

**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**

**WESTERN ENVIRONMENTAL LAW CENTER,
ET AL.**

CASE NO. 24683

APPLICANTS.

**NEW MEXICO OIL AND GAS ASSOCIATION (“NMOGA”) AND INDEPENDENT
PETROLEUM ASSOCIATION OF NEW MEXICO (“IPANM”) JOINT RESPONSE TO
APPLICANTS’ MOTION TO EXCLUDE NMOGA’S CLOSING EXHIBIT 7 AND
NMOGA AND IPANM’S RELATED FINDINGS OF FACT**

The New Mexico Oil and Gas Association (“NMOGA”) and the Independent Petroleum Association of New Mexico (“IPANM”) (collectively, the “Industry Trade Associations”), through undersigned counsel, file this Joint Response to Applicants’ Motion to Exclude NMOGA’s Closing Exhibit 7, a public comment letter submitted by the Surety and Fidelity Association of America (“SFAA”) attached hereto as **Exhibit A**, and the Industry Trade Associations’ related Findings of Fact reported in their Closing Briefs. Applicants’ Motion to Exclude (hereinafter “Motion”), led by the Western Environmental Law Center (“WELC”), should be denied as procedurally waived, factually incorrect, legally unsupported, and to preserve fairness, protect the rights of interested associations and the public, and ensure a complete administrative record.

I. ARGUMENT

Contrary to the Applicants’ assertion, excluding the SFAA public comment letter at issue in Applicants’ Motion, attached as Exhibit 7 to NMOGA’s Closing Brief, and relied upon in NMOGA’s Closing Brief for its Proposed Finding of Fact #88 and IPANM’s Closing Brief for its Proposed Finding of Fact #191, is improper, unfair, and prejudices NMOGA, IPANM, SFAA, interested persons, and the public at large. For the following reasons, the Industry Trade

Associations contest the Applicants' Motion as untimely and effectively waived, or, alternatively, respectfully request that the Commission exercise its authority to extend the public comment period or its discretion to admit the SFAA letter, because equity so requires.

The last day of the hearing shifted during the final week without adequate notice, thereby creating confusion about when the public comment period would close and whether there was a difference in oral versus written deadlines for public comments. The record shows repeated indications that the hearing would run through November 7, 2025. On October 31, 2025, SFAA's Senior Vice President, Ms. Julie Alleyne, emailed the Commission to confirm SFAA's understanding that it had until the end of the last scheduled week of the hearing to submit written comments, with that email attached hereto as **Exhibit B**. *See Exhibit C, Declaration of Julie Alleyne, SFAA Senior Vice President* ¶¶ 1, 7.¹ But Ms. Alleyne never received a response to her inquiry. *Id.* ¶ 8. Nor did any SFAA employee or representative receive any notice that the public comment period might close early if the rulemaking hearing ended earlier than scheduled. *Id.* ¶ 9. Despite the representation made during the hearing that Commission staff would contact "everyone who indicated an interest" to comment during the final week. Tr. 278:7-9 (Nov. 3, 2025). Other members of the public reiterate the same understanding that they had until November 7th to provide oral and written public comments. *See* Part I.B.3.ii., *infra* (citing **Exhibit F**).

A. Applicants' Objection Has Been Waived for Failure to File Their Motion More Than a Month After the Industry Trade Associations' Closing Briefs Were Filed and More Than Five Months After the SFAA Public Comment Letter Was Filed

Applicants' failure to file their Motion until May 6, 2026, a month after the Closing Briefs were filed on April 3, 2026, constitutes a waiver of Applicants' objection due to their failure to

¹ SFAA Senior Vice President, Ms. Alleyne, has provided a sworn declaration regarding the facts provided by SFAA, attached hereto as **Exhibit C**, with the SFAA public comment letter and her preceding October 31st email also appended to her declaration as its **Appendices A and B**.

raise the issue timely. Moreover, the SFAA public comment letter at issue in the Motion, attached to NMOGA's Closing Brief, and relied on in NMOGA and IPANM's Proposed Findings of Facts #88 and #191, respectively, has been recorded and available on OCD's Official Case Record since November 19, 2025.

All written comments were uploaded to the OCD Online Case File for this OCC Case No. 24683.² Notably, the OCD Case Files webpage reflects that it is the “[o]fficial record of a case including pre-hearing documents, transcripts, and exhibits.”³ As reflected in the official case record, on November 19, 2025, the SFAA letter was uploaded along with two November 6th written comments. Those three written public comment submissions, including SFAA's public comment letter, were all uploaded together as the “1138 kB - 11/19/2025” batch.⁴

Applicants have had ample time to seek the exclusion of the SFAA letter from the administrative record, but failed to do so. This untimely attempt to do so through the present Motion to Exclude NMOGA's and IPANM's related exhibit and proposed findings of fact should be denied.⁵

² N.M. Oil Conservation Div., Case File No. 24683 (N.M. Energy, Minerals & Nat. Res. Dep't), <https://ocdimage.emnrd.nm.gov/imaging/CaseFileView.aspx?CaseNo=24683> (last visited May 18, 2026).

³ N.M. Oil Conservation Div., Imaging Database, N.M. Energy, Minerals & Nat. Res. Dep't, <https://ocdimage.emnrd.nm.gov/imaging/> (last visited May 18, 2026).

⁴ N.M. Oil Conservation Div., Case File No. 24683, 1138 kB - 11/19/2025 batch, (N.M. Energy, Minerals & Nat. Res. Dep't), https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafe/cf/20251119/24683_11_19_2025_03_10_39.pdf (last visited May 18, 2026).

