

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**

**IN THE MATTER OF PROPOSED
AMENDMENTS TO 19.15.2, 19.15.5,
19.15.8, 19.15.9, AND 19.15.25 NMAC**

CASE NO. 24683

**APPLICANTS' OBJECTION TO NMOGA AND IPANM'S EXPEDITED MOTION TO
REOPEN EVIDENTIARY RECORD**

Preliminary Statement

The New Mexico Oil and Gas Association and Independent Producers Association of New Mexico ("Industry Parties") unexpectedly move to reopen the evidentiary record in this case to include legislative materials related to [HB 80](#) and a recently-filed [complaint](#) ("Complaint") unconnected to this rulemaking; delay filing posthearing briefs 60 to 90 days; and extend the 75 page limit on posthearing briefs by 25 pages.

Industry Parties' motion should be denied. There is no basis to reopen the record, hold more hearings, postpone posthearing briefs, and significantly delay Commission deliberations.

There is an easy fix to Industry Parties' 11th hour request:

- Industry Parties have not identified any new evidence on HB 80 they wish to introduce except the legislative documents related to the bill attached to their motion. The Commission may take administrative notice of those materials and consider them.
- There is no basis to reopen the evidentiary record based on unsubstantiated allegations in the Complaint, allegations that are irrelevant to this rulemaking.
- There is no need to postpone filing posthearing briefs or to substantially extend the page limit, all previously agreed to by Industry Parties. The parties can file posthearing briefs on schedule and file supplemental briefing not to exceed five pages within five days of an order from the Hearing Officer taking administrative notice of the HB 80 legislative materials.

This critical rulemaking – that began in June 2024 -- is governed by an agreed-upon scheduling order issued in December 2025 that should not be upended at the last minute. Industry Parties' for a reprieve should be denied.

Legal Standard

I. THE DECISION TO REOPEN RESTS WITHIN THE COMMISSION'S DISCRETION

Industry Parties claim the Commission is **required** to reopen the evidentiary record because HB 80, passed this legislative session, “materially altered the factual and legal predicates underlying the Proposed Rules.” Mot. to Reopen at 2, 5. However, **no case** cited by Industry Parties stands for the proposition that the Commission is under a mandatory duty to reopen the rulemaking for new evidence on this basis. In fact, none of Industry Parties’ cases set forth the standard for **reopening** the record for an administrative rulemaking. By and large, Industry Parties² rely on cases in which evidence is already in the record, and the agency decision is upheld based on the record or not upheld because the agency didn’t properly consider evidence in the record.¹

¹ Industry Parties cite the following cases: *Atlixco Coalition v. Maggiore*, 1998-NMCA-134, ¶ 25, 125 N.M. 786 (in adjudicatory action, secretary must give reasons for not accepting hearing officer’s recommended permit conditions); *Mountain States Tel. & Tel. Co. v. N.M. State Corp.*, 1977-NMSC-032, ¶ 85, 90 N.M. 325 (commission should consider most recent economic data available in the record); *In re Petition of PNM Gas Services*, 2000-NMSC-012, 129 N.M. 1 (commission decision not based on substantial evidence in the record); *In re Rhino Environmental Services*, 2005-NMSC-024, ¶ 34, 138 N.M. 133 (limited remand ordered because hearing officer excluded evidence under incorrect legal standard); *Motor Vehicle Mfr. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983) (agency acted arbitrarily by failing to present an adequate basis and explanation for action); *Ohio v. EPA*, 603 U.S. 279 (2024) (agency action arbitrary and capricious arbitrary by not considering important aspect of the problem in the record); *Ziffrin, Inc. v. U.S.*, 318 U.S. 73 (1943) (change of law pending an administrative hearing on application for permit to do future acts must be followed in determining whether to grant permit); *Zen Magnets, LLC v. Consumer Prod. Safety Comm’n*, 841 F.3d 1141 (10th Cir. 2016) (agency must examine newly acquired evidence, including changed regulatory posture, in the record); *Bd. of Cnty. Comm’rs v. N.M. Tax’n & Rev. Dep’t*, A-1-CA-36305, mem. op. ¶ 10 (N.M. Ct. App. May 24, 2019) (nonprecedential) (noting administrative hearing officer reopened hearing by taking administrative notice of recent legislation relevant to the matter); *Auto. Parts & Accessories Ass’n v. Boyd*, 407 F.2d 330 (D.C. Cir. 1968) (substantive evidence supports agency rule for new automotive safety standard); *N.M. Atty. Gen. v. N.M. Pub. Reg. Comm’n*, 2015-NMSC-032 (affirming commission order is supported by substantial evidence); *Am.*

