 90 million,
22 that are going to this issue. That's the only point I
23 will make.

24 Q. Yeah, and that's the distinction,
25 Representative Murphy, that I'm trying to make.

1 Because you had testified that the BIL grant money may
2 be used on federal wells. So, have you reviewed the
3 specific terms of the BIL grants?

4 A. I have not. I was only familiar with it
5 from my conversations with Mr. Sallee.

6 Q. Okay.

7 A. And some media reports.

8 Q. Okay. If I told you that that was
9 inconsistent with the legal analysis and the
10 understanding of the Division, that those BIL grant
11 funds may only be used on non-federal wells, would
12 that change your concern or your testimony?

13 A. No, it really wouldn't. Because money is
14 fungible, right? I mean, if they gave you \$90 million
15 to plug whatever wells, you've got \$137 every year to
16 plug the rest of them.

17 So once again, I mean, coming back to
18 this as being a revenue or payment, as I say, funds
19 problem, it just doesn't wash with me. And the reason
20 being is, I think the proof is in the pudding. You've
21 got a \$75 million balance you can't spend, and you've
22 got \$100 million a year that also you can't spend.

23 And I apologize, Mr. Tremaine. I mean
24 the OCD. I don't mean you personally.

25 Q. No, certainly.

1 A. The Oil Conservation Division.

2 Q. Sir, I've been in-house, so to speak, for so
3 long that I dip into the weeds too much.

4 So, Representative Murphy, in your
5 direct testimony, you had talked about a couple
6 different numbers, the 56 million, the 66.7 million,
7 and you just referred to a more recent number of 70, I
8 believe it was 76, but that same material. So,
9 there's a lot of money in the quote, unquote,
10 reclamation fund, you would agree?

11 A. Yes.

12 Q. Okay. But we ran through an analysis here
13 on cross that, you know, the status quo of plugging
14 might be 3,150 wells plugged under an orphaned
15 program. And, you know, using your analysis of 66.7
16 million could plug either 800 to 1,000 wells. That
17 looks like -- if you're plugging 1,000 wells, you
18 think that there should be a per-well plugging cost
19 averaging \$66,700, that would mean that there would
20 have to be \$210 million over -- to plug those 3,150
21 wells. And if we're using those OCD's average cost
22 from FY24 of \$163,000 for the well-bore plugging, that
23 would be \$513 million, in excess of \$513 million.
24 Would you agree with that?

25 A. Yes, I would agree with it. But I think

1 here's the point, and I think it's easy to get people
2 confused about these numbers, and sometimes I even get
3 a little bit confused.

4 So let's just agree, for sake of
5 agreement, that we have 3,000 wells that the OCD is
6 worried about, and \$150,000 seems to be the number,
7 that's \$450 million. You went back just now between
8 210 on the low estimate and 00 on a high estimate. So
9 let's just take your number. Let's take 500 million.
10 All right. That's what's been swept out of that fund
11 in the last four years. That's what that fund will
12 generate over the next four or five years.

13 So I keep coming back to the point,
14 Mr. Tremaine, that this is not a funding problem, and
15 I don't know why it's being described that way. Even
16 at 3,000 wells, which I don't begin to accept for a
17 moment, but let's just do that, \$500 million, 137-,
18 \$125 million a year coming into the reclamation fund,
19 how long does it take to pay that \$500 million?

20 Q. That's fine. Well, I understand the point
21 you're trying to make, Representative. I have kind of
22 a different -- a little different analysis I want to
23 examine with you.

24 So even if the reclamation fund were
25 dramatically increased, as I think you're

1 suggesting --

2 A. Actually, I'm not suggesting that. I'm
3 suggesting that the balance be moved into a protected
4 fund, that you all be given whatever you can spend.
5 So no, I mean let's be clear about what I'm
6 suggesting.

7 I'm suggesting that the OCD be given the
8 resources that it needs and the funding that it needs
9 to plug these wells. And I don't care if there's 350
10 of them, I don't care if there's 3,000 of them.
11 You've got the money to do it. You spend 20 -- you've
12 got a balance of \$75 million, you spend about 25 a
13 year. You've got three years of plugging fund in your
14 balance right now.

15 This year, industry will generate
16 another 100 and to 125 million, none of which you'll
17 need to plug wells. And next year.

18 Q. So I think what you're saying,
19 Representative Murphy, is that there are funds being
20 utilized or appropriated by the legislature to other
21 purposes, which would need to be placed into the
22 reclamation fund. That would be step one, right? And
23 then step two, would require --

24 A. Well, it's a little different than that.

25 Q. -- an approval or appropriation by the

1 legislature for OCD to actually spend the funds. Is
2 that accurate?

3 A. I'm sorry I interrupted you. But let me see
4 if I can answer it. Is that the legislature, by
5 nature, is not going to give any agency more money
6 than they can spend, because there are so many
7 perceived needs for that money. So when you submit a
8 budget for roughly \$21 million a year and say, "This
9 is what we need to plug wells," that's what they're
10 going to give you and that's what you've gotten.

11 Now, you say over a period of some
12 years, you're going to need roughly another \$425
13 million. And that will be there in that fund because
14 historically it's been generating that, and there's no
15 reason to believe that it won't continue to generate
16 that.

17 And so I'm not sure -- I'm not sure
18 where we're miscommunicating here, but maybe --

19 Q. No, sir, we're not. I don't believe we're
20 miscommunicating. I think it's different perspectives
21 and I'm trying to get at something else.

22 So let's talk about -- let's say that
23 hypothetically there are no procurement problems,
24 there are no recruitment problems, we can get every
25 staff that is necessary to administer the increased

1 fund.

2 And let's say that tomorrow, the
3 Division went from -- I believe your number was
4 plugging an average of 50 wells per year. Say
5 tomorrow, the Division went to plugging 200 wells per
6 year like that. All right? There's no other
7 problems.

8 If we're talking about 3,150 wells,
9 that's going to take us what, 12 to 15 years to plug
10 all of those wells, assuming that OCD was able to
11 instantaneously ramp up everything to the point of
12 where everything that you're asking us to do was
13 entirely possible with no restrictions.

14 A. Mr. Truman, I think he can plug 500 wells a
15 year with a robust plugging industry. And that's what
16 I was trying to get to before. We were hoping to be
17 part of that industry. But that opportunity doesn't
18 exist because of these procurement issues.

19 So, I mean, we designed our rigs -- what
20 I recall is, we figured one would plug 50 wells a
21 year. About one -- a little less than one per week,
22 or a little more than one per week, given holidays and
23 so forth. And we planned for a minimum of two and up
24 to four rigs. So we'd be able to, just my company,
25 we'd be able to plug 200 wells a year.

1 Assuming that there are other companies
2 out there that would do the same thing we were doing,
3 which there would be, then you would be up to probably
4 400 or 500 wells a year, and you'd have your problems
5 solved very rapidly.

6 Q. Representative, I greatly appreciate the
7 vote of confidence and being able to plug 500 wells a
8 year.

9 A. Well, that's what happens when you engage
10 industry. And when you ignore it, we end up in a room
11 like this.

12 Q. Well, Representative, how is that going to
13 work? I mean, where are those OCD staff coming from?

14 A. Well, you know, we talked about this in
15 committee, and I was assured that you all could get it
16 because of all the federal employees that are going to
17 be laid off. As a matter of fact, that was a direct
18 quote from -- I don't know if it was Ben Shelton or
19 one of the representatives at OCD. I'm not going to
20 mischaracterize it. But I asked that question, "Can
21 you ramp up?" "Oh, yeah, we can ramp up." So there's
22 your answer.

23 Q. Well, Representative, I would submit that
24 there's a distinction between ramping up, even
25 aggressively ramping up, and multiplying the current

1 capacity as you stated it by 10 times over a short
2 period of time.

3 A. Well, I can only speak to what we plan,
4 right? And so from our company business plan, we
5 would have ramped you up four times. And I have a
6 hard time believing that once somebody sees that
7 opportunity, we wouldn't have a lot of competition.

8 And so it goes back to process. And
9 that's -- we've talked about procurement, but we
10 haven't talked about process. And I don't -- once
11 again, I'm not a lawyer, I don't know what your
12 constraints are within the legal framework, but I know
13 this. You've sued companies before, you've won a
14 district court. You've taken over their wells, I
15 believe you've plugged them.

16 And my question is, why hasn't the OCD
17 done that more aggressively? Why haven't they done it
18 sooner? And why aren't they doing it more?

19 And if that's not adequate, if you need
20 more authority from the legislature, then please come
21 to us and tell us what you need. I don't know if you
22 need some sort of emergency power -- once again, I'm
23 not a lawyer -- you need some sort of emergency powers
24 to expedite things. But that's the process problem.

25 You don't have a pool of wells big

1 enough to really be very concerned about. And that's
2 why I say you don't have an orphaned well problem.
3 What you've got is speculation that you might have an
4 orphaned well problem, which runs into a hundred years
5 of industry history, which says that you won't have an
6 orphaned well problem. But if you do have an orphaned
7 well problem, you're going to have \$125 million a year
8 to solve it.

9 Q. Do you agree that we have an inactive law
10 enforcement problem?

11 A. I can't speak to that really. I mean, I
12 look at your list, it appears that you did. You know,
13 I can't -- we don't have any inactive wells -- well,
14 we may have one that we're waiting to be plugged.
15 NM3, I believe, may be inactive. But it'll be plugged
16 soon. So we don't -- I don't have a lot of direct
17 experience with that. But according to your numbers,
18 it does appear you did.

19 Q. Representative Murphy, I greatly appreciate
20 the vote of confidence and the blessing to more
21 aggressively pursue an active well-enforcement. I
22 guess I am struggling with apparent presumption that
23 if we more aggressively pursue an active well
24 enforcement, that we won't simply be adding wells, a
25 substantial number of wells to the orphaned well list.

1 A. Well, you will --

2 Q. Because that's been the history.

3 A. You will be, but you'll have the funds to do
4 it, Mr. Tremaine. But here's the other thing, and
5 this is something that I'd hoped to talk to the LFC
6 about.

7 They talked a lot about the Colorado
8 experience, and this goes directly to what you just
9 asked me. In Colorado -- and this is one thing I want
10 to talk to them about. It's interesting they
11 mentioned the Colorado experience, but they failed to
12 include the impact of that experience. Right? They
13 failed to include the fact that 2,000 wells were added
14 to the inactive well list immediately or the orphan
15 list or whatever it was.

16 And so under your numbers, the state
17 immediately, immediately picked up \$300 million of
18 liability at \$150,000 per well. So if you pursue the
19 \$150,000 per well, you're absolutely -- and maybe
20 that's your point, is that that is your process, is
21 that you want to force these people out of compliance
22 so you can expedite the process to get it.

23 All I would say to that, if that's where
24 you're headed, there's a lot easier ways to do it, and
25 the legislature can probably help you with that.

1 Because we want this process solved as well, and the
2 industry wants this process solved as well. Because
3 quite frankly, as an oil and gas operator, I'm sick
4 and tired of hearing about how we're not cleaning up
5 our own messes when we pay to clean up our own messes.
6 That's insulting to me, and it's not true.

7 Q. So, Representative Murphy, the reason you
8 say that is because of the existence of the
9 reclamation fund?

10 A. Correct.

11 Q. Okay. And so, again, last question here.
12 Representative Murphy, I think the sum total of our
13 discussion today and my understanding of your
14 recommendations, is that you think that the OCD or
15 Commission should wait for the legislature to take
16 action in one of the future sessions; is that fair?

17 A. I would welcome -- as a legislator, I would
18 welcome a dialogue. OCD's never come to me and said,
19 "Will you help us fix this problem?" And I know the
20 legislature feels very strongly, both sides of the
21 aisle, that this issue needs to be addressed.

22 There will be a bill. I don't know if
23 it'll make it up on the call or not, but it will be
24 bipartisan, as the past bills have been. I can't
25 predict what that will do, but I will say this. We

1 should have some optimism. Because when Meredith
2 Dixon and myself and Rob Montoya and a few others,
3 proposed 403 in committee, it came out unanimous.
4 Matthew McQueen, the chairman, worked closely with me
5 in making that bill a good bill. Vice Chairman
6 Sarinana did the same thing. And for those of us that
7 are familiar with the energy and natural resource
8 committee, that's a pretty rare feat, to have a bill
9 come out unanimously.

10 Unfortunately, it came out late and we
11 couldn't get it in front of the finance,
12 Representative Lente's committee in time. But there
13 seems to be a lot of bipartisan support for this
14 approach.

15 And I also feel like it's the proper
16 venue. And I'm, once again, not a lawyer and don't
17 mean to get into whether you have the jurisdiction or
18 you don't. I personally believe you don't, I'm not a
19 lawyer.

20 But I will say this, is that I think the
21 people, the early leadership of New Mexico, recognized
22 how important oil and gas is to our economy and put
23 some real constraints on what can be done to this
24 industry, and largely retained a lot of that power
25 within the legislature. And I believe that this is

1 such an important issue and it could have such a huge
2 impact on this day, that that's the body that should
3 be debating this.