⁵ In addition, pursuant to Paragraph 6 of the Amended Prehearing Order, “[d]ispositive motions and motions to exclude evidence shall be filed and served by September 15, 2025 at 5:00 pm.” Applicants filed this Motion to Exclude on May 6, 2026, almost eight months after the deadline for motions to exclude evidence. This alone warrants denial.

New Mexico law firmly establishes that prehearing orders control the subsequent course of hearings. The principle is well-established that a prehearing order, made and entered without objection, and to which no motion to modify has been made, controls the subsequent course of the prehearing and hearing process. *See Ortega, Snead, Dixon & Hanna v. Gennitti*, 1979-NMSC-056, ¶ 142, 93 N.M. 135, 597 P.2d 745. This fundamental rule ensures orderly proceedings and prevents parties from unilaterally disregarding established deadlines. Although the Amended Prehearing Order does not allow for late motions for any reason, the Applicants do not even attempt to explain the reason for their untimely motion. The Amended Prehearing Order was jointly negotiated and entered without objection, and

B. Alternatively, Even If The Commission Finds the SFAA Comment Letter was Filed After November 6th, the Commission and Its Chair Have the Authority to Extend the Written Public Comment Period, and the Commission Has the Discretion to Admit the SFAA Letter, Actions Which are Both Warranted Here, Under These Circumstances and Where Equity Supports Admission

In the event the Commission does not agree that Applicants have waived their objection to the November 2025 SFAA letter by failing to move to exclude the letter to until a month after it was attached to NMOGA's Closing Brief and referenced by both Industry Trade Associations in their Findings of Fact on April 3, 2026, alternatively, the Commission and its Chair have the authority to extend the written public comment period and the discretion to allow admission of the SFAA letter based on the special circumstances surrounding the final week of the hearing.

The rulemaking hearing transcript confirms that the hearing ended earlier than expected, by just one day, on Thursday, November 6, 2025, instead of Friday, November 7th. *See* Tr. 121:9-10 (Nov. 6, 2025) (“We’ll close the administrative record at this point then.”); *see* Part I.B.3., *infra*. SFAA received no notice that the hearing was ending early. **Exhibit C ¶ 9**. Despite the fact that Ms. Alleyne, Senior Vice President for SFAA, emailed the Commission on October 31, 2025, to confirm that SFAA had until November 7, 2025, to file its written comments. **Exhibit B; Exhibit C ¶ 7**. Ms. Alleyne’s email went unanswered. *Id.* ¶ 8.

During the final week of the hearing, it was noted that Commission staff would contact “everyone who indicated an interest” in providing public comment that final week. Tr. 278:7-9 (Nov. 3, 2025). However, Ms. Alleyne was never contacted after that representation was made, nor was any employee or representative of SFAA. **Exhibit C ¶ 9**. Unaware that written and oral

Applicants themselves have relied upon it to enforce deadlines earlier in this proceeding. Having benefited from those procedural protections, they cannot now disregard them. The Commission has consistently enforced such deadlines to maintain fairness and efficiency in complex, multi-party rulemakings. Applicants’ untimely motion, filed after all parties had relied on the established schedule, is procedurally barred. Applicants themselves put it aptly in their prior unsuccessful Motion to Exclude the Rebuttal Evidence of Clayton Sporich, NMOGA’s Legal Expert: “If the requirements of the Procedural Order are to mean anything,” such improper, untimely motions should be denied.

public comments were closing early, despite efforts to confirm the timeframe for SFAA to exercise its right to be heard remained unchanged, SFAA proceeded with filing its letter on November 7, 2025, at 11:33 AM EST. **Exhibit A; Exhibit C ¶¶ 6, 10.** Accordingly, NMOGA and IPANM respectfully request that the Commission or its Chair extend the public comment period to November 7, 2025, or exercise its discretion, to allow for the admission of the SFAA letter under these extraordinary circumstances where unambiguous notice of the change in oral and written comment periods was not provided an interested association entitled to make public comment and which made efforts to confirm the comment period remained open through November 7, 2025.

1. OCC's Rulemaking Regulations and the Notice of Public Hearing Proposed Rulemaking Confirm that the Commission and Its Chair Have the Authority to Extend the Time for Filing Written Public Comments

The Commission's rulemaking regulation 19.15.3.10 NMAC states the following regarding written comments on rulemakings:

A person may submit written or electronic comments on a proposed rule change, and those comments shall be made part of the hearing record. A person shall provide written comments on the proposed rule change to the commission clerk not later than the date of the scheduled hearing, unless the commission chairman or the commission extends the time for filing comments. The commission chairman or the commission may extend the time for filing written or electronic comments by making an announcement at the hearing, or by posting notice on the division's website. A person may review written or electronic comments on a proposed rule change at the division's Santa Fe office. The division shall post copies of written or electronic comments that persons have filed with the commission clerk on the division's website as soon as practicable after they are filed.

The Commission and Chair's authority to extend the public comment period is also reflected in the Notice of Public Hearing for Proposed Rulemaking issued by the Commission on May 19, 2025, attached hereto as **Exhibit D**, which states:

Any person may submit written comments on the proposed amendments no later than 5:00 pm on the final day of the administrative hearing unless extended by the Commission. . . . The public hearing will be held in-person, online, and by telephone commencing on October 20, 2025 at 9:00 am and continuing each weekday thereafter as necessary.

2. SFAA as a Member of the Public and an Interested Association Has the Right to Reasonable Notice and is Entitled to a Reasonable Opportunity to Be Heard, Both of Which are Protected by the New Mexico Oil and Gas Act (“NM OGAct”), as well as the New Mexico Administrative Procedure Act (“NM APA”) as Confirmed by the New Mexico Attorney General’s (“NM AG”) Rulemaking Hearing Regulations

Although the Notice of Public Hearing generally defines the written comment period for proposed rulemaking, *see Exhibit D*, the New Mexico Oil and Gas Act (“NM OGAct”) requires reasonable notice of rulemaking hearings and that “any person having an interest in the subject matter of the hearing shall be entitled to be heard.” Similarly, the New Mexico Administrative Procedure Act (“NM APAct”) requires agencies to publish notice that will reasonably give notice to interested persons and afford the public a reasonable opportunity to provide oral and written comments, as confirmed by the New Mexico Attorney General’s (“NM AG”) rulemaking hearing regulations.