The Commission's decision to reopen for new evidence rests within the Commission's discretion and will be overturned only upon a finding of abuse of discretion. *Accord Trujillo v. Los Alamos Nat. Lab'y*, 2016-NMCA-04, ¶ 26 (administrative law judge decision to reopen record reviewed under abuse of discretion standard); *State v. Harrison*, 2000-NMSC-022, ¶¶ 56-59, 129 N.M. 328 (trial court's denial of motion to reopen for new evidence reviewed under abuse of discretion standard); *Fox v. Doak*, 1968-NMSC-031, ¶ 9, 78 N.M. 743 (1968) (motion to reopen to present additional evidence is addressed to trial court's discretion; denial of motion to reopen was not abuse of discretion). Reopening for new evidence would significantly delay decision in this matter, raises a host of scheduling issues -- including the availability of Commission members, the Hearing Officer, Commission counsel, the parties' counsel, and witnesses -- and should be undertaken only if necessary.

II. INDUSTRY PARTIES MISREPRESENT APPLICANTS' POSITION ON THE RECLAMATION FUND

The entire premise of Industry Parties' request to reopen is that **Applicants' position** is that the proposed rules are necessary because the Reclamation Fund is insufficient to address the orphan well problem. And Industry Parties claim that, with passage of HB 80, the proposed rules are not now necessary. Mot. to Reopen at 3-5.

Industry Parties flagrantly misrepresent Applicants' position. While Industry Parties argued that more robust funding of the Reclamation Fund would solve the orphan well problem and render Applicants and Oil Conservation Division's ("OCD") proposals unnecessary, *e.g.*, 11/4/25 Tr. 131:22 to 132:16, 143:3-12, 151:12 to 153:24, Applicants' **most emphatically** did

Petroleum Inst. v. U.S. Dep't of Interior, 81 F.4th 1048 (10th Cir. 2023) (agency decision supported by the evidence in the record).

not take that position at hearing. Had that been Applicants' position, Applicants would have spent the last four years advocating for legislation to increase the Reclamation Fund instead of working on the proposed rules.

The Reclamation Fund addresses the orphan well problem only **after the fact**: after wells have become orphaned and become the responsibility of the State. The Reclamation Fund does not **prevent** wells from becoming orphaned in the first place, which is the primary purpose of Applicants and OCD's proposed rules. There is a host of problems that would arise if New Mexico didn't try to prevent orphan wells in the first instance and relied only on the Reclamation Fund. These problems include:

- Orphaned wells emit methane, a powerful greenhouse gas; can contaminate groundwater with toxic chemicals; and can negatively impact nearby communities' health and economy. Apps' Ex. 57 at 0847.
- Orphaned wells and the surrounding sites are more likely to be severely degraded and require more extensive work, costs, and time to clean up. *E.g.*, 11/23/25 Tr. at 65:13-17, 67:15 to 68:6, 92:15-20.
- Even with a robust Reclamation Fund, OCD resources could not keep pace with the massive resources required to plug the thousands of wells anticipated to be orphaned.

Bottomline, **operators** should be responsible for plugging wells and remediating sites; that responsibility should not fall to the State.

Applicants and OCD's proposals prevent wells from becoming orphaned in the first place by increasing financial assurance for high risk wells to incentivize operators to timely plug; strengthening transfer rules to prevent transfer of wells to high risk operators; identifying low producing wells that are in effect "inactive" and should be plugged; and ensuring that wells placed in temporary abandonment have future beneficial use and operators are not simply avoiding their plugging responsibilities by placing wells in TA.

Addressing the complexities of the orphan well problem requires a multipronged

approach, like that offered by Applicants and OCD. 10/20/25 Tr. 31:23 to 32:10. The Reclamation Fund is a **backstop** to the orphan well problem; not a panacea.

