New Mexico Oil and Gas Association Opening Statement

OCC Case No. 24683| October-November 2025

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Introduction

- NMOGA represents operators large and small – the backbone of New Mexico's energy economy.
- Employs thousands of New Mexicans; generates over one-third of state general fund revenue.
- Committed to responsible operations, environmental stewardship, and supporting New Mexico's institutions.

Purpose of Rulemaking

1. WELC and OCD seek to move the Commission from administering law to creating new law.
2. Proposals include defining 'Beneficial Use' and 'Marginal Wells' and expanding bonding limits.
3. Would exceed statutory authority under NMSA 1978, §§ 70-2-12 and 70-2-13.
4. Reform must remain within the law.

What the Commission Will Hear

- Applicants claim an “orphan well crisis” supported by the 2025 LFC Report.
- WELC’s witnesses helped shape the report and selectively cite it.
- LFC itself admitted data were incomplete.
- LFC found inflated plugging costs due to OCD procurement inefficiencies—2–3x higher than industry costs.

LFC Report Findings

- High plugging costs are due to restrictive bidding and poor contract oversight within OCD.
- Inflated state costs are not evidence of industry failure but of administrative inefficiency.
- Solution: fix the process, don’t punish compliance.
- Industry plugs ~95% of NM wells; proposals would worsen, not solve, the problem (see Colorado).

Experts and Collaboration

- NMOGA's experts: McGowen, Emerick, and others – demonstrate market-based plugging costs.
- Existing bonding already covers realistic risk; focused enforcement is the solution.
- WELC's claim that NMOGA refused to collaborate is false.
- NMOGA learned of filing only days before submission – no genuine opportunity to engage.

NMOGA's Positions are Simple

- **Statutory Limits**
- **Data Must Drive Regulation**
- **NMOGA is a Partner**

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Conclusion

- Industry is already addressing the issues this rulemaking purports to fix.
- Focus on lawful, practical improvement—not overreach.
- NMOGA's case is grounded in experience, data, and practicality.
- Goal: protect New Mexicans and the environment while keeping the State strong.

Thank you

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Miguel Suazo | Shareholder
Santa Fe, New Mexico

J. Daniel Arthur, PE, SPEC, CPG, FGS, QMS, CCML

NMOGA Lead Technical Expert

Direct Examination in OCC Case No. 24683 | October-November 2025

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DIRECT TESTIMONY

Role and Purpose

Direct §§ I-II, pp. 2-3

- Lead technical expert witness for the New Mexico Oil and Gas Association
  - I have served as an expert witness on more than 2,500 dockets and more than 100 litigation cases throughout the U.S. on a variety of issues and topics, including before this New Mexico Oil Conservation Commission
- I assess the propriety and plausibility of Applicants' proposals to amend the Oil Conservation Division's regulations implementing the New Mexico Oil and Gas Act 19.15**.2.7**, **.5**, **.8**, **.15**, and **.25** NMAC
  - Based on my 40 years of experience and expertise in onshore oil and gas operations and regulatory compliance
- My direct and rebuttal testimony sets forth NMOGA's case in chief
  - Provides industry perspective and concerns with proposed changes

Credentials

Direct § I, p. 1

- ***J. Daniel Arthur, BSPE, PE, SPEC, CPG, FGS, QMS, CCML***
  - Bachelor of Science degree in Petroleum Engineering from the Missouri University of Science and Technology
  - Registered professional engineer in 36 states and have completed projects throughout the U.S. and in 30 other countries
  - Registered professional Petroleum Engineer (SPEC) through the Society of Petroleum Engineers
  - Certified Petroleum Geologist (CPG) through the American Association of Petroleum Geologists
  - Fellow of the Geological Society (FGS)
  - Qualified Measurement Specialist (QMS)
  - Certified Climate Management Leader (CCML)

Background and Experience

Direct § I, p. 1

- Founder, President, and Chief Engineer of ALL Consulting
- VP of Well Plugging Initiatives for CSR Services
- CEO for Engineering for DynaVert Holdings
- VP of Sustainability for Verdant Technologies
- Halliburton Services
- Field engineer for small independent oil and gas company
- National expert in U.S. EPA's Underground Injection Program
- VP of Upstream Services for large international consulting company

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Relevant Regulatory Consulting Work

Direct § I, pp. 1-2

- **Multi-disciplinary firm**
- **Completed numerous regulatory projects**
  - New regulation development
  - Commenting on new proposed regulations
  - Regulatory analyses
  - Evaluation of regulatory implementation impacts
  - Effects of historic regulatory and industry practices
  - Negotiating with regulatory agencies concerning their rules for conventional and unconventional oil and gas development and closure
    - Plugging and abandoning various types of wells
- **For both governmental and industry clients**
- **Domestic and internationally**
  - Financial assurance, decommissioning, and operational issues and regulations across U.S.
    - New Mexico, Florida, Texas, Montana, North Dakota, Colorado, Oklahoma, Louisiana, Arkansas, Pennsylvania, Ohio, Indiana, New York, Alaska, and others
  - Financial assurance in New Zealand
  - Coalbed methane development in China
  - Unconventional development in Mexico and Saudi Arabia
  - Carbon credit guidelines for African well fields
  - Hydraulic fracturing in Canada

Governmental and Private Oil and Gas Consulting

Direct § I, pp. 2-3

- Worked with the **U.S. Bureau of Land Management** or "BLM" for marginally producing wells and assessing financial assurance requirements for oil and gas operators
- Worked with the **U.S. Environmental Protection Agency** or "EPA" regarding various types of financial assurance for operators and all types of injection wells
- Advised the **Florida Department of Environmental Protection** and the **Florida Attorney General's Office** on various financial assurance options as their Expert Consultant as well

- Managed environmental due diligence in evaluating idle and marginally producing wells
- Assessed potential risks and compliance costs
- Helped to assess wells that required plugging versus those that had potential to be put back into production
- Assisted operators in attaining financial assurance in various states
- Advised multiple types of marginal and inactive wells in assessing reserves and potential beneficial uses (e.g., conversion to a disposal well, production of source water for enhanced recovery, conversion to a water supply well for farming, etc.)
- Assisted operators in using new technologies to re-complete wells in ways to increase production dramatically (e.g., short radius horizontal wells) and using unique pumping methods (e.g., air lift)

Scope of Direct Testimony

Direct § III.A.-G., pp. 4-49

A. **New definition of "Beneficial Purposes" or "Beneficial Use"** under 19.15.2.7 NMAC, **and related proposed "Presumptions of No Beneficial Use" provision** under 19.15.25.9 NMAC

B. **Changes to when wells are to be either temporarily and permanently plugged and abandoned** under 19.15.25.8(B) NMAC, which notably references beneficial use determinations as one triggering event

C. **Amendments to New Mexico's existing temporary abandonment program** under 19.15.25 NMAC

D. **New definition of "Marginal well"** under 19.15.2.7 NMAC, which is actually more stringent than federal or other states' definitions of marginally producing wells

E. **Increased $150K individual well financial assurance requirements for active, marginal, and inactive and temporarily abandoned wells,** under proposed 19.15.8.9(C), (D), and (E) NMAC, respectively, **the removal of blanket alternatives, and other financial assurance changes** proposed under 19.15.8 NMAC

F. **Changes to the "Waste Prevention Requirements" criteria under which an operator is considered in regulatory compliance** under proposed 19.15.5.9(A)(4)-(5) NMAC

G. **New requirements for operator registration and change of operator (and thus asset transfers)** under 19.15.9.8 and 9.9 NMAC, respectively

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Conclusions

Direct § IV, pp. 49-50

- **Applicants' proposals are overly rigid, operationally impractical, and economically disruptive**
  - Risk unintended consequences, including the premature plugging of viable wells, reduced production from marginal assets, and substantial revenue losses to the State of New Mexico
- **Proposals discredit the value of and disproportionately impact marginal wells**
- **Risk-based financial assurance regimes that reflect factors such as well depth, compliance history, and plugging cost variability provide a far better balance between environmental protection and economic sustainability**
  - Compared to the one-size-fits-all $150k/well approach proposed by the Applicants and supported by OCD and SLO
- **This Commission can ensure that its rules remain both enforceable and aligned with the technical and economic realities of modern oil and gas operations in the state by**
  - Avoiding definitions or bonding thresholds that conflict with the realities of field development, infrastructure investment, and operator capacity
  - Preserving regulatory discretion
  - Maintaining the 5-year term for approved temporary abandonment ("ATA") status

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Overarching Concern with Waste

Direct §§ II-III, pp. 3, 15, 33, 34, 36

- Overarching concern with waste and premature plugging of viable wells that, once plugged, are lost forever, where technology to utilize these wells exists
- Applicants' proposals with either directly or indirectly result in the premature plugging and abandonment of otherwise viable and potentially economic wells and well units
- It is the State of New Mexico’s responsibility to protect and effectively use its natural resources
- Prematurely plugging a well could mean resources are lost forever

A) Proposals to Add New Definition of "**Beneficial Purposes/Use**" and Related "**Presumptions of No Beneficial Use**" Provision

Proposed 19.15.2.7(B)(7) and 19.15.25.9 NMAC

Direct § III.A, pp. 4-14

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New Definition of "Beneficial Purposes/Use" Under Consideration

Proposed 19.15.2.7(B)(7) NMAC
Applicants' PHS Exhibit 1-A

"an oil or gas well that is being used in a productive or beneficial manner, such as production, injection, or monitoring, ***and does not include use of a well for speculative purposes****"*

Direct § III.A.1.i. at p. 5

(3) **"Barrel"** means 42 United States gallons measured at 60 degrees fahrenheit and atmospheric pressure at the sea level.

(4) **"Barrel of oil"** means 42 United States gallons of oil, after deductions for the full amount of basic sediment, water and other impurities present, ascertained by centrifugal or other recognized and customary test.

(5) **"Barrel of oil equivalent"** is determined by converting the volume of gas the well produced to barrels of oil by using a ratio of 6,000 cubic feet to one barrel of oil.

~~(5)~~(6) **"Below-grade tank"** means a vessel, excluding sumps and pressurized pipeline drip traps, where a portion of the tank's sidewalls is below the surrounding ground surface's elevation. Below-grade tank does not include an above ground storage tank that is located above or at the surrounding ground surface's elevation and is surrounded by berms.

(7) "Beneficial purposes" or "beneficial use" means an oil or gas well that is being used in a productive or beneficial manner such as production, injection or monitoring, and does not include use of a well for speculative purposes.

~~(6)~~(8) **"Berm"** means an embankment or ridge constructed to prevent the movement of liquids, sludge, solids or other materials.

~~(7)~~(9) **"Biopile"**, also known as biocell, bioheap, biomound or compost pile, means a pile of contaminated soils used to reduce concentrations of petroleum constituents in excavated soils through biodegradation. This technology involves heaping contaminated soils into piles or "cells" and stimulating aerobic microbial activity within the soils through the aeration or addition of minerals, nutrients and moisture.

~~(8)~~(10) **"BLM"** means the United States department of the interior, bureau of land management.

~~(9)~~(11) **"Bottom hole pressure"** means the gauge pressure in psi under conditions existing at or near the producing horizon.

~~(10)~~(12) **"Bradenhead gas well"** means a well producing gas through wellhead connections from a gas reservoir that has been successfully cased off from an underlying oil or gas reservoir.

~~(11)~~(13) **"BS&W"** means basic sediments and water.

~~(12)~~(14) **"BTEX"** means benzene, toluene, ethylbenzene and xylene.

C. **Definitions beginning with the letter "C".**

(1) **"Carbon dioxide gas"** means noncombustible gas composed chiefly of carbon dioxide occurring naturally in underground rocks.

(2) **"Casinghead gas"** means a gas or vapor or both gas and vapor indigenous to and produced from a pool the division classifies as an oil pool. This also includes gas-cap gas produced from such an oil pool.

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Multiple Concerns with this Definition and Adding Any Definition of Beneficial Now

Direct § III.A.1.i.-ii. at pp. 5-7

- New Mexico has historically extended "beneficial use" beyond volume-based thresholds or narrowly defined production activity
- Historically, OCD has recognized a variety of "beneficial use" categories, including
  - Uses for on-lease fuel
  - Equipment power
  - Vapor recovery
  - Flare reduction
  - Storage
  - Recycling
  - Pressure maintenance
  - Enhanced recovery
  - Pilot projects
- Many of these functions are essential to field development and compliance and not speculative
- Inclusion of the term "speculative purposes" as a disqualifying factor, without definition, introduces subjectivity and regulatory uncertainty, and invites inconsistent enforcement or litigation
- Defining an industry term of art like "beneficial" could have significant impacts on existing interpretations by OCD and regulated operators
- Risks introducing duplicative standards, inconsistent enforcement, and legal ambiguity that could hinder the regulatory process and increase the risk of dispute or protest

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Recommendation: Do Not Define Beneficial; Otherwise, Reject the Exclusion of Speculative Purposes from Any Adopted Definition

Direct § III.A.1.ii. at p. 7

- Adopting the proposed definition would likely result in
  - misclassification of viable wells
  - increased plugging obligations
  - associated loss of production and tax revenue.
- I recommend rejecting adding a new defined term of "beneficial purposes" or "beneficial use"
- In the event the Commission proceeds with the adoption of a new defined term of beneficial:
  - Reject any version that would broadly exclude speculative purposes
  - I have reviewed the testimony of Clayton Sporich, NMOGA's legal witness, on this term, and I support his alternative definition of "beneficial purpose" and "beneficial use" which better reflect the reality of oil and gas operations in New Mexico

Related New "Presumptions of No Beneficial Use" Provision

Proposed 19.15.25.9 NMAC
Applicants' Prehearing Statement Exhibit 1-E

Setting "90-Day Criteria" for (A) Production vs. (B) Water Injection/Disposal Wells:

A. Presumes that a production well is not capable of beneficial use is triggered if, during **any** consecutive 12-month period, there was **less than 90 days of production and less than 90 total BOE**

B. Saltwater disposal and injection wells would be presumed to have no beneficial use during **any** consecutive 12 months of **less than 90 days of injection and less than 100 bbls. total injected**

(C) But Exempting Drilled/Completed <18 Months

(D) Procedure that Makes the Presumption Rebuttable

Direct § III.A.2.i. at p. 7

19.15.25.9 PRESUMPTIONS OF NO BENEFICIAL USE:

A. For oil and gas production wells, there is a rebuttable presumption that a well is not capable of beneficial use if, in a consecutive 12 month period, the well has not produced for at least 90 days and has not produced at least 90 barrels of oil equivalent.

B. For injection or salt water disposal wells, there is a rebuttable presumption that a well is not capable of beneficial use if, in a consecutive 12 month period, the well has not injected at least 90 days and at least 100 barrels of fluid.

C. The rebuttable presumptions in this Section do not apply to wells that have been drilled but not completed for less than 18 months and wells that have been completed but have not produced for less than 18 months.

D. Within 30 calendar days after notice of a preliminary determination from the division that a well or wells are not being used for beneficial purposes, a well operator may submit an application for administrative review of such determination through the division's electronic permitting portal. The division shall issue a final determination based on the application and information available in division records. The final determination may be appealed pursuant to 19.15.4 NMAC. Applications to demonstrate beneficial use of a well or wells shall include:

(1) Documentation demonstrating that the well is reasonably projected to produce in paying quantities; and

19.15.25 NMAC 1

Apps' Ex. 1-E

0032

APPLICANTS' PROPOSED REVISED AMENDMENTS TO 19.15.25 NMAC

(2) Documentation demonstrating that the operator maintains adequate capitalization or reasonably projected revenue sufficient to meet all reasonably anticipated plugging and environmental liabilities of the well or wells and associated production facilities, not inclusive of any financial assurance associated with the well or wells; and

(3) Other relevant information requested by the division including a plugging and abandonment plan as described in 19.15.9.9.B NMAC.

