

**STATE OF NEW MEXICO
ENERGY, MINERALS, AND NATURAL RESOURCES DEPARTMENT
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

**THE NEW MEXICO OIL AND GAS ASSOCIATION AND
INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO'S
REPLY TO OCD AND SLO'S OBJECTIONS TO
EXPEDITED JOINT MOTION TO REOPEN EVIDENTIARY RECORD**

The New Mexico Oil and Gas Association (“NMOGA”) and Independent Petroleum Association of New Mexico (“IPANM”) (collectively, the “Industry Associations” or “Trades”), through their counsel of record, submit this Reply in Support of their *Expedited Joint Motion to Reopen the Evidentiary Record* (“Motion”), jointly responding to the objections raised by the New Mexico Oil Conservation Division (“OCD” or “Division”) and New Mexico State Land Office (“SLO”). Because the state agency Parties to this rulemaking make the same core arguments in their *Responses in Opposition* (“Oppositions”) and those few differences are supplemental, not contradictory, the Industry Associations address them collectively in this Reply.

I. PRELIMINARY STATEMENT

As a threshold matter, NMOGA and IPANM must address OCD and SLO’s assertion that “the Industry Parties seek to delay the finalization of this rulemaking, which has already taken considerable time and effort, including extensive negotiations and agreements amongst many of the stakeholders since the close of evidence.” That characterization is unfounded. NMOGA and IPANM embraced the opportunity this Commission provided to engage in negotiated rulemaking on Applicants’ proposed amendments to OCD’s financial assurance and abandonment regulations (“Proposed Amendments” or “Proposed Rules”), and Industry Association leadership and

members have invested substantial time, resources, and expertise to improve the proposals set to be considered by the Commission. The Industry Associations accepted numerous compromises and worked collaboratively to refine the Proposed Amendments. This narrowly tailored request to reopen the record concerns only two very recent developments—the enactment of HB 80 as law and the filing of a topical lawsuit by a Co-Applicant.

Against this backdrop, OCD and SLO's suggestion that the Industry Associations are attempting to delay the rulemaking is misplaced. NMOGA and IPANM have remained fully engaged even after the record closed, precisely because they want any rules adopted to be durable and workable. NMOGA and IPANM recognize that the process is nearing completion, but finishing well matters more than finishing quickly. After sixteen negotiation sessions demonstrating the Industry Associations' commitment, the Industry Associations' *Motion to Reopen* is filed to ensure that the final evidentiary records support the rules ultimately adopted by the Commission.

It is also not NMOGA or IPANM's fault that Applicants' positions in this rulemaking now conflict with those advanced by Co-Applicant San Juan Citizens Alliance ("SJCA") in separate litigation. The Industry Associations wish only to raise this development for the Commission's attention. In the spirit of the negotiated rulemaking this Commission authorized, NMOGA and IPANM seek only to ensure that the final rule is sound, defensible, and reflective of the full factual landscape.

Finally, OCD claims that "despite every reasonable opportunity, the numerous, informed, and competently represented Parties opted against raising any of the content of the Complaint during the course of the hearing or stakeholder discussions" is inaccurate. The lawsuit was filed on March 9th, after the sixteenth and final discussion session between the Parties. The Industry

Associations acted promptly, notifying counsel for WELC and OCD and filing this Motion to Reopen the Record the following Friday, March 13, just four days after SJCA's Complaint was filed.

II. ARGUMENT

A. The Commission Should Reopen the Record for the Limited Purpose of Addressing Material Post-Record Developments

The Motion should be granted because HB 80 and, secondarily, the SJCA complaint materially altered the factual and legal landscape after the evidentiary record closed. Those developments bear directly on assumptions that were central to the Applicants' Proposed Amendments, including the asserted need for the proposed one-well financial assurance amount and the broader financial premise underlying the Proposed Rules. New Mexico administrative law requires the Commission to address the relevant factors and important aspects of the problem before it. *See Atlixco Coalition v. Maggiore*, 1998-NMCA-134, ¶ 24, 125 N.M. 786, 965 P.2d 370; Motion ¶¶ 34-36. Where the governing context changes before final agency action, the Commission should not proceed as though nothing material has changed.