The SFAA is a nonpartisan, non-profit association that represents 450 member companies that write 98% of private and public bonds. **Exhibit C ¶ 2**. In New Mexico, 70% of current operators utilize surety bonds to meet their plugging assurance obligations with the Division. *See* OCD Exhibit 29. Accordingly, the SFAA is not only a member of the public but is also an interested association. **Exhibit C ¶¶ 3-5**. SFAA’s ability to make public comment in this rulemaking is legally protected by these statutes and regulations at the highest level. *See* Part I.B.2.ii.-iii., *infra*.

Moreover, input and comment on the feasibility of the surety market to respond to or absorb the cost of the proposed rules is one area in which the record is conspicuously sparse. Over three weeks of hearing, the Commission heard from a total of two witnesses with actual surety experience. The SFAA, on the other hand, “is a national trade association of more than 400 insurance companies that write 98 percent of surety and fidelity bonds in the U.S. SFAA is licensed as a rating or advisory organization in all states, and it has been designated by state insurance

departments as a statistical agent for the reporting of fidelity and surety experience.” **Exhibit A** at n.1. This is not a matter of duplication or redundancy, but instead direct insight from an industry that the proposed rules inherently rely upon. In other words, SFAA’s voice matters, and it is a voice that is absent from the current record.

i. NM OGAct Guarantees the Public Reasonable Notice and Entitles Interested Persons the Opportunity to Be Heard

Pursuant to the NM OGAct:

Except as provided for herein, before any rule, regulation or order, including revocation, change, renewal or extension thereof, shall be made under the provisions of this act, a public hearing shall be held at such time, place and manner as may be prescribed by the division. The division shall first give reasonable notice of such hearing (in no case less than ten days, except in an emergency) and at any such hearing any person having an interest in the subject matter of the hearing shall be entitled to be heard. . . .

NMSA 1978 § 70-2-3 (“Hearings on rules, regulations and orders; notice; emergency rules.”)

Accordingly, under the governing statute here, the NM OGAct, SFAA, as a member of the public, has a right to reasonable notice and, as an interested association, *see* Part I.B.2, *supra*, is entitled to be heard by providing written comment, *see* Part I.B.4, *infra*. The conclusion of the hearing a day earlier than originally scheduled, *see* Part I.B.3, *infra*, cannot override those binding statutory entitlements.

ii. NM APAct and NM AG Rulemaking Hearing Regulations Guarantee All Interested Persons Reasonable Notice and a Reasonable Opportunity to Provide Public Comment

Pursuant to the NM APAct, agencies must “publish notice of its proposed action . . . as will reasonably give public notice to interested persons.” NMSA 1978 § 12-8-4.A.(1) (“Rulemaking prerequisites”). Further, requiring agencies must “afford all interested persons reasonable opportunity to submit data, views, or arguments orally or in writing,” and “the agency shall consider fully all written and oral submissions respecting the proposed rule.” *Id.* at § 12-8-4.A.(3).

Accordingly, the Commission, as a New Mexico agency, cannot infringe upon the public's right to reasonable notice and reasonable opportunity to be heard. The NM AG's public hearing regulation 1.24.25.13.A. NMAC reinforces that the purpose of a rulemaking hearing is to give interested persons a reasonable opportunity to provide oral or written comment on the proposed rule. SFAA, as an interested association, *see* Part I.B.2, *supra*, is thus further guaranteed reasonable notice and a reasonable opportunity to be heard

3. Because the Written Comment Period was Tied to the Rulemaking Hearing, Which Ended One Day Earlier than Originally Scheduled on November 6, 2025, but the Public Understood November 7th to Be the Final Day for Submissions, the Commission has the Discretion to Admit the SFAA Letter, Especially under These Circumstances

i. New Mexico State Rules Act ("NM SRA") Requires Agencies to Include When Public Comments are Due in Notices of Proposed Rulemakings

The New Mexico State Rules Act ("NM SRA") requires that agencies include when comments are due in their mandatory notice of proposed rulemakings. NMSA 1978 § 14-4-5.2.A.(5) ("Notice of proposed rulemaking"). According to the Commission's Notice of Public Hearing for Proposed Rulemaking attached hereto as **Exhibit D**, as supplemented by the Notice of Public Meeting 9 AM Daily attached hereto as **Exhibit E**, the public was informed that the rulemaking hearing was originally scheduled to run through Friday, November 7th, and that they would have the opportunity to comment through that time.

ii. The Official Case Record Reflects That the Public Understood They Had Until Friday, November 7, 2025, to Provide Public Comment

The official case record contains an email dated October 31, 2025, from SFAA Senior Vice President, Ms. Alleyne, to the Commission, requesting confirmation that SFAA had until November 7th to provide its written comment on the rulemaking, which went unanswered. **Exhibit B; Exhibit C ¶¶ 7-8**. At least one other member of the public commenters expressed the same understanding in their written comment submitted when they were unable to provide oral

comments on November 7th, as they had expected, with that submission attached hereto as **Exhibit F** (“I am submitting my public comment by writing as the window to attend virtually as I logged onto Microsoft Teams at 9:30 AM and stated it was closed to the hearing on November 7.”).

iii. Notice of the 1-Day Change in When the Hearing Would Conclude Was Ambiguous and Not Sufficient to Infringe on the Public’s Right to Comment, Most Especially for SFAA as an Interested Association

Although the rulemaking hearing ended earlier than expected, by just one day, on Thursday, November 6, 2025, instead of Friday, November 7th, *see* Tr. 121:9-10 (Nov. 6, 2025), the rulemaking hearing transcript reflects that the record was set to close Friday, November 7, 2025, up until the very last week of the hearing when the Hearing Officer verbally announced oral comments would likely need to be made by November 6th:

By the way, speaking of public comment, just one thing. It appears to me that we may not have a 4:00 o’clock public comment period tomorrow or any time on Wednesday, if we’re going to take a break between the witnesses. So if you are in contact with people whom you know plan to give public comment, encourage them to speak either tomorrow morning or Thursday morning. And I did ask Sheila to reach out directly to everyone who indicated an interest to her to let them know that. Thank you all.