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Presumptions Provision Sets Forth Sole Application Process to Refute "PD" With Required Documentation

Proposed 19.15.25.9 NMAC

Direct § III.A.2.i. at pp. 7-8

- Operators who receive a Preliminary Determination ("PD") from OCD that a well or wells are not being used for beneficial purposes would have only 30 days to apply for administrative review
  - Or appeal rights presumably waived, as appears to be the case, as proposed
- Application for review of PD must include required operational and financial documentation
  - Forecast demonstrating current or future production in paying quantities
  - Evidence of financial capacity beyond financial assurance
  - Or any other "relevant" information requested from OCD
  - Including a plugging and abandonment plan

Recommendation: Reject or Revise Proposed Presumptions of No Beneficial Use and Use of the 90-Day Criteria to Make Determinations

Direct § III.A.2.ii.,v. at pp. 7-9, 12-13

- Wholly reject or rigid 90-Day Criteria that fail to account for wells in temporary non-productive status due to valid operational factors
- If presumption must be adopted, extend 12-month period to at least 3 years, if not 5 years
    - To align with the maximum for Approved Temporary Abandonment ("ATA") status (which Applicants do not oppose), capital allocation cycles, drilling limitations, lease term negotiations, and permitting timelines
    - To provide sufficient time for operators to evaluate redevelopment options, align capital resources, and respond to market conditions
- If presumption must be adopted, only trigger if the subject well has not produced or injected for any reason during that time and the operator has not submitted a plan or application demonstrating intent to return the well to productive service
- If presumption must be adopted, consider or account for
    - Documented infrastructure plans or delays (e.g., pending pipeline construction)
    - Projected use within a defined field development plan
    - Monitoring data or regulatory filings demonstrating compliance-related functions;
    - Evidence of shared use or pad-level economic contributions
    - Planned reactivation timelines and
    - Operator-submitted documentation explaining leasehold strategy or reservoir management objectives

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Risks and Potential Impact of Ignoring Strategic Use of Wells

Direct § III.A.2.iv-vi. at pp. 10-14

- Wells that do not meet the 90-Day Criteria often still serve critical regulatory and strategic functions and should not be presumed nonbeneficial
- Risks and potential impacts of using the 90-day criteria to determine whether a well is presumed not capable of beneficial use include
  - Disproportionately impacting smaller operators
  - Discouraging incremental development
  - Possible loss of leasehold rights or disruption of unit agreements
  - Promotes premature plugging of viable wells
- Using the 90-day criteria to determine whether a well is capable of beneficial use ignores operational value and non-productive but regulatory or infrastructure-related functions that serve essential roles in
  - Leasehold maintenance and/or monitoring
  - Reservoir management
  - Environmental compliance
  - Future field development
  - Enhanced oil recovery (EOR) or secondary/tertiary recovery
  - Regulatory compliance

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Risks and Potential Impact of Tying Beneficial to Production

Direct § III.A.2.iv-vi. at pp. 10-14

- Additionally, production can vary due to market, seasonal, or infrastructure factors like pipeline takeaway capacity, gas plant downtime, weather-related shut-ins, or scheduled maintenance and recompletions
- Wells awaiting recompletion, re-fracs, or reactivation of artificial lift systems may temporarily fall below arbitrary production thresholds but remain fully integrated into an operator's capital and field development plan
- Limiting a well's capability of beneficial use to production volumes is shortsighted and does not account for the complexities of oil and gas operations
    - Particularly for marginal wells and
    - Wells with shared infrastructure

B) Proposal to Change **When Wells are to Be Properly Plugged and Abandoned**

Proposed 19.15.25.8(B) NMAC

Direct § III.B, pp. 14-15

Wells are to Be Properly Plugged and Abandoned

Proposed 19.15.25.8(B) NMAC

Applicants' Prehearing Statement Exhibit 1-E

Proposal to:

1. **Shorten the action deadline from 90 days to 30 days**
2. **Modify the requirement to place the well in approved temporary abandonment within the compliance window to instead require the operator to apply to do so within the new 30-day timeframe**
3. **Strike the word "continuously" from the 1-year inactivity**

19.15.25.8 WELLS TO BE PROPERLY ABANDONED:

A. The operator of wells drilled for oil or gas or services wells including seismic, core, exploration or injection wells, whether cased or uncased, shall plug the wells as Subsection B of 19.15.25.8 NMAC requires.

B. The operator shall either properly plug and abandon a well or apply to the division to place the well in approved temporary abandonment in accordance with 19.15.25 NMAC within ~~90~~ 30 days after:

(1) a 60 day period following suspension of drilling operations;

(2) a determination that a well is no longer usable for beneficial purposes; or

(3) a period of one year in which a well has been ~~continuously~~ inactive.

[19.15.25.8 NMAC - Rp, 19.15.4.201 NMAC, 12/1/2008]

Direct § III.B at pp. 14-15

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Concerns with Changes to When Wells are to Be Plugged

Direct § III.A.2.iv-vi. at pp. 10-14

- Changes are contrary to actual timelines for plugging and abandonment activities
- Typically, once a decision is made to plug a well, the process takes 6 to 18 months
  - From internal review and cost estimation to contractor mobilization, permitting, and scheduling
  - Depending on well depth, site conditions, and regulatory coordination and authorization
- Timelines may extend even further for wells with
  - Surface access issues
  - Sensitive environmental settings
  - Tribal/federal land considerations
- These timeframes represent the minimums and often require additional time to account for safety prioritization like
  - Weather-related deferrals
  - Wildfire or flood risk mitigation
  - Proximity to critical wildlife or surface infrastructure
  - Logistical constraints such as limited availability of plugging rigs,
  - High seasonal service demand
  - Permit processing delays
  - Coordination with other ongoing field activities

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C) Proposals to Amend New Mexico's **Existing Temporary Abandonment Program**

Proposed 19.15.25 NMAC

Direct § III.C, pp. 15-25

NMOGA Expert Harold McGowen fully testifies regarding the following proposals

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Applicants' Changes to Existing 19.15.25.12 NMAC (ATA)

Applicants' PHS Exhibit 1-E

Would require operators to:

- Justify a well's future use to obtain approval from OCD
- Impose excessive and burdensome documentation requests as a part of that process
- Limit ATA status extensions beyond the initial approval period to two years

Direct § III.C.1. at pp. 15-17

19.15.25.~~12~~13 APPROVED TEMPORARY ABANDONMENT:

A. The division may place a well in approved temporary abandonment for a period of up to five years upon a demonstration from the operator that the well will be used for beneficial use within the approved period of temporary abandonment. The operator's demonstration shall include an explanation why the well should be placed in temporary abandonment, how the well will be put to beneficial use in the future including supporting technical and economic data, a plan that describes the ultimate disposition of the well, the time frame for that disposition, and any other information the division determines appropriate, including a current and complete well bore diagram; geological evidence; geophysical data; well casing information; waste removal and disposition; production engineering; geophysical logs, e.g., cement bond logs, caliper logs, and casing inspection logs; and health, safety, and environmental information. If the division denies a request, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

B. Prior to the expiration of an approved temporary abandonment, the operator shall return the well to beneficial use under a plan the division approves, permanently plug and abandon the well and restore and remediate the location, or apply ~~for a new approval to temporarily abandon the well~~ to the division to extend temporary abandonment status pursuant to the procedures for adjudicatory proceedings in 19.15.4 NMAC, except that in any such adjudicatory proceeding any interested person may intervene under 19.15.4.11.A NMAC. To continue in temporary abandonment, the operator must demonstrate to the division that the well will be returned to beneficial use within the requested period of temporary abandonment. The request shall include documentation demonstrating why the well should remain in temporary abandonment; documentation demonstrating why the well was not brought back to beneficial use or plugged and abandoned during the period of temporary abandonment; documentation demonstrating how the well will be put to beneficial use in the future and supporting technical and economic data; a plan that describes the ultimate disposition of the well, the time frame for that disposition; and a health and safety plan demonstrating the well's casing and cementing meet the requirements of Subsections B and C of Section 19.15.25.13 NMAC and the operator has adequate monitoring procedures in place to ensure such requirements will be met. An extended term shall not exceed two additional years, upon which time the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

C. An operator is limited to placing the following numbers of wells in approved temporary abandonment:

~~A.~~(1) one well, if the operator operates between one and five wells; or

~~B.~~(2) one-third of all wells (rounded to the nearest whole number), if the operator operates more than five wells.

D. **Implementation schedule for existing wells.**

(1) **Inactive wells.** Wells that have been inactive for less than three years are eligible for temporary abandonment status. Wells that have been inactive for three or more years are not eligible for temporary abandonment status.

(2) **Wells in approved temporary abandoned status.** Any operator of a well in temporary abandoned status as of [effective date of amendments] shall apply to the division to extend temporary abandonment status in accordance with Subsection B of this Section prior to the date temporary abandonment status terminates. Unless an operator of a well has renewed a temporary abandonment in accordance with this Paragraph, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

(3) **Wells in expired temporary abandoned status.** Any operator of a well in expired temporary abandoned status as of [effective date of amendments] shall apply to the division to extend temporary abandonment status in accordance with Subsection B of this Section. Unless an operator of a well has renewed a temporary abandonment in accordance with this Paragraph, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

E. The timeframes Subsections A and B in this Section shall be implemented consistent with any applicable federal requirements.

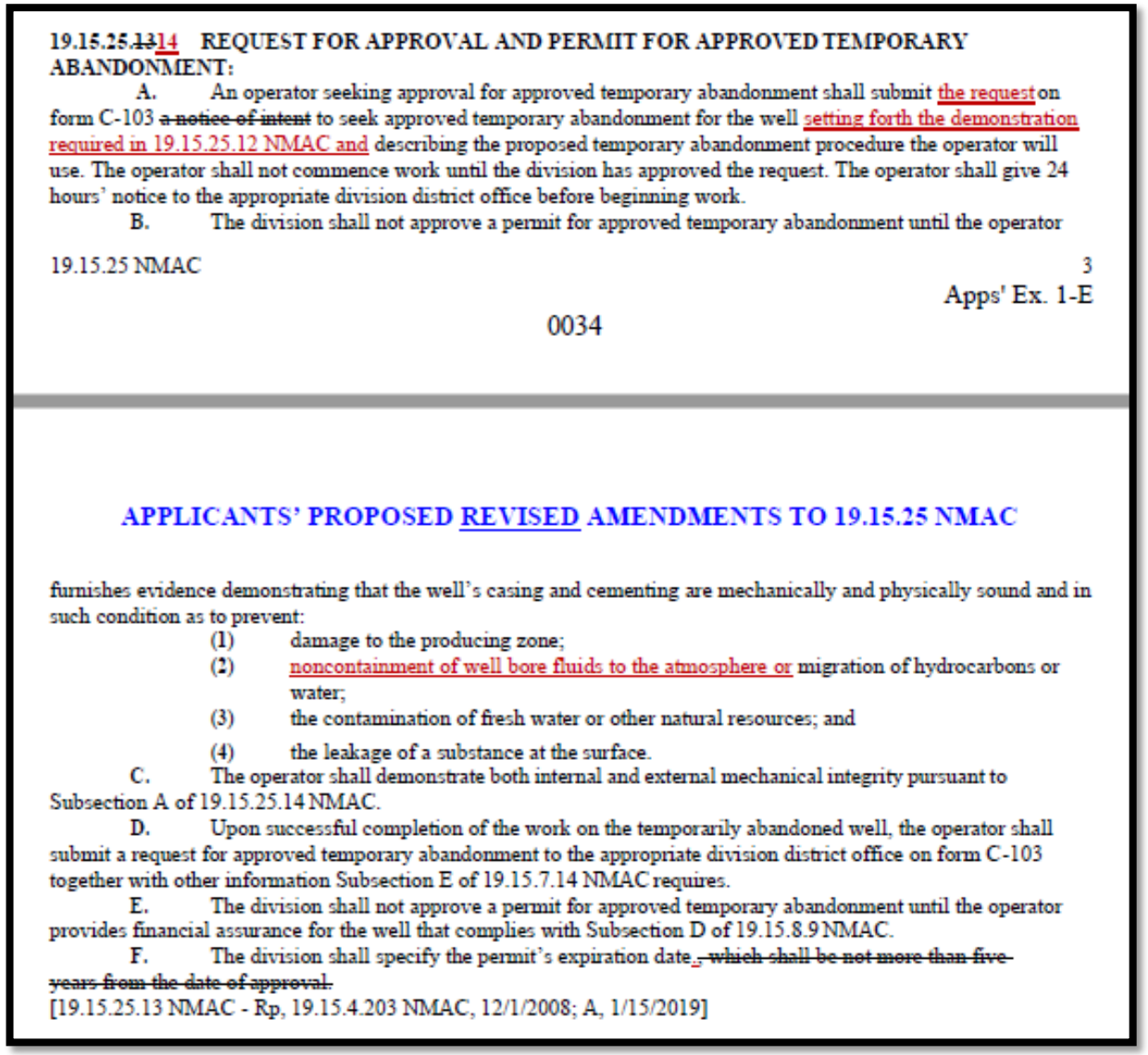
[19.15.25.12 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008; A, 1/15/2019]

Applicants' Changes to Existing 19.15.25.13 NMAC (Request for ATA Approval and Permit)

Applicants' PHS Exhibit 1-E

- What was once a notice is now a request
- Requires by cross reference a "**demonstration from the operator that the well will be used for beneficial use within the approved period of TA . . .**" as proposed under existing 19.15.25.12(A) NMAC (ATA)
- Increased casing requirements

Direct § III.C.1. at pp. 15-17



19.15.25.~~13~~14 REQUEST FOR APPROVAL AND PERMIT FOR APPROVED TEMPORARY ABANDONMENT:

A. An operator seeking approval for approved temporary abandonment shall submit the request on form C-103 ~~a notice of intent~~ to seek approved temporary abandonment for the well setting forth the demonstration required in 19.15.25.12 NMAC and describing the proposed temporary abandonment procedure the operator will use. The operator shall not commence work until the division has approved the request. The operator shall give 24 hours' notice to the appropriate division district office before beginning work.

B. The division shall not approve a permit for approved temporary abandonment until the operator

19.15.25 NMAC 3

Apps' Ex. 1-E

0034

APPLICANTS' PROPOSED REVISED AMENDMENTS TO 19.15.25 NMAC

furnishes evidence demonstrating that the well's casing and cementing are mechanically and physically sound and in such condition as to prevent:

(1) damage to the producing zone;

(2) noncontainment of well bore fluids to the atmosphere or migration of hydrocarbons or water;

(3) the contamination of fresh water or other natural resources; and

(4) the leakage of a substance at the surface.

C. The operator shall demonstrate both internal and external mechanical integrity pursuant to Subsection A of 19.15.25.14 NMAC.

D. Upon successful completion of the work on the temporarily abandoned well, the operator shall submit a request for approved temporary abandonment to the appropriate division district office on form C-103 together with other information Subsection E of 19.15.7.14 NMAC requires.

E. The division shall not approve a permit for approved temporary abandonment until the operator provides financial assurance for the well that complies with Subsection D of 19.15.8.9 NMAC.

F. The division shall specify the permit's expiration date~~, which shall be not more than five years from the date of approval.~~

[19.15.25.13 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008; A, 1/15/2019]

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Changes Proposed to Existing 19.15.25.14 NMAC (Demonstrating Mechanical Integrity)

Applicants' PHS Exhibit 1-E

- What was once a notice is now a request
- Requires by cross reference a "**demonstration from the operator that the well will be used for beneficial use within the approved period of TA . . .**" as proposed under existing 19.15.25.12(A) NMAC (ATA)
- Increased casing requirements

Direct § III.C.2. at pp. 17-22

19.15.25.~~14~~15 DEMONSTRATING MECHANICAL INTEGRITY:

A. An operator may use the following methods of demonstrating internal casing integrity for wells to be placed in approved temporary abandonment:

(1) the operator may set a cast iron bridge plug within 100 feet of uppermost perforations or production casing shoe, load the casing with inert fluid and pressure test to 500 psi surface pressure with a pressure drop of not more than 10 percent over a 30 minute period;

(2) the operator may run a retrievable bridge plug or packer to within 100 feet of uppermost perforations or production casing shoe, and test the well to 500 psi surface pressure for 30 minutes with a pressure drop of not greater than 10 percent over a 30 minute period; or

(3) the operator may demonstrate that the well has been completed for less than five years ~~and has not been connected to a pipeline~~.