The request remains limited. The Industry Associations seek only to supplement the record with HB 80 and its official fiscal and legislative materials, additional plugging costs if deemed helpful by this Commission, and the SJCA complaint and any related litigation materials reflecting changed post-hearing causal framing. IPANM will be ready to provide a concise supplemental analysis from its already admitted IPANM Economist Expert Witness, Dr. Robert Arscott, tied to HB 80's effects and assessing OCD's plugging and reclamation cost post-HB 80 projections by the current April 3rd closing deadline. This should dispel any claims of impropriety or delay. The Trades are not asking to reopen the entire merits case, to revisit every issue addressed at the hearing, or to launch a new round of broad witness testimony. *See Part II.G.1.i.-iv, infra.*

A. HB 80's Impacts Are an "Important Aspect of the Problem" the Commission Must Consider

HB 80 fundamentally reshapes the fiscal assumptions underlying this rulemaking. First, HB 80 dedicates more than \$1.23 billion in non-reverting Conservation Tax revenue to the Reclamation Fund through FY 2037. *Motion* ¶ 3, 21, n.11, 24, 26, 37, 43, 45, 55, 57. Second, this legislative commitment changes the evidentiary and fiscal context of the Applicants' rulemaking proposal, which states that New Mexico faces a massive unfunded orphan well liability requiring a dramatic increase in one-well financial assurance to \$150,000. *Motion* ¶¶ 3-8, 51-53, 55; *see* Applicants Exhibit 4/OCD Exhibit 18 (Legislative Finance Committee's ("LFC") June 2025 *Policy Spotlight on Orphan Wells* referred to as the "LFC Report" at the hearing). Third, under settled New Mexico administrative law principles, an agency acts arbitrarily if it fails to consider major new facts or contemporaneous statutory developments that undermine the foundational assumptions of a proposed rule. *Motion* ¶¶ 1-2. Finally, HB 80 directly addresses the very fiscal problem the Proposed Rules were designed to solve, making it essential that the Commission consider this new statutory landscape before adopting any Proposed Rules.

B. Administrative Notice Alone Is Not a Substitute for Reopening the Record

The Industry Associations respectfully disagree with OCD and SLO that taking "judicial notice" of HB 80 is sufficient. *SLO Opposition* at 1-2; *OCD Opposition* at 2. Administrative notice extends only to the existence of a statute, not to its fiscal consequences, policy implications, or its effects on proportionality, necessity, or reasonableness. Only a supplemented record can capture the statute's new revenue streams and updated projections, the effect of public funding on financial assurance needs, and HB 80's impact on the \$150,000 one-well financial assurance proposed by Applicants for all well types, regardless of status or type.¹ *Motion* ¶ 3, 21, n.11, 24, 26, 37, 43, 45,

¹ Proposed: 19.15.8.9(C)(1) NMAC (individually secured "active wells" immediately effective with promulgation of

55, 57. In addition to the definitions, transfer screens, compliance gating, and timelines contained in the Proposed Rules and underlying assumptions regarding the current state of the “orphan well problem,” *Motion* ¶¶ 3-8, 51-53, 55. The Trades further aver that taking administrative notice of the SJCA lawsuit against OCD’s parent agency, the New Mexico Energy, Minerals, and Natural Resources Department (“EMNRD”), is similarly insufficient because an analysis of the claims made, which are in contrast to claims made on the record in this rulemaking, is required.

1. *The Board of County Commissioners Case Cited by SLO is Distinguishable*

SLO relies solely on *Board of County Commissioners v. New Mexico Taxation and Revenue Department*, A-1-CA-36305, op. ¶¶ 10, 12 (N.M. Ct. App. May 24, 2019) (nonprecedential), to argue that administrative notice of HB 80 is enough. But that case involved a materially different situation. *SLO Opposition* at 1-2.

There, the administrative tribunal took notice of a statutory amendment and applied it directly to resolve the valuation issue before it, without the need for additional testimony, valuation modeling, or further factual analysis. By contrast, HB 80 does not mechanically resolve any issue in this rulemaking. Its significance lies in its practical effect on the fiscal assumptions and policy justifications underlying the Proposed Rules. The mere existence of the statute does not establish that effect; it requires a limited evidentiary record sufficient to assess how the new funding structure bears on the necessity and proportionality of the proposed financial-assurance provisions. This Commission can take notice that \$1.23 billion is a lot of money, but it needs additional information to understand the extent to which those funds can reasonably be projected to affect

the Proposed Amendments); *id.* (D)(1)-(2) (every Low Producing Well, immediately effective for transfers but otherwise delayed to mid-2029); *id.* (E) (all wells in a high-risk portfolio with 20% or more Temporarily Abandoned (“TA’d”) and/or “inactive wells” but effective date delayed to mid-2029); *id.* (F)(1)-(2) (every TA’d and inactive well, regardless if covered by blanket financial assurance instrument, immediately effective); *id.* (G) (each well not covered by existing blanket financial assurance, immediately effective with promulgation of the Proposed Amendments).

the orphan well issues that the proponents of the Proposed Rules project. For that reason, the *Board of County Commissioners* does not support proceeding on notice alone here. If anything, it underscores that notice may suffice only where the legal development answers the question directly, which HB 80 does not.