Tr. 277:25-278:1-9 (Nov. 3, 2025).

NMOGA and IPANM notified their members and encouraged them to spread the word. However, SFAA and other members of the public who did not sign up to speak were not notified of this change, either by the Commission staff or by word of mouth from parties. But SFAA should have been notified of this change, considering its email inquiry from October 31, 2025, but it was not. **Exhibit B; Exhibit C ¶¶ 7-9.** SFAA Senior Vice President, Ms. Alleyne, never received any response to her October 31st email, nor any subsequent notification from the Commission, despite her correspondence to the Commission that SFAA was planning to provide written public comment by November 7th. *Id.*

In addition, the limitation set by the Hearing Examiner appears to be specific to oral

comments, not written comments. This further complicates the timeline of when written public comments were due, and the lack of notice regarding changes to the same.

Additional ambiguous statements followed that final week, which suggested that there could be an opportunity to provide oral and written comments on Friday, November 7th. Tr. 37:12-13 (Nov. 4, 2025) (“We’re certain we will have another session this Thursday morning at 9:00.”) (indicating there is a possibility public comments could be submitted on Friday, November 7th); Tr. 22:8-9 (Nov. 5, 2025) (“We’re certain that we will have another session this Thursday morning at 9:00.”) (same).

It was not until November 6th itself that the Hearing Officer provided a firm cutoff for oral public comments: “This is our final public comment session in this hearing. We believe we’ll be wrapping up the hearing fully around the middle of the day today.” Tr. 9:8-10 (Nov. 6, 2025). It is the Industry Trade Associations’ understanding that no written notice, in the form of email or otherwise, was provided to the parties, interested persons, or the public, including SFAA, which had specifically inquired to confirm that Friday, November 7th, would be the last day to provide oral or written public comment. *See Exhibit C ¶ 9.*

The public was not formally notified that written public comment was ending before November 7th. A day or at most a few days’ notice by word of mouth regarding the last day to provide public comment, because the hearing ended one day early on Thursday, November 6th, should not override and infringe on SFAA as an interested party’s, *see* Part I.B.2, *supra*, and Part I.B.4, *infra*, ability to provide public comment through the day they were formally notified as required by law, *see* Part I.B.3.i., *supra*, through the end of the day Friday, November 7th, *see* Part I.B.3.ii., *supra*. **Exhibit C ¶¶ 2-15.**

iv. *These Circumstances Justify the Commission Exercising Its Discretion to Admit the SFAA Letter Here*

To date, SFAA has received no notice that Applicants in this rulemaking are attempting to exclude SFAA's public comment letter. **Exhibit C ¶ 11.** To exclude SFAA's written comments, after Ms. Alleyne received no contrary notice in response to her inquiry regarding the applicable deadline, combined with the absence of any subsequent notice that the record would close prior to November 7, 2025, in the event the hearing ended early, would deprive SFAA of a meaningful opportunity to be heard. **Exhibit C ¶¶ 12-15.** Equity warrants the Commission exercising its discretion to allow admission of the SFAA's public comment, especially as an interested association entitled to reasonable notice and an opportunity to be heard. *See Part I.B.2, supra.*

Basic principles of due process and fundamental fairness in administrative proceedings require that interested parties receive clear notice of deadlines and a reasonable opportunity to present their views before agency action is finalized. Where, as here, an interested and directly affected association expressly communicated its intent to submit comments by a date it reasonably understood to be operative, and received no contrary guidance or correction, the unexplained early closure of the record undermines the integrity of the proceeding and prejudices the party's ability to participate. This lack of notice and opportunity is inconsistent with the procedural protections that attach to rulemaking processes affecting substantial rights and regulated interests and justifies the Commission extending the public comment period or exercising its discretion to allow the SFAA letter at issue in the Motion.

Furthermore, because the written comment period as set forth in the public notices was tied to the rulemaking hearing duration, which ended one day earlier than originally scheduled, rather than set by a fixed deadline independent of the hearing, as the language of the NM SRA indicates is required, the Commission should exercise its discretion to admit the SFAA letter under these

circumstances. *See* Part I.B.3.-I.B.4., *infra*; *see* **Exhibit D** as supplemented by **Exhibit E**.

4. Only Two Witnesses with Any Surety Experience Testified in this Financial Assurance Rulemaking, Where 70% of Current Operators Meet Their Plugging Assurance Obligations with the Division Using Surety Bonds Issued in Large Part by SFAA Members

Considering only two witnesses with any surety experience testified during the rulemaking hearing, this is an area where comments from the SFAA as a surety trade association are particularly valuable in this financial assurance rulemaking proceeding. *See* Part I.B.2, *supra*; *see* **Exhibit A**; **Exhibit C ¶¶ 2-6**. Especially here in New Mexico, where 70% of operators utilize surety bonds to meet their plugging assurance obligations owed to and on file with the Oil Conservation Division. *See* OCD Exhibit 29. In addition, one of the proposed amendments at issue in this rulemaking would add to the qualification criteria required for sureties to be eligible to issue these plugging bonds to New Mexico operators; specifically, proposing to require certification of the surety by the U.S. Department of the Treasury as reflected in the list of certified companies on its Circular 570. *See* 19.15.8.10 NMAC (prop. Apr. 4, 2026) (“Additional Requirements for Cash and Surety Bonds”). These facts further justify the Commission exercising its authority to extend the public comment period, or its discretion to admit the SFAA letter at issue in Applicants’ Motion and underlying the Industry Trade Associations’ related Findings of Fact contested in the Motion.