4 And it bothers me that an applicant who
5 has a mission statement of working to end oil and gas
6 leasing and drilling on our public lands, that is on
7 the website, and the environmental defense fund, had
8 so much influence in the report that's driving this
9 hearing and driving this action. And I think that
10 from a policy standpoint, that's a very dangerous
11 thing.

12 Q. Representative Murphy, the legislature has,
13 despite bipartisan support, not taken any action to
14 address this issue or finalize any action to address
15 this issue in the last several years. Would you
16 agree?

17 A. I disagree. We've been -- legislative
18 process moves at the pace of legislative process.
19 There was a lot of -- there was a lot of discussions
20 and everything under 403, and there were there was a
21 lot of movement.

22 If you take that what happened at 403 to
23 my bill, our bill, in this year, I mean, it made it
24 through a hearing. We had a similar bill that
25 advanced on the Senate side. I think there's a lot of

1 legislative process that's being done and there's a
2 lot of debate. And quite frankly, there's a lot of
3 thought going in to how to solve this problem without
4 jeopardizing a very, very important industry.

5 MR. TREMAINE: Thank you, Representative
6 Murphy. No further questions.

7 HEARING OFFICER ORTH: Thank you,
8 Mr. Tremaine. Mr. Biernoff, do you have questions?

9 MR. MOORE: Good afternoon, Madam Hearing
10 Officer. I'll be representing the commissioner this
11 afternoon, at least for a little while longer. Chris
12 Grazer should be joining later. Our schedules are in
13 flux. I just have a couple of questions for
14 Representative Murphy.

15 CROSS-EXAMINATION

16 BY MR. MOORE:

17 Q. Good afternoon, Representative Murphy. My
18 name is Richard Moore. I represent the commissioner
19 of public lands and the State Land Office.

20 A. Nice to meet.

21 Q. Nice to meet you as well, and thank you for
22 your testimony this afternoon.

23 In testifying about the number of
24 orphaned or inactive wells on federal versus state or
25 private land, you used Cano Petro as an example; is

1 that correct?

2 A. Actually, I was referring to previous
3 testimony by the commissioner, I believe, because Cano
4 came up. And so yes, I was referencing that.

5 Q. But I believe that you testified that Cano
6 Petro only has a handful of wells that are not on
7 federal land; is that correct?

8 A. My understanding is there were roughly 299
9 wells, somewhere around 300 wells of Cano, and the
10 vast majority of those were federal. That's been what
11 I've been told.

12 Q. I'm just going to share my screen here
13 quickly. Are you familiar with the inactive well
14 list? I know that's come up.

15 A. I am.

16 Q. So having then searched for inactive wells
17 on Cano Petro, this is the results. Would you
18 characterize -- so you mentioned that you're familiar
19 with the list. You're familiar with what the F and
20 the P stand for under lease-type and surface owner,
21 correct?

22 A. Yes.

23 Q. Looking at this inactive list for Cano
24 Petro, would you characterize the number of wells that
25 are indicated as private lease or surface owner as

1 merely a handful?

2 A. No, I wouldn't. I would say that there's --
3 just glancing at it, I haven't counted it, but to be
4 fair, it would probably be a mix of mostly federal and
5 private. I see very little state on there.

6 However, I would also note there --
7 well, we're getting down to quite a few of the
8 federal. But regardless of whether they're federal
9 and they're paid for federal, even if they're private,
10 federal or state, as was established earlier, the
11 recommendation fund is available to plug them. So
12 whatever number of wells there were or are, there's
13 ample funding.

14 MR. MOORE: Well, thank you for your answers
15 and your testimony today.

16 That is all the questions that I have
17 and I'll pass the witness.

18 THE WITNESS: Thank you, Mr. Moore.

19 HEARING OFFICER ORTH: Thank you, Mr. Moore.

20 Let's see. I don't believe we have
21 Mr. Nanasi. Mr. Maxwell --

22 CHAIR CHANG: May I recommend a
23 mid-afternoon break at this point, before we move on?

24 THE COURT: Oh, yes. Absolutely. Thank you
25 so much for the reminder, Mr. Chair. Let's come back

1 at 3:00.

2 (Recess held from 2:48 to 3:00 p.m.)

3 HEARING OFFICER ORTH: Again, I think we do
4 not have Ms. Nanasi. I believe Mr. Maxwell is at the
5 polls.

6 Mr. Rankin, do you have questions?

7 Mr. RANKIN: I have no questions for
8 Representative Murphy. Thank you very much.

9 All right. EOG is monitoring.

10 Mr. Suazo, do you have questions of
11 Representative Murphy?

12 Mr. SUAZO: No questions.

13 HEARING OFFICER ORTH: All right.

14 Ms. Tripp, do you have redirect?

15 MS. TRIPP: Yes, Madam Hearing Officer, just
16 very briefly.

17 REDIRECT EXAMINATION

18 BY MS. TRIPP:

19 Q. So, Representative Murphy, you went through
20 some math with Mr. Tremaine, and the figures that were
21 used were 63,000 wells at 5 percent, being 3,150 wells
22 potentially that would be orphaned; is that right?

23 A. That's my recollection, yes.

24 Q. Okay. About how long would you estimate a
25 well's lifespan?

1 A. 30 to 50 years.

2 Q. In the 63,000, that 63,000 is composed of
3 all active wells. Was that your understanding?

4 A. That's correct.

5 Q. So do you have any expectation that there
6 will be 3,000 or 3,150 wells orphaned next year?

7 A. No.

8 MS. TRIPP: No further questions.

9 HEARING OFFICER ORTH: All right. Thank you
10 very much, Ms. Tripp.

11 HEARING OFFICER ORTH: Commissioner Ampomah,
12 do you have questions?

13 COMMISSIONER AMPOMAH: Yes, I do.

14 EXAMINATION

15 BY COMMISSIONER AMPOMAH:

16 Q. Representative Murphy, thanks so much for
17 your testimony today. I'm Dr. Ampomah from New Mexico
18 Tech, so nice for meeting you.

19 A. Nice meeting you.

20 Q. I do have a couple of questions if we can
21 bring up the slides and walk through that the direct.

22 Let's start from slide number 3. I
23 thank you once again for the testimony. Here, item
24 Number 4 is showing that your company has blocked 38
25 wells in New Mexico.

1 Can you share with the Commission the
2 average cost of the plugging?

3 A. The average cost, typically these wells vary
4 between 5,000 and 8,500 feet. Principally, Delaware
5 wells, but there are probably some exceptions.

6 Our actual plugging and reclamation
7 costs would be somewhere around 100,000 to 120,000, on
8 average. We've had some higher and some lower. And
9 it might be a little bit more if you include
10 reclamation on some sites. But it'd be somewhere in
11 that range, 100,000, either way.

12 Q. So we heard the same from Armstrong, as
13 well, averaging 120, but his wells were much deeper.
14 But it sounds like you are combining a little bit of
15 the reclamation to it.

16 A. Yes.

17 Q. So it's a little bit difficult to
18 distinguish between how much is actually for the well
19 plugging?

20 A. That's right, Commissioner. And the other
21 thing I would say is that many of his wells, they're
22 deeper, but they're single horizon or single zone.

23 In the Delaware Formation, where we
24 operate, there's many times 15 to 17 individual sands,
25 not necessarily all present at the same time. But we

1 might have multiple sets of perforations, so there's
2 differences.

3 Q. Thank you. Let's go to slide Number 4. So
4 slide Number 4, based on your discussion, you said
5 that it will not solve -- let's say you're talking
6 about a single well bonding of 150,000 per well limit.
7 You're saying that it will not solve this problem.

8 But I'm asking you, will it not make
9 sure that OCD has enough bonding to support the
10 plugging for companies that are bonding their wells?

11 A. Respectfully, Mr. Commissioner, not in my
12 opinion. And I tell you why, is that the problem,
13 people are not going to be able to come up with
14 150,000, and so they're going to simply -- and this is
15 the Colorado experience -- they're going to simply
16 walk away. And when many of those wells might have
17 been plugged by them over a course of time.

18 They just can't -- think they can deal
19 with the plugging of wells periodically, two or three
20 wells a year, or whatever their plans are for over a
21 period of years. But to be hit with \$150,000 bond
22 that they have to meet immediately is not going to
23 make economic sense to them. So the ones that can pay
24 it, are the ones that you don't need it from; and the
25 ones that can't pay it, that you need it from, can't

1 pay it.

2 And so I don't think -- I think you'll
3 collect very little of that, especially amongst the,
4 quote, unquote, problem operators. Even if you go to
5 a good operator, if you came to me and you said, "All
6 right. Your well is" -- you know, "You either have to
7 put this \$150,000 bond up, or plug it," I think I'd be
8 inclined to plug it, because I eliminate all
9 regulatory, you know, dangers. At a low-volume well
10 like that I'd have to see the payout. You know, I'm
11 going to put up \$150,000 bond and then I'm going to
12 have to plug it, too.

13 I mean, it doesn't make economic sense
14 to me. Because when you think about the categories of
15 operators, the real problem ones are not going to be
16 able to come up with the money. Especially when the
17 money is already there through the reclamation fund.
18 So that's the basis of that comment.

19 Q. But if you're looking at your average well
20 plugging cost, and in the same as what Armstrong
21 Energy, more or less presented to the Commission, it
22 sounds like the actual plugging cost can probably not
23 be less than 120,000?

24 A. Excuse me, Mr. Commissioner. You asked me
25 what the average was. So we have many, many wells

1 that are less than 125. So if I have a well -- if I
2 look at a well, and it's going to cost me \$50,000 to
3 plug it, and I have to put up 150, I think the
4 decision is pretty clear.

5 Q. So then on that one, do you know if IPANM or
6 NMOGA has presented to the Commission a quantified
7 risk-based way of assigning the bonds for the
8 Commission's consideration? Do you know?

9 A. I do not know. But I approach it a little
10 bit differently. And the reason I have is that I've
11 looked at it mainly, how does New Mexico compare to
12 adjoining states? For example, we are competing
13 primarily with Texas and Oklahoma, less so with
14 Colorado. So I look at it from an economic
15 competitive standpoint, is that it's going to impact
16 that. And I hope that answers your question.

17 Q. Okay. Yeah. So I'm sure you understand the
18 situation the three of us, you know, Commissioner
19 Bloom on the platform, that we are in. Because we
20 need to make all these difficult decisions. And the
21 industry, I mean, you guys have plugged over
22 95 percent, yeah. And we've heard about risk based,
23 risk based, risk based. You know, the applicant is
24 putting their case direct, direct.

25 So are IPANM and NMOGA going to go back

1 and try to help us quantify the risk base, you know,
2 as it is stated in the application for our
3 consideration?

4 A. You know, I can't speak for them,
5 Commissioner. I would say that history is the best,
6 you know, past is prologue, right? We've got a
7 hundred years of history in this state, 1926 to 2000
8 almost 26 of producing oil and gas wells. And
9 historically, we've seen somewhere between 2 and 5
10 percent of those wells being orphaned, over a
11 hundred-year period. And there's no reason, in my
12 mind, for there to be a lot of speculation about what
13 the future may hold.

14 As you know, in the oil and gas
15 industry, we have what's called a decline curve. And
16 that curve, that forward-looking curve, is based upon
17 past performance. And it's a pretty solid scientific
18 method of judging future performance as well. So
19 that's how I'd answer that question.

20 Q. And I appreciate that. Let's go to slide
21 Number 5. So when we started the hearing, you know,
22 the TA issues were something that I also was concern
23 with because of the production cycles, primary,
24 secondary and tertiary. And I did not -- based on the
25 experience, I don't feel like put in the eighth year,

1 you know, where -- I mean, we're probably not going to
2 be able to go through secondary, not even to tertiary
3 without really having premature plugging.

4 You know, so there have been a lot of
5 discussions here where there is a potential where the
6 applicant, even -- that was Mr. Alexander who provided
7 some exceptions, you know, for the beneficial use.
8 And that is definitely going to handle -- if the
9 applicant brings that back, that is definitely going
10 to help on the premature plugging in terms of the
11 beneficial use.

12 But I want to talk to you about the TA
13 status. So the TA status, too, I do like what the
14 applicant put forward, because they do have the
15 approved and then the expired TA status.

16 So let's focus on the approved TA
17 status, for instance. Based on the current rule, if
18 enacted, it sounds like approved TA will still need it
19 to be borne at 150,000. Is that your understanding?

20 A. That's my understanding.

21 Q. Now, on that one, don't you believe that,
22 let's say, an approved TA status means that OCD has
23 inspected this well to know that the mechanical
24 integrity of this well is so good? Is there any --
25 you know, should that approve TA also, more or less,

1 be in the same category as expired TA in terms of the
2 bonding?

3 A. No, I don't believe so. I mean, the
4 industry practice with respect to temporary abandon is
5 to set a cast iron bridge plug and usually some volume
6 of cement above it to circulate the well with inert
7 fluids and to pressure test. And if I recall the
8 rule, it's required, I think, every five years unless
9 otherwise notified by the Commission. But it's at
10 least a five-year test. That pretty well ensures the
11 mechanical integrity of that well.