2. The U.S. Supreme Court in Ohio v. EPA Reasoned Contemporaneous Legal Development, Which Affected, Needed to Be Addressed in the Record Because It Occurred Before Promulgation—the Same is True Here

The U.S. Supreme Court confirmed in *Ohio v. EPA*, 603 U.S. 279 (2024), that agencies cannot proceed as though nothing has changed when a contemporaneous legal development directly affects the assumptions underlying a rulemaking. *Motion* ¶¶ 34-35. The Court explained that for promulgation of Federal Implementation Plans (“FIP”) under the Clean Air Act, which are adopted using public notice and comment just like agency regulations, the FIP must be based on information or data which has been placed in the docket as of the date of promulgation and the record for judicial review regarding the merits of the rule cannot consider information offered post-promulgation. *Id.* at n.11.² That same administrative principle is true here for this New Mexico Oil and Gas Act rulemaking, and the Trades’ *Motion to Reopen* properly raises these issues for resolution, just like the comments received on the FIP preserved these issues and required a

² “As the applicants conceded at oral argument, see Tr. of Oral Arg. 25–26, EPA did not need to address every possible permutation when it sought to adopt a multi-State FIP. Our conclusion is narrower: When faced with comments like the ones it received, EPA needed to explain why it believed its rule would continue to offer cost-effective improvements in downwind air quality with only a subset of the States it originally intended to cover. To be sure, after this Court heard argument, EPA issued a document in which it sought to provide further explanations for the course it pursued. See 89 Fed. Reg. 23526 (2024). But the government has not suggested that we should consult this analysis in assessing the validity of the final rule. See Letter from E. Prelogar, Solicitor General, to S. Harris, Clerk of Court 1 (Mar. 28, 2024). Nor could it, since the Clean Air Act prevents us (and courts that may in the future assess the FIP’s merits) from consulting explanations and information offered after the rule’s promulgation. See 42 U.S.C. §§ 7607(d)(6)(C) (“The promulgated rule may not be based (in part or whole) on any information or data which has not been placed in the docket as of the date of such promulgation”), 7607(d)(7)(A) (restricting the “record for judicial review”). We therefore look to only “the grounds that the agency invoked when it” promulgated the FIP. *Michigan v. EPA*, 576 U.S. 743, 758, 135 S.Ct. 2699, 192 L.Ed.2d 674 (2015). Should the applicants show the FIP was arbitrary or capricious on the existing record, as we have concluded is likely, the Clean Air Act entitles them to “revers[al]” of that rule’s mandates on them. § 7607(d)(9)(A).” *Ohio v. EPA*, 603 U.S. 279, n.11 (2024).

reasoned response by the EPA. Here, both HB 80 and the SJCA lawsuit were enacted and filed on March 9, 2026, after the record closed when the Hearing ended, but before the filing of closing documents by the rulemaking Parties, before Commission deliberations or adoption of the Proposed Amendments, and thus are properly raised for resolution prior to promulgation.

C. HB 80 Materially Alters the Evidentiary Context for the Proposed One-Well Financial Assurance Amount

The \$150,000 single-well figure applicable to virtually every well under the Proposed Rules, *see* n.1, *supra*, was based solely on OCD's average cost for the most complex wells in the state, not the typical plugging costs incurred by operators and non-orphan wells with typical plugging ranges that make up the vast majority of the inventory. *Motion* ¶ 3, 21, n.11, 24, 26, 37, 43, 45, 55, 57. Applicants' own witness, Peter Morgan, stated: "[t]he only relevant figure for determining the typical cost to plug and abandon a New Mexico well is the cost to OCD." *Id.* ¶ 43 (citing Tr. 601:21–602:1, 542:11–13 (Oct. 21, 2025)). "The average per-well cost of state-contracted plugging has risen nearly 450 percent since FY 19, and the average per-foot cost has risen 270 percent, more than eight times the rate of overall oilfield inflation." . . . from an average of \$30 thousand to \$163 thousand in FY 24. Applicants Ex. 4/OCD Ex. 18 at 13 (LFC Report); Tr. 12:8-9 (Oct. 20, 2025). And the hearing record is rife with examples of how OCD's own actions have inflated that cost far beyond that of even other states. Applicants Ex. 4/OCD Ex. 18 at 16-17 (LFC Report) (reporting Texas average statewide plugging costs of \$15.60/foot versus OCD's FY 24 plugging cost was \$43.85/foot on average, or a median of \$40.30/foot). The Legislature has now provided a dedicated public-funding mechanism to address the average \$163,000 liability directly.