C. Applicants’ Opportunity to Respond Argument is Illusory

Applicants claim that if the SFAA letter had been filed on November 6th, then they would have had an opportunity to respond. Motion ¶ 1. Even if the SFAA letter was filed on November 6th, there still would have been no time for WELC or any party to respond before the end of the day on November 6, 2025, when the Commission ended the hearing a day early, because the comment was not uploaded or made public until November 19, 2025. *See* Part I.A., n.4, *supra*.

As such, the Applicants’ argument that they were not afforded an opportunity to respond

to the SFAA letter is illusory. Closing briefs were the proper avenue to respond to public comment letters, as the Industry Trade Associations did with the SFAA letter at issue in Applicants' Motion.

II. CONCLUSION

For the foregoing reasons, the Commission should deny the Applicants' Motion to Exclude. Applicants waived their objection through untimely filing, and the official case record demonstrates that the SFAA letter was not uploaded and made available for parties and other members of the public to review until November 19, 2025. As such, the Applicants' alleged lack of opportunity to respond is illusory, as closing briefs provided the appropriate mechanism for addressing public comment. Moreover, the Commission retains clear authority to extend the comment period and the discretion to admit the SFAA letter at issue.

Equity strongly favors admission where the Hearing Officer closed the record on November 6th without unambiguous notice, leaving some members of the public and interested persons, including SFAA, without a fair opportunity to provide comments they reasonably believed could be submitted on November 7th and had attempted to confirm with the Commission to no avail. **Exhibit B; Exhibit C ¶¶ 7-10.** Given the relevance of SFAA's expertise in a rulemaking where surety bonding is central, excluding the SFAA letter would unfairly prejudice not only the Industry Trade Associations but also SFAA as an interested association and the broader public interest. *Id.* ¶¶ 2-6, 11-15.

Accordingly, the SFAA public comment letter should be admitted into the record, NMOGA should be allowed to attach the SFAA letter as its Closing Exhibit 7, and NMOGA's and IPANM's related Findings of Fact should be deemed admissible evidence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response to Applicants' Motion to Exclude was served to counsel of record by electronic mail this 21st day of May 2026, as follows:

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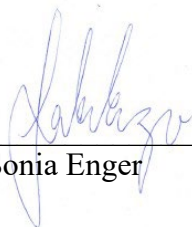
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RE: Revised Application for Rulemaking from Western Environmental Law Center, Citizens Caring for the Future, Conservation Voters New Mexico Education Fund, Diné C.A.R.E, Earthworks, Naeva, New Mexico Interfaith Power and Light, San Juan Citizens Alliance, and Sierra Club (collectively "Applicants"); Case No. 24683

Dear Clerk Apodaca,

The Surety & Fidelity Association of America ("SFAA")¹ appreciates the opportunity to provide written comments regarding the Applicant's revised application submitted in response to the alternative proposals the Oil Conservation Division submitted on February 12, 2025. SFAA urges the Oil Conservation Commission ("Commission") to reject the amendments proposed explicitly to 19.5.8.9 NMAC-Financial Assurance, notably the addition of a new category of financial assurance for certain operators based on the types of wells they hold.

While SFAA recognizes the need to address the projected oil and gas cleanup liabilities New Mexico faces and appreciates the good intentions behind the proposed amendments to protect the state and its citizens, the additional financial assurance requirements proposed for certain operators are problematic and create adverse selection against smaller operators based on their current portfolios. Additionally, recent market events have already reduced surety appetite and are likely to diminish it further if the proposed amendments are adopted; any remaining appetite will likely be offered on more restrictive terms. Based on SFAA's general understanding of the market, many operators would not qualify for the increased liabilities associated with marginal wells. Therefore, SFAA welcomes the opportunity to engage with the Commission and the industry to find a better solution that benefits all stakeholders while protecting New Mexico's interests.

¹ SFAA is a national trade association of more than 400 insurance companies that write 98 percent of surety and fidelity bonds in the U.S. SFAA is licensed as a rating or advisory organization in all states, and it has been designated by state insurance departments as a statistical agent for the reporting of fidelity and surety experience.





Clerk Apodaca
November 7, 2025
Page 2 of 2

The proposed amendment to 19.15.8.9 NMAC recommends additional financial assurance requirements beyond the current standards for certain operators, based on the makeup of their portfolios, particularly the percentage of marginal wells they hold. This creates adverse selection against these operators. Furthermore, these wells are in the poorest condition and demand the most significant financial investment for plugging and abandonment, thereby increasing their financial risk. Because this presents more immediate and substantial exposure and, given the nature of the risk, the surety industry would regard these bonds as high-risk obligations, requiring stricter underwriting scrutiny.

As mentioned earlier, the market has recently shrunk further due to adverse developments. If sureties continue issuing these bonds under the proposed changes, they will raise their underwriting standards for operators seeking bonds for these obligations, likely making only the largest operators eligible. As a result, the proposed rules could reduce competition by excluding all but the biggest oil and gas operators from the pool of eligible operators. Small and medium-sized operators might be effectively shut out of this market, as sureties are likely unwilling to issue bonds for them because they often lack enough financial capital to demonstrate their fiscal strength and ability to handle the increased risks to the Commission over time.