12 And we've got to remember what we're
13 looking at in terms of wells. These are wells whose
14 bottom hole pressure is essentially zero. I mean,
15 right, you've got a fluid that can only -- if you've
16 got a 3,000-foot well, your bottom hole pressure might
17 be 200 or 300 pounds. So what does that mean? The
18 fluid can only migrate up 300 or 400 feet. It can
19 never get to the surface because there's not enough
20 bottom hole pressure at the bottom to push it all the
21 way up.

22 Now, some gas can migrate, you know, if
23 not TA'd. But if it's TA'd, everything is sealed down
24 there. And so to me, it's really -- in many ways,
25 when you think about the future potential of that

1 well, it's much better to leave a well in that sort of
2 status if it has future potential than to plug it.

3 Now, many of the studies that we did
4 back when I was working primarily on secondary and
5 tertiary recovery projects, and this is also -- I'm
6 going to complicate your policy plate here a little
7 bit -- is that one of the things that we found was
8 that when you take any given reservoir, when you plug
9 out some percentage of those wells, the economic
10 viability of that secondary or tertiary recovery
11 project is no longer there because you have to
12 re-drill those wells.

13 And the reason you have to re-drill
14 those wells is you have to be able to establish the
15 patterns to get the efficiencies to get the recoveries
16 to get the revenues. And so from a policy standpoint,
17 I am very reluctant to plug wells.

18 And the reason is, is that I think many
19 policymakers look at them and say, "Well, these things
20 are long-term liabilities." Well, not if they're
21 handled correctly, right? And the way I look at it is
22 they are long-term assets. They are the key strategic
23 petroleum reserve because they allow us access back
24 into the reservoir in order to apply some sort of
25 technology.

1 And so that's -- I probably took a long
2 way around the barn. And I apologize.

3 Q. But you believe that the expired TA wells,
4 they have to be bonded because those are wells that
5 probably OCD might be responsible for?

6 A. I would say that a properly TA'd well and
7 maintained should not be bonded. And in terms of --
8 whether there's some detail -- I would say, look, an
9 unapproved or a TA'd well that's out of compliance,
10 then I could see where that might require bonding.
11 But I think there's statutory limits as to what that
12 can be.

13 Q. Well, the applicant, you know, they do have,
14 you know, in the proposed rule -- and you did not go
15 through this rule exactly, so I don't want to really
16 push on that line. But in that they do have the
17 bonding for inactive wells; you know, it includes
18 approved and even expired. But what I'm suggesting is
19 that the approved needs to be dealt with separately.

20 A. I would agree with that.

21 Q. Yeah, from the expired. And they are
22 putting 150 bonding on expired because they are
23 non-compliance. And I don't think you disagree with
24 that.

25 A. I believe -- well, I'm not sure I

1 understand. Putting a hundred and -- well, putting a
2 single-well bond on, in my opinion, that ought to be
3 something that's looked at very, very carefully.

4 Because once again, if you've got a well
5 that is out of compliance in whatever way it's out of
6 compliance, then there ought to be a process that that
7 well is put back into compliance. And if the OCD
8 doesn't have the tools to do that, they should have
9 the tools to do that.

10 But I don't believe bonding is that
11 solution, especially when there's so much money
12 available from other sources and reclamation fund.
13 Now, when you take -- and the reason being it's
14 largely about capital. And capital is pretty precious
15 not only in the oil and gas industry, but in business
16 in general, for investment purposes.

17 Q. Okay. Let's go to slide Number 6. So slide
18 Number 6, bullet point two, you said propose rules
19 would have chilling effect. Is that based on the
20 details you've provided to us or specifically -- how
21 is the marginal rule? So let's take the marginal
22 definition for instance and then the beneficial use
23 and combine them.

24 A. Okay.

25 Q. So how is that going to provide a chilling

1 effect, you know, to the industry?

2 A. Okay. So with respect to margin -- well,
3 there's a number of areas. With respect to marginal
4 wells, it'll be clear that they either need to be
5 plugged or a substantial amount of money needs to be
6 put up very quickly.

7 And that goes back to my point of --
8 well, and this is going to answer your question,
9 because it really is about what the impact of that
10 would be.

11 I believe the chilling effect is going
12 to be that we have another example of regulatory
13 uncertainty going to an extreme. And that you also
14 have an expansion of regulatory authority into areas
15 that the industry typically has not seen before,
16 calling for financial records of private companies,
17 for example. That's chilling.

18 Private companies are private for a
19 reason. And there are metrics on their ability to
20 perform. But in this case, I'd have to agree that as
21 long as they meet the statutory requirements, that
22 diving in and having an agency that is charged with
23 protecting correlative rights, preventing waste,
24 protecting health and the environment, to some degree,
25 that's not exactly a mission that falls very well in

1 that agency.

2 Q. So let's talk about -- let's still talk
3 about marginal wells. There has been a lot of
4 discussions about changing the 1,000 to about 750 BOE.
5 Is that something that you will support?

6 A. It's not. And it's because I reject the
7 premise. I do. And with all due respect,
8 Commissioner, the thing is, is that we now have
9 agencies that are getting into economics. And they
10 don't know my wells' economics.

11 And unless you allow the owner to
12 continue to produce that asset, as long, as it's
13 economic to do so, if you disrupt that system, then
14 you're going to lose waste.

15 And in my opinion, I think -- and once
16 again, I'm not a lawyer, but in thinking about it, if
17 I have to prematurely plug a well because of the
18 arbitrary either production number or other number,
19 and I lose access to my profits and reserves, that's a
20 taking, in my opinion.

21 And that's not something that the OCC,
22 with all due respect, should be in the middle of. I
23 think, you know, you set reasonable bonding limits,
24 and we can debate about what those are in terms of
25 blanket bonds, that are consistent with other area

1 states, so that we stay competitive. And then you
2 ensure, through the procurement, through the process
3 of populating, as I think it was described, access to
4 these wells, and then you make sure that there's
5 funding. And we know that there's funding. And so
6 the whole approach to me is, from a public policy
7 standpoint, really poorly thought out.

8 Q. So, you are not -- so you've described, from
9 an operator standpoint, these marginal worlds, some of
10 them are economic, you know, based on, let's say, from
11 an operator's point of view.

12 You know, Commissioner Bloom has
13 proposed, or based on the discussion, we've discussed
14 about putting some exceptions with regards to the
15 definition, you know, to make sure that we are really
16 targeting the bad operators that are not really in
17 compliance. So it sounds like you are not in a
18 position to even help us with some of these
19 exceptions.

20 A. Well, I could be. But under the current
21 framework, I mean, I think I would have to really be
22 convinced that this is the right policy approach, and
23 I just don't see it right now.

24 I mean, it's -- and when you start
25 thinking about those exceptions, you're not going to

1 be able to catch them all, right? Maybe we'll catch
2 some of them.

3 But, you know, when I looked at it --
4 I'll just explain my situation. When I looked at it,
5 I said, Okay, I described the four wells, two federal,
6 two state, both of which are around 700 BOE, all of
7 which produce over 180 days. Okay?

8 But if you eliminated -- let's say they
9 produced 100 days. They produced 100 days, but they
10 made 1,000 BOE or 750 or whatever that threshold is.
11 Then I wouldn't make that, right? Because it would
12 have to be -- no, I would make that because I hadn't
13 produced the 180 days. But it's economic, right? So
14 I've got an economic well that doesn't produce the 180
15 days. That's marginal.

16 Q. No, it's not.

17 A. Or maybe I had that backwards.

18 Q. Yeah.

19 A. Excuse me. Yeah, it at least has to produce
20 180 days, right?

21 Q. And less than 1,000.

22 A. Yeah, less than 1,000. Okay. Well, I was
23 just using numbers. But let's say that -- let's say I
24 have a well, which I do, I have four wells that
25 produce 700 BOE, they produce over 180 days. All

1 right? So they're okay. But what if they produced
2 100 days? They wouldn't be okay because it's "and."
3 Here, it hurts. Right? Because I can show that well
4 being economic, but it didn't make the 100 days -- or
5 180 days of production. So it's got to be 750 and
6 180. I'm 750 and 100. I'm not exempt.

7 Q. So let's attach on that one. And that is
8 where the Commission is also considering that -- let's
9 say in this instance there could be an issue why the
10 well was not able to produce after the, let's say, 750
11 or, let's say, 1,000.

12 So there are some of these issues that
13 could happen that the Commission is looking into to
14 put it as an exception so that you do not really go
15 after a well that because of, let's say, a mechanical
16 issue or some kind of issue, pipeline, whatever, they
17 were not able to meet that criteria.

18 So we're trying to see if we can come up
19 with some exceptions to make sure that we do not
20 necessarily go after wells that are economical.

21 A. I'd be interested to hear, you know, how
22 that would go. I think the approach is -- when I
23 began sort of that thought process of what you're
24 talking about, I considered sort of the factors that I
25 could think of that might go into sort of that

1 economic analysis, and they would probably be better
2 than this, but not much better.

3 And the reason -- here are the facts.
4 We talked about age. I think everybody sort of agreed
5 with that. We talked about depth. I think -- but we
6 also have to talk about location, northwest or
7 southeast. We have to talk about is it primary oil or
8 gas. I mean, is there hydrogen sulfide available?
9 What is the gathering situation? What is the -- what
10 are the natural processes that are going on with the
11 well that might make a 200 BOE well profitable that
12 produces 30 days. It wouldn't meet that either.

13 And so what I'm saying is, is that when
14 you approach it in that way, you're never going to get
15 it really right.

16 The way to do it I think historically
17 has been correct, and that is, you leave the owner and
18 the operator in charge of determining the economic
19 benefit, and then you protect yourself and you protect
20 the state through reasonable bonding and through the
21 use of the funds the industry has dedicated to
22 plugging that. And that is the ultimate protection.

23 Once again, I probably took the long way
24 around the barn. I apologize, Commissioner.

25 Q. So you talked about funds holdup. You know,

1 you talked, still on this slide, you talked about
2 funds hold up that could have been utilized instead of
3 using to pay high premiums on financial assurance
4 surety bonds.

5 And Mr. Gilstrap yesterday testified to
6 the Commission presenting two scenarios. And one of
7 the one of the scenarios that he presented here was a
8 situation where an operator has to put up 3.75 million
9 to 5.25 million yearly payments on the surety bond. I
10 mean, there's a lot of numbers.

11 A. That's a lot of money.

12 Q. Now, you know, you talked about funds is not
13 the problem, right for the orphan, or let's say for
14 the plugging. Now, with this huge amount of money
15 that is going to be held up to just paying premiums,
16 just paying premiums to the surety companies, I'm not
17 sure how that solve the plugging problem. I don't
18 know.

19 A. I don't know either, and I'm not familiar
20 with those particular circumstances. I guess this has
21 been -- this is my experience, and that is, even if
22 you had -- let's say that you created a brand-new
23 company and you funded it with a whole lot of money,
24 you just put \$100 million into a brand-new company and
25 it's going to come into New Mexico and it wants to

1 explore and buy wells and do all the things, and it
2 needs bonding. Right? It would probably, even with a
3 lot of money in the bank, would have to put that
4 bonding up in cash.

5 And the reason is, is that, this would
6 have been my experience, the surety companies are not
7 going to write a bond just based upon your assets.
8 They're going to write a bond based upon how long
9 you've been in business, what your track record is and
10 so forth.

11 So when I say it has a chilling effect
12 or there's all these input -- all these impacts, it's
13 primarily to those people that are entering the
14 business, right? Those of us that are well
15 established in the business are probably paying some
16 of the premiums you heard, 1, 2, 3, 5 percent maybe.
17 But the entrants, many of the companies coming into
18 this, are either going to have to put up a cash bond
19 or they're going to pay a very, very high percentage.

20 And my point is only this, is that
21 capital is very, very precious. And given that, in my
22 opinion, the orphan-well situation, the reclamation,
23 the plugging is largely addressed through the
24 reclamation fund, is it good policy to take millions
25 or tens or hundreds of millions of dollars and put it

1 into a fund that may be released later, may not, but
2 probably will, when that money could be invested in
3 this state, actually finding and producing oil and
4 gas?

5 And if you think about that, when a
6 company comes into the state, they're not looking just
7 to get their money back, right? So let's say they
8 have to pay the \$5 million in premiums. Well, if they
9 invested that \$5 million, they would expect probably
10 \$15 million back, two or three to one return, or
11 otherwise they won't stay in business.

12 That money, a good portion of it, comes
13 right to the beneficiaries, comes right to the state.
14 So where do you want the money? Do you want it
15 sitting in a can under grandma's bed? Or do you want
16 it out drilling wells, producing, paying salaries? I
17 mean, that's the policy argument, I believe.

18 Q. Yeah. But we all agree that the orphan well
19 could be a problem for our state, right? So based on
20 the discussion that we're having, my question to you
21 is what is the alternative situation?