One can calculate that HB 80's projected revenue stream equates to approximately \$35,000 starting in FY 2028 to \$200,000 per at-risk well by FY 2037, fully covering the cost range used in

WELC's own modeling. *Motion* ¶¶ 24, 26. However, neither the costs to plug wells nor the value of a dollar in tax revenue will remain static over time. To determine the proportionality and necessity of the amount of the proposed single well bonding, this Commission needs to understand what the additional funds can reasonably be projected to enable the Reclamation Fund to do in the future. This evidence is not in the legislation. IPANM wishes to have its Economist Expert, Dr. Arscott, submit supplemental testimony about that precise issue and is prepared to submit written testimony in short order. IPANM assumes that the other parties will want the opportunity to probe and/or rebut that testimony and that the Commission may have questions for Dr. Arscott.

Additionally, under Section 70-2-14, financial assurance must be “sufficient to reasonably pay the cost,” and that statutory analysis must now incorporate the substantial public funding HB 80 provides. N.M. Stat. Ann. § 70-2-14(A). Accordingly, the Commission must reopen the record to consider these issues; otherwise, it will run afoul of New Mexico administrative law's requirement that it meaningfully address the problem at hand. *Motion* ¶¶ 1, 3, 18, 20, 28-32, n.14, 59-60.

D. Co-Applicant's Claim that Operational Constraints—Not Funding—Limit Plugging Capacity in New Mexico

The evidentiary record establishes that OCD's ability to execute well-plugging projects is constrained primarily by staffing and procurement limitations, not by inadequate funds. OCD currently employs only three staff members dedicated to managing and overseeing plugging activities, and standard procurement practices routinely result in six- to twelve-month rebids when bids expire, or vendors withdraw. As OCD Exhibit 29 shows, these operational chokepoints—not a lack of money—have already resulted in tens of millions of dollars in the Reclamation Fund remaining unspent each year.

Crucially, this pattern predates HB 80. Even under prior financial-assurance requirements

and with substantial funding available, OCD lacked the administrative capacity to obligate and deploy its existing resources. No increase in bonding or financial assurance can overcome these structural limitations. Until the agency expands personnel, improves procurement processes, and builds internal operational capacity, additional revenue will accumulate without accelerating plugging activity. *Motion* ¶ 40.

1. Why the Allegations in the SJCA Complaint Matter

The Commission should not ignore pending allegations made by Co-Applicant SJCA that go directly to OCD's operational capacity. The Industry Associations acknowledge that allegations concerning OCD's past inefficiencies or failures have not yet been adjudicated. But that is precisely the point: because these allegations may ultimately be proven true, the Commission should not cavalierly disregard them. The existence of a pending judicial challenge raises legitimate questions about the factual assumptions that underpinned this rulemaking, especially those concerning OCD's operational reliability, its historical use of plugging funds, and its administrative capacity to manage a dramatically expanded financial-assurance regime.

In administrative law, when new evidence calls into question the factual foundation of an agency decision, the agency is obligated to address it—not pretend it does not exist. HB 80 and the Complaint together present material changes in both facts and circumstances, triggering precisely the kind of situation where reopening the record is not only appropriate but necessary.

2. Material Changes Necessitating Reopening of the Evidentiary Record

This analysis directly supports reopening the record because HB 80 fundamentally changes the agency's statutory mandate and funding structure, giving OCD new tools to build the program capacity that was previously lacking, and the Commission cannot rely on an evidentiary record that predates these changes. Moreover, the Commission's current record rests on assumptions of inadequate revenue rather than inadequate administrative capacity, and HB 80 shifts that balance

both by providing additional revenue and express capacity-building authority—requiring a reassessment of the factual predicate underlying the rule. The Commission must account for the possibility that these allegations raised prior to adoption of the Proposed Rules may ultimately be substantiated, and the existing records do not consider that potential outcome if adjudicated accurate by New Mexico's courts.