(4) Any isolation device used to test mechanical integrity pursuant to Subsection A of this Section shall remain in place for the duration of the temporary abandonment.

(5) The operator shall perform a caliper log and casing integrity log.

B. During the testing described in Paragraphs (1) and (2) of Subsection A of 19.15.25.14 NMAC the operator shall:

(1) open all casing valves during the internal pressure tests and report a flow or pressure ~~change~~ occurring immediately before, during or immediately after the 30 minute pressure test;

(2) top off the casing with inert fluid prior to leaving the location;

(3) report flow during the test in Paragraph (2) of Subsection A of 19.15.25.14 NMAC to the appropriate division district office prior to completion of the temporary abandonment operations; the division may require remediation of the flow prior to approving the well's temporary abandonment.

C. An operator may use any method approved by the EPA in 40 C.F.R. section 146.8(c) to demonstrate external casing and cement integrity for wells to be placed in approved temporary abandonment.

D. The division shall not accept mechanical integrity tests or logs conducted more than 12 months prior to submittal.

E. The operator shall record mechanical integrity tests on a chart recorder with a maximum two hour clock and maximum 1000 pound spring, which has been calibrated within the six months prior to conducting the test. Witnesses to the test shall sign the chart. The operator shall submit the chart, caliper log, and casing integrity log with form C-103 requesting approved temporary abandonment.

F. The division may approve other testing methods the operator proposes if the operator demonstrates that the test satisfies the requirements of Subsection B of 19.15.25.13 NMAC.

[19.15.25.14 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008]

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ENERGY IN THE LAW

Applying Single Definition for "Approved Temporary Abandonment" to Three Defined Terms under 19.15.25.2.7(A)(13) NMAC

Applicants' PHS Exhibit 1-A

(13) **"Approved temporary abandonment," "temporary abandonment," or "temporarily abandoned status"** means the status of a well that is inactive, has been approved in accordance with 19.15.25.13 NMAC and complies with 19.15.25.12 NMAC through 19.15.25.14 NMAC.

(14) **"Aquifer"** means a geological formation, group of formations or a part of a formation that can yield a significant amount of water to a well or spring.

(15) **"ASTM"** means ASTM International - an international standards developing organization that develops and publishes voluntary technical standards for a wide range of materials, products, systems and services.

T. **Definitions beginning with the letter "T".**

(1) **"Tank bottoms"** means that accumulation of hydrocarbon material and other substances that settles naturally below oil in tanks and receptacles that are used in oil's handling and storing, and which accumulation contains more than two percent of BS&W; provided, however, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet to the tank.

(2) **"TDS"** means total dissolved solids.

~~(3) **"Temporary abandonment" or "temporarily abandoned status"** means the status of a well that is inactive.~~

Direct § III.C.3. at pp. 22-24

BEATTY & WOZNIAK
ENERGY IN THE LAW

Adding New Single Definition for "Expired Temporary Abandonment" and "Expired Temporary Abandonment Status" under 19.15.25.2.7(E)(8) NMAC

Applicants' PHS Exhibit 1-A

> (8) **"Expired temporary abandonment"** or **"expired temporary abandonment status"** means the status of a well that is inactive and has been approved for temporary abandoned status in accordance with 19.15.25.13 NMAC, but that no longer complies with 19.15.25.12 NMAC through 19.15.25.14 NMAC.

Direct § III.C.4. at pp. 24-25

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ENERGY IN THE LAW

D) Proposal to **Add a New Definition of "Marginal Wells"** and Increase Their Financial Assurance Obligations

Proposed 19.15.2.7(M)(2)

Direct § III.E, pp. 35-44

New Definition of "Marginal Well" Under Consideration

Proposed 19.15.2.7(M)(2) NMAC
Applicants' PHS Exhibit 1-A

"oil or gas well that produced less than 180 days and less than 1,000 BOE within a consecutive 12-month period."

Direct § III.E.1 at p. 35

APPLICANTS' PROPOSED REVISED AMENDMENTS TO 19.15.2 NMAC

M. Definitions beginning with the letter "M".

(1) "Marginal unit" means a proration unit that is incapable of producing top proration unit allowable for the pool in which it is located.

(2) "Marginal well" means an oil or gas well that produced less than 180 days and less than 1,000 barrels of oil equivalent within a consecutive 12 month period.

~~(2)~~(3) **"Market demand percentage factor"** means that percentage factor of one hundred percent or less as the division determines at an oil allowable hearing, which, when multiplied by the depth bracket allowable applicable to each pool, determines that pool's top proration unit allowable.

~~(3)~~(4) **"MCF"** means 1000 cubic feet.

~~(4)~~(5) **"MCFD"** means 1000 cubic feet per day.

~~(5)~~(6) **"MCFGPD"** means 1000 cubic feet of gas per day.

~~(6)~~(7) **"Measured depth"** means the total length of the well bore.

~~(7)~~(8) **"Mg/l"** means milligrams per liter.

~~(8)~~(9) **"Mg/kg"** means milligrams per kilogram.

~~(9)~~(10) **"Mineral estate"** is the most complete ownership of oil and gas recognized in law and includes the mineral interests and the royalty interests.

~~(10)~~(11) **"Mineral interest owner"** means a working interest owner, or an owner of a right to explore for and develop oil and gas that is not subject to an existing oil and gas lease.

~~(11)~~(12) **"Minimum allowable"** means the minimum amount of production from an oil or gas well that may be advisable from time to time to the end that production will repay reasonable lifting cost and thus prevent premature abandonment and resulting waste.

~~(12)~~(13) **"Miscellaneous hydrocarbons"** means tank bottoms occurring at pipeline stations; oil storage terminals or refineries; pipeline break oil; catchings collected in traps, drips or scrubbers by gasoline plant operators in the plants or in the gathering lines serving the plants; the catchings collected in private, community or commercial salt water disposal systems; or other liquid hydrocarbon that is not lease crude or condensate.

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Overarching Concerns for Adding a Definition of "Marginal Well"

Direct § III.E.2 at p. 35

- Should not be defined, but if it is, must be grounded in operational and economic context, considering leasehold strategy, reservoir management needs, and cash flow projections, not abstract thresholds
- If it must be defined, then the definition should incorporate flexibility and allow for a case-by-case economic assessment like the EPA's production-based criteria or adopt a more nuanced approach like that used in ND or TX, which better align with regulatory and operational realities and avoid unintended consequences

Marginal Well Financial Assurance Implications

Proposed 19.15.8.9(D) NMAC

Direct § III.E.3 at pp. 35-36

D. Marginal wells and inactive wells. Notwithstanding the provisions in Subsection C(2) in this Section:

(1) As of the [effective date of amendments] a transferee operator shall provide a one well plugging financial assurance of $150.000 for each marginal well prior to transfer.

(2) Beginning January 1, 2028, an operator shall provide a one well plugging financial assurance for each marginal well.

(3) An operator with 15 percent or more of their wells in marginal or inactive well status, or a combination thereof, shall provide a one well plugging financial assurance in the amount of $150.000 for each well registered to the operator until the percentage of the operator's marginal and inactive wells is decreased below 15 percent.

(4) An operator may furnish all necessary one well plugging financial assurance in the form of a single instrument.

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Importance of "Marginal Wells"

Direct § III.E.4 at pp. 36-40

- Marginally producing wells in New Mexico collectively contribute a meaningful share of national production
- Marginally producing wells represent a significant portion of New Mexico's oil and gas portfolio
- Huge financial losses and repercussions, including lost tax revenue
- Marginally producing is not synonymous with end of life
  - Wells may produce intermittently due to common technical, economic, or operational factors

Comparison of Other States Definitions of "Marginal Wells"

Direct § III.E.5 at pp. 40-43

State	Marginal Well Definition
Colorado	Colorado defines stripper wells as those producing ≤15 bbl/day for oil or ≤90 Mcf/day for gas.
North Dakota	North Dakota uses stratified thresholds ranging from ≤10 bbl/day in wells under 6,000 feet to ≤35 bbl/day for deep wells in the Bakken or Three Forks formations.
Texas	Texas defines marginal oil wells based on depth, with production thresholds ranging from ≤10 barrels per day (bbl/day) for wells ≤2,000 feet to ≤35 bbl/day for wells deeper than 8,000 feet, and classifies gas wells as marginal if they produce ≤250 Mcf/day. Additionally, the Texas Commission on Environmental Quality (TCEQ) applies operational plugging criteria of ≤15 bbl/day for oil and ≤90 Mcf/day for gas when prioritizing marginal wells for closure.
BLM	BLM does not have a standalone regulatory definition of a stripper or marginal well. However, it has adopted the IRS definition of a stripper well for fiscal and regulatory analyses. Under Internal Revenue Code § 613A(c)(6), a "stripper well property" is defined as a property producing not more than 15 barrel-equivalents per day, averaged across all producing wells on the lease.

Risks and Potential Impacts of Proposed Changes

Direct § III.E.6 at pp. 43-44

- Risk of premature plugging of marginal yet viable wells amplified by financial assurance proposals
- Serious cost implications for the State of New Mexico and operators alike
  - According to the U.S. Energy Information Administration's 2024 Well Distribution Report, wells producing 15 BOE per day or less accounted for 10,579 oil wells and 33,443 natural gas wells, representing over 54% of oil wells and 81% of natural gas wells in New Mexico
  - These marginal wells produced approximately 10 million barrels of oil (or 18% of the state's total oil production) and 310 billion cubic feet (Bcf) of natural gas (or 10% of the state's total gas output) in 2023
  - In fiscal year 2024, the industry contributed 49% ($7.4 billion) of all State of New Mexico General Fund revenue, funds that would likely decrease if it were no longer worth the risk and cost to operate marginal wells in the state under the proposed requirements

Recommendation: Do Not Add a Definition of "Marginal Well"

Direct § III.E.6 at p. 43

- Do not add a definition of "marginal well"
- But if a definition is adopted, it should
  - Be reflective of real-world production variability
  - Recognize that marginal wells operate economically at different volumes depending on depth and formation
  - Provide administrative clarity without triggering premature or unnecessary plugging of viable wells

E) Proposals to **Increase Financial Assurance Requirements**

Proposed 19.15.8.9 NMAC

Direct § III.D, pp. 25-35

Proposed Financial Assurance Increases for "Active Wells"

Proposed 19.15.8.9(C)

Applicants' PHS Exhibit 1-C

19.15.8.9 CATEGORIES AND AMOUNTS OF FINANCIAL ASSURANCE FOR WELL PLUGGING:

A. Applicability. An operator who has drilled or acquired, is drilling or proposes to drill or acquire an oil, gas or injection or other service well within this state shall furnish a financial assurance acceptable to the division in accordance with 19.15.8.9 NMAC and in the form of an irrevocable letter of credit, plugging insurance policy or cash or surety bond running to the state of New Mexico conditioned that the well be plugged and abandoned and the location restored and remediated in compliance with commission rules, unless the well is covered by federally required financial assurance. The division shall not approve, and the operator shall not proceed with any proposed drilling or acquisition until the operator has furnished the required financial assurance.

B. A financial assurance shall be conditioned for well plugging and abandonment and location restoration and remediation only, and not to secure payment for damages to livestock, range, crops or tangible improvements or any other purpose.

C. Active wells. An operator shall provide financial assurance for wells that are covered by Subsection A of 19.15.8.9 NMAC and are not subject to Subsections D and E of 19.15.8.9 NMAC in one of the following categories:

APPLICANTS' PROPOSED REVISED AMENDMENTS TO 19.15.8 NMAC

(1) a one well plugging financial assurance in the amount of $150,000 per well; ~~$25,000 plus $2 per foot of the projected depth of a proposed well or the depth of an existing well; the depth of a well is the true vertical depth for vertical and horizontal wells and the measured depth for deviated and directional wells;~~ or

(2) a blanket plugging financial assurance in the amount of $250,000 ~~following amounts~~ covering all the wells of the operator subject to Subsection C of 19.15.8.9 NMAC ~~:~~

~~(a) $50,000 for one to 10 wells;~~

~~(b) $75,000 for 11 to 50 wells;~~

~~(c) $125,000 for 51 to 100 wells; and~~

~~(d) $250,000 for more than 100 wells.~~

ACTIVE WELLS: Current Requirements and Scope vs. Proposed

Direct § III.D.1 at pp. 25-26

- Current financial assurance requirements for "active wells" are risk-based for individually secured wells (starting at $25k plus an amount determined by depth) and offer tiered blanket bond alternatives (where $250k is only required to secure 100+ active wells)
- Proposed Increases for "Active Well" Financial Assurance Requirements: $150,000 per well or $250,000 blanket bond alternative
- Scope of "active well" financial assurance requirements change because of
  - Applicants' proposal to add new marginal well requirements and
  - Applicants' proposal to expand inactive requirements scope
  - OCD's proposal to add new grounds to "inactive" to align with proposed definition of beneficial
- **Unworkable, unnecessarily exponentially increase the bonding required for wells which post the lease type of risk and are the most prevalent type in NM, and will drive business and tax revenue out of NM**

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Proposed Financial Assurance Increases for "Inactive Wells"

Proposed 19.15.8.9(E)

Applicants' PHS Exhibit 1-C

E.~~D.~~ **Inactive wells** and wells in approved and expired temporarily abandoned status. An operator shall provide financial assurance for wells that are inactive and wells in approved and expired temporarily abandoned status, ~~covered by Subsection A of 19.15.8.9 NMAC that have been in temporarily abandoned status for more than two years~~ or for which the operator is seeking approved temporary abandonment pursuant to 19.15.25.13 NMAC in one of the following categories:

(1) a one well plugging financial assurance in the amount of $150,000 per well; ~~$25,000 plus $2 per foot of the projected depth of a proposed well or the depth of an existing well; the depth of a well is the true vertical depth for vertical and horizontal wells and the measured depth for deviated and directional wells;~~ or

(2) a blanket plugging financial assurance equal to an average of $150.000 per well covering all wells of the operator subject to Subsection E~~D~~ of 19.15.8.9 NMAC.~~:~~

~~(e) $150,000 for one to five wells;~~

~~(f) $300,000 for six to 10 wells;~~

~~(g) $500,000 for 11 to 25 wells; and~~

~~(h) $1,000,000 for more than 25 wells.~~

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INACTIVE WELLS: Current Requirements vs. Proposed

Direct § III.D.2 at pp. 25-26

- Currently, heightened financial assurance requirements for "inactive wells" are risk-based for individually secured wells (starting at $25k plus an amount determined by depth) and offer tiered blanket bond alternatives
- Proposed financial assurance increases for "inactive well" and wells in temporarily abandoned status: $150,000 per well with no true blanket bond alternative
- $150k/well average blanket option creates a moving target, which in turn creates internal compliance risks
- **Just like the active well proposals, the inactive well financial assurance requirements are unworkable, unnecessarily exponentially increase the bonding required for wells which NMOGA P&A expert says can be safer than active producers if properly plugged, and will drive business and tax revenue out of NM**

INACTIVE WELLS: Current Scope vs. Proposed

Direct § III.D.2 at pp. 25-26

- Applicants would extend heightened financial assurance requirements under existing (D) to "inactive wells" and all wells with pending, approved, and temporarily abandoned status

Existing 19.15.8.9(D (Inactive Wells)	**Proposed 19.15.8.9(E)** (Inactive Wells and Wells in Approved or Expired Temporarily Abandoned Status)
"D. Inactive wells. An operator shall provide financial assurance for wells that are covered by Subsection A of 19.15.8.9 NMAC that have been in temporarily abandoned status for more than two years or for which the operator is seeking approved temporary abandonment pursuant to 19.15.25.13 NMAC in one of the following categories: . . ."	"E. Inactive wells and wells in approved and expired temporarily abandoned status. An operator shall provide financial assurance for inactive wells and wells in approved and expired temporarily abandoned status, . . ."