22 A. Well, I had this conversation with
23 Mr. Tremaine, and he said there's roughly -- I
24 disagree there's that many wells, but let's take his
25 number. And we'll take a compromise number. He said

1 3,100. I'll use 3,000 because I'm sitting here.
2 3,000 times \$150, 450 million would be generated in
3 three years from the reclamation fund, if they could
4 spend it.

5 Now, remember, not all those wells are
6 ready to be plugged. They're worried about them.
7 Some they're somewhat worried about, some they're
8 really worried about. But once again, it's
9 speculation.

10 We've got, I think, 700 wells, I think
11 was the number that was discussed here. That's, I
12 don't know, what, \$15 million, 12 and a half million
13 dollars, something like that. So that's why I say
14 that the money is not a problem, because the money is
15 coming in faster than the activity is happening.

16 Q. So you don't believe that operators should
17 more or less be asked to put a bond that could be
18 utilized -- or let's say a bond that is almost close
19 to how much it costs to plug the well?

20 A. I don't believe -- and let me speak to I
21 think what we've all been trying to address, either
22 the bad actors or the unfortunate situations where the
23 state is left with a lot of wells, right? I don't
24 think that's -- and historically we haven't seen that
25 that just drops in our lap; it happens over time and

1 we can deal with it, as we have for 100 years.

2 And I'll just go back, I think the ones
3 that you want to collect it from, you'll never collect
4 it from. In other words, if you go to the 10
5 operators that they have talked about being 89 percent
6 of the problem, you're probably not going to collect
7 from them. If you go to the list that was even more
8 expensive than I thought, however many hundreds there
9 are that haven't put up the 150, most of them probably
10 won't either.

11 So what's going to happen? What's the
12 impact of that? No money collected, huge transfer of
13 wells over to be the plugging fund. When many of
14 those wells might very well have been plugged over
15 time. So I just don't see the policy or economic win,
16 Commissioner.

17 Q. Yeah, but so assuming those ten companies --
18 or let's say the companies that are going to earn the
19 most, assuming OCD was able to bond each of these
20 wells, 150, 150, and then they've neglected their
21 responsibility, don't you believe that OCD can go to
22 the surety companies and get the same amount instead
23 of using the state funds to plug these wells?

24 A. I don't believe so. I don't believe, from
25 my knowledge of the sureties and bonding and the state

1 of the industry, that the operators that you target
2 are going to are going to do that.

3 Look, how realistic is it to think of an
4 operator having, let's just say, 50 wells and he
5 doesn't report production on them for 12 months.
6 Right? But he's going to come up with seven and a
7 half million dollars in bonds? That's just not
8 realistic to me, Commissioner.

9 COMMISSIONER AMPOMAH: Yeah. Thank you for
10 your time, sir.

11 THE WITNESS: Thank you, sir. I really
12 enjoyed the discussion. I think we're fleshing it
13 out a little bit.

14 UNIDENTIFIED FEMALE: Thank you.

15 Commissioner Bloom, do you have
16 questions.

17 COMMISSIONER BLOOM: Yeah, thank you Madam
18 Hearing Officer.

19 EXAMINATION

20 BY COMMISSIONER BLOOM:

21 Q. Good afternoon, Representative Murphy.

22 A. Hi, Commissioner. How are you?

23 Q. Fine. Thanks. Yourself?

24 A. I'm good.

25 Q. All right. Again, thank you for your

1 testimony. Thank you for your service as a state
2 legislator. I hear the pay is not great.

3 A. I've heard that too?

4 Q. Hey, I appreciate you having mentioned
5 Daniel Yergin' work, "The Prize." It's a fantastic
6 history of oil and gas. And you mentioned Oil Creek.
7 I was born in Oil City and grew up with Oil Creek in
8 the backyard. And my family's worked -- my dad's an
9 attorney, started off doing oil and gas law, finished
10 in oil and gas real estate.

11 My stepfather worked for Gulf, Mobile,
12 Halliburton over the years. When you talked about
13 downturns, I remember the '80s, I remember the 1'90s
14 when he was out of a job for, you know, a year or two
15 at a time, and it was tough times.

16 Representative Murphy, I'd like to get
17 into some of the issues around OCC's authority and
18 jurisdiction, as you said, and some of the issues that
19 you raised around that.

20 You stated in your written testimony,
21 Page 7, I quote: From my perspective, WELC is asking
22 the Commission to take steps that far exceed its
23 authority under the Oil and Gas Act. I'm no attorney,
24 but I have lived and worked with the Oil and Gas Act
25 and its regulations for the past 40 years. The

1 Commission's primary purpose has always been to
2 prevent waste and protect correlative rights. End
3 quote. Did I get that right?

4 A. Yes. I read along the same, yeah.

5 Q. So, Representative Murphy, you mentioned
6 engaging with the LFC staff on the well report and
7 being dissatisfied with it. I take it you've read the
8 report in its entirety?

9 A. I have.

10 Q. Yeah. Okay. I quoted a section to
11 Mr. Ezzell, and I'll read that again. It says, quote,
12 the federal Environmental Protection Agency estimates
13 annual methane emissions from the nation's inactive
14 and unplugged oil and gas wells are comparable to
15 adding an additional 2 million gas-powered cars to the
16 road. End quote.

17 Is that methane a wasted resource?

18 A. If that report is accurate, I would -- I
19 would say yes. And I'm sorry, Commissioner Bloom, I'm
20 not familiar with it, but you said that's a national
21 report, not a New Mexico-focused report; is that
22 correct?

23 Q. Yeah. That's a federal EPA estimate of
24 annual methane emissions from inactive and unplugged
25 oil and gas wells.

1 A. I'm sorry. Yes, I accept that.

2 Q. We heard from the OCD that 60 percent of
3 inactive wells in New Mexico leak methane. If that's
4 true, is this also fugitive methane waste, and then
5 does the OCC regulate waste?

6 A. Yes. Along with others.

7 Q. Yeah. Does proper plugging stop methane
8 leakage and waste?

9 A. It does, but it's not the only method.

10 Q. You're a long-time --

11 A. But I think it's important --

12 Q. Yeah, go ahead. Finish.

13 A. Yeah, Commissioner Bloom, I also think
14 it's -- to put this in perspective -- and I see where
15 you're headed and I share the concern about methane
16 being vented from unplugged wells.

17 But I would also note this, is I think
18 we always sort of have to quantify what we're talking
19 about. And plugging the well is one option. We can
20 talk about the pros and cons of that. But the easy
21 option would be to TA the well, or the even easier
22 option is to basically just fix the minor leaks, which
23 should be done.

24 But in order to quantify this -- because
25 I've really had a question about it. And during last

1 week's water and natural resources, we were presented
2 with a presentation from the New Mexico Environment
3 Department, and it talked about this very subject. It
4 talks about the New Mexico oil and gas greenhouse
5 emissions inventory for year 2023 for methane and
6 carbon dioxide. And this is a report director Miano,
7 of EPA Division, New Mexico Environment Department,
8 presented in Artesia.

9 And I find it interesting that we have a
10 number of categories. We have production, gathering
11 and boosting, processing, transportation and storage,
12 and inactive oil and gas wells. Now, all of these
13 colors represent these first four. This red color,
14 inactive oil and gas wells, does not appear on this
15 chart. So I think when we talk about this, we need to
16 quantify the numbers, right? They're so low that the
17 New Mexico Energy Department isn't even graphing them.

18 So I hope that answered your question.

19 Q. Yeah, it did. Thank you, Representative
20 Murphy.

21 So I know you're a long time oil and gas
22 man, and so in terms of those emissions, we'd also be
23 getting some of the volatile organic compounds, the
24 BTEXs, benzene, toluene, ethylbenzene and xylene,
25 correct?

1 A. Correct.

2 Q. You know, it's certainly my understanding.
3 I believe it's the Commission's understanding that the
4 Commission is also charged with protecting the
5 environment, water and public health. Do you agree
6 with that?

7 A. I do agree with that.

8 Q. I'm not sure where we're going to end up in
9 this rulemaking, but, you know, I am interested in
10 exploring where we have authority, and we wouldn't
11 want to exceed that. And, you know, perhaps from what
12 I'm seeing, this probably ends up in the courts or
13 something, and they can decide.

14 We've been over some of this. I feel
15 like I'm repeating, you know, questions with the same
16 answers I got from Mr. Ezzell and other, you know,
17 NMOGA witness also. But I guess we're seeing some
18 commonalities in the testimony as well.

19 A. Representative, if you also talked to us
20 about your legislative work in the last session and
21 for the upcoming session; is that correct?

22 Q. I mean, at the end of the day, can anyone
23 guarantee what the legislature will do?

24 A. No. Just like we can't guarantee what the
25 courts would do.

1 Q. You know sometimes we think our bills are --
2 you get the promises and it doesn't happen. I mean,
3 I'm sitting here, you know, from the land office
4 perspective. It took us seven years and six attempts
5 to get our royalty rate bill through.

6 A. Glad you got it done. Well, let me offer
7 this, Commissioner Bloom, that when I present the
8 reclamation bill with the protections in there, I hope
9 that the State Land Office will be there as an expert
10 witness supporting that testimony.

11 Q. That's actually something to think about.

12 A. Yeah, maybe the OCD will show up, too.

13 Q. Finally, I go back to some other questions
14 that I asked Mr. Ezzell about, and that's just related
15 to the land office, you know, feeling the need back at
16 the end of I think it was 2020, to institute an
17 accountability and enforcement program to get orphan
18 wells and inactive wells closed on state trust lands,
19 because the companies weren't doing it.

20 And, I mean, you've probably seen some
21 of the information we've put out that, you know, so
22 far that program has succeeded in plugging -- you
23 know, really kind of working with and enforcing and
24 sometimes suing operators and lessees on state trust
25 land, to plug 750 wells.

1 A. Yeah I've heard that testimony, Commissioner
2 Bloom. I'd also -- I've encouraged both the Bureau of
3 Land Management and I would encourage your office to
4 look at issuing leases with unplugged wells as long as
5 the purchaser is willing to take on that
6 responsibility and bond them.

7 And that would actually eliminate a lot
8 of problems, both on -- at any rate, that's a policy
9 discussion we can have later.

10 Q. And that's interesting because that might
11 require legislation as our oil and gas lease is set
12 statutorily when we re-lease land to the next lessee,
13 gets that free and clear.

14 COMMISSIONER BLOOM: All right, I think,
15 Representative Murphy, I'm starting to fade at the
16 end of the day. I'm going to leave it there. Thank
17 you so much for your time and testimony today?

18 THE WITNESS: I very much appreciate your
19 background there. I hope you're putting on some skis
20 and hitting the Matterhorn or something. It looks
21 good.

22 COMMISSIONER BLOOM: I'd love to?

23 HEARING OFFICER ORTH: Thank you,
24 Commissioner.

25 THE WITNESS: Thank you, Commissioner Bloom.

1 HEARING OFFICER ORTH: Chair Chang, do you
2 have questions?

3 CHAIR CHANG: Representative Murphy, thank
4 you very much for joining us here and providing us
5 with your testimony.

6 I'll just make a brief comment that
7 whatever comes of this current bonding petition, I
8 certainly agree with you that OCD needs to make the
9 best possible use of every dollar in the reclamation
10 fund, and I certainly hope we can work with all the
11 various stakeholders to make that happen in terms of
12 the specifics. I think we've covered it in fairly
13 exhaustive detail, so I think I'll let you go for the
14 afternoon.

15 THE WITNESS: Thank you very much. I
16 appreciate you.

17 CHAIR CHANG: Thank you.

18 THE WITNESS: Thank you, Commission.

19 HEARING OFFICER ORTH: Thank you,
20 Representative Murphy.

21 THE WITNESS: I guess that you didn't
22 actually release me, so I spoke a little bit.

23 HEARING OFFICER ORTH: Is there any reason
24 not to excuse Representative Murphy?

25 MS. TRIPP: Thank you so much. No.

1 HEARING OFFICER ORTH: Thank you very much.

2 Well, it is 3:47. Sheila, do we have --
3 it looks as though there are a number of names for
4 the 4 o'clock. Do we have some of those folks on the
5 platform already?

6 MS. APODACA: I haven't seen any, and we had
7 forewarned some of them that we may not be in session
8 this afternoon, so they may not all be in attendance.

9 HEARING OFFICER ORTH: All right. Thank
10 you. Do you want to take the first 15 minutes?

11 MR. CLOUTIER: We can introduce Dr. Arscott,
12 and he can start it up. We've discuss that we may
13 need to chop him up a little bit.

14 MS. APODACA: We do have one in-person
15 commenter, if you'd like to take him down.

16 HEARING OFFICER ORTH: No. We're going to
17 do 15 minutes of Dr. Arscott, and then we'll go to
18 the public.

19 MS. APODACA: Very good.

20 MR. CLOUTIER: IPANM calls Dr. Rob Arscott.

21 And, Ms. Apodaca, if you could give
22 Mr. Arscott -- would you e-mail him the hearing
23 notice so he can log in to the Teams meeting.
24 Ms. Tripp and I forgot to do that.