For these reasons, SFAA urges the Commission to reject the proposed amendments to 19.15.8.9 NMAC and instead encourages the Commission to work with SFAA and its members to find a better, more effective solution that minimizes impact on current operators in the New Mexico oil and gas industry while safeguarding the state's interests, a shared common goal.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Julie Alleyne', with a long, sweeping underline.

Julie Alleyne
Senior Vice President & General Counsel
The Surety & Fidelity Association of America
jalleyne@surety.org
202.702.8865



From: [Alleyne, Julie](#)
To: [Hearings, OCC, EMNRD](#)
Subject: [EXTERNAL] Urgent Request for Proposed Amendments - comments due November 7th
Date: Friday, October 31, 2025 2:19:59 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)

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Dear New Mexico Oil Conservation Commission,

I am reaching out regarding the proposed amendments to the Commission rules at 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC, which are proposed by Western Environmental Law Center, Citizens Concerned 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. I am seeking the actual proposed amendments because I have been unable to find them on your website. Could you please send them to me as soon as possible? I understand comments are due by the end of next week.

Thank you.

Thank you.

Best,

Julie

Julie Alleyne
Senior Vice President and General Counsel
The Surety & Fidelity Association of America
Office: 202-778-3630 / Cell: 202-702-8865 / jalleyne@surety.org
www.surety.org



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**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**

**WESTERN ENVIRONMENTAL LAW CENTER,
ET AL.**

CASE NO. 24683

APPLICANTS.

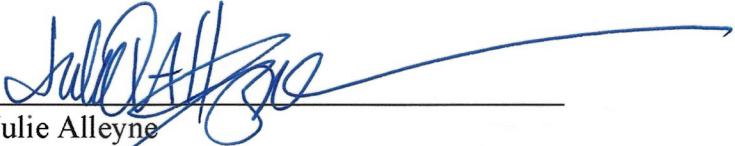
DECLARATION OF JULIE ALLEYNE

I, Julie Alleyne, declare as follows:

1. I am the Senior Vice President for The Surety & Fidelity Association of America (“SFAA”). I have personal knowledge of the matters set forth herein and, if called as a witness, could and would testify competently thereto.
2. SFAA is a national trade association representing more than 400 insurance companies that write approximately 98% of surety and fidelity bonds in the United States.
3. SFAA is licensed as a rating or advisory organization in all states and has been designated by state insurance departments as a statistical agent for reporting fidelity and surety experience.
4. SFAA and its member companies are directly and substantially affected by regulatory changes governing financial assurance requirements because such rules govern the underwriting, availability, and terms of surety bonds issued to oil and gas operators.
5. SFAA is an interested association with a concrete stake in the outcome of this rulemaking and in ensuring that its members’ interests, as well as broader market impacts, are properly and prudently considered.
6. As such, SFAA submitted its written public comment in this New Mexico Oil Conservation Commission’s (“OCC”) Case No. 24683 before the administrative record was originally scheduled to close at the end of the final day of the hearing. SFAA’s public comment letter is attached hereto as **Appendix A**.
7. On October 31, 2025, I emailed the OCC to request a copy of the current version of the proposed rules and asked for it as soon as possible, given that the SFAA had only until November 7, 2025, to submit written public comment. My October 31st email to the OCC is attached hereto as **Appendix B**.

8. The OCC did not respond to my October 31st email, nor did any OCC staff or representatives.
9. Despite SFAA's stated intent to submit comments by November 7, 2025, SFAA did not receive any notice from OCC staff during the final week of the hearing that the hearing might end early, and, if it did, both the oral and written public comment periods would end as well.
10. Because the OCC did not respond to my inquiry or advise SFAA in any manner that SFAA would need to file public comments earlier than November 7, 2025, SFAA filed its written public comment letter on Friday, November 7, 2025, at 11:33 AM EST. *See Appendix A.*
11. To date, SFAA has received no prior notice that the Applicants in this rulemaking are attempting to exclude its comment letter.
12. The first time SFAA learned of the Applicants' Motion to Exclude SFAA's public comment letter from the record was when counsel for the New Mexico Oil and Gas Association contacted SFAA on Tuesday, May 19, 2026, to confirm that the Commission had not contacted SFAA in response to my October 31st email and/or to inform SFAA that public comment might close early since I had asserted SFAA's intent to provide public comment that final week by November 7th in my email.
13. SFAA protests the exclusion of its public comment letter from the administrative record in this OCC Case No. 24683.
14. SFAA finds the efforts to exclude its public comment especially egregious, considering SFAA reasonably relied on the anticipated November 7, 2025, deadline, and I took steps to confirm SFAA could file through November 7th and did not receive any contrary notice.
15. Excluding SFAA's comment letter will deprive it as a member of the public and an interested association of a meaningful opportunity to participate fully in this rulemaking process, which it is legally entitled to and took steps to engage in during the originally scheduled dates communicated to SFAA and all members of the public.

I declare under penalty of perjury under the laws of the United States that the foregoing testimony is true and correct to the best of my knowledge.



Julie Alleyne
Executed on May 21, 2026, in West Hartford, CT



November 7, 2025

Via Electronic Mail occ.hearings@emnrd.nm.gov

Sheila Apodaca, Commission Clerk
New Mexico Oil Conservation Commission
Wendell Chino Building
1220 S. St. Francis Dr.
Santa Fe, NM 87505

RE: Revised Application for Rulemaking from 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 (collectively "Applicants"); Case No. 24683

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Clerk Apodaca
November 7, 2025
Page 2 of 2

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NOTICE OF PUBLIC HEARING FOR PROPOSED RULEMAKING

The New Mexico Oil Conservation Commission (Commission) hereby gives notice that the Commission will hold a public hearing to consider proposed amendments to Commission rules at 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC. Western Environmental Law Center, Citizens Concerned 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 propose the amendments. The public hearing will be held in-person, online, and by telephone commencing October 20, 2025 at 9:00 am and continuing each weekday thereafter as necessary.