E. New Mexico Law Supports a Reopening of the Record to Account for HB 80

The SLO and OCD declined to meaningfully address many of the legal principles contained in the Motion. Administrative law requires this agency to consider all “important aspects of the problem,” and courts consistently hold that record supplementation is necessary when new statutes materially reshape the factual context of a pending rule. Precedents such as *Ziffrin*, *Zen Magnets*, and *Ohio v. EPA* confirm that agencies act arbitrarily when they ignore significant post-record legal or factual developments. *Motion* ¶¶ 34-36. Appeals of OCC rulemakings are confined strictly to the administrative record. Because HB 80 and the SJCA lawsuit represent important aspects of the problem, reopening the record is procedurally required and represents the least intrusive, legally sound remedy. *Motion* ¶¶ 1, 18, 29, 32, 34, 45, 47, 50, 55.

F. SLO's Arguments Do Not Justify Denial of a Limited Reopening

1. HB 80 Materially Changes Factual Circumstances and Underlying Assumptions of the “Orphan Well Problem” as Asserted by Applicants Beyond Just “Adding Revenue”

SLO's effort to minimize HB 80 is misplaced. HB 80 does not merely “add revenue” for a narrow subset of truly orphaned wells, as SLO suggests. It fundamentally alters the fiscal landscape and eliminates the financial predicate on which the WELC proposal rests. HB 80's structure (non-reverting, multi-year, and predictable) differs materially from prior statutory funding mechanisms. It creates a stable, long-term public-funding solution that directly replaces the need for the extraordinary financial assurance increases proposed in this rulemaking. *Motion*

¶¶ 4-8, 25-26, Atts. A-D.

2. Industry Associations Request Limited Reopening of the Record Directly Related to Key Issues Raised on Both Sides at the Hearing

SLO's argument that reopening the record would require the Commission to admit unrelated issues such as oil prices or alleged new violations is equally misplaced. *SLO Opposition* at 2-3. Reopening cannot be broadened (nor do the Industry Associations request such a broad reopening of the record) in this manner because those issues: (1) were not part of the original rulemaking,³ (2) are unrelated to HB 80's legal effect on the Proposed Rules, and (3) would violate procedural fairness by expanding the scope beyond what the Parties had notice and opportunity to address. The Reclamation Fund was mentioned on the hearing record 144 times alone, not including discussion in the pre-filed testimony. The Reclamation Fund is not a new issue – it's a key underlying issue the parties agreed was a key piece to the puzzle, or at least at that time, the funding gap was. *Motion* ¶¶ 5, 51, 53.

NMOGA and IPANM further assert that the underlying premise of the SJCA lawsuit, OCD's failure to enforce its regulations, was a topic of discussion among all Parties on cross-examination when inquiring about the OCD Orphan Well Program's prioritization, staffing, efficiency, and practice of not forfeiting plugging assurance.⁴

³ As the Trades recall, commodity pricing came up in two contexts in the public hearings. First, by statute, the percentage amount of Conservation Tax revenues that flow to the Reclamation Fund is tied to the price of West Texas Intermediate crude. Second, the Trades presented evidence that a prudent operator of a natural gas well would seek to minimize gas production during periods of low or negative pricing. Neither issue is effected by the SLO's argument.

⁴ "At the recent Legislative Finance Committee meeting in June 2025, which I was present for, ENMRD's Deputy Secretary Ben Shelton admitted that OCD has 'barely pursued financial assurance, and the answer is because the juice isn't worth the squeeze. [EMNRD] has three attorneys to process a hundred percent of the enforcements. It's not worth the juice; is not worth the squeeze...We don't collect enough to make it worth our while.'" LFC Transcript, 62:18-63:9. At last report, OCD went after just one bond in the past 8 years. Raising FA levels on individual wells will not save the State any money.'" IPANM PHS Exhibit D at 7:5-12 (IPANM Executive Director Jim Winchester pre-filed Direct Testimony). OCD Deputy Director Powell confirmed during the hearing that forfeited FA is not currently a funding source for its Orphan Well Program because OCD does not typically redeem plugging bonds, at least one-well financial assurance amounts. Tr. 84:2-15 (Oct. 27, 2025).