25 MS. APODACA: He's logged on and he has the

1 permission.

2 MR. CLOUTIER: Thank you. All right.
3 Appreciate it, Ms. Apodaca.

4 So we're going to do our best to speed
5 Dr. Arscott up by having me ask a few questions and
6 then get out of the way and let him run through his
7 presentation with fewer questions from me.

8 HEARING OFFICER ORTH: Dr. Arscott, would
9 you please spell your first and last name.

10 THE WITNESS: Robert Arscott, R-O-B-E-R-T,
11 A-R-S-C-O-T-T.

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

14 THE WITNESS: I do.

15 HEARING OFFICER ORTH: Thank you very much.
16 Go ahead, Mr. Cloutier.

17 ROBERT ARSCOTT,
18 having first been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. CLOUTIER:

21 Q. Would you please introduce yourself to the
22 three members of the Commission.

23 A. May I share my screen? There you go.

24 Yeah, my name is Rob Arscott. I'm here
25 to offer testimony on behalf of the Independent

1 Petroleum Association of New Mexico.

2 Currently, my role is as an economist.
3 I do consulting work at a company called Applied
4 Economics in Austin, Texas. Prior to this role, which
5 I've been in for about two years now, I was an
6 assistant professor of finance at Syracuse University,
7 where I taught courses on corporate finance topics and
8 real estate.

9 And in a previous life, a long time ago,
10 I worked in syndicated lending at an investment bank,
11 and in private equity as an acquisitions associate at
12 a real estate fund in London, England.

13 My education, I have a bachelor of
14 business administration from Concordia University in
15 Austin. I have an MBA from Oxford University in the
16 UK. And I have an MSBA in applied economics, and a
17 PhD in finance from the University of Rochester.

18 Q. And very briefly, what do you do at Applied
19 Economics, Dr. Arscott?

20 A. Yeah, so Applied Economics and I regularly
21 consult on matters related to oil and gas. I would
22 say the majority of my work over the past little over
23 two years now has been with various oil and gas
24 clients, both upstream operations as well as in
25 midstream.

1 Here's a brief little sample of some
2 clients that I've worked with over the past year.
3 Some of them are fairly large producers. Some of them
4 are not so large. Kraken Resources, for example,
5 would be an example, a private equity backed operator
6 that primarily operates out of the Bakken in North
7 Dakota.

8 Q. Thank you. And you submitted direct and
9 rebuttal testimony in this matter?

10 A. I did.

11 Q. Do you have any corrections to that
12 testimony?

13 A. I do not.

14 MR. CLOUTIER: All right. We offer
15 Dr. Arscott's direct and rebuttal testimony into
16 evidence. And then Dr. Arscott is the sponsor of IPA
17 and Exhibits 1 through 9 and 29 through 36, which we
18 also tend to read I'm hearing officer.

19 HEARING OFFICER ORTH: Thank you. I'll
20 pause for a moment in the event there are objections.
21 BY MR. CLOUTIER:

22 Q. And from now on, Dr. Ascott, I'm going to
23 let you take it away. And I may interrupt if I think
24 something needs clarification, but why don't you go
25 ahead and talk to the Commission, at least about the

1 first point you'd like to make.

2 HEARING OFFICER ORTH: The exhibits are
3 admitted.

4 MR. CLOUTIER: Thank you. I apologize,
5 Madam Hearing Officer.

6 (Admitted: Arscott Direct and
7 Rebuttal Testimony, IPANM Exhibits
8 1 through 9 and 29 through 36.)

9 A. All right. Well, thank you very much.

10 So I guess I'll start with this question
11 as to what is the right amount of financial assurance.
12 And so I've been asked to work on this financial
13 assurance aspect of the proposed rule.

14 And in part of my work in this, I've
15 been doing a lot of research on -- I've been doing
16 research into some of the theoretical, at least in a
17 perfect rule, theoretical amount of financial
18 assurance, how would you determine that.

19 But it's really based on something known
20 as the judgment-proof problem, which is related to
21 this concept of limited liability, which is very
22 important to our capitalist economy. If it weren't
23 for limited liability, we would likely not have the
24 level of innovation and investment and entrepreneurial
25 activity that we enjoy in this country. It encourages

1 people to take risks.

2 And the dark side of this is sometimes
3 we run into moral hazard issues, such as this concept
4 known as the judgment-proof problem. The
5 judgment-proof problem arises when you have, in this
6 case, an operator that becomes insolvent. They
7 declare bankruptcy, and through bankruptcy protection,
8 an operator can shirk its responsibility potentially
9 to properly plug and abandon its wells.

10 And so the duty to plug and abandon the
11 wells then falls to the state, at the state's expense.
12 And this is obviously not an ideal outcome, especially
13 from a social standpoint. And so we have to come up
14 with ways in which we can encourage bad actors, for
15 example, to behave like good actors.

16 One of the ways that we do this is with
17 a bond. So what the bond does is the bond requires
18 the operator to put up some monetary incentive to
19 provide for the incentive to plug and complete the
20 well according to his obligation.

21 If the operator fails to plug the well,
22 he'll forfeit the bond. That money will then go to
23 the state to aid in plugging the wells. And in
24 addition to providing an incentive to plug the wells,
25 this actually delivers money to the state to help with

1 the plugging effort. So in that sense, it's an
2 efficient way to deal with this judgment-proof
3 problem.

4 Now, there is this tension between
5 economic growth and public protection. Obviously, the
6 bond can protect the public from the costs of plugging
7 and abandoning wells that are abandoned by private
8 industry. But if we set the bond amount too high, it
9 will stifle economic growth.

10 Now, there is a theoretically ideal
11 amount of bond protection. And the economic
12 literature is actually clear on this. It's related to
13 the expected P&A cost of a well. But actually, the
14 P&A cost and expectation for a well is actually the
15 maximum bond amount that, in theory, you should
16 require.

17 The reason why the ideal bond amount may
18 actually not be equal to expected P&A costs is because
19 operators face a lot of other potential deterrence to
20 defaulting on their obligations to plug their wells.
21 Some of those deterrence are non-monetary. For
22 example, the operator faces a reputational risk if
23 they fail to honor their obligation to plug wells.
24 Aside from non-monetary considerations, operators also
25 have monetary considerations related to lost profit,

1 potentially from continued operations.

2 You can imagine an operator that, in
3 expectation, might think that they might be able to
4 reap substantial profits from continued operations in
5 the state. But if they fail to plug their wells, they
6 may find that they face permit denials from the
7 regulatory authority, in addition to possibly
8 revocations of their authority to transport oil and
9 gas in the state. That would effectively end that
10 operator's ability to do business in the oil and gas
11 industry in the state and represent a significant
12 monetary cost if he fails to plug his well.

13 So, in the portfolio of incentives that
14 the operator faces that would lead him to honor his
15 obligation, in some cases, the bond, even a bond in
16 the full amount of the expected plugging and
17 abandonment expense, may not really move the needle
18 much in terms of affecting the operator's decision to
19 honor his obligation.

20 So, in that case, the bond amount,
21 whatever the cost of that bond is, would be a pure
22 cost and not necessarily have any associated benefit.
23 In that respect, the ideal bond amount might actually
24 be considerably lower than the expected cost of
25 plugging and abandonment.

1 Because the ideal bond amount is in some
2 ways connected to expected P&A costs, it's important
3 to recognize that there's considerable variation in
4 plugging and abandonment costs in the data. For
5 example, the OCD's plugging costs may not reflect
6 typical costs of plugging wells throughout the state.
7 According to Ben Shelton, the OCD's cost may be
8 anywhere between 10 to 15 percent higher than what
9 private industry's costs are.

10 Regardless, if we were to set a bond
11 amount at, say, 150,000 per well, if this is somewhere
12 near the average cost for wells in the state, by
13 definition, the median or the average is going to be
14 set higher than about half of the wells in the state.

15 Now, to the extent that we're talking
16 about wells that, in expectation, have plugging costs
17 that are less than 150,000, for example, a well that
18 maybe costs 50,000 or even, let's say, 100,000, a well
19 that, in expectation, will cost 100,000, we know that,
20 theoretically, the optimal bonding amount should be no
21 more than the expected costs of P&A'ing in the well.
22 So if a well is an expected cost of P&A equal to
23 100,000, imposing a financial assurance burden in the
24 amount of 150,000 on that well presents an
25 economically unjustified cost.

1 We're not necessarily talking about
2 forcing operators to fully internalize the costs of
3 their activity at that point. We're now imposing a
4 cost in excess of what is economically justified.
5 Now, this can lead to the premature plugging of wells,
6 which ultimately would lead to waste, reserves that
7 are lost beneath the ground because we plugged the
8 well prematurely.

9 There are other sources available to
10 address the orphan well problem. We've heard from
11 several people during this hearing. The OCD
12 reclamation fund is one such source. There is a
13 conservation tax of anywhere between .19 percent and
14 .24 percent that is charged on all hydrocarbons
15 severed and sold in the state. Depending on oil
16 prices, either 10 to 20 percent of that revenue is
17 diverted to the reclamation fund.

18 According to the LFC report that was
19 published earlier this year, the fund had a balance of
20 60 million as at the end of fiscal year 2024.
21 Although, as we've heard from Representative Murphy,
22 that may be significantly higher. I think he said 76
23 million.

24 There are also federal grants that can
25 be used to address the orphan well problem. According

1 to the LFC report, a little over \$55 million of such
2 grants have already been used in New Mexico. And
3 New Mexico remains eligible for a further 111.8
4 million.

5 So, the proposed rules will lower the
6 incentives to produce oil and gas in New Mexico. And
7 I say that because there is an increase to the cost of
8 production related to the amount of financial
9 assurance that's levied on the operator. To the
10 extent that that financial assurance is economically
11 unjustified, it's too high. And if it's too high,
12 then it increases fixed costs above what's
13 economically justifiable and, therefore, reduces the
14 incentives for operators to continue to produce oil
15 and gas.

16 The effects will vary by operator
17 depending on the types of wells that they operate in
18 their own financial condition. This one-size-fits-all
19 \$150,000 per single well is, I would argue, overly
20 broad because it ignores the default likelihood and
21 cost of default that is unique to each individual
22 well. In some cases, FA costs will be extreme.

23 And in these cases, I'm going to mention
24 two specifically. One is an instance of a cash bond.
25 The other is this 15 percent threshold that we've

1 heard about many, many times. So the cash bond is, as
2 opposed to a surety bond, this is a bond that requires
3 100 percent collateralization. The operator that is
4 taking out a cash bond has to put up full \$150,000
5 today. They may not plug the well for years to come,
6 after which they can get the money from their bond
7 back only after the well has been verified as plugged
8 correctly. All the while, the operator is out that
9 capital. If I have to deposit \$150,000 today, that's
10 \$150,000 that I don't get to deploy for other
11 purposes.

12 To the extent that we're talking about
13 operators of PDP reserves, or proven develop producing
14 reserves, those typically have a discount rate of
15 about 10 percent per year. So an operator that's
16 setting aside \$150,000 on a cash bond actually faces a
17 bonding cost on an annual basis equal to 10 percent of
18 that amount. So these cash bonds are actually quite
19 expensive relative to surety bonds that may have fees
20 ranging between 2 percent and 3 percent.

21 The other case in which FA costs will be
22 extreme, in my estimation, will be in cases where the
23 portfolio of the operator contains more than
24 15 percent either marginal or inactive wells as the
25 proposed rules define them. I'll give you two

1 examples after comment.

2 HEARING OFFICER ORTH: Thank you very much.
3 I thought perhaps before you started your next slide
4 we could do public comment.

5 So we have reached another public
6 comment session. Is there anyone in the room who
7 would like to -- so, Dr. Arscott, if you would vacate
8 the witness stand.

9 And, sir, if you would come up. If you
10 would say and spell your first and last name please.

11 MR. MCQUEEN: My name is Matthew McQueen,
12 M-A-T-T-H-E-W, M-C-Q-U-E-E-N.

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

15 MR. MCQUEEN: I do.

16 HEARING OFFICER ORTH: Thank you. Go ahead.

17 MR. MCQUEEN: Thank you, Chair, Members of
18 the Commission. My name is Matthew McQueen. I'm a
19 member of the New Mexico Legislature. And I've been
20 in the legislature for 11 years, and for the past
21 nine years, I've chaired the House energy,
22 environment and natural resources committee.

23 I'm here today as an individual, as a
24 legislator, to encourage you to adopt a strong and
25 effective bonding rule. I caught a little bit of the

1 testimony and my colleague, Representative Murphy,
2 and he's on the committee that I chair.

3 I will tell you, I was also at the water
4 and natural resources committee meeting in Artesia
5 last week. And it was interesting to me -- the
6 recommendation fund was discussed at some length.
7 And it was discussed shortly after we discussed the
8 liability in un-remediated uranium mines that exist
9 in New Mexico.