- Could effectively also be expanded to "any well which had no production or injection for 12 consecutive months Because OCD separately proposes to modify the definition of "inactive well" by adding those new grounds to align with the proposed new definition of beneficial

Proposed Financial Assurance Increases for "Marginal Wells" and Tie to Inactive Inventory

Proposed 19.15.8.9(C)

Applicants' PHS Exhibit 1-C

D. Marginal wells and inactive wells. Notwithstanding the provisions in Subsection C(2) in this Section:

(1) As of the [effective date of amendments] a transferee operator shall provide a one well plugging financial assurance of $150,000 for each marginal well prior to transfer.

(2) Beginning January 1, 2028, an operator shall provide a one well plugging financial assurance for each marginal well.

(3) An operator with 15 percent or more of their wells in marginal or inactive well status, or a combination thereof, shall provide a one well plugging financial assurance in the amount of $150,000 for each well registered to the operator until the percentage of the operator's marginal and inactive wells is decreased below 15 percent.

(4) An operator may furnish all necessary one well plugging financial assurance in the form of a single instrument.

MARIGNAL WELLS: New Requirements and Tie to Inactive Wells

Direct § III.D.3 at p. 28

- New $150,000 financial assurance requirements for all individually secured "marginal wells" starting in 2028 and immediately for all marginal wells being transferred or sold
  - Proposed (D)(1)-(2)
- New <15% threshold for marginal and/or inactive well portfolio before $150,000 individual well requirement applies to every well registered to operator, regardless of active/marginal/inactive status
  - Proposed (D)(3)
- **Inclusion of these requirements will exponentially increase bonding required under the rulemaking because of**
  - **the rigid, unrealistic threshold set by definition and**
  - **the prevalence of marginal wells in New Mexico**

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Other Proposed Financial Assurance Changes

Proposed 19.15.8.9(A)
Applicants' PHS Exhibit 1-C

19.15.8.9 CATEGORIES AND AMOUNTS OF FINANCIAL ASSURANCE FOR WELL PLUGGING:

A. **Applicability.** An operator who has drilled or acquired, is drilling or proposes to drill or acquire an oil, gas or injection or other service well within this state shall furnish a financial assurance acceptable to the division in accordance with 19.15.8.9 NMAC and in the form of an irrevocable letter of credit, plugging insurance policy or cash or surety bond running to the state of New Mexico conditioned that the well be plugged and abandoned and the location restored and remediated in compliance with commission rules, unless the well is covered by federally required financial assurance. The division shall not approve, and the operator shall not proceed with any proposed drilling or acquisition until the operator has furnished the required financial assurance.

Other Proposed Financial Assurance Changes

Proposed 19.15.8.9(F)-(G), 8.10

Applicants' PHS Exhibit 1-C

F.~~D.~~ Operators who have on file with the division a blanket plugging financial assurance that does not cover additional wells shall file additional one ~~single~~ well plugging ~~bond~~ financial assurance for any wells not covered by the existing blanket plugging financial assurance ~~bond~~ in an amount as determined by Section 19.15.8.9 NMAC, subject to any limitations in Section 70-2-14 NMSA 1978.~~or, in the alternative, may file a replacement blanket bond.~~

G. On January 1, 2028 and on January 1 of each successive year, the division may adjust the financial assurance amounts provided by Subsections C(1), D, E and F of this Section by multiplying the financial assurance as of January 1, 2027 by a fraction, the numerator of which is the consumer price index ending in September of the previous year and the denominator of which is the consumer price index ending September 2026; provided that any financial assurance shall not be adjusted below the minimum amounts required in Subsections C(1), D, E and F of this Section as a result of a decrease in the consumer price index. By November 1, 2027 and by November 1 of each successive year, the division shall post on its website the financial assurance requirements in Subsection A through E of this Section for the next year. As used in this subsection, "consumer price index" means the consumer price index, not seasonally adjusted, for all urban consumers, United States city average for all items, or its successor index, as published by the United States department of labor for a 12 month period ending September 30.

[19.15.8.9 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 6/30/2015; A, 1/15/2019]

19.15.8.10 ADDITIONAL REQUIREMENTS FOR CASH AND SURETY BONDS:

A. Surety bonds shall be issued by a reputable corporate surety authorized by the office of the superintendent of insurance to do business in the state. The surety shall be listed on U.S. department of the treasury circular 570.

B. The operator shall deposit cash representing the full amount of the bond in an account in a

Concerns with Incomplete Financial Assurance Rule Change

Proposed 19.15.8.9(F) NMAC

Direct § III.D.3 at p. 28

- The proposal would require operators with incomplete blanket financial assurance requirements to provide an additional $150k single-well financial assurance for uncovered wells and remove the blanket option
- Unworkable to mandate matching new wells with bonding coverage without accounting for
  - Acquisitions and dispositions common in the oil and gas industry
  - Issues with updating bonds as wells are plugged, sold, or transferred
- This is another instance of the Applicants' **eliminating blanket bond alternatives**
  - Which are more realistic and easier for sureties to provide
  - NMOGA surety expert Douglas Emerick will be testifying regarding

Overarching Concern with One-Size-Fits-All $150,000 FA

Direct at pp. 29-30

P&A costs being secured by the assurance required by OCD can vary greatly, which is why retaining NM's risk-based bonding approach focused on depth is most advisable

- I've witnessed many wells that were plugged and abandoned for $20,000 or even less (a shallow vertical well might be plugged and abandoned for even less than $20,000; a coalbed methane well would fall into a similar range)
- A long horizontal well might demand greater costs to abandon, but it is important to remember that even there, only the vertical wellbore will be cemented (there is no need to cement a long horizontal well segment buried deep underground with no connection to the surface or shallower formations)
- Amounts demanded must also be examined with respect to the actual risk that the government will be forced to call on those bonds to complete decommissioning
    - Which, in practice, appears to be consistently low
    - Vast majority of decommissioning continues to be handled by the well operators themselves
- **There will always be exceptions, but in my expert opinion, there are better, more tailored ways to decide on appropriate levels of financial assurance**

Comparison to Other Jurisdictions Financial Assurance Requirements and Alternatives

Direct at pp. 31-32

State	Well Financial Assurance Requirements and Exceptions
Utah	• Sets bonding levels for wells of different depths, presumably under the rationale that deeper wells cost more to plug and abandon. • A shallow well of less than 1,000 feet can be bonded for $1,500 per well, while a well that is more than 10,000 feet in depth can be bonded for $60,000. • Shut-in and temporarily abandoned wells must demonstrate wellbore integrity, and the regulatory agency can require necessary remedial action.
North Dakota	• Sets single well bonds at $50,000 and blanket bonds at $100,000, • But strictly limits the number of unreclaimed and abandoned wells an operator may hold. • Above that baseline, the regulatory agency can set a higher bond based on a well's economic value and the costs of plugging, abandoning, and reclaiming wells. • Allows field-specific or unit-based bonding arrangements under NDAC 43 02 03 15 • Operators and regulators can tailor financial assurance to reflect local well risk profiles and reclamation timelines through administrative approvals.
Colorado	• Allows operators to demonstrate that their plugging, abandonment, and reclamation costs are far less than the default value of $150,000.
Texas	• Railroad Commission maintains a tiered blanket-bond schedule ($25,000 for ≤10 wells; $50,000 for 11–100 wells; $250,000 for >100 wells) and specifically excludes low-risk wells from blanket bonding obligations.

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Risks and Potential Impacts of Adopting Proposed Financial Assurance Increases

Direct at pp. 32-33

- Direct operational impacts of the heightened financial assurance requirements on a per-well basis include
  - Repeated revisions to bonding instruments
  - Legal review of acquisition documents for bonding contingencies
  - Delays in closing deals
  - Higher overhead to track and update well-level bonding status
- New requirements to post collateral or cash to obtain and even maintain surety bonds, and potential increases in bonding premiums due to perceived regulatory risk
  - Which the NMOGA financial assurance expert Douglas Emerick is going to explain in detail
- Will likely require expanded internal compliance staffing and third-party legal and financial advisory expenses associated with ensuring bonding sufficiency on a dynamic, per-well basis
- Other unintended consequences for operators may flow from the implementation of Applicants' heightened FA requirements, as proposed, including
  - Reduced access to capital for smaller or mid-sized operators
  - Discouraged participation in asset acquisitions or farm-in agreements due to bonding burdens
  - Premature plugging of otherwise viable wells
  - Increased risk of orphaned wells due to operator insolvency
  - Consolidation of assets into fewer hands
  - Undermining competition
  - Local economic participation

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All Anticipated Effects Have Been Experienced by Operators Firsthand in Other States Where Similar Heightened Requirements Imposed

Direct at p. 34

State	Adverse Effects from Unreasonably Increased Bonding Requirements
California	Implemented bonding reforms in 2021–2022, which led to significantly higher bonding obligations per well, **triggering delays in permit approvals and asset transactions, and contributing to the early abandonment of marginal wells**
Alaska	Alaska attempted a per-well bonding increase in 2019 that was ultimately scaled back after strong industry opposition and concerns about **operator insolvency and stranded assets**
Colorado	Following its 2022 financial assurance overhaul (COGCC Rule 434), created a tiered bonding system with high default per-well bonding assumptions (e.g., $150,000), which has led to **operator consolidation, divestment from marginal assets, and increased bonding disputes**

Recommendations Regarding Financial Assurance Proposals

Direct at pp. 32, 34

- All these far-reaching and expansive negative effects greatly outweigh any incremental benefit the new requirements would provide
- And in my opinion, are completely unnecessary considering the level of financial assurance already provided by
  - New Mexico's current financial assurance requirements (as explained by NMOGA financial assurance expert Douglas Emerick and P&A expert Harold McGowen in their testimony)
  - The state's Reclamation Fund, in place as a financial backstop
  - The state's existing temporary abandonment program (to be detailed by Mr. McGowen)
- Alternatively, engage stakeholders in a technical discussion about the relative risks associated with plugging and abandoning a variety of wells to better inform figure by well type instead of one size fits all $150k/well requirement

Conclusions Regarding Financial Assurance Proposals

Direct at p. 34

- My written and oral testimony, based on my operational experience, provides context for NMOGA witness Doug Emerick's forthcoming surety focus testimony
- I have examined other states' approaches to financial assurance, and I find that WELC's proposals would be unnecessarily rigid and do not incorporate a risk-based framework to establish appropriate levels of financial assurance
- As a result, in my expert opinion, the proposed approach poses a risk of unintended and undesirable outcomes
    - Proposed framework fails to reflect the operational and cost variability of well plugging and abandonment. In my experience, a one-size-fits-all requirement, such as the proposed $150,000 per well, ignores significant differences in plugging costs that can range from under $20,000 for shallow vertical or coalbed methane wells to higher amounts for deeper or more complex completions
    - Proposals do not account for the fact that only the vertical section of horizontal wells typically requires abandonment, and that many low-producing wells can be responsibly decommissioned for far less than the proposed financial assurance
    - Disproportionately impact smaller operators and those with large portfolios of marginal or inactive wells, potentially accelerating the premature abandonment of wells that remain economically viable
    - Poses barriers to routine transactions by requiring transferee operators to post excessive bonding amounts and by triggering blanket bonding requirements based on marginal well percentages that do not correspond to actual risk

F) Proposals to Change Compliance Criteria in **Waste Prevention Requirements**

Proposed 19.15.5.9(A)(4)-(5) NMAC

Direct § III.F, pp. 44-46

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Proposed Changes to Waste Prevention Requirements

(*i.e., Criteria Under Which an Operator is Considered in Regulatory Compliance)*

Proposed 19.15.5.9 NMAC
Applicants' PHS Exhibit 1-B

Removes the compliance buffer for small operators and minor deviations in (A)(4)

Adds regulatory cross references in (A)(4) and new (A)(5) instead

- Proposed (A)(4): New cross-reference to compliance with **venting and flaring requirements in 19.15.27.8(A) NMAC**, *with no compliance buffer*
- Proposed (A)(5): New cross-reference to compliance with **plugging and abandonment requirements 19.15.25.8 NMAC**, *with no compliance buffer*

19.15.5.9 COMPLIANCE:

A. An operator is in compliance with Subsection A of 19.15.5.9 NMAC if the operator:

(1) currently meets the financial assurance requirements of 19.15.8 NMAC;

(2) is not subject to a division or commission order, issued after notice and hearing, finding the operator to be in violation of an order requiring corrective action;

(3) does not have a penalty assessment that is unpaid more than 30 days after issuance of the order assessing the penalty; ~~and~~

(4) currently meets the requirements of 19.15.25.8 NMAC; and ~~has no more than the following number of wells out of compliance with 19.15.25.8 NMAC that are not subject to an agreed compliance or final order setting a schedule for bringing the wells into compliance with 19.15.25.8 NMAC and imposing sanctions if the schedule is not met:~~

~~**(a)** two wells or fifty percent of the wells the operator operates, whichever is less, if the operator operates 100 wells or less;~~

~~**(b)** five wells if the operator operates between 101 and 500 wells;~~

~~**(c)** seven wells if the operator operates between 501 and 1000 wells; and~~

~~**(d)** 10 wells if the operator operates more than 1000 wells.~~

(5) currently meets the requirements of 19.15.27.A.8 NMAC.

B. Inactive wells.

(1) The division shall make available on its website, and update daily, an "inactive well list" listing each well, by operator, that according to division records:

(a) shows no production or injection for past 15 months;

(b) does not have its well bore plugged in accordance with 19.15.25.9 NMAC

Apps' Ex. 1-B

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Concerns with Changes to Waste Prevention Requirements

Direct § III.F at pp. 44-46

- Removal of the 2-10 well compliance buffer for smaller operators and minor deviations makes it **impractical and unrealistic**
- **Creates likely risk good-faith venting, flaring, and technical issues will be treated as categorical OCD non-compliance**
    - Even when other agencies' permits and regulations already adequately address
- Adding cross references enables OCD to leverage those separate and distinct requirements for other uses not intended when the referenced rules were promulgated
- Unfairly penalizes compliant operators if they acquire noncompliant entities

Waste Prevention Requirements Recommendations

Direct § III.F at pp. 44-46

- Reject changes entirely or at least the very least Applicants' removal of the 2-10 well compliance buffer under existing (A)(4)
- If adopted:
  - Replace cross references in proposed (A)(4) and (A)(5) with precise requirements and
  - Add grace period

G) Proposals to Change **Operator Registration and Change of Operator** Requirements

Proposed 19.15.9.8(B)-(E), 9.9(C), (E) NMAC

Direct § III.G, pp. 46-49

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Well Operator Proposed Changes

Proposed 19.15.9.8 and 9.9 NMAC

Applicants' PHS Exhibit 1-D

19.15.9.8 OPERATOR REGISTRATION:

A. Prior to commencing operations, an operator of a well or wells in New Mexico shall register with the division as an operator. Applicants shall provide the following to the financial assurance administrator in the division's Santa Fe office:

(1) an oil and gas registration identification (OGRID) number obtained from the division, the state land office or the taxation and revenue department;

(2) a current address of record to be used for notice and a current emergency contact name and telephone number for each district in which the operator operates wells; and

(3) the financial assurance 19.15.8 NMAC requires.

B. Prior to commencing operations, an operator shall provide to the division a certification by an officer, director, or partner that the new operator is in compliance with federal and state oil and gas laws and regulations in each state in which the new operator does business; a disclosure of any officer, director, partner in the new operator or person with an interest in the new operator exceeding 25 percent, who is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC; and a disclosure whether the new operator is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC.

~~B.~~C. The division may deny registration as an operator if:

(1) the applicant is not in compliance with Subsection A of 19.15.5.9 NMAC;

(2) the applicant is out of compliance with federal and state oil and gas laws and regulations in each state in which the applicant does business;

(~~2~~3) an officer, director, partner in the applicant or person with an interest in the applicant exceeding 25 percent, is or was within the past five years an officer, director, partner or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC;

(~~3~~4) the applicant is or was within the past five years an officer, director, partner or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC; or

(~~4~~5) the applicant is a corporation, ~~or~~ limited liability company, or limited partnership and is not registered or is not in good standing with the New Mexico secretary of state ~~public regulation commission~~ to do business in New Mexico.~~; or~~

~~**(5)** the applicant is a limited partnership and is not registered with the New Mexico secretary of state to do business in New Mexico.~~

~~C.~~D. An operator shall inform the division of its current address of record and emergency contact names and telephone numbers by submitting changes in writing to the division's financial assurance administrator in the division's Santa Fe office within 30 days of the change.