Purpose of Proposed Amendments. The purpose of the proposed amendments is to require financial assurance from oil and gas operators that better reflects the actual costs to plug and abandon oil and gas wells in the state to better protect the State of New Mexico against the risks of wells becoming orphaned; to require that wells placed in temporary abandonment will be returned to beneficial use within a reasonable period or will be plugged and abandoned; and to set forth requirements for transfer of wells to better protect the state against transfer of wells that could become orphaned.

Summary of Proposed Amendments. The proposed amendments would add meeting the waste prevention requirements at Subsection A of 19.15.27.8 NMAC as a requirement for an operator to be in compliance at Subsection A of 19.15.5.9 NMAC and to eliminate the allowance that a certain number of wells may be out of compliance with 19.15.25.8 NMAC to be considered in compliance for purposes of Subsection A of 19.15.5.9 NMAC; modify financial assurance requirements for wells at 19.15.8 NMAC to better reflect actual well plugging and abandonment costs and risks to the state and add a new category of marginal wells for financial assurance based on their risk; modify well transfer requirements at 19.15.9 NMAC to better protect against risks to the state against wells becoming orphaned; modify requirements at 19.15.25 NMAC for presumptively determining whether wells are being used for beneficial purposes and placing wells in approved temporary abandonment status, maintaining wells in that status, and renewing that status; and modify certain definitions at 19.15.2 NMAC to reflect the other proposed amendments.

Legal Authority. The proposed rule is authorized by the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, including Section 70-2-6 (authorizing Commission to exercise jurisdiction, authority, and control over all persons, matters, and things necessary or proper to enforce the statute), Section 70-2-11 (authorizing Commission to make rules to prevent waste, protect correlative rights, and to do whatever may be reasonably necessary to implement the statute), Section 70-2-12 (enumerating powers of Commission and Oil Conservation Division (OCD)), and Section 70-2-14 (authorizing Commission to establish categories of financial assurance). The public hearing is governed by the Commission's rule on rulemaking proceedings at 19.15.3 NMAC.

Availability of Proposed Amendments. The full text of the proposed amendments are available on OCD's website at <http://www.emnrd.nm.gov/OCD/rules.html> or may be obtained from Commission Clerk Sheila Apodaca at occ.hearings@emnrd.nm.gov.

Written Comments. Any person may submit written comments on the proposed amendments no later than 5:00 pm on the final day of the evidentiary hearing unless extended by the Commission, by mail or delivery to Sheila Apodaca, Commission Clerk, Wendell Chino Building, 1220 S. St. Francis Dr., Santa Fe, NM 87505, or by email to the Commission Clerk at occ.hearings@emnrd.nm.gov.

Public Hearing. The public hearing will be held in-person, online, and by telephone commencing on October 20, 2025 at 9:00 am and continuing each weekday thereafter as necessary. The hearing will be held in Pecos Hall on the first floor in the Wendell Chino Building at the address above. To access the public hearing online via Microsoft Teams or by telephone:

[Join the meeting now](#)

[Join a Microsoft Teams Meeting by ID | Microsoft Teams](#)

**The meeting is also accessible at the following web address:
<https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting>**

Meeting ID: 257 871 029 212 2
Passcode: QD2eM2vG

Dial in by phone

[+1 505-312-4308,95109307#](tel:+1505312430895109307) United States, Albuquerque
[\(888\) 506-1357,95109307#](tel:(888)506135795109307) United States (Toll-free)
Phone conference ID: 951 093 07#

For any questions about how to participate in the hearing, please contact the Commission Clerk at occ.hearings@emnrd.nm.gov or 505-699-8358, or visit the Hearings page on OCD's website at <http://www.emnrd.nm.gov/OCD/hearings.html>. Public comment will be accepted each day of the hearing beginning at 4:00 p.m. on October 20, 2025, and at 9:00 am and 4:00 pm on each subsequent day of the hearing. A Spanish language translator will be available at 4:00 p.m. on October 20, 21, 27, and November 3, 2025. The translator will only be made available until the close of the evidentiary hearing. If the evidentiary hearing closes before any of these dates, public comments will no longer be taken and a translator will not be available.

Proposed Modifications, Technical Testimony, and Cross-Examination. Any person intending to propose a modification to the proposed amendments, to present technical testimony at the hearing, or to cross-examine witnesses must file a Pre-hearing Statement conforming to the requirements of Subsection B of 19.15.3.11 NMAC, except that instead of filing a concise statement of each witness's testimony as required by Paragraph 2 of Subsection B of 19.15.3.11NMAC, the person shall file each witness's full testimony. Full direct testimony and exhibits shall be filed no later than 5:00 pm on July 25, 2025. Full rebuttal testimony and exhibits shall be filed no later than 5:00 pm on September 5, 2025. Filing may be accomplished by mail or delivery to Sheila Apodaca, Commission Clerk, Wendell Chino Building, 1220 S. St. Francis Dr., Santa Fe, NM 87505, or by email to the Commission Clerk at occ.hearings@emnrd.nm.gov. Any person who presents technical testimony will be subject to cross-examination by the members of the Commission, the Commission's counsel, or another person who filed a Pre-hearing Statement.

Oral Comments. Any person who did not file a Pre-hearing Statement may present non-technical testimony or make an unsworn statement at the hearing, and may offer exhibits at the hearing so long as the exhibits are relevant to the proposed rule and do not unduly repeat testimony. Any person who presents sworn, non-technical testimony is subject to cross-examination by the Commission, the Commission's counsel, or another person who has filed a Pre-hearing Statement.