10 To me, the bonding is -- I describe it
11 as an insurance policy. I think it is a form of
12 insurance. This is what we will draw on if we ever
13 need to. Hopefully, we don't need to. But the State
14 of New Mexico can't continue to leave itself in the
15 position where it has to clean up after industry when
16 industry goes south.

17 The reclamation fund is being used. I
18 support Representative Murphy's legislation to stop
19 diverting a portion of that fund so we have more of
20 that fund available and that we can ramp up the
21 expenditures of that fund. But the reclamation fund
22 serves a different purpose. It's different than
23 bonding.

24 The reclamation fund, in my mind, is
25 what we use to plug and abandon wells that have

1 already been abandoned or already been orphaned. And
2 the bonding is what we will use in the future,
3 especially if there is a downturn and a lot of these
4 are orphaned at the same time, whether it's a single
5 company or industry-wide.

6 And I will say, I hear occasionally that
7 the smaller operators can't afford the bonds. And it
8 sends a shiver down my spine because if they can't
9 afford the bonds, how are they going to plug and
10 abandon their wells?

11 And those my comments. Thank you very
12 much.

13 HEARING OFFICER ORTH: Sheila, who do we
14 have on the platform?

15 Ms. APODACA: I don't see anybody on the
16 platform.

17 HEARING OFFICER ORTH: If you're on the
18 platform and would like to offer public comment at
19 this time, please raise your virtual hand. If you
20 have dialed in, you would raise your hand by pressing
21 star 5. No one?

22 All right. Our next public comment
23 session will be at 9 o'clock tomorrow morning. We
24 will also have a public comment session Thursday at
25 9 o'clock in the morning.

1 Let's go back to the technical case,
2 Dr. Arscott. Sorry for the interruption. Please go
3 ahead.

4 A. No. Thank you. Okay. So I'm going to move
5 back one slide. The issue I was discussing is what I
6 think the proposed rules, what effect they'll have on
7 the incentives to produce oil and gas in New Mexico.

8 And I think in particular this
9 15 percent threshold may have a barely significant
10 distorted effect on the incentives to produce oil and
11 gas. To illustrate, I'll give you two examples. Both
12 examples will be operators with only ten wells.

13 This first example we'll call Operator
14 A. Operator A has ten wells, eight of which are
15 highly productive; one with low production, but not
16 marginal, as defined in the proposed rule, and one
17 inactive. Now the 15 percent threshold is, again, if
18 there's 15 percent either marginal or inactive wells
19 in the operator's portfolio. And as it stands, with
20 only one inactive well, this operator is currently at
21 10 percent.

22 Under the proposed financial assurance
23 rules, the inactive well will require a single bond in
24 the amount of \$150,000. But the other nine would
25 qualify for a blanket bond in the amount of \$250,000.

1 All in, this is a \$400,000 financial assurance amount.

2 Now, the issue is if the low-producing
3 well declines into marginal status, if that happens,
4 the operator will have 20 percent of his wells in
5 either inactive or marginal status. That will trigger
6 the 15 percent threshold rule, which will increase the
7 required bonding amount to \$150,000 on all ten of this
8 operator's wells. As a result, the financial
9 assurance amount will increase from \$400,000 to
10 over -- well, to \$1.5 million.

11 And I almost said over, because the
12 actual increase in the cost might be more than, say,
13 three times as much. We've almost tripled the amount
14 of bond required. But there is also a secondary
15 effect in terms of the premiums that this operator may
16 have to pay on those bonds, because all else equal, if
17 we increase the amount of debt or the amount of
18 bonding required that's extended from, say, a surety
19 provider, that increases the risk to that provider.
20 And as you increase the risk, a rational provider of
21 that security will charge a higher premium.

22 And so what you may have is not only an
23 increase in the bond amounts, but you may also have a
24 concomitant increase in the premiums charged on those
25 bonds.

1 I'll give you a second example. We'll
2 call this Operator B. Operator B also has ten wells,
3 five of which are highly productive, and five are
4 marginal. Five of these ten wells would be classified
5 as either marginal or inactive, therefore triggering
6 the 15 percent threshold rule.

7 Under existing financial assurance
8 regulations, this operator could have covered its
9 financial assurance obligation with a \$50,000 blanket
10 bond. However, under the proposed rules, all ten of
11 this operator's wells would require \$150,000 each.
12 Again, resulting in a financial assurance amount of
13 1.5 million.

14 There are two aspects of this that I
15 would like to point out. In reference to Operator A,
16 who had nine -- or rather eight highly productive
17 wells, in comparison to Operator B, which has only
18 five highly productive wells, both of these operators
19 are charged the same amount of financial assurance.

20 To the extent that marginal wells are
21 argued to be more risky from an orphaned-well
22 perspective, which to be clear, I'm not saying one way
23 or the other, although that is the implication, I
24 believe, we have two portfolios that vary in their
25 risk in terms of producing orphaned wells and yet they

1 have the identical amount of bonding assurance.

2 I think it's worth asking how we think
3 operators will respond to this 15 percent threshold.
4 As the previous two examples have shown, there is a
5 significant incentive to immediately plug or sell
6 these marginal wells.

7 In the case of Operator A, who had a
8 low-producing well that was declining into marginal
9 status, incentive to plug that well that is not yet
10 marginal before it gets to marginal status. The
11 increase in financial assurance as a result of the 15
12 percent threshold presents a very large increase to
13 the fixed cost of operating wells. Therefore, I would
14 expect operators to expend considerable effort in
15 order to plug these wells before they can cause the
16 cost to the operator to skyrocket because of the
17 \$150,000 bonding requirement on every single one of
18 the operator's wells.

19 Ultimately, I think this will lead to
20 premature plugging. Because we have to ask ourselves,
21 how will this operator get rid of these marginal
22 wells? Maybe you could try to sell them. I don't
23 think there would be a market for these wells, because
24 any likely buyer would face the same concerns about
25 the 15 percent threshold. Therefore, it is highly

1 likely that these marginal wells would all be
2 prematurely plugged.

3 In of why increasing financial assurance
4 would affect the economic life of a well, I'm going to
5 give you guys a picture. This is IPANM Exhibit 2.
6 And what I'm showing here is money on the vertical
7 axis, and time on the horizontal axis.

8 The declining curve that starts out very
9 high and declines over time becomes very low and the
10 slope becomes shallower, is my sort of rough
11 approximation of the net inflow produced from a well
12 over time. So as the volume of production declined
13 over time at a constant assumed price, we get this
14 curve that captures our net inflow, meaning the amount
15 of hydrocarbons produced multiplied by price minus any
16 variable costs associated with that production.

17 In addition to this curve that
18 represents the net inflow from the well, I'm also
19 showing a horizontal line that I'm calling fixed
20 outflow. These represent the fixed costs associated
21 with the well. These are the costs that you have to
22 pay every month regardless of how many barrels you
23 produce. So things like labor and electricity and
24 also financial assurance.

25 To the extent that the financial

1 assurance that's proposed in this proposed rulemaking
2 would lead the financial assurance costs in this well,
3 in this example, to exceed the economically justified
4 amount of financial assurance, those costs would
5 increase the fixed outflow line up, holding everything
6 else constant. It must be the case at the point at
7 which the net inflow curve crosses below this fixed
8 outflow line would move to the left.

9 This is an important point, because when
10 this curve, this net inflow curve, falls below the
11 fixed outflow line, the well starts producing at a
12 loss. So it's about that point that the operator
13 would find an economic incentive to plug the well, not
14 necessarily exactly that point because there's some
15 auction value in the well. Who knows? Maybe
16 commodity prices will increase tomorrow. But
17 generally, this is about the time that an operator
18 would find it from a purely economic perspective
19 advantageous to plug the well.

20 So having established that the economic
21 life of oil and gas wells will be shortened by the
22 proposed rule, I've asked myself this question: What
23 would have happened had we applied this rule several
24 years ago? Because I think, based on what I believe
25 the incentives are for operators in terms of avoiding

1 the 15 percent threshold, I think that it would be
2 highly likely that a lot of marginal wells would be
3 plugged prematurely.

4 And so I looked at June of 2017 in the
5 data supplied by Enverus. I'm looking at vertical
6 wells only. And in this month, June 2017, I applied
7 the definition for marginal well status to every
8 single one of these vertical wells in New Mexico. And
9 I collected all of the wells that would have been
10 categorized as marginal under the proposed rule, and
11 there is about 7,800 of these, exactly 7,844 of these
12 wells.

13 A great majority of them are listed in
14 row 1. Row 1 through 6, as you decline down the
15 table, increase in terms of the amount of barrels of
16 oil equivalent produced on a per well basis.

17 So the top row consists of all marginal
18 classified wells in June 2017 that ultimately went on
19 to produce next to nothing. And there are quite a few
20 of these wells. In fact, there's 6,260 of them.
21 Collectively, these 6,260 wells produced only 418,000
22 barrels of oil equivalent in the seven years after
23 June 2017. So pretty much none of these return to any
24 sort of meaningful production. Now, a number of these
25 have actually been plugged in the years since. In

1 fact, of those 6,260, 2,561 have already been plugged.

2 As we move down the table, I'm
3 categorizing wells into buckets according to how
4 productive those wells are. In the second row, this
5 consists of wells that went on to produce between
6 1,000 and 5,000 barrels of oil equivalent. In total,
7 when you think about aggregating these 892 wells on
8 row 2, they cumulatively, over those seven years,
9 produce almost 2.3 million barrels of oil equivalent.

10 This gets larger and larger as you move
11 down the table. If we look at the last row, these
12 would be the most prolific of these wells. There's
13 only six of these wells, but these six wells went on
14 to produce over a million barrels of oil equivalent.
15 Again, this all would have transpired after the point
16 at which these wells would have been characterized as
17 marginal.

18 Given the incentives that I think
19 operators would have with regard to should I plug this
20 well I think that's entering into marginal status,
21 because it has the threat of dramatically increasing
22 the financial assurance burden on the entire
23 portfolio, given the 15 percent threshold, I think
24 there's a strong incentive to plug marginal wells.
25 Had these wells been plugged prematurely, we never

1 would have realized this production.

2 Some specific examples of the wells in
3 this data set. Here is one, the San Juan 36 Unit 407.
4 You can see here, it's got a fairly -- it almost looks
5 like the classic arc/decline curve. For decades, this
6 well was very, very consistent. You can see there was
7 a brief cessation of production, though, right at the
8 point where -- I think this was about June 2017, in
9 which it was characterized as marginal because there's
10 about a year where it didn't produce anything.

11 Now, that obviously was a brief
12 cessation in this overall consistent period of
13 production. And it may be that this well would have
14 returned to production and would not have been
15 prematurely plugged. Although you have to consider
16 the fact that the likelihood that it would have been
17 plugged is much higher than it would be absent the
18 15 percent threshold.

19 Other examples include the federal G 1
20 well. This almost looks like a poster child of a well
21 that should be plugged. If you were to look at this
22 in June of 2017, you can see that the production had
23 been declining for a long period of time. In the few
24 years preceding June 2017, not only was the production
25 extremely low, but it was erratic. It may have been

1 determined that this is a well that should have been
2 plugged. And yet, with some stimulation, this well
3 has gone on to become a prolific producer.

4 Another example, this one is almost
5 certainly involved in a CO2 flood, but has undergone a
6 couple different rounds of stimulation. You can see
7 at multiple points in its history it would have been
8 classified as marginal and, again, the likelihood of
9 it being prematurely plugged cannot be ignored.

10 It's something that I think is visually,
11 at least for me, convincing that -- there are a lot of
12 different stories here behind where a well -- a well's
13 individual story in terms of what brought it to
14 marginal status. I don't think it's a uniform
15 categorization. I think there's a lot of variety in
16 the types of wells that you find categorized as
17 marginal.

18 And certainly in these cases that I'm
19 showing you, these are wells that should not have been
20 plugged at those times. I'll give you one last
21 example. This is the Scott 2A well. This is operated
22 by San Juan Resources, a small independent operator.

23 San Juan Resources purchased this well
24 right at the bottom of that first hill. Right at the
25 point where it would have been classified as marginal,

1 it had effectively ceased producing entirely, San Juan
2 Resources purchased the well, brought it back onto
3 production, and it's been producing at a stable rate
4 ever since.

5 So again, examples of marginal wells
6 that have plenty of productive potential in the months
7 and even years after which it would have been
8 classified as marginal. The effects of these proposed
9 rules, I think, will disproportionately affect small
10 operators.

11 Now, in order to make this a little bit
12 more clear, I'm going to give you guys this table
13 here, which is IPANM Exhibit 8.

14 In this table, I've taken my Enverus
15 data, which, again, is a subset of vertical wells
16 only. But here, I'm looking only at the vertical
17 wells in my sample that are either on state or private
18 fee lands as of November 2024, which is where my data
19 ends.