~~D.~~E. ~~The division may require an~~ An operator shall ~~or applicant to~~ certify compliance annually of ~~identify~~ its current and past officers, directors and partners and its current and past ownership interest in other operators consistent with 19.15.9.8.C(2) and (3) NMAC.

[19.15.9.8 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

19.15.9.9 CHANGE OF OPERATOR:

A. A change of operator occurs when the entity responsible for a well or a group of wells changes. A change of operator may result from a sale, assignment by a court, a change in operating agreement or other transaction. Under a change of operator, wells are moved from the OGRID number of the operator of record with the division to the new operator's OGRID number.

B. The operator of record with the division and the new operator shall apply for a change of operator by jointly filing a form C-145 using the division's web-based online application. If the operator of record with the division is unavailable, the new operator shall apply to the division for approval of change of operator without a joint application. The operator shall make such application in writing and provide documentary evidence of the applicant's right to assume operations; a certification by an officer, director, or partner of the new operator that the new operator is in compliance with federal and state oil and gas laws and regulations in each state in which the new operator does business; a plugging and abandonment plan; a disclosure of any officer, director, partner in the new operator or person with an interest in the new operator exceeding 25 percent, who is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC; and a disclosure whether the new operator is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC. The new operator shall not commence operations until the division approves the application for change of operator. The plugging and abandonment plan shall be certified by an officer, director, or partner of the new operator and shall demonstrate that the new operator has and will have the financial ability to meet the plugging and abandonment requirements of 19.15.25 NMAC for the well or wells to be transferred in light of all the operator's assets and liabilities. The division may request the operator to provide additional information including corporate credit rating, corporate financial statements, long-term liabilities, reserves and economics report, records of the operator's historical costs for decommissioning activities, estimate of the operator's decommissioning obligations, and history of inactive wells and returning wells to production.

C. The director of the director's designee may deny a change of operator if:

(1) the new operator is not in compliance with Subsection A of 19.15.5.9 NMAC; ~~or~~

~~**(2)** the new operator is acquiring wells, facilities or sites subject to a compliance order requiring remediation or abatement of contamination, or compliance with 19.15.25.8 NMAC, and the new operator has not entered into an agreed compliance order setting a schedule for compliance with the existing order.~~

(2) the new operator is out of compliance with federal and state oil and gas laws and regulations in each state in which the new operator does business;

(3) any officer, director, partner in the new operator or person with an interest in the new operator exceeding 25 percent, who is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC;

(4) the new operator is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC;

(5) the applicant is a corporation, limited liability company, or limited partnership and is not registered or is not in good standing with the New Mexico secretary of state to do business in New Mexico; or

(6) the certification or disclosure requirements set forth in Subsection B of this Section disclose a substantial risk that the new operator would be unable to satisfy the plugging and abandonment requirements of 19.15.25 NMAC for the well or wells the new operator intends to take over.

D. In determining whether to grant or deny a change of operator when the new operator is not in compliance with Subsection A of 19.15.5.9 NMAC, the director or the director's designee shall consider such factors as whether the non-compliance with Subsection A of 19.15.5.9 NMAC is caused by the operator not meeting the financial assurance requirements of 19.15.8 NMAC, being subject to a division or commission order finding the operator to be in violation of an order requiring corrective action, having a penalty assessment that has been unpaid for more than 70 days since the issuance of the order assessing the penalty or having ~~more than the allowed number of~~ wells out of compliance with 19.15.25.8 NMAC. If the non-compliance is caused by the operator having ~~more than the allowed number of~~ wells not in compliance with 19.15.25.8 NMAC, the director or director's designee shall consider the number of wells not in compliance, the length of time the wells have been out of compliance and the operator's efforts to bring the wells into compliance.

E. No well, facility or site that is out of compliance with Subsection A of 19.15.5.9 NMAC, 19.15.29 NMAC, or 19.15.30 NMAC shall be transferred unless, prior to transfer, the current operator brings the associated well, facility or site into compliance or the new operator submits a schedule of compliance approved by the division.

[19.15.9.9 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

Adding Additional Disclosure and Certification Requirements to Operator Registrations and Change of Operator

Proposed 19.15.9.8(B)-(E) and 9.9(B) NMAC

Direct § III.G.1. at pp. 46-47

- Affirmative certification of compliance with all federal and state oil and gas laws in each state where the operator does business
  - Which NMOGA and IPANM have jointly challenged and briefed, and
  - NMOGA's legal expert Clayton Sporich will further expound upon
- Mandatory disclosure of whether any current/past officers or owners with more than twenty-five percent (25%+) interest were affiliated with currently non-compliant operators in the past five (5) years; and
- Annual certifications for existing operators regarding compliance with all current/past leadership and ownership

Adding Additional Grounds for OCD to Deny Change of Operator

Proposed 19.15.9.9(C) NMAC

Direct § III.G.2. at pp. 47-48

- As proposed, OCD's discretion to deny a change of operator would be expanded if:
  - New operator is out of compliance with federal and state oil and gas laws and regulations in **any** state in which the new operator does business;
    - Proposed (C)(2)
  - Any officer, director, or twenty-five percent or more (25%+) interest holder who is or was in the past five (5) years involved with an entity not currently in compliance with 19.15.5.9(A) NMAC
    - Proposed (C)(3) and (4)
  - The applicant is not properly registered or in good standing with the New Mexico Secretary of State
    - Proposed (C)(5)
  - Certifications or disclosures show a "substantial risk" that the new operator can't meet plugging and abandonment requirements
    - Proposed (C)(6)

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Prohibiting Transfer of Non-Compliant Wells

Proposed 19.15.9.9(E)

Direct § III.G.2. at p. 48

- Additionally, a new paragraph (E) is proposed
- Would prohibit the transfer of non-compliant wells or facilities to operators unless they are:
  - brought into compliance
  - or a compliance schedule is approved

Concerns, Risks, and Potential Impacts

Direct § III.G.1. at pp. 47-49

- **Requirements are unworkable, if not impossible to meet**
  - Due to the difficulty of verifying compliance across unrelated companies, especially post-affiliation
  - A common occurrence due to the many mergers and acquisitions in the oil and gas industry
- **Proposals would chill executive and investor mobility by deterring otherwise qualified professionals from serving** as officers, directors, or equity stakeholders **in new ventures**
  - Due to fear of being penalized for the unrelated compliance history of companies with which they were previously affiliated
- **Requiring affirmative certification of compliance in all states where the operator does business introduces substantial legal and logistical risks and is unlawful**
  - As explained by NMOGA legal expert Clayton Sporich
- **Tracking the historical and ongoing compliance status of** entities, particularly those with which an individual is no longer affiliated, is **cumbersome and often impossible**
- **Patchwork compliance burden, where a technical violation in one jurisdiction** – such as a delayed report or non-material administrative infraction – **could inadvertently trigger consequences in NM**
  - Disproportionate and impractical
  - Lacks a clear materiality threshold
  - Means even minor or resolved issues could result in disqualification
  - Will drive operators, business, and investments out of NM

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OVERARCHING RECOMMENDATIONS

7 Recommendations

Direct § V, pp. 50-52

1. Reject the definition of beneficial and the related presumption of no beneficial purposes or beneficial use
2. Decline to add a rigid definition of marginal wells and new marginal well financial assurance requirements
3. Maintain regulatory flexibility wherever possible
4. Preserve the use of blanket bonds and avoid stacking requirements
5. Reject the use of “average per well” blanket bonding requirements.
6. Encourage adoption of tiered and incentive-based structures
7. Limiting additional reporting and certification burdens (guiding principle should be streamlining)

1st Recommendation

Direct § V.A, p. 50

- **Reject the Definition of Beneficial and Related Presumption of No Beneficial Purposes or Beneficial Use**
  - The Commission should decline to add a new definition of beneficial due to the unintended consequences it could have with respect to other Commission and state regulations that utilize the terms
  - In the event the Commission moves forward with adding a definition of beneficial purpose or beneficial use, the word speculative should be removed at a minimum, and preferably other non-production related uses identified within the definition
  - The Commission should also decline to add WELC's proposed presumption of no beneficial use. But in the event the Commission moves forward with the presumption proposal, then the 90-Day Criteria should utilize a 5-year timeframe to align with the current 5-year maximum for approved temporary abandonment, which Applicant does not oppose in this rulemaking (i.e., they did not propose to strike) and which is more consistent with typical infrastructure, reinvestment, and development timelines

2nd Recommendation

Direct § V.B, pp. 50-51

- **Decline to Add Rigid Definition of Marginal Wells and New Marginal Well Financial Assurance Requirements**
  - I recommend rejecting WELC's proposal to add a new definition of "marginal wells"
  - If a definition must be adopted, which in my opinion is not necessary, then any new marginal well definition and resulting classification must be grounded in an operational and economic context, not abstract thresholds
  - Applicants' proposed definition of "marginal well" sets thresholds that do not align with the reality of how marginal wells operate or their prevalence in New Mexico
    - Will deem otherwise active and productive wells as "marginal wells"
  - It appears that new definition of marginal wells would also trigger the proposed heightened $150K per marginal well financial assurance requirements, or for every well where an operators has ≥15% "inactive" and/or "marginal" wells
  - I also recommend that $150K one-size-fits all individual well assurance requirement be rejected and the risk-based individual well bonding currently in place retained

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3rd Recommendation

Direct § V.C, p. 51

- **Maintain regulatory flexibility wherever possible**
- Using financial assurance as an example:
  - The Commission should preserve discretion in financial assurance determinations by allowing for risk-based bonding approaches that consider operator compliance history, well condition, asset maturity, and demonstrated plugging costs
  - Flat per-well bonding requirements, such as the proposed $150,000 per well, fail to reflect actual risk or plugging cost variability and will unnecessarily burden operators with viable, low-producing wells

4th Recommendation

Direct § V.D, p. 51

- **Preserve the Use of Blanket Bonds and Avoid Stacking Requirements**
  - The Commission should affirm that blanket financial assurance satisfies applicable obligations for covered wells
  - Avoid rules that would outright or effectively eliminate that option
    - Like the $150K/well average requirement for inactive/TA well blanket bonds
  - Avoid rules that require simultaneous single-well and blanket bonding unless there is a demonstrated, case-specific basis to require both

5th Recommendation

Direct § V.E, p. 51

- **Reject the Use of "Average per Well" Blanket Bonding Requirements**
  - The proposal to require blanket bonding based on an average of $150,000 per well introduces a target compliance standard that is difficult to administer, audit, and enforce
  - It will create confusion and generate unintended consequences for acquisitions, mergers, and internal compliance systems
  - The Commission should instead retain fixed blanket bonding tiers that align with industry norms and simplify enforcement

6th Recommendation

Direct § V.F, p. 52

- **Encourage Adoption of Tiered and Incentive-Based Structures**
  - New Mexico could adopt a tiered bonding structure that provides reduced financial assurance obligations for operators who maintain
    - strong compliance records
    - reduce inactive well counts
    - actively participate in orphan well reduction efforts
  - Already utilized by some other states

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7th Recommendation

Direct § V.G, p. 52

- **Limit Additional Reporting and Certification Burdens**
  - The proposed new registration and ownership certification requirements are overly broad, likely unworkable in practice, and risk discouraging executive mobility and capital investment
  - Any ownership-based disclosure should be limited to current control parties with material decision-making authority and based on known, verifiable records

REBUTTAL TESTIMONY

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Overarching Concerns with Applicants' Case

Rebuttal § III.A.1.-3. at pp. 9-27

1. Analysis of what the legislative finance committee report actually states and recommends, compared to applicants' characterization
2. Applicants mischaracterize marginal, temporarily abandoned, and orphan wells as high risk and difficult to manage with no future benefit
3. Applicants' proposals ignore oilfield innovation

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Analysis of What the Legislative Finance Committee Report Actually States and Recommends, Compared to Applicants' Characterization

Rebuttal § III.A.1.i.-vi. At pp. 10-20

i. The LFC recommends a lower threshold for "low-producing wells" than applicants propose under the new definition of "marginal well"

ii. The LFC report acknowledges need for flexibility in assessing the future potential of wells

iii. The LFC report confirms lack of authority to make marginal well financial assurance category

iv. The LFC report confirms lack of authority to deny well transfers if determined the buyer is unlikely to fulfill plugging, abandonment, and reclamation obligations

v. The LFC report recommends a narrower definition of "orphan well" than applied and recommended by applicants and agency witnesses

vi. The LFC's narrower definition of 'orphan well' undermines applicants' reliance on OCD's master orphan well list, which captures wells beyond those the state has pursued or obtained plugging authority for

Applicants Mischaracterize Marginal, Temporarily Abandoned, and Orphan Wells as High Risk and Difficult to Manage with No Future Benefit

Rebuttal § III.A.2.i.-iii. at pp. 20-22

i. Marginal and inactive wells are low risk and can be managed without environmental incident

ii. Temporarily abandoned wells can be easily reactivated and lower risk than active producers if properly managed

iii. Marginal, temporarily abandoned, and inactive wells present future benefits beyond production or injection

Applicants' Proposals Ignore Oilfield Innovation

Rebuttal § III.A.3.i.-iii. at pp. 22-26

i. CO2 Huff-n-Puff Projects

ii. Stimulating Existing Wells

iii. Carbon Capture and Sequestration

Flaws in Applicants' and Now OCD's Position That Current Financial Assurance Requirements are Inadequate and Factors Ignored in Supportive Direct Testimony

Rebuttal §§ III.A.4, III.D.1.i.-vii. at pp. 27, 56-68

i. Blanket bonds function as intended

ii. Industry can plug, abandon, and remediate wells faster and cheaper than OCD, undermining applicants' and the agency's reliance on LFC averages

iii. Operators should not be held to a standard or accountable to the public for cost overruns until the OCD procurement system is remedied, and the Commission should not pass these seemingly elevated costs on to the entire industry

iv. Analysis of reclamation cost claims and existing SLO lease surface improvement damage bond requirements

v. Reclamation fund is ignored

vi. Multiple statewide economic and policy consequences will flow from proposed changes

vii. Financial assurance increases actually create the risk of premature plugging

Responsive **Financial Assurance** Recommendations and Alternatives for Commission Consideration

Rebuttal § III.D.10.i.-vi. at pp. 84-91

- Phased or risk-based assurance increases
- Flexibility tied to well risk and operator compliance history
- Refining targeted enforcement mechanisms like ACOIs instead of discarding tools
- Enhanced reporting or certification for inactive wells only
- Using the Reclamation Fund as designed
- Bipartisan support has been shown for relying on the proven value of reserves or current interest holder's or grant holders' creditworthiness to qualify for exemption from supplemental financial assurance to cover federal offshore decommissioning obligations

Responsive **P&A** Analysis and Recommendation

Rebuttal § III.G. at pp. 123-145

Proposed Changes to Requirements for the Temporary and Permanent Plugging and Abandonment of Wells under 19.15.25 NMAC

- Shortening compliance windows and converting periods of inactivity into near-automatic plugging or formal temporary abandonment filings removes the operational flexibility needed to
  - Sequence recompletions
  - Coordinate gathering, compression, and facility work;
  - Await market or offtake constraints
  - Prepare pad-level refracturing or EOR projects
- Plugging not tied to actual mechanical integrity or a well-specific risk showing a need to plug undermines the New Mexico Oil and Gas Act's conservation mandate by foreclosing otherwise prudent, near-term reactivation paths and pad-level optimization

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Responsive **P&A Definition** Analysis and Recommendation

Rebuttal § III.B. at pp. 27-31

Adding "Temporary Abandonment" and "Temporarily Abandoned Status" to the Existing Definition of "Approved Temporary Abandonment" under Proposed 19.15.2.7.A(13)