Persons with Disabilities. If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, including a summary or other accessible form of document, please contact the Commission Clerk at occ.hearings@emnrd.nm.gov or 505-699-8358 or through the New Mexico Relay Network at 1-800-659-1779, no later than 5:00 pm on October 1, 2025.

Technical Information. Technical information that may be provided through Pre-hearing Statements will be made publicly available on the OCD Imaging, Case File Search portal on OCD's website at <http://ocdimage.emnrd.nm.gov/imaging/CaseFileCriteria.aspx>, and may be accessed by searching for Case File No.24683.

**NOTICE OF PUBLIC MEETING
STATE OF NEW MEXICO OIL CONSERVATION COMMISSION
SANTA FE, NEW MEXICO
OCTOBER 20-NOVEMBER 7, 2025
9:00 A.M. DAILY**

The State of New Mexico Oil Conservation Commission meeting will be held in a hybrid format with both in-person and virtual participation options as set forth below. **The meeting will be held at the Wendell Chino Building, 1220 S. Saint Francis Drive, Pecos Hall, First Floor, Santa Fe, New Mexico.**

Beginning on Monday, October 20, 2025, 9:00 AM | 8 hours | Mountain Time (US & Canada) and continuing daily until Friday, November 7, 2025, or sooner if completed.

The Commission’s public meeting may also be accessed by using the following links and meeting information:

[Join a Microsoft Teams Meeting by ID | Microsoft Teams](#)

Or

[Join the meeting now](#)

**Meeting ID: 257 871 029 212 2
Passcode: QD2eM2vG**

**The meeting is also accessible at the following web address:
<https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting>**

**Dial in by phone
[+1 505-312-4308,,95109307#](#) United States, Albuquerque
[\(888\) 506-1357,,95109307#](#) United States (Toll-free)
Phone conference ID: 951 093 07#**

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Sheila Apodaca at (505) 699-8358 or through the New Mexico Relay Network at 1-800-659-1779. Public documents can be provided in various accessible formats. A preliminary agenda will be available to the public no later than two weeks prior. A final agenda will be available no later than 72 hours preceding the meeting. Members of the public may obtain copies of the agenda by contacting Ms. Apodaca or by visiting the Oil Conservation Division website at www.emnrd.nm.gov/ocd.

* * * * *

The following items are for discussion and possible action:

- **Case No. 24683:** Application by Western Environmental Law Center, et al. for Rulemaking to Amend 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC.
- **Matter to be Heard: Rulemaking Hearing**

Counsel of Record:

Western Environmental Law Center

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Morgan O'Grady
Matthew Nykiel
Kyle Tisdell
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ogrady@westernlaw.org
nykiel@westernlaw.org
tisdell@westernlaw.org
*Attorneys for Applicants Western
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Citizens Caring for the Future
Conservation Voters New Mexico
Education Fund
Dine C.A.R.E.
Earthworks, Naeva,
New Mexico Interfaith Powe & Light
San Juan Citizens Alliance, Sierra Club
WildEarth Guardians*

**New Mexico Energy Minerals
and Natural Resources Department**

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Christopher Moander
Michael Hall
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New Energy Economy

Mariel Nanasi, Esq.
mariel@newenergyeconomy.com
Attorney for New Energy Economy

Given under the Seal of the New Mexico Oil Conservation Commission at Santa Fe, New Mexico.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

/s/ Albert C.S. Chang

Albert C.S. Chang, Chair

From: wendy_atcitty
To: [Hearings, OCC, EMNRD](#)
Cc: wendy_atcitty
Subject: [EXTERNAL] Public Comment on Reference Case No. 24683
Date: Friday, November 7, 2025 9:59:57 AM

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Hello NM Oil Conservation Commission

I am submitting my public comment by writing as the window to attend virtually as I logged onto Microsoft Teams at 9:30 AM and stated it was closed to the hearing on November 7.

Hello, my name is Wendy Atcitty and I grew up in San Juan County. I saw oil and gas development my whole life in all its stages of planning, drilling, running, and abandoned. It was only till reaching adulthood that I began to understand the full picture of oil and gas impacts to the health of people and the environment. My family has lived in the eastern side of the Navajo Nation where there are over 13 oil and gas developments two miles from our homesite, which just yesterday a new rig was put up to make it 14. I have only seen once in the region an orphan well being plugged up, but many sit there remaining to be the monument that it made someone else's life benefit in monetary means but lays still slowly emitting any remnants of pollution to life living around it seeing it day to day. We see the trucks tear up the dirt roads, as they still drive in the hard rains and don't come back to level the ground; we see oil and gas wells having herds of wild horses and cattle that walk over as there are no fences stopping them; I still hear the sounds of the these sites pumping on and off all day; my family getting headaches, nosebleeds, etc. as the nearby wells operated 24 hours a day at their peak time over 10 years ago; and finally smell the gases that escape as they are vented and fortunately not flared as it was a few years ago that brightened our night sky with huge flames and smells that disturbed the quietness of the sky.

I would like to have the oil and gas corporations in this state be held accountable to cleanup at full cost as we can't continue to not see what is seen of the legacy pollution this industry has caused around the rural and tribal lands. Being accountable would hold rules for plugging wells,, address orphaned/abandoned, and low producing wells for all stages of clean up.

In closing, the New Mexico Oil Conservation Commission considered the new bonding and cleanup rules to bring up requirements to modernize outdated requirements and protect our land, air, water, and public health. Let's celebrate the beauty our state brings, ensuring protection and requirements to be upheld in all the state's agencies of working together to have oil and gas corporations be held accountable ensuring their accountability to safely clean up their mess.

Thank you,
Wendy Atcitty
Huerfano Navajo Tribal Member