The Commission cannot reopen the record to bring in unrelated matters simply because SLO prefers a broader inquiry. SLO's "if we reopen, we want to add everything" position is legally incorrect and strategically unreasonable. The purpose of reopening is to ensure the record reflects material changes in law that directly affect the evidentiary foundation of the Proposed Rules, not to create an open-ended vehicle for introducing new, tangential issues. A narrowly tailored reopening (limited to HB 80, its fiscal analyses, a new economic analysis, updated projections, and the SJCA lawsuit's contradictions) is the least intrusive and legally appropriate remedy.

3. The Motion to Reopen is 23 Pages with 13 Pages of HB 80 Fiscal Impact Reports and EMNRD Agency Analyses Attached, and the Following 50 Pages are the SJCA Complaint

Although the New Mexico Rules of Civil Procedure are not binding in this rulemaking, 19.15.3.12(A)(1) NMAC, SLO raises that the *Motion to Reopen* weighed in at 90 pages. *SLO Opposition* at 1. Industry Associations clarify that 70% of the page count was comprised of the Attachments (HB 80 fiscal impact reports and EMNRD analysis, plus the 50-page SJCA complaint), with the Motion at 23 pages and asserting only what was necessary to substantiate the request to reopen and generally describe the specific evidence to be instructed if the record is reopened, which NMOGA and IPANM now set forth with more specificity, as follows.

G. The Specific Evidence the Industry Associations Will Introduce Upon Reopening Is Concrete, Limited, and Directly Relevant

Contrary to OCD and SLO's assertions, Industry Associations have identified with precision the evidence they seek to introduce. The requested supplementation is narrow, directly tied to HB 80 and/or the SJCA lawsuit, and is essential for the Commission to meet its obligations under New Mexico administrative law principles.

1. Four Categories of Evidence on HB 80's Fiscal Impacts

In response to OCD and SLO's position that the Industry Associations provide any specific

evidence or testimony that they intend to offer in support of their *Motion*, the Industry Associations seek to introduce four discrete categories of evidence, each addressing the statute's impact on the fiscal assumptions underlying the Proposed Rules and/or the contradictory cause of the orphan well problem as asserted by SCJA in new litigation.

i. HB 80 Official Analyses and Associated Legislative Documents

With respect to HB 80 and its official supporting materials, the Industry Associations will submit: the full text of HB 80, the HB 80 Fiscal Impact Report from NM Tax and Revenue, the EMNRD Agency Bill Analysis, the LFC Fiscal Impact Report, and the HB 80 Legislative History, floor debate and sponsor statement, as well as updated Reclamation Fund revenue projections reflecting the Oil and Gas Conservation Tax dedication through FY 2037 and legislative modeling showing expected annual inflows (collectively, the "HB 80 Official Analyses and Legislative Documents").

This evidence is necessary because it demonstrates how HB 80 replaces the "unfunded liability" predicate for the \$150,000 one-well financial assurance and the underlying assumption for other Proposed Amendments. Administrative notice of HB 80's existence cannot establish its fiscal effects, the operative fact that the Commission must evaluate.

ii. Limited Financial Analysis By Admitted IPANM Economist Expert Dr. Arscott

To aid the Commission in its economic analysis of HB 80 and the impact on the Proposed Rules during deliberations, the Industry Associations are prepared to submit a limited financial analysis, in the form of less than ten pages of written supplemental testimony, from IPANM Economist Expert, Dr. Robert Arscott, with any related, referenced, or underlying report and spreadsheet(s) attached, and make Dr. Arscott available for remote examination, cross-examination, and questioning by the Commission. Issues to be addressed by Dr. Arscott include,

but are not limited to, the following key analyses:

- Modeling the Reclamation Fund balance and outflow trajectory;
- An analysis of how long it takes to work through the 700 orphaned wells and 1,400 at-risk wells as the non-reverting balance increases over time and at what pace, if possible;
- What the Reclamation Fund balance will look like over that timeline relative to OCD's realistic program output; and,
- The number of wells that HB 80 funds will pay to be plugged and reclaimed, assuming OCD's costs.

IPANM is prepared to provide those concise pages of supplemental testimony from Dr. Arscott by the closing document deadline of April 3, 2026, so that reopening the record for the limited purposes requested by the Industry Associations and keeping the current schedule are not made mutually exclusive. IPANM is not seeking additional or live witness testimony unless the parties assert or the Commission determines that HB 80 requires further interpretation or analysis beyond that provided by briefing and the limited, brief supplemental testimony and supporting documents Dr. Arscott intends to provide.