- Reject OCD's assertion that the proposed definitional expansion "provides clarity"
- That framing omits the practical effect of collapsing distinct concepts into a single, defined status tethered to "compliance"
- As written, the definition would allow temporary abandonment "expiration" to be equated with broad "non-compliance," and then to cascade into plugging obligations for wells that remain mechanically sound and integral to pad-level and field development
- That is not "clarity" so much as a definition-driven mandate that automatically converts routine compliance lapses into plugging obligations
    - Tie any obligation to plug, or to move from inactive to approved temporary abandonment, to objective, risk-based criteria already embedded in Part 19.15**.25** NMAC (mechanical integrity demonstrations, site-specific conditions, renewal intervals), which Mr. McGowen explains in detail
- Where "consistency" is needed across parts, harmonize references without importing new, outcome-determinative labels

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Responsive **P&A Definition** Analysis and Recommendation

Rebuttal § III.B. at pp. 30-33

Adding Definition of "Expired Temporary Abandonment" and "Expired Temporary Abandonment Status" under Proposed 19.15.2.7.E(8) NMAC

- OCD suggests that this amendment merely codifies an administrative shorthand,
- But the phrase "no longer complies" is vague and could encompass anything from minor reporting delays to mechanical integrity questions
- This would create an automatic reclassification of wells based on incidental or easily correctable issues, leading to arbitrary enforcement
- OCD already administers temporary abandonment through 19.15.25.12–.14 NMAC.
    - Expiration of temporary abandonment is handled procedurally through those rules—principally via annual reporting and extension requests—not by automatic definitional triggers
    - Introducing a separate "expired" category risks duplicating or even contradicting the procedures
- By tying expiration to broad "non-compliance," the definition would function as an overbroad definitional trigger: it would automatically force premature plugging of wells that remain mechanically sound and integral to long-term field development

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Responsive **Marginal Well** Analysis and Recommendation

Rebuttal § III.B. at pp. 36-40

Adding Definition of "Marginal Well" under Proposed 19.15.2.7.M(2) NMAC

- Based on my industry experience, the proposed definition of "marginal well" would capture productive and viable wells and misclassify them as marginal
- Many wells that fall below the proposed 1,000 BOE annual threshold remain viable, generate meaningful revenue, and serve critical operational roles:
  - Lease-retention wells
  - Reservoir management wells
  - Future recompletion or refrac candidates
  - Economic producers at modest prices
- LFC Report recommends that OCC adopt a definition of "low producing" wells as "wells producing less than 750 BOE annually or ~2 BOE per day."
  - Reflects the LFC's acknowledgment that there is no single economic cutoff at which a well becomes uneconomic
  - Less than the IRS's tax definition of marginal wells (a well that produces less than 15 barrels of oil or equivalent, or less than 90,000 cubic feet (90 MCF) of natural gas per day)
  - Less than Applicants' proposed definition of "marginal well"
- For the reasons outlined in my direct testimony, the term marginal well should not be defined due to the unforeseen and widespread consequences that modifying the term might have
- But if a definition must be assigned, I believe the LFC Report's recommended threshold for "low producing wells" should be adopted, if deemed absolutely necessary

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Concerns with **Tying Waste Prevention Requirements** to **Beneficial and the Inactive Well List** and **Operatorship Eligibility**

Rebuttal § III.E. at pp. 122-23

OCD Proposed Amendment to 19.15.5.9.B(1) NMAC to Require Agency List Well on Its Inactive Well List After a Final Determination of No Beneficial Use

- OCD reports the "change is needed to be consistent with the changes proposed under 19.15.25.9 NMAC"
- By tying 19.15.5.9.B(1) NMAC directly to the new presumptions of no beneficial use under 19.15.25.9 NMAC, OCD is effectively hard-wiring flawed thresholds and procedural determinations into the inactive well framework
- The Commission should reject the proposed amendment to 19.15.5.9.B(1) NMAC as drafted
- If an inactive well list is to be maintained, wells should be added only after case-by-case evaluation of risk and beneficial use, not as an automatic consequence of failing arbitrary production or injection thresholds
- At a minimum, the rule should allow operators to demonstrate beneficial use beyond production volumes and should preserve OCD's discretion to exclude wells that serve legitimate operational purposes

Linking compliance to registration and financial assurance approvals as under 19.15.5.9 NMAC

- Operators who fall even temporarily out of compliance with plugging or flaring requirements could be barred from registering or transferring wells or from releasing assurance. Faced with such uncertainty, many operators will choose to plug wells rather than risk regulatory deadlock

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Multiple Proposals Create Risk of Waste via Premature Plugging

Rebuttal §§ III.D.1.vii. at pp. 68-70, III.G.3. at pp. 131-132

- **Expanded definitions of marginal and inactive wells:** By misclassifying productive or strategically important wells as "marginal" or "non-beneficial," the rule creates new triggers that force wells into higher financial assurance categories or into plugging requirements, regardless of their actual utility
- **Shortened compliance windows under 19.15.25 NMAC:** Reducing the compliance period from 90 to 30 days after 12 months of inactivity removes operational flexibility. Operators will be forced to plug wells quickly if they cannot immediately complete recompletions, infrastructure upgrades, or secure approvals for temporary abandonment
- **Elimination of risk-based individual well assurance requirements and blanket bonding alternatives:** Forcing operators into per-well bonding at $150,000 per well will create unsustainable financial burdens, especially for portfolios with higher percentages of marginal wells. Many operators will view plugging as the only viable alternative to posting millions in new assurance
- **Market realities of the surety industry:** As NMOGA surety expert Douglas Emerick testified, the private surety market does not have the capacity to issue the volume of instruments these rules would require. Even operators willing to post additional assurance may find coverage unavailable, leaving premature plugging as the default option. NMOGA surety expert Douglas Emerick reached the same conclusion of miscategorizing financial assurance required
- **Reducing the current 15-month timeframe for well inactivity to 13 months of inactivity:** After which time a rebuttable presumption is created that the well is out of compliance with 19.15.25.8 NMAC. I recommend the current 15-month timeframe be retained or extended but not reduced. Additionally, or alternatively, further specification needs to be added explaining what an operator does if the inactivity rebuttal presumption is triggered

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Miguel Suazo | Shareholder
Santa Fe, New Mexico

Douglas R. Emerick

NMOGA Financial Assurance Expert

Direct and Rebuttal Testimony in OCC Case No. 24683| October-November 2025

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Role and Background

- Douglas R. Emerick, Director of Operations, Insurance Expert Network
- Approx. 40+ years of experience in surety and insurance industries
- NMOGA's Financial Assurance expert

Purpose of Testimony and Overarching Concerns

1. **Purpose of Testimony**: Explain the process for securing a surety, associated costs for bonding, and explaining challenges that companies will experience in securing sureties at reasonable costs upon WELC proposals
2. Applicants' proposed changes are not as straightforward as advertised and contain several unintended consequences
3. Applicants' proposals display a clear lack of understanding of insurance and surety market function and dynamics
4. Applicants' proposals are not based on robust industry input and fail to consider more viable alternatives

Background on Financial Assurance Markets, Underwriting, and Practical Limitations

- **WELC proposals:**
  - Require single well FA of $150K for many wells types
    - Represents a dramatic increase in surety requirements
    - Increase will make sureties unavailable to many operators
    - Particularly high requirement for small and medium sized operators
    - High surety amounts are prohibitively expensive
- **Realities of Bond Market:**
  - Demanding and difficult to navigate
  - Surety companies require large collateral requirements, as is
    - WELC collateral requirements exceed ability to secure bond

Surety Market Overview/Nature of Surety Bonds and Market Realities

- **A surety is NOT insurance: it's a financial guarantee**
  - It is a promise to pay
- **Three-party System: 1. Surety; 2. Obligee; and 3. Principal**
  - **Reality is that each bond account has an indemnity agreement (Surety and Principal)**
- **When "Called"**
  - Surety company will seek reimbursement from principal
- **Written to a Zero-Percent (0%) Loss Ratio**
  - Surety companies seek to avoid loss at all cost
  - Surety companies have become increasingly more restrictive in underwriting guidelines to minimize risk that bond will be called

Surety Market Today/Surety Requirements Generally

- **Surety Requirements, Generally**
  - Provider will review principal financial statements to determine amount of working capital to account for portion of surety amount
    - This amount routinely exceeds 25% or more of surety amount requested
    - WELC proposals may result in required working capital increasing to 50-100% levels
  - As is, many companies in NM struggle to meet existing working capital level requirements demanded by surety companies
  - WELC proposal function to harm less well-off operators with limited working capital
    - Results in higher collateral amounts demanded by surety companies for those who have less working capital to give
  - Surety companies are in the business of minimizing risk, collateral amounts is integral in balancing risk

Surety Companies Will Demand Increased Working Capital

- **Surety Companies Will Demand Increased Working Capital Levels with WELC Proposals**
  - Will require operators to demonstrate working capital in levels above what is necessary to maintain existing bonding
  - This is a direct result of:
    - Increased compliance costs
    - Higher risk of default due to regulatory goal posts constantly shifting
  - Wells with existing coverage will be viewed by surety companies as having increased exposure due to increased financial assurance amounts

Practical Implications of WELC's Proposals

- **In Practice**
  - Under WELC's proposals, an operator with (10) wells requiring single well financial assurance will require surety in the amount of $1,500,000
  - (50) wells will require financial assurance valued at $7,500,000
- **Blanket Bonds Remain a Better Solution**
  - Easier to write
  - Constrain less levels of an operator's working capital
  - Easier for operators and surety providers to agree on and implement

Zero-Loss Model in Practice

- Sureties avoid payout risk entirely
- Higher regulatory risk means higher collateral
- Non-cancelable NM Bonds magnify exposure

Surety Bond Alternatives

- **Common Alternatives to Surety Bonds include:**
  - Letter of Credit – 100% collateralized
  - Cash Bond
- These types of assurance require 100% of associated costs to be “tied up” or not available for other operations or new projects
- **Function like bonds by:**
  - Operator could draw on line of credit, or
  - Post a cash certificate to back credit issued by operator’s bank
- **These options likely remain out of reach for medium and mid size operators**
  - Due to high bonding level and high number of single wells subject to this assurance as a result

Practical Implications of WELC Proposals

- Increased costs from increased bonding = less profit and revenue to attract investors and ownership support for operations
    - Impacts are magnified for small and medium sized operators
- Surety providers less likely to approve larger bonds (blanket or single) when access to capital is diminished and existing capital is tied up in existing financial assurance
- More Costs leads to Less Capital leads to Less investment, resulting in Less New Projects (e.g., drilling new wells/workover of existing wells)
- Overburdened wells will negatively impact entire “unit” operations and economics
- Ultimate result will be increased premature well abandonment and increase in orphan wells
- Stable and productive companies will be unable to afford new sureties in the amounts proposed by WELC

Surety Requirements, Generally

- Additive framework (blanket + single-well)
- Destroys scalability
- Triggers re-underwriting and collateral increases

Existing OCD Bond/Noncancelable Form

- **Non-cancelable form**
  - Issued for life of well it secures
  - Cannot be canceled until wells are P&A'd
  - Does not allow for periodic review of operator financial situation
  - Surety industry disfavors this bond form since surety provider is unable to get off of noncancelable bond unless replaced by another company

Collateral and Capital Requirements: Collateral Safeguards the Surety

- **Sureties require operators to demonstrate strong financials and adequate working capital**
- **Typical underwriting benchmark: ≥ 25 % of bond amount in working capital**
- **Weaker balance sheets trigger 50 – 100 % collateral requirements**
- **Collateral ties up capital needed for drilling, plugging, and maintenance**
- **Smaller operators have limited liquidity → greater exposure to collateral calls**
- **Result: Less investment, less production, and reduced field activity**

How the Zero-Loss Model Drives Collateral and Premiums

- Surety business written to a 0 % loss ratio – no unpaid claims expected
- Every claim must be recoverable from the principal or collateral
- Regulatory changes = heightened risk → sureties act defensively
- Typical responses:
  - Increase collateral requirements
  - Raise premiums across portfolios
  - Exit high-risk markets altogether
- Fewer participating sureties → higher costs and reduced capacity for NM operators

Other Forms of Financial Assurance Used in Practice

- **Letters of Credit (LOCs) – 100 % collateralized from day one**
- **Cash bonds – require full cash deposit up front**
- **Trust accounts – may be allowed but limited use and slow to implement**
- **Third-party guarantees – rarely accepted by sureties in current rules**
- **All alternatives immobilize working capital or credit lines**
- **Impractical for small and mid-sized operators under New Mexico's bond forms**

How WELC's Proposals Redirect Capital and Reduce Production

- **Higher bond amounts → larger collateral calls from sureties**
- **Working capital diverted from drilling and plugging to meet bonding requirements**
- **Reduced investment in maintenance and field operations**
- **Fewer wells returned to production / more idle wells left in inventory**
- **Decreased tax and royalty revenues for New Mexico**
- **Overall: less capital, less activity, and more long-term liability exposure**

Collateral Demands Increase as Operator Size Decreases

- **Typical forms of collateral required by sureties:**
  - **Cash deposits (fully restricted funds)**
  - **Irrevocable letters of credit (ties up credit lines)**
  - **Other policy coverages or pledged assets (on a case-by-case basis)**
  - **Smaller operators lack working-capital flexibility → face 50–100 % collateral demands**
  - **Larger operators may secure lower-collateral terms based on stronger balance sheets**
  - **As collateral rises, access to new capital and investment shrinks**
  - **Result: Market consolidation and loss of independent producers**

Rising Premiums Reflect Shrinking Surety Capacity

- **Current market range: 1 % – 10 % of bond value**
- **Small & mid-sized operators: typically 2.5 % – 5 %**
- **Large operators: lowest rates due to stronger balance sheets**
- **Premiums increase when collateral or regulatory risk increases**
- **Sureties pass cost of risk through to operators via higher rates**
- **Higher premiums + higher collateral = reduced investment and fewer participants**

Smaller Operators Bear the Greatest Burden

- **Collateral and premium increases hit small operators hardest**
- **Limited working capital → higher collateral ratios (50–100%)**
- **Sureties increasingly require collateral from all operators, regardless of credit quality**
- **Small and mid-sized producers pay higher premiums and lose access to surety credit**
- **Result: market contraction and fewer independent participants**
- **Long-term risk: more orphan wells, less state revenue, and diminished competition**

Current Surety Market Lacks Capacity for WELC Proposals

- **Private surety market cannot absorb sweeping bonding increases**
- **Requires bonding of legacy wells pre-acquisition – not possible at scale**
- **Sureties already demand significant working-capital thresholds**
- **Market would become inaccessible to many operators**
- **Transactions and acquisitions would stall due to bonding limits**

WELC Active Well Proposals – 19.15.8.9(C) NMAC

- WELC Proposes for Active Wells :
  - Increasing single well financial assurance to $150K for each “active well”
  - Allowing operator to post blanket bond of $250K
  - Even when blanket bond is used, operator remains subject to additional single well FA for “marginal wells”
- WELC’s “per well” requirements result in excessive and unnecessary bonding for individual wells not bonded through blanket bonding
- Mixture of single well and blanket bonds will be additive to operator and difficult to obtain and manage
- Underwriters are likely to decline bond requests if operator lacks clarity on bond amounts or criteria

Non-Cancelable Bond Impacts

- Why New Mexico's Bond Form Amplifies Risk:
  - Non-cancelable bonds remain in force until wells plugged & released
  - Sureties cannot manage or exit risk mid-term
  - Higher collateral + premium demands follow every rule increase
  - Some sureties will refuse new NM business altogether
  - Magnifies every market shock caused by regulatory change

Marginal and Inactive Wells

- Flat $150 K Approach Misclassifies Wells and Overstates Cost
  - Misclassifies viable producing wells as “marginal”
  - Replaces risk-based tiers ($25 K–$1 M) with flat $150 K per well
  - Average plug & abandon cost $40 K–$60 K – far lower than WELC estimate
  - Creates 7X bonding increase without safety benefit
  - Eliminates underwriting predictability and collapses capacity

Overall Market Feasibility and Risk

- One-Size-Fits-All Rules Will Collapse Surety Capacity
  - Premiums are a result of the bond amount—collateral collected can reduce 25%-50%
  - Removes quantitative, risk-based underwriting standards
  - Surety industry depends on predictable loss data and risk tiers
  - Flat-rate system forces uniform collateral & premium increases
  - Market contraction + reduced participation inevitable
  - Regulatory simplicity = practical infeasibility

Collateral Calls and Litigation Risk (W&T Offshore Case)

- Federal offshore rule changes triggered simultaneous collateral calls
- Sureties demanded new security on existing bonds
- Operators forced to divert cash or litigate to keep coverage
- Bonding capacity shrinks as disputes escalate

Case Summary – W&T Offshore, Inc.