20 Now of these 376 operators identified in
21 the data, I've ranked them according to how many wells
22 each operator operates. So the first row is the very
23 smallest of these operators. There are 61 of these
24 operators, each operating a single well. So in
25 comparison to the total number of wells that we've

1 been talking about here, I know Mr. Purvis has
2 mentioned 63,000 wells, we're talking about a very,
3 very small amount of wells in terms of the grand
4 scheme.

5 I'm offering this table as a way to
6 illustrate how the proposed rule can be somewhat
7 regressive in terms of actually producing financial
8 assurance burdens that are particularly high on the
9 smallest operators and low for the largest operators.

10 For these 61 operators that operate a
11 single well, the average bond per well under the
12 existing rules was about \$39,000. Under the proposed
13 rules, the average would be \$150,000; again, because
14 the rules require a uniform single-well bonding
15 requirement of \$150,000 per well. It represents a
16 very significant increase in the actual bonding
17 amount, but again, the costs associated with the
18 bonding proposal here may actually be more than just
19 the multiple increase in the amount of the bond
20 because this may coincide with an increase in the
21 bonding premium charged on those bonds.

22 As we move down the table, we get to row
23 2, it's operators that operate between two and ten
24 wells. There are 130 of those operators. You can see
25 their average bond per well increases from almost

1 28,000 to a little over 100,000.

2 As you move down the list, you get
3 larger and larger operators in terms of the size of
4 their portfolio. However, I want to remind you that
5 this is only for vertical wells. And the largest
6 operators, take the last row, for example, operators
7 with more than 500 wells, these are some of the
8 largest operators in the state, they almost certainly
9 have large numbers of horizontal wells, for example,
10 that would not be included in this data.

11 Nevertheless, the table hopefully makes
12 clear that the proposed rules disproportionately
13 affect the smallest of the operators out there.

14 Continuing on this theme, I'd like to
15 maybe do a little bit of an example, sort of a toy
16 example, thinking about what would be the percentage
17 increase to the fixed operating costs for wells, given
18 various levels of these operating expenses.

19 Going back to my earlier picture of that
20 straight, flat, fixed outflow line and the declining
21 curve representing net inflows, we know that the
22 decision to plug the well occurs about where the net
23 inflow meets the net outflow.

24 And so the wells that we should expect
25 to be the most sensitive to increases in the financial

1 assurance costs should be wells that have fixed costs
2 extremely close to their net inflows. So this table
3 provides a sort of toy example for various bond premia
4 and various lease operating costs to show you what the
5 percentage increase would be over the base case lease
6 operating expense that operators would face for these
7 wells.

8 I'm going to assume an increase in
9 average bond amount per well of 110,000. I'm choosing
10 that because that is the increase associated with the
11 most sensitive of the operators in my previous table.
12 That is the 61 operators, each operating a single
13 well. I'm really asking what would happen to their
14 lease operating expenses if they were to pay the
15 proposed financial assurance burden at various rates
16 of return.

17 So starting in row 1, I'm going to
18 assume that the bond required rate of return is
19 10 percent, which, again, would probably be consistent
20 with a cash bond. Again, if we're thinking about an
21 operator that has a 10 percent cost of capital, which
22 is fairly typical, there are studies done by -- sorry,
23 not studies, but surveys done by the Society of
24 Petroleum Evaluation Engineers, annual surveys that
25 ask, amongst other things, what types of discount

1 rates do people assign in valuing various categories
2 of reserves. For proven developed and producing
3 reserves, PDPs, the most common discount rate is
4 10 percent. And so this is very typical, I think, of
5 what most operators would actually face in terms of
6 the cost of capital.

7 As you move down the table, the bond
8 premium declines until eventually you get to
9 1 percent. Now, for most operators that satisfy the
10 financial assurance obligation through a surety bond,
11 they're paying premiums on the order of 2 percent to
12 3 percent. But again, I want to caution that if we're
13 going to increase the amount of financial assurance,
14 it could be that the bond premium is going to increase
15 along with the amount of bond face value that's
16 required of these operators.

17 Nevertheless, I want to calculate the
18 percentage increase above the base lease operating
19 expense, assuming three different scenarios. In one
20 scenario, which is column 4, I'm going to assume a
21 lease operating expense of only 1,500 per month. This
22 is extremely low. This is an amount that was quoted
23 to me from one of six operators I interviewed. I also
24 was quoted amounts of 2,500 a month and 5,000 a month.

25 The lease operating expenses typically

1 for oil wells will be much higher than this. In fact,
2 there may be gas wells that have higher lease
3 operating expenses as well. But these three give us
4 at least a rough approximation of what the effect
5 would be on the percentage increase above fixed costs
6 for the smallest, most sensitive operators.

7 At a rate of return of 10 percent in
8 column 1, this amount of bonding increase, given a
9 lease operating expense of \$5,000 per month, would
10 represent an 18 percent increase above base case fixed
11 operating costs. If we're talking about an operator
12 that has a margin of 15 to 20 percent, this represents
13 almost all of the profit margin on the well.

14 Now, as we move down the table, we might
15 think about if this operator is paying a premium
16 between 2 and 3 percent, let's say 2 percent, that
17 same \$5,000 a month LOE, the increase in financial
18 assurance, would represent only a 4 percent increase.

19 And so the point of this table is really
20 to illustrate that the sensitivity in terms of how we
21 think that the -- or how I think the proposed
22 financial assurance will affect operators, it's going
23 to be operators that face very high bond premium,
24 perhaps operators that are only posting cash bonds
25 because their cost of capital then becomes their cost

1 of bonding. Not only is it about the rate of return
2 on the bond, but it's also a function of the well in
3 terms of how costly it is to continue operating that
4 well.

5 So, the conclusion from all this is that
6 the operators that are going to be the most affected
7 are likely going to be small and potentially
8 financially constrained. Financially constrained
9 operators are highly likely to have no recourse other
10 than a cash bond. They likely do not have the
11 resources required to access the surety bond market.
12 These would be operators that have very little working
13 capital, have very limited access to debt markets,
14 very little collateral with which they can post secure
15 loans and bonds. These are the types of operators
16 that will be facing the highest increase in the
17 financial assurance cost.

18 And to the extent that these are the
19 most financially sensitive operators in the sample, my
20 concern would be that the proposed rules may push some
21 of these operators into financial distress and
22 possibly bankruptcy. If there is no accommodation for
23 financially constrained operators in the short run, my
24 concern is that responsible operators may be rendered
25 insolvent because of the increased financial assurance

1 demands. This may ultimately, potentially, reduce the
2 amount of private funds available for plugging.

3 I'm going to pivot here. Number one,
4 I'm amazed that I -- I think I speed ran through that.
5 I was a little thrown. But I would like to get into
6 my rebuttal points at this point.

7 To begin with, I would like to address
8 this notion of holdback that has been sponsored by
9 Mr. Purvis. Mr. Purvis has talked about this concept
10 of holdback, which he characterizes as when a well
11 reaches a point in its life cycle where the amount of
12 expected cash flow in the future equals the amount of
13 plugging liability that will eventually have to be
14 paid in connection with that well.

15 And so there are a couple problems with
16 this. They're all rooted in this concept called the
17 "time value of money," which is central in finance.
18 This time value of money concept could be summed up in
19 one sentence, and that's that: A dollar tomorrow is
20 worth less than a dollar today.

21 And when you think about it, this has to
22 be true. If, for example, you could deposit a dollar
23 into a savings account with no risk, let's say that
24 the savings account pays you 5 percent in a year. In
25 one year's time, your dollar would grow to become a

1 dollar and five cents.

2 Therefore, a dollar today cannot be
3 worth a dollar tomorrow. It's worth a dollar and five
4 cents. And this idea that money has a time value is
5 critical in how we value assets of all types.

6 Now, holdback ignores the time value of
7 money because it adds cash flows from various periods
8 in time together without making the proper adjustment
9 to account for the time value of money.

10 In some sense, it's worthwhile to think
11 about why you can't do this. I've already sort of
12 described intuitively from a mathematical standpoint
13 that a dollar today would be worth a dollar and five
14 cents a year from now. But I would really suggest
15 that you think about it in terms of money having time
16 units.

17 A dollar a year from now is denominated
18 in time units a year from now. And just like it
19 doesn't make sense to add a U.S. dollar to a Canadian
20 dollar, it doesn't make any sense to add a dollar
21 today to a dollar tomorrow. They simply cannot be
22 added together with any economic sense.

23 The way to think about plugging
24 decisions in terms of the expected value or the
25 expected future cash flows on a well is actually the

1 net present value, or NPV. I'm going to argue that
2 this is the right way to think about when to time the
3 plugging and abandonment of a well.

4 And so what I'm showing you here is a
5 plot of the NPV as a function of the time until a well
6 is plugged and abandoned. In this simple example,
7 we're going to assume the plugging cost is normalized
8 at negative 100. And so if you decide to plug the
9 well immediately at time zero, all the way over at the
10 left side of the chart, the NPV is worth negative 100
11 because you have no cash flows from operating the
12 well. Instead, all you have is the negative 100 in
13 plugging cost.

14 As you wait to plug and abandon the
15 well, you will operate the well, presumably collecting
16 some positive net inflows from the sale of
17 hydrocarbons, less your fixed cost. And if you do
18 this long enough, the NPV grows and grows and grows
19 until eventually you get to the top of the hill.

20 If you plug the well before you get to
21 the top of the hill, you're leaving profitable
22 resources out in front of you. You're plugging too
23 early, premature plugging. If you wait too long, you
24 will have entered a state where you start to operate
25 the well at a loss, and this starts to chip away at

1 the net present value of the well.

2 And so when you're thinking about a
3 valuation exercise to determine mathematically when is
4 the right time to plug and abandon the well, it's not
5 by adding cash flows together inter-temporally without
6 any regard for the time value of money, it's by using
7 the proper time value of money technique to calculate
8 the NPV and find the top of the hill. In this case,
9 the optimal time to plug and abandon the well is about
10 12 years.

11 I'm going to work through a few
12 examples. We'll start with the simplest one. And
13 this is actually fairly similar to Mr. Purvis' example
14 in his direct testimony in which we have an asset that
15 produces a positive 25 million and ultimately has a
16 plugging expense of negative 25 million. I'm going to
17 simplify this as much as possible.

18 So I'm going to say you're going to get
19 positive 25 million today and you're going to plug the
20 well in exactly a year for negative 25 million. So
21 this well would be in holdback because negative 25
22 million plus 25 million is zero.

23 I'm also going to assume a return on
24 savings equal to 10 percent, which, when we're
25 thinking about PDPs, operators with PDPs, a 10 percent

1 discount rate again is pretty typical. This well is
2 in holdback, but it doesn't have no value. Mr. Purvis
3 has said that a well in holdback is a liability. I'm
4 going to show you that it's anything but.

5 Not only is this not a liability, it has
6 considerable value. And it has to be the case because
7 if you take that positive 25 million and you deposit
8 it at your rate of return of 10 percent, in exactly
9 one year, it will grow by 10 percent of 25 million or
10 2 and a half million dollars.

11 So at the end of one year, you're going
12 to end up with positive 27.5 million, at which point
13 you pay the 25 million in plugging expense and you're
14 left with a surplus of 2 and a half million dollars.
15 It cannot be the case that this is a liability. This
16 is a valuable asset.

17 Let's look at a slightly more
18 complicated example, but the same rules apply, the
19 same concepts apply. This, again, is going to add
20 \$25 million in positive cash flows, but this time
21 instead of coming at one lump sum at time zero, I'm
22 going to spread this out over time, similar to an oil
23 well where it's declining over time until eventually,
24 in year five, you have to pay the negative \$25 million
25 in plugging expense.

1 This well, again, is in holdback because
2 if you add up the positive 25 million in green cash
3 flows, they equal exactly the negative 25 million in
4 plugging expense. While this well is in holdback, I'm
5 going to show you again that this well actually does
6 have considerable value. And I'm going to show you a
7 couple of these tables, and so I'm going to invest a
8 little bit of time to walk through this table.

9 This is IPANM supplemental Exhibit 30,
10 and what I'm showing you here is a table that tracks
11 the balance of an investment over time. As you walk
12 down the table on column 1, you're keeping track of
13 which year it is, starting in year one and then
14 eventually ending up in year five at the bottom of the
15 table, our beginning balance, we start at zero
16 dollars. Our growth in savings, because we started
17 with zero dollars, is zero dollars.

18 But in year one, we get to the third
19 column, or rather the fourth column, where we invest,
20 or withdraw -- in this case we invest the \$10 million
21 positive cash flow we received from operating the
22 well.

23 I'm going to walk back to that picture
24 one more time to show you that 10 million. That's
25 that first green bar over on the left. It's a

1 positive 10 million in year one, then it declines to
2 7 million in year two, and 5 million in year three,
3 3 million in year four.

4 When we go back to this table, you can
5 see in that column where, in row one, we have positive
6 10 million. If we walk down that column, we see those
7 positive cash flows, 10 million in year one, 7 million
8 in year two, 5 million in year three, 3 million in
9 year four. Then ultimately, at the end of year five,
10 we pay our negative 25 million dollar plugging
11 expense.