IPANM's supplemental HB 80 testimony and report prove that HB 80 is not just a new statute the Commission can take notice of in the abstract; it has concrete fiscal consequences that bear directly on the assumptions used to justify the proposed rules. IPANM's Dr. Arscott will show how HB 80 materially changes the fiscal and evidentiary context and therefore requires the Commission to reassess the necessity and proportionality of the \$150,000 one-well financial assurance amount and other overhauls and increases, and materially weakens the funding-shortfall premise.

iii. Updated Statewide and Industry Plugging and Cost Projections

IPANM's supplemental testimony by Dr. Arscott will assess OCD plugging cost projections, assuming OCD's plugging and reclamation costs at an inflation rate of 2.5%, while holding contributions to the Reclamation Fund stagnant, to provide the most conservative estimate

possible. Given the direction under the Oil and Gas Act under Section 70-2-14(A), to set one-well financial assurance in an amount “sufficient to reasonably pay the cost,” however, the Industry Associations are prepared to provide supplemental exhibits reflecting collected industry plugging cost data in comparison to HB 80’s new per-well funding ratio and WELC’s modeling, *Motion* ¶¶ 21, 24, 26, such that HB 80 alters or eliminates the need for proposed eight-fold financial assurance increases, *Motion* ¶¶ 7, 19, 28, 37, 44, 51, 59, 61-62. If the Commission agrees that such analysis would aid its post-HB 80 financial assessment, then the Industry Associations are willing to supplement the record as directed by the Commission and will make every attempt to do so by the April 3rd closing deadline.

iv. Evidence Related to the SJCA Complaint

The Industry Associations will introduce the SJCA Complaint itself, along with any additional pleadings, litigation materials, or related press releases or publications demonstrating contradictions between WELC, SJCA, and the other Co-Applicants’ positions in this rulemaking and the factual assertions made in court. These inconsistencies must be part of the record to avoid an arbitrary outcome, even if the Commission ultimately assigns them limited weight. The lawsuit contains newly acquired factual assertions from a Co-Applicant that directly contradict central claims in the hearing record.

2. This Evidence Is Narrowly Tailored, Directly Relevant, and Procedurally Necessary

The items above are the only evidence the Industry Associations seek to admit, and each category is tied directly to HB 80’s fiscal consequences, the statutory requirements for financial assurance, and the need to maintain a legally defensible record on appeal. This targeted supplementation is far less intrusive than SLO’s proposed expansion, which would improperly introduce unrelated issues such as oil-price volatility or new alleged violations. The Industry

Associations' request is narrow, relevant, and procedurally required.

III. CONCLUSION

The Commission should reopen the record because HB 80 and the SJCA lawsuit fundamentally changed the factual and legal landscape. These developments undercut the assumptions supporting the Proposed Rules—particularly the \$150,000 one-well financial assurance—and reshape the statutory framework the Commission must apply. Reopening is necessary to: (1) admit HB 80 Official Analyses and Legislative Documents, Dr. Arscott's supplemental analyses, new or revised plugging cost projections, and the SJCA complaint and related evidence, *see* Part II.J.1.i.-iv, *supra*; (2) allow limited briefing on the statute's effect on the Proposed Amendments and complaint's effect on their underlying justification and assumptions on which the Proposed Rules are based, (3) correct the now-obsolete assumptions embedded in Applicants' Proposed Rules, and (4) ensure that any final rules are reasonable, proportionate, and aligned with current law.


The Industry Associations' request remains narrowly tailored: it seeks only to introduce HB 80 and its Official Analyses and Legislative Documents, additional industry plugging cost projections if deemed helpful to the Commission, and limited evidence related to the SJCA complaint. In opposing reopening, SLO and OCD rely solely on the pre-HB 80 record and do not address the statute's immediate and substantial impact on the Proposed Rules. Denying reopening risks adoption of rules that will be overturned as arbitrary, capricious, unsupported by the record, and contrary to law. Because the governing legal context has changed in ways the existing record does not capture, reopening the record is both necessary and appropriate. While NMOGA and IPANM believe their originally requested relief (25 pages and 60-90 days) is proportionate to the magnitude of both recent legal developments described above, IPANM is prepared to submit at

least the limited financial analysis by its Economist Expert, Dr. Arscott, by the closing deadline date of April 3, 2026.

WHEREFORE, the Industry Associations respectfully request that the Commission consider and grant their Motion to Reopen the Record, and such other relief as the Commission deems necessary and proper.