- 2024 Gulf of Mexico: new federal bonding rule imposed
- Sureties issued $7.5 M collateral demand within 30 days
- W&T filed suit – alleging breach & antitrust collusion
- Demonstrates industry-wide reaction to rapid rule change
- Parallel to NM's non-cancelable bond environment

W&T Offshore, Inc. - Lessons for New Mexico

- NM's non-cancelable bond form = federal offshore model
- Sudden bonding increases → collateral calls & surety withdrawal
- Operators forced to tie up millions in new capital
- Reduced coverage + higher costs = greater orphan-well risk

Antitrust and Coordination Risks

- Few active sureties = concentrated market power
- Parallel collateral demands look like coordinated action
- Shrinking capacity → less competition & uniform pricing
- WELC framework heightens antitrust exposure

WELC's Definitional Changes Under 19.15.2.7 NMAC

- New terms: Marginal Well and Beneficial Use
- Definitions are vague & subjective → inconsistent application
- Misclassifies productive wells as "marginal"
- Creates unpredictable bonding obligations and underwriting risk
- Sureties require clear, objective criteria to price risk

Definition of Marginal Well

- <1,000 BOE in 180 days = overinclusive
- Applies $150 K bond to productive wells
- Inflates liability estimates
- Captures viable producers
- Eliminates link between economic performance & risk
- Distorts liability and bonding metrics

Definition – "Beneficial Use"

- WELC's proposed definition overly broad and vague; uncertainty for underwriters
    - Making bonds even more difficult to issue and obtain
    - "Speculative Purposes" is a subjective term
- WELC's proposed "presumption of no beneficial use"
    - If not refuted, would lead to premature determinations on well operations
        - In turn, would affect well classifications and corresponding level of bonding
        - Created underwriting risks by adding uncertainty and volatility to surety market
    - Misapplies lease level economic principles to individual wells
        - Will result in underwriting process uncertainty due to variable nature of a metric not intended for individual wells

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Definition – “Presumption of No Beneficial Use”

- 30-day rebuttal window → operational chaos
- Volatile well status → volatile bonding demand

Effects of Definitions on Markets

- Inflated liability estimates
- Misclassification increases cost
- Deters investment and renewal of surety capacity

Comparisons with Other States

- How Other States Handle Financial Assurance
    - Most states use risk-based or tiered blanket-bond systems
    - Example – Texas: $25 K (1-10 wells) → $250 K (100+ wells)
    - No production-level or “marginal-well” definitions
    - Oklahoma & Louisiana follow similar tiered models
    - Frameworks emphasize predictability and manageability for sureties

Competitive Impacts

- WELC Proposals Would Undermine NM Competitiveness
    - Neighboring states: predictable, bankable bonding systems
    - WELC's one-size-fits-all model → capital flight to TX / OK / CO
    - Fewer wells • Fewer jobs • Less severance-tax revenue
    - Investors favor jurisdictions with clear, renewable FA structures
    - NM risks becoming regionally uncompetitive

Bond Structure Differences

- Non-Cancelable Bonds Make NM an Outlier
    - Other states allow renewable / terminable bonds (annual or biennial)
    - NM's non-cancelable form = perpetual exposure for sureties
    - Higher collateral + premium demands result
    - WELC's proposals would exacerbate this existing barrier
    - Reform needed to align NM with peer-state practices

Administrative Complexity of WELC's Framework

- Proposed Rules Create a Constantly Moving Target
    - Blanket-bond formula based on fluctuating average values
    - Well status changes (on/offline) → continuous recalculation
    - OCD lacks capacity for real-time oversight
    - Creates confusion and inconsistent enforcement across offices
    - Adds workload without improving accountability

Enforcement Instability and Inconsistent Application

- Instability Breeds Inconsistent Enforcement
    - Different OCD offices could apply formulas inconsistently
    - Subjective interpretations → disparate treatment of operators
    - Litigation risk from uneven enforcement
    - Lack of clear criteria = unpredictable regulatory outcomes
    - Both operators and OCD face confusion and inefficiency

Performance of Existing Blanket Bonds

- Existing Blanket Bonds Already Work
    - Predictable and enforceable structure
    - Provides adequate coverage for the State
    - Offers flexibility for operators and OCD
    - Efficient to administer and easy to monitor
    - Should be preserved—not replaced by untested models

Combined Impacts of Administrative and Definitional Changes

- Definitional + Administrative Proposals = Dysfunction
    - Moving-target formulas create operational chaos
    - OCD overburdened by continuous recalculation
    - Surety market retreats under unstable framework
    - Enforcement delays and inconsistency increase
    - Financial assurance becomes a bottleneck, not protection

Practical Alternatives to WELC's Proposal

- Workable Solutions that Preserve Accountability
    - Retain risk-based, tiered-blanket bond framework
    - Phase in any new bonding levels gradually
    - Expand approved assurance forms (trusts, guarantees, etc.)
    - Avoid market shock while maintaining environmental protection
    - Aligns with successful state models (TX, OK, CO, LA)

Trust Accounts

- Trust Accounts – Secure and Flexible
    - Hold actual funds available for decommissioning
    - Can be funded incrementally over time
    - Transparent and regulator-accessible
    - Reduce risk of surety or insurer default
    - Free operators from large upfront capital freezes

Comparing Trust Accounts and Surety Bonds

- Trust Accounts vs. Surety Bonds
    - Trusts hold real funds – no secondary liability
    - Surety bonds rely on surety solvency & approval
    - More secure and transparent for regulators
    - Already used in Louisiana and Colorado
    - LFC Report supports inclusion as viable alternative

Third-Party Guarantees

- Third-Party Guarantees – Expanding Capacity
    - Used by BOEM offshore and other jurisdictions
    - Parent or affiliate guarantees smaller operator's obligations
    - Increases market participation and surety diversity
    - Reduces orphan-well risk without harming independents
    - Broadens financial assurance options for New Mexico

Retain Tiered Blanket Bond System

- Keep New Mexico's Proven Tiered System
    - Risk-based tiers align coverage with actual exposure
    - Preserves liquidity for responsible operations
    - Encourages investment and avoids over-bonding
    - Protects small & mid-sized operators from exclusion
    - Replacing it would reduce competition and revenues

Renewable Bond Instruments

- Convert Non-Cancelable Bonds into Renewable Forms
    - Allow two-year renewable bond periods
    - Expands surety underwriting eligibility
    - Simplifies approval for non-cancelable bond exceptions
    - Aligns NM with surety-industry norms
    - Reduces market barriers while keeping accountability

Maintaining Protection While Improving Workability

- Accountability Without Market Collapse
    - Reforms retain full State protection
    - Ensure bonding availability and prevent stranded assets
    - Reduce orphan-well risk through market stability
    - Support a strong operator and surety base in NM
    - Achieve environmental goals without economic damage

Reliability of LFC Averages

- LFC Averages Overstate Actual Plugging Costs
    - LFC cost figures don’t reflect industry efficiency
    - Operators plug and remediate faster and cheaper than OCD
    - State procurement process inflates cost averages
    - Using those numbers skews financial-assurance policy
    - Policy should reflect field data, not procurement inefficiency

Comparing Industry and Government Plugging Costs

- Industry Costs Are Less Than Half of OCD Procurement Costs
    - Typical industry plug-and-abandon: $40K–$60K per well
    - WELC proposes $150 K per well based on LFC averages
    - OCD relies solely on vendor bids, not negotiated estimates
    - Procurement rules inflate costs and misrepresent real risk

Risks of Inflated Cost Assumptions

- Inflated Assumptions = Market Distortion
    - Overstates real plugging costs by 2–3X
    - Creates unrealistic, uniform bonding levels
    - Penalizes efficient operators and deters investment
    - Makes blanket bonds effectively unusable
    - Disconnects assurance from true environmental risk

Principles for Setting Financial Assurance

- Set Bond Levels by Realistic, Risk-Based Criteria
    - Base assurance on actual plugging cost data
    - Adjust for risk factors (well type, age, operator record)
    - Maintain fairness and functionality in the market
    - Align incentives for responsible operations and timely plugging
    - Ensure protection without distortion

NMOGA's Key Recommendations

- Practical Reforms to Strengthen Financial Assurance
    - Retain risk-based, tiered-blanket bonds
    - Phase in increases to prevent collateral shocks
    - Adopt BOEM-style safety valve (30 C.F.R. § 556.901(c))
    - Use creditworthiness / reserve exemptions (30 C.F.R. § 556.901(d))
    - Authorize trust accounts & third-party guarantees
    - Clarify definitions for consistency & predictability

Why These Recommendations Work

- Balancing Protection, Predictability, and Market Stability
    - Builds on NM's existing functional framework
    - Keeps market participation strong and surety capacity available
    - Provides clear standards and risk-based coverage
    - Avoids collateral calls and unintended orphan-well growth
    - Protects both the environment and State revenues

Lessons from Other Models

- BOEM, Texas, and Oklahoma Offer Proven Templates
    - Use risk-based, flexible bonding frameworks
    - Allow operator-specific deviations when coverage is sufficient
    - Permit multiple assurance forms (trusts, guarantees, LOCs)
    - Provide stability and participation without weakening oversight
    - NM can adopt best practices while retaining its strengths

Closing Observations

- Refine, Don’t Replace – Strengthen What Works
    - Current system balances protection & practicality
    - Reform should improve—not overhaul effective tools
    - Lead by example: strong environment & strong economy
    - Keep New Mexico competitive and responsible
    - Align with real-world costs, capacity, and experience

WELC Proposals – Recommendations

- OCC should:
  - Strike or revise WELC's proposed "marginal well" FA requirements
  - Preserve existing blanket bond concepts
  - Implement a "risk-based" bonding system for single well FA
  - If necessary, tie FA to NM Specific index
  - Modify bond instrument to be a periodically renewable form

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Miguel Suazo | Shareholder
Santa Fe, New Mexico

Harold McGowen III, PE

NMOGA Technical Plugging and Abandonment Expert

Direct Examination in OCC Case No. 24683 | October-November 2025

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DIRECT TESTIMONY

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Role and Purpose

Direct §§ I-II, pp. 1-4

- Harold McGowen III, P.E.
- Technical expert witness for the New Mexico Oil and Gas Association
- I have reviewed and assessed Applicants'' proposals to amend the Oil Conservation Division ("OCD") regulations
  - Codified at 19.15**.2.7**, **.5**, **.8**, **.15**, and **.25** NMAC
- My direct and rebuttal testimony provide an industry perspective on, and my concerns with, the changes proposed by Applicants, based on my professional experience and expertise in
  - Repurposing oil and gas wells
  - Permanent plugging and abandonment (P&A) of wells
  - Temporary abandonment (TA) operations and permitting

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Credentials and Expert Experience

Direct § I, pp. 1, 3-4

- Bachelor of Science Degree in Mechanical Engineering from Texas A&M University
- Registered Professional Engineer in Texas (License No. 66419)
- Member of the Society of Petroleum Engineers, the National Academy of Forensic Engineers, and the American Society of Safety Professionals
- Extensive post-graduate technical continuing education, including Phase I and II Environmental Site Assessment courses through the Texas A&M Engineering Extension Service
  - Performed environmental site assessments on over 500 properties
  - Prepared Spill Prevention Control and Countermeasure plans on over 2,000 properties (1992-1997) CV pg. 5
- Expert witness or technical advisor in approximately 40 cases and deposed over 20 times
- Provided sworn testimony under cross-examination in:
  - 3 federal court trials, 1 arbitration
  - 1 regulatory hearing before the Texas Railroad Commission (RRC) where I supported the successful petition to revise the Fort Trinidad/Eastham Field Rules through data-driven, statistical reservoir analysis

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Professional Background and Experience

Direct § I, pp. 1-2

- Founder, President, and CEO of Navidad Energy Advisors (NEA)
  - Served in those capacities throughout the firm's 12-year history
- Served as the President and CEO of multiple upstream exploration and production companies
  - Including Navidad Resources, Inc., Navidad Resources, LLC, and Navidad Resource Partners, LLC
  - In these roles, I executed full-cycle acquisition, development, divestiture, and decommissioning programs, including
    - P&A and surface restoration activities which encompasses plugging numerous wells, re-entering wells that had been previously plugged by other operators
  - Directing U.S. Securities and exchange commission (SEC) compliant reserve audits that included economic modeling of P&A obligations
- At Navidad Resources, LLC
  - I raised and deployed over $75 million in equity and negotiated numerous joint development agreements
  - Scaled production from zero to over 5,700 barrels of oil equivalent per day (BOEPD)
  - Achieved 3-year compound annual growth rate of about 100% during the company's peak growth period

Relevant Real-World Ventures and Projects

Direct § I, p. 2

Most recently, as CEO of Navidad Resource Partners, LLC (NRP), I led the execution of a multi-well, full-field horizontal development program in the Brookeland Austin Chalk Field in East Texas.

- From 2017 through 2024, the project was ultimately capitalized at approximately $100 million and began with the successful Hancock 1H "proof of concept" well, which confirmed virgin reservoir pressure, high oil and NGL yield, and validated our geologic, reservoir, and completion models
- Building on that success, I oversaw the drilling and completion of ten horizontal wells, each with a capital cost of approximately $18.5 million
- The development also included the design and buildout of critical water infrastructure and natural gas processing and takeaway systems
- As part of this project, I evaluated the potential of reentering and/or repurposing multiple legacy wellbores to facilitate delineation of the potential of our mineral acreage position
- I managed all aspects of the project through its full-cycle execution, including well design, field planning, operations management, reserves evaluation, and ultimately, the successful divestment of the asset
- Sold NRP's oil and gas assets in early 2025 marked the successful culmination of our strategy and create significant value for our private equity investors
- Employed full time EHS personnel and maintained strong track record in environmental stewardship and operational safety

Experience Plugging and Repurposing Wells

Direct § I, p. 4

- Throughout my 40-year career:
  - I have been directly involved in the planning and execution of plugging operations on approximately 100 wells consistent with the requirements of the Texas RRC
  - I have also evaluated, re-purposed, and/or re-entered, numerous inactive/marginal, and even previously plugged and abandoned wells, to enhance hydrocarbon recovery and extend well life
  - Union Pacific Resources (1984-1988): Drilled, P&Ad, Recompleted and Refractured many wells (CV Pg 1)
  - Trinity Resources (1988-1992): Analyzed 4,300-well Giddings Austin Chalk field (Texas) for Refracturing. Processed data, performed statistics, mapped performance data, automated candidate selection, and executed a successful large-scale restimulation program on marginal wells (CV Pg 5-6)
  - Navidad Resources, Inc. (2001-2003): Multi-year fracturing fluid performance study on 1,000 Codell-Niobrara re-fracs (Colorado). Identified key parameters required for refracturing success (CV Pg 3)
  - Recent and relevant continuing education: SPE Workshop: Refracturing – A Proven Strategy to Maximize Economic Recovery, 14-15 Aug 2023 (CV Pg 6)

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Relevant Consulting Work

Direct § I, p. 3

- Alongside my work running oil and gas companies, at NEA, I have built a multidisciplinary technical advisory firm that offers services to private equity investors, oil and gas exploration and production companies, and legal professionals
- At NEA, I lead and manage a team of reservoir, drilling, production, geology, and data engineers and analysts, providing engineering due diligence, reserves evaluations, expert witness services, and forensic investigations as required by the needs of our clients
- My expert testimony/litigation support has included patent disputes involving P&A technologies, as well as litigation centered on well-plugging operations and technologies applicable to large-scale revitalization of marginal wells (CV Ex. C)