12 The trick here is to notice what happens
13 along the way, because before we have to pay that
14 negative 25 million, we have a series of positive cash
15 flows that we've been able to invest at some positive
16 rate of return; in this case, 10 percent.

17 So in the first row, we start with a
18 zero balance, we make our first deposit of 10 million,
19 our ending balance is 10 million. At the beginning of
20 year two, we start with the previous year's ending
21 balance, \$10 million, and now we have our first
22 instance of a growth in savings. Because we earned
23 10 percent on our money, we're going to earn
24 \$1 million over that year two.

25 To this \$11 million, we're going to add

1 the \$7 million from operating the well, to ultimately
2 end up at \$18 million as our ending balance at the end
3 of year two.

4 That balance carries forward to the next
5 row down, where the beginning balance starts at 18
6 million. This time our growth in savings is
7 10 percent times 18 million, or \$1.8 million. To
8 that, we add the \$5 million from operating the well in
9 that year. Now we get an ending balance of
10 \$24.8 million.

11 And we keep doing this until eventually
12 we get to year five, and in year five, we have a
13 beginning balance of a little over \$30 million. We
14 accrue interest or growth in savings of a little over
15 \$3 million on that balance. And then we pay the
16 plugging liability of 25 million. But at the end of
17 the day, after we've paid the plugging liability, we
18 end up with a surplus of a little over \$83 million.

19 So again, we have a case in which we
20 have a well in holdback, which Mr. Purvis, again,
21 defines as a liability; by definition, something that
22 has no value. And yet, it has considerable value, in
23 this case over \$8.3 million, five years from now. Now
24 that surplus of \$8.3 million, that only arrives in
25 exactly five years, right, because we have to get to a

1 point where we actually pay all the cash flows, right,
2 we pay the plugging expense, we've collected the cash
3 flows from operating the well for these five years.

4 How does this surplus in five years time
5 relate to the net present value that I was trying to
6 convince you is the way to think about valuing the
7 well? Well, it turns out that the net present value
8 is the amount of money that we would have to deposit
9 today in order to end up with exactly \$8.3 million
10 five years from now.

11 I can show you that with another table.
12 So if we start in year one and we deposit the net
13 present value of 5.1 million, and then we make no
14 investments at all -- so we're not thinking about the
15 same example where we have positive cash flows, we
16 deposit into the account over time. This example,
17 we're not making any other investments other than the
18 initial investment of the NPV 5.1 million. If we do
19 that at our 10 percent rate of return, we will end up
20 with \$8.3 million in surplus, the exact same surplus
21 from the project we just looked at.

22 And so that's really what the NPV is.
23 It tells us in today's dollars what the expected
24 surplus is associated with the project.

25 So again, we've got a project that is

1 not a liability. In fact, it's an asset that any
2 rational buyer in the market would be willing to pay
3 \$5.15 million for.

4 Staying on this topic, again, sort of
5 using these tables that we sort of invested a little
6 bit of time in figuring out how they work, let's ask
7 some other questions that have to do with the time
8 value of money and the expected plugging expense.

9 One question might be, how much money do
10 we have to set aside today in order to make sure that
11 we cover that \$25 million five years from now?
12 Because if we go back to my original picture with the
13 NPV in terms of what is the optimal time to plug the
14 well, if we have an estimate of when we think that is,
15 we could plan for it. We could set aside money for
16 it.

17 Question is, how much would we have to
18 set aside today? You have the savings rate of
19 10 percent. Turns out we would only have to set aside
20 \$15.5 million. That's the beginning balance
21 investment in year one in this table, which is IPANM
22 supplemental Exhibit 32. If we deposit that amount,
23 and it grows at a 10 percent rate of return, we will
24 end up with exactly 25 million, the exact amount we
25 will need to make sure we can plug that well.

1 And as this relates to the optimal or
2 ideal, theoretical ideal, financial assurance bonding
3 amount, again, we see that there is another reason why
4 we would expect that the ideal bonding amount should
5 fall short of the expected cost of plugging and
6 abandoning the well. In this case, our expected P&A
7 cost is 25 million, and yet, because we have a
8 positive rate of return on our savings, we only have
9 to set aside \$15.5 million today in order to satisfy
10 that obligation.

11 Now, I have played a little bit of a
12 trick on you, because 10 percent rate of return is an
13 appropriate cost of capital for a risky business.
14 This assumes that the operator can take that money and
15 redeposit it into his own operations, but those
16 operations are risky. So to the extent that I may be
17 exaggerating somewhat the amount of money you have to
18 deposit today in order to satisfy that future
19 obligation, it could be that I'm ignoring some of the
20 risk inherent in this 10 percent rate of return, and
21 that may be true.

22 So let's do the same exercise, except
23 this time let's completely remove risk from the
24 equation. What if we, instead of deploying that 15
25 million into our own operations at a rate of return of

1 10 percent, let's think about what if we deposit it in
2 treasury bills or a risk-free rate of return. This
3 way our money is going to grow at 4 percent, and I
4 looked this up a couple months ago when I wrote my
5 testimony, and it turns out not much has changed in
6 treasury yield since. The ten-year treasury yield is
7 still about 4 percent. So this is actually a
8 realistic, risk-free rate of return.

9 If we deposit \$20.5 million today
10 risk-free in treasury bills, we will end up with the
11 \$25 million we need to plug the well in five years?
12 So again, even absent risk, it is still the case that
13 the optimal amount we need to set aside today to cover
14 future plugging expenses is strictly lower than the
15 expected value of P&A costs. And that's just because
16 of the time value of money.

17 There is one last example I want to
18 provide because the last example I gave you assumed
19 that we have an operator that actually has \$20 million
20 to set aside today to cover that future cost, which as
21 we've heard from numerous people, and as I've tried to
22 suggest as well, that we have a number of operators
23 that are financially constrained. And this means that
24 their financial resources are limited, and we
25 shouldn't expect that they have that type of liquidity

1 that they can pump that amount of money down right
2 now.

3 So let's relax this even further, again,
4 keeping the risk-free rate of return, so we've got no
5 risk here whatsoever. Instead of having to deposit
6 anything right now, let's just use the cash flow from
7 operating the well to self-finance the plugging
8 liability at the end of five years. We invest the \$10
9 million from operating the well in year one, that then
10 grows. We invest the \$7 million that we get from
11 operating the well in year two, that then grows and we
12 keep doing this.

13 We could self-fund the liability at a
14 risk-free rate of return and still end up with a
15 surplus of \$3.1 million at the end of five years.
16 Again, this is a well that would be characterized as a
17 liability, it is in holdback.

18 And this is emblematic of why this
19 notion of holdback should not be relied on in any
20 matters concerning the value of oil and gas wells. It
21 shouldn't be used as a measure of determining the
22 optimal time to plugging and abandoned well, because
23 it's divorced from fundamental economic principles
24 regarding the time value of money.

25 I'd like to say a little bit about what

1 I think would be practical limitations to avoiding the
2 proposed 15 percent threshold. Mr. Purvis has
3 testified that over 52 percent of operators in
4 New Mexico are already in breach of the 15 percent
5 threshold. This strikes me as a lot of operators, and
6 so to the extent that we think that operators would
7 have no trouble in adapting to this policy, half of
8 operators in the state is a large number. I'm not
9 necessarily confident that all of them would be able
10 to adapt in time.

11 This is to say nothing of the permitting
12 processes that are involved, the availability of
13 plugging services. All of this likely limits the
14 number of wells that could be plugged in short order.
15 And, of course, if we're going to credit operators
16 with an ability to adapt to the proposed rules, I
17 believe they'll do so by prematurely plugging their
18 marginal wells in order to avoid the steep FA cost
19 increase associated with the 15 percent threshold.

20 All of this should be administratively
21 burdensome, because, of course, plugging wells
22 necessarily means they have to be inspected, and all
23 of this takes time and resources.

24 Another aspect of the proposed rule that
25 I think might be difficult to implement in terms of

1 feasibility, the definition of marginal well, as
2 you've heard, is a two-pronged inquiry.

3 It's the number of production days, does
4 it produce less than 180 days a year, and does it
5 produce fewer than 1,000 barrels of oil equivalent in
6 a year. This is a graph showing these two dimensions
7 in Mr. Purvis' testimony. And he's got some
8 color-coding here to identify marginal wells in blue,
9 and in purple we have some no-beneficial-use wells,
10 and so on and so forth. Although the wells in black,
11 presumably, are wells that would not be classified as
12 marginal.

13 Now, I looked at this picture, and one
14 thing jumped out at me, looked a little bit strange,
15 and I highlighted these, what appear to be vertical
16 lines with some red arrows just to draw your eye.
17 This type of bunching, where we see almost really
18 vertical lines throughout the data, as you move from
19 right to left or left to right, these bunching occur
20 almost exactly at intervals of 30 or 31 days, right?

21 So 30, 31, 60, 61, 62, they are almost
22 certainly the number of calendar days in a month,
23 which this tells me that there's already considerable
24 leeway in how operators are able to report this data.
25 Now, if you are going to adopt a rule that requires

1 that you need to depend on an accurate measure of the
2 number of production days, this may be quite difficult
3 to monitor.

4 And this type of bunching tells me that
5 this rule may actually serve to help to weed out
6 honest reporters who will not fudge what they tell the
7 department, the Division, as opposed to bad actors
8 who, by definition, would have less misgivings from
9 misleading the department -- Division, excuse me,
10 along the dimension of the number of production days.

11 And so my concern is that this may not
12 catch the bad actors we're concerned about, and may
13 actually weed out honest, responsible operators at the
14 same time.

15 Lastly, this is a chart from -- I know
16 this is credited to the Interstate Oil and Gas Compact
17 Commission, but I believe I pulled this from one of
18 the Department of Interior's annual reports,
19 regardless. The source of the picture is the IOGCC.
20 And what this shows us here is the recent trend in
21 documented orphaned wells.

22 And I'm going to argue that the recent
23 trend is almost certainly policy-induced as opposed to
24 any real indication of the physical number of orphaned
25 wells in the United States.

1 So if I can draw your attention all the
2 way to the right side of the plot, in 2024 we have
3 141,000 and almost 142,000 orphaned wells. If you
4 walk back to the left, the next data point is 131,000
5 orphan wells, and that's in 2021. So pretty
6 significant increase, right? We're increasing by
7 about 10,000 over a three-year period.

8 But the real increase occurs between
9 2019 and 2021. 2019, we have a count of 61,246
10 orphaned wells, and by the time you get to 2021, only
11 two years later, you're all the way up at 131,000
12 plus.

13 Question is, why do we see this steep
14 increase? Again, this is the amount of documented
15 orphaned wells. There is a pretty unfortunate data
16 visualization cardinal sin here which is not making
17 the units of one of your axes consistent.

18 I want you to look at the leftmost data
19 point, the 49,743. Based on the number of years that
20 elapsed between the 2019 number and the 2024 number,
21 you might expect this leftmost value would be
22 somewhere around 2010, and yet it's 1992. So the
23 x-axis here is not uniform in terms of spacing.

24 What this graph actually tells us, as
25 opposed to a recent trend, and this is between 1992

1 and 2019, so almost a 30-year period, the number of
2 documented orphaned wells is relatively flat,
3 fluctuating between 49,000 and 62,000. It's only in
4 the last couple of years, especially between 2019 and
5 2021, that we've had this large increase in the number
6 of documented wells.

7 And I'm going to argue the most likely
8 reason for this is it's policy-induced. There are
9 federal grants earmarked toward addressing orphaned
10 wells at this time. If we go back to the passage of
11 the BIL, the Department of the Interior has grants
12 that they're going to award states based on need. And
13 so there is an incentive at the state level to
14 document as many orphaned wells as possible at this
15 time, and that could go a long way toward explaining
16 why we see the recent trend.

17 And to the extent that people have been
18 citing this trend as an indication of some future
19 continuation of this trend, I would hesitate somewhat.
20 I would argue that, because this is likely
21 policy-induced, there isn't as much reason to expect
22 that this trend is going to continue.

23 MR. CLOUTIER: Madam Hearing Officer, that
24 concludes Dr. Arscott's direct and rebuttal
25 testimony. We're right at 5 o'clock. I would

1 anticipate he's got about 15 minutes of surrebuttal.
2 So I don't know what we want to do with our time.

3 HEARING OFFICER ORTH: I think we want a
4 break now.

5 MR. CLOUTIER: That's what I thought.

6 HEARING OFFICER ORTH: Well, we've actually
7 been going two hours.

8 MR. CLOUTIER: Yes. That's fine. I'm just
9 not in charge, so I don't want to presume that I am.

10 HEARING OFFICER ORTH: Thank you so much.

11 All right, we'll resume at 9:00 in the
12 morning and we'll start with public comment and then
13 we'll do your surrebuttal.

14 THE WITNESS: Okay. Thank you very much.

15 HEARING OFFICER ORTH: Thank you so much.

16 (Proceedings adjourned at 5:00 p.m.)
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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

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[apodaca - armstrong]

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