Respectfully submitted,

BEATTY & WOZNIAK, P.C.

By: 

Miguel A. Suazo

James P. Parrot

Ryan McKee

Valkyrie E. Buffa

Jacob L. Everhart

500 Don Gaspar Ave.,

Santa Fe, NM 87505

(505) 946-2090

msuazo@bwenergylaw.com

jparrot@bwenergylaw.com

rmckee@bwenergylaw.com

larentsen@bwenergylaw.com

kbuffa@bwenergylaw.com

jeverhart@bwenergylaw.com

Attorneys for New Mexico Oil and Gas Association

HINKLE SHANOR LLP

By: /s/ Andrew J. Cloutier

Andrew J. Cloutier

Ann Cox Tripp

P.O. Box 10

Roswell, NM 88202-0010

acloutier@hinklelawfirm.com

atripp@hinklelawfirm.com

Attorneys for Independent Petroleum Association of New Mexico

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing NMOGA and IPANM Consolidated Joint Reply in Support of Motion to Reopen and Responding to OCD and SLO's Oppositions was served to counsel of record by electronic mail this 25th day of March 2026, as follows:

Tannis Fox
Senior Attorney
Morgan O'Grady
Staff Attorney
Western Environmental Law Center
409 East Palace Avenue, #2
Santa Fe, New Mexico 87501
505.629.0732
fox@westernlaw.org
ogrady@westernlaw.org

Kyle Tisdell
Managing Attorney
Western Environmental Law Center
208 Paseo del Pueblo Sur, #602
Taos, New Mexico 87571
575.613.8050
tisdell@westernlaw.org

Matt Nykiel
Staff Attorney
Western Environmental Law Center
224 West Rainbow Boulevard, #247
Salida, Colorado 81201
720.778.1902
nykiel@westernlaw.org
Attorneys for Applicants Western Environmental Law Center, Citizens Caring for the Future, Conservation Voters New Mexico Education Fund, Diné C.A.R.E., Earthworks, Naeva, New Mexico Interfaith Power and Light, San Juan Citizens Alliance, and Sierra Club.

Felicia Orth
Hearing Officer
New Mexico Energy, Minerals, and Natural Resources Department
Wendell Chino Building
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
Felicia.l.orth@gmail.com
Oil Conservation Commission Hearing Officer

Jesse Tremaine
Chris Moander
Assistant General Counsels
New Mexico Energy, Minerals, and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
jessek.tremaine@emnrd.nm.gov
chris.moander@emnrd.nm.gov
Attorneys for Oil Conservation Division

Michael H. Feldewert
Adam G. Rankin
Paula M. Vance
P.O. Box 2208
Santa Fe, New Mexico 87504
mfeldewert@hollandhart.com
agrarkin@hollandhart.com
pmvance@hollandhart.com
Attorneys for OXY USA Inc.

Andrew J. Cloutier
Ann Cox Tripp
Hinkle Shanor LLP
P.O. Box 10
Roswell, New Mexico 88202-0010
acloutier@hinklelawfirm.com
atripp@hinklelawfirm.com
Attorneys for Independent Petroleum Assoc of NM

Jennifer L. Bradfute
Matthias Sayer
Bradfute Sayer P.C.
P.O. Box 90233
Albuquerque, New Mexico 87199
jennifer@bradfutelaw.com
matthias@bradfutelaw.com
Jordan L. Kessler
EOG Resources, Inc.
125 Lincoln Avenue, Suite 213
Santa Fe, New Mexico 87501
Jordan_kessler@eogresources.com
Attorneys for EOG Resources, Inc.

Zachary A. Shandler
Assistant Attorney General
New Mexico Department of Justice
P.O. Box 1508
Santa Fe, New Mexico 87504
zshandler@nmdoj.gov
Oil Conservation Commission Counsel

Mariel Nanasi
Lead Attorney and Executive Director
New Energy Economy
422 Old Santa Fe Trail
Santa Fe, NM 87501
505-469-4060 (cell)
MNanasi@NewEnergyEconomy.org
Attorney for New Energy Economy

Sheila Apodaca
New Mexico Energy, Minerals, and Natural
Resources Department
Wendell Chino Building
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
occ.hearings@emnrd.nm.gov
Oil Conservation Commission Clerk

Nicholas R. Maxwell
P.O. Box 1064
Hobbs, New Mexico 88241
inspector@sunshineaudit.com



Rachael Ketchledge