Relevant Recognitions and Research

Direct § I, pp. 2-3

- Recognized for technical leadership and business performance throughout my career
- In 2013, I was named one of the Top 15 Best CEOs of Medium-Sized Producers by the Texas Independent Producers and Royalty Owners Association (TIPRO)
- Under my leadership, the oil and gas exploration and production companies I founded were honored four times in the Texas A&M University "Aggie 100" ranking of the fastest-growing Aggie-led businesses, earning the #1 spot in 2012, #4 in 2013, #3 in 2014, and #9 in 2023
- Published and presented extensively on
  - Horizontal drilling
  - Underbalanced and managed pressure drilling
  - Complex reservoir development
  - Parent-child well interference
  - Upstream oil and gas project management
- Presented at industry conferences throughout my career, including the Society of Petroleum Engineers (SPE)

Scope of Direct Testimony: 6-Part Analysis

Direct § II, pp. 6-8

A. **Opposition to Defining Beneficial and Presumptions of No Beneficial Use**

B. **Unnecessary Amendments to Temporary Abandonment (TA) Permitting and Casing Integrity Requirements**

C. **Detrimental Plugging and Abandonment (P&A) Requirements and Timelines**

D. **Unreasonable Financial Assurance (FA) to Secure P&A Costs**

E. **Opposition to Adding New Marginal Well Definition and Financial Assurance Requirements**

F. **Restrictions on Asset Transfers and Operator Registration**

Overarching Conclusions

Direct § II, p. 4

- I urge the Commission to consider a more balanced and risk-based approach that honors the Legislature's intent while ensuring New Mexico's energy resources are managed wisely and responsibly
- The proposed amendments, while rooted in concerns over environmental risk and orphan wells, are
    - overbroad
    - misaligned with field and business realities and
    - counterproductive to the Legislature's original mandate for the OCD
- The cumulative effect of these changes would be to
    - increase waste
    - reduce investment and
    - prematurely eliminate valuable infrastructure that could otherwise be repurposed or returned to beneficial use
- A more constructive path forward would retain OCD's existing performance and risk-based framework while allowing for targeted improvements that support environmental protection without destroying capital, impeding transactions, or penalizing compliance

Overarching Concern with Waste

Direct §§ II, pp. 4-6

- The New Mexico Legislature established the Oil Conservation Division to **promote the responsible development of the state's oil and gas resources, prevent the waste of hydrocarbons, protect correlative rights, and safeguard public health and the environment**
- The New Mexico Legislature intended the OCD to strike a balance, ensuring environmental protection while facilitating efficient and prudent resource recovery that **maximizes the economic value of New Mexico's natural resources for the benefit of the economy of New Mexico and its citizens**.
- I will demonstrate how these **proposed changes would force operators to prematurely or arbitrarily plug valuable wellbores**

A) Opposition to **New Definition of Beneficial and Related Presumption a Well is Not Capable of Beneficial Use** Using Misleading and Unrealistic Thresholds

Proposed 19.15.2.7(B)(7) and 19.15.25.9 NMAC

Direct § III.A, pp. 9-19

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New Definition of "Beneficial Purposes/Use" Under Consideration

Proposed 19.15.2.7(B)(7) NMAC
Applicants' Prehearing Statement Exhibit 1-A

"an oil or gas well that is being used in a productive or beneficial manner, such as production, injection, or monitoring, ***and does not include use of a well for speculative purposes****"*

Direct § III.A.1. at pp. 9-10

(3) **"Barrel"** means 42 United States gallons measured at 60 degrees fahrenheit and atmospheric pressure at the sea level.

(4) **"Barrel of oil"** means 42 United States gallons of oil, after deductions for the full amount of basic sediment, water and other impurities present, ascertained by centrifugal or other recognized and customary test.

(5) **"Barrel of oil equivalent"** is determined by converting the volume of gas the well produced to barrels of oil by using a ratio of 6,000 cubic feet to one barrel of oil.

~~(5)~~(6) **"Below-grade tank"** means a vessel, excluding sumps and pressurized pipeline drip traps, where a portion of the tank's sidewalls is below the surrounding ground surface's elevation. Below-grade tank does not include an above ground storage tank that is located above or at the surrounding ground surface's elevation and is surrounded by berms.

(7) "Beneficial purposes" or "beneficial use" means an oil or gas well that is being used in a productive or beneficial manner such as production, injection or monitoring, and does not include use of a well for speculative purposes.

~~(6)~~(8) **"Berm"** means an embankment or ridge constructed to prevent the movement of liquids, sludge, solids or other materials.

~~(7)~~(9) **"Biopile"**, also known as biocell, bioheap, biomound or compost pile, means a pile of contaminated soils used to reduce concentrations of petroleum constituents in excavated soils through biodegradation. This technology involves heaping contaminated soils into piles or "cells" and stimulating aerobic microbial activity within the soils through the aeration or addition of minerals, nutrients and moisture.

~~(8)~~(10) **"BLM"** means the United States department of the interior, bureau of land management.

~~(9)~~(11) **"Bottom hole pressure"** means the gauge pressure in psi under conditions existing at or near the producing horizon.

~~(10)~~(12) **"Bradenhead gas well"** means a well producing gas through wellhead connections from a gas reservoir that has been successfully cased off from an underlying oil or gas reservoir.

~~(11)~~(13) **"BS&W"** means basic sediments and water.

~~(12)~~(14) **"BTEX"** means benzene, toluene, ethylbenzene and xylene.

C. **Definitions beginning with the letter "C".**

(1) **"Carbon dioxide gas"** means noncombustible gas composed chiefly of carbon dioxide occurring naturally in underground rocks.

(2) **"Casinghead gas"** means a gas or vapor or both gas and vapor indigenous to and produced from a pool the division classifies as an oil pool. This also includes gas-cap gas produced from such an oil pool.

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Multiple Concerns with this Definition and Adding Any Definition of Beneficial Now

Direct § III.A.2. at pp. 10-11

- Defining beneficial is unnecessary
  - To date, the industry has operated without a formal definition of these terms or "beneficial"
- Defining "beneficial" now will potentially conflict with other instances the term or its variants currently appear in Title 19 of the NMAC
  - Including other OCD regulations like "Approved TA" under existing 19.15.25.12 NMAC and the proposed amendments to the same
  - NMOGA expert witness Dan Arthur's testimony and regulatory analysis further supports this position
- Reference to **speculative purposes** is subjective and invites inconsistent enforcement or litigation
- Prohibition on speculative purposes effectively excludes non-production beneficial uses like
  - Enhanced oil recovery (EOR) projects
  - Geothermal
  - Monitoring
  - Injection
  - Seismic
  - Other technical, regulatory or strategic reservoir management uses

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Related New "Presumptions of No Beneficial Use" Proposal

Proposed 19.15.25.9 NMAC
Applicants' Prehearing Statement Exhibit 1-E

Setting "90-Day Criteria" for (A) Production vs. (B) Water Injection/Disposal Wells:

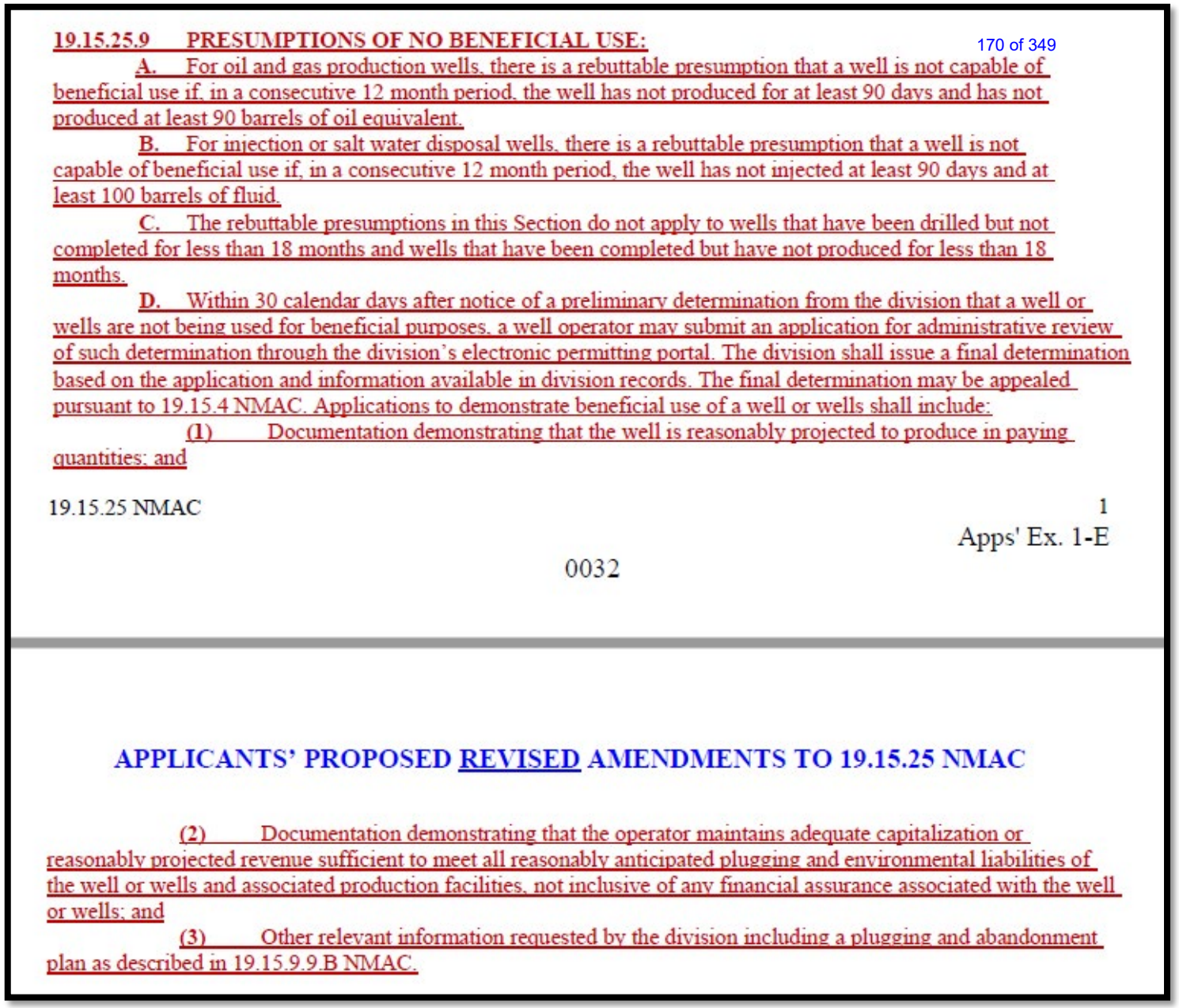
A. Presumes that a production well is not capable of beneficial use is triggered if, during **any** consecutive 12-month period, there was **less than 90 days of production and less than 90 total BOE**

B. Saltwater disposal and injection wells would be presumed to have no beneficial use during **any** consecutive 12 months of **less than 90 days of injection and less than 100 bbls. total injected**

(C) But Exempting Drilled/Completed <18 Months

(D) Procedure that Makes the Presumption Rebuttable

Direct § III.A.2. at p. 11



19.15.25.9 PRESUMPTIONS OF NO BENEFICIAL USE:

A. For oil and gas production wells, there is a rebuttable presumption that a well is not capable of beneficial use if, in a consecutive 12 month period, the well has not produced for at least 90 days and has not produced at least 90 barrels of oil equivalent.

B. For injection or salt water disposal wells, there is a rebuttable presumption that a well is not capable of beneficial use if, in a consecutive 12 month period, the well has not injected at least 90 days and at least 100 barrels of fluid.

C. The rebuttable presumptions in this Section do not apply to wells that have been drilled but not completed for less than 18 months and wells that have been completed but have not produced for less than 18 months.

D. Within 30 calendar days after notice of a preliminary determination from the division that a well or wells are not being used for beneficial purposes, a well operator may submit an application for administrative review of such determination through the division's electronic permitting portal. The division shall issue a final determination based on the application and information available in division records. The final determination may be appealed pursuant to 19.15.4 NMAC. Applications to demonstrate beneficial use of a well or wells shall include:

(1) Documentation demonstrating that the well is reasonably projected to produce in paying quantities; and

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APPLICANTS' PROPOSED REVISED AMENDMENTS TO 19.15.25 NMAC

(2) Documentation demonstrating that the operator maintains adequate capitalization or reasonably projected revenue sufficient to meet all reasonably anticipated plugging and environmental liabilities of the well or wells and associated production facilities, not inclusive of any financial assurance associated with the well or wells; and

(3) Other relevant information requested by the division including a plugging and abandonment plan as described in 19.15.9.9.B NMAC.

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Multiple Concerns with Adding New "Presumptions of No Beneficial Use" Provision Using Rigid "90 Day Criteria"

Direct § III.A.2. at pp. 11-13

- Introducing specific annual time/volume thresholds is too rigid and not operationally realistic, particularly for wells with
  - Variable production
  - Maintenance downtime
  - Or waiting on infrastructure
- I agree with NMOGA lead witness Dan Arthur's testimony and agree with his opinion on this issue as well
- Use of rigid presumptions could force premature P&A, thereby increasing costs and reducing revenues to royalty and interest owners

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Multiple Concerns with Procedure for Rebutting "Presumptions of No Beneficial Use"

Direct § III.A.2. at pp. 11-13

- Operators would have just 30 days from receipt of a preliminary determination from OCD that a well or wells are not being used for beneficial purposes to apply for administrative review
  - 30-day response window is too short and operationally unworkable
- Excessive and burdensome documentation required to rebut the presumption
  - Creating new confidentiality and litigation risks by requiring unwarranted disclosure of proprietary data in the form of
- Even once the operator files its application in response, OCD can demand any relevant documentation, which creates an added risk of inconsistent enforcement and regulatory overreach.
- **In short, a rebuttable presumption (guilty until proven innocent) that a well is not capable of beneficial use based solely on short-term production thresholds is arbitrary and unfairly shifts the burden of proof onto compliant operators, ignoring valid economic, technical, and operational reasons for temporary inactivity.**

Risks and Potential Impacts of Adopting Proposed Presumption Provision and Using the Rigid 90-Day Criteria

Direct § III.A.2.ii.-iii. at 13-19

- Setting 90-day/90 BOE or production in paying quantities for producing wells or 90-day/100 bbls for SWD or injection wells during any 12-month period is arbitrary, unrealistic, and risks premature P&A of beneficial wells
- Premature classification of compliant wells as liabilities
- Requiring demonstration of production in paying quantities (PPQ), which is typically a lease-wide economic concept, to refute non-beneficial presumptions on a well-by-well basis is misleading and burdensome
- Production determinations made on a well-by-well basis disrupt multi-well pad economics, lease-level reservoir management, and can force premature P&A of marginally producing wells that support larger operations
- Risk that "no beneficial use" determinations, or even administrative presumptions, could become evidence in lawsuits alleging lease expiration or abandonment
- The 1-year period is too short, not realistic or workable from an operations standpoint or for the investment cycle, and should be extended to five years
- Ignores innovation
- Mandatory disclosure of proprietary data harms small entrepreneurial operators most
- Presumption of no beneficial use, if not refuted, can trigger the legal obligation to apply to TA or properly P&A a well

B) Unnecessary Changes to **Temporary Abandonment (TA) Permitting and Casing Integrity Requirements**

Proposed 19.15.25 NMAC

Direct § III.B, pp. 19-45

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Approved Temporary Abandonment (ATA)

Direct § III.B.1. at p. 20

- The Division currently allows wells to be placed in ATA status
  - for up to five years,
  - but only under specific conditions, including
    - Full demonstration of mechanical integrity in line with the U.S. Environmental Protection Agency (EPA) standards under 40 C.F.R. §146.8(c).

Existing 19.15.25.12 NMAC "Approved Temporary Abandonment"

Direct § III.B.1.i. at p. 20

- Operators may apply