III. THERE IS NO BASIS TO REOPEN BASED ON HB 80 OR THE COMPLAINT

While the legislative materials on HB 80 are relevant to the rulemaking – and therefore Applicants’ do not object to the Commission taking administrative notice of them -- passage of HB 80 does not render Applicants’ proposals moot and does not require reopening the record for additional evidence. The legislative materials attached to Industry Parties’ motion² meet the standard for the Commission taking administrative notice of them,³ and may be used Industry Parties to support their positions. However, Industry Parties have not identified other documents or witnesses they intend to introduce in a reopening. As such, they have made **no showing** why the Commission should go to the lengths of reopening the record based on other evidence.

As to reopening the record based on the Complaint: this is a throwaway argument of Industry Parties. The Complaint is simply a litany of unsubstantiated allegations against the State alleging failure to properly enforce the Oil and Gas Act and related rules. Allegations are not evidence. The fact that one of the parties to the Complaint was a party in this rulemaking at the time the Complaint was filed is of no evidentiary consequence, and Industry Parties strain to find any kind legitimate reason that the Complaint – which will be adjudicated over the next several

² Bill Analysis and FIR Taxation and Revenue Department - HENRC sub. for HB-80 (Feb. 2, 2026) [Att. A]; DFA Agency Bill Analysis - 2026 Regular Session - H80cs (Jan. 28, 2026) [Att. B]; LFC FIR – HB 80 (Feb. 5, 2026) [Att. C]; EMNRD Agency Bill Analysis – HB 80 (Jan. 27, 2026) [Att. D].

³ *Accord* NMRA 11-201(B)(2) (judicial notice may be taken of facts that can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned); 1.2.2.35.D(1)(e), (h) NMAC (administrative notice by Public Regulation Commission may be taken of state statutes and matters of which the courts of this state may take judicial notice); *State ex rel. Hughes v. Cleveland*, 1943-NMSC-029, ¶ 7, 47 N.M. 230 (court may take judicial notice of legislative reports).

years – has any relevance whatsoever to this proceeding.⁴

Not only is the Complaint irrelevant, but allegations in a complaint do not meet the standard for taking administrative notice. Allegations in a complaint are far from “facts that can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” *See* NMRA 11-201(B)(2). Therefore, the Complaint should not be considered by the Commission on this basis.

IV. THERE IS NO BASIS TO DELAY FILING POSTHEARING BRIEFS

Because there is no basis to reconvene the Commission and hold additional hearings, there is no basis to postpone filing posthearing briefs, due four days from now on March 20. This last minute delay tactic by Industry Parties should not be rewarded. The deadline for filing posthearing briefs was postponed once, by request of the parties, who assured the Commission they would meet the new deadline. The substance of the parties’ negotiations ended weeks ago, and the parties have spent the last weeks refining rule language and refining a stipulation among the parties. There is no basis to postpone: the posthearing briefs should be timely filed.

Applicants do not object to giving the parties a short period of time to file argument on the impact of HB 80. However, there is no need to significantly increase the page limit for posthearing briefs and certainly no showing an additional 25 pages is needed. Nor is there any showing that supplemental briefing requires any significant delay.

Applicants propose allowing the parties to file a supplemental brief limited to the impact

⁴ San Juan Citizens Alliance (“SJCA”) is a party to the Complaint. SJCA was an Applicant in this proceeding but, as Industry Parties acknowledged, with as a party on March 13, 2026. Moreover, no lawyer at Western Environmental Law Center, including all four undersigned counsel, assisted in any way in drafting the Complaint, had any knowledge of the factual allegations or legal claims in the Complaint prior to filing, or had any knowledge that SJCA intended to join as a party in the Complaint prior to filing.

of HB 80 not to exceed five pages within five days of an order from the Hearing Officer taking administrative notice of the HB 80 legislative materials. There is no showing this proceeding should be delayed longer than that.

Conclusion

For the foregoing reasons, Applicants respectfully request the Commission (1) deny Industry Parties' Motion to Reopen, including the request to postpone filing posthearing briefs, (2) take administrative notice of the legislative materials related to HB 80 attached to Industry Parties' motion (Attachments A-D), and (3) allow the parties to file a supplement to their posthearing brief not to exceed five pages within five days of an order from the Hearing Officer taking administrative notice of the HB 80 legislative materials.

Respectfully submitted,

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Certificate of Service

I certify that on March 16, 2026, I served by a copy of this pleading to the following via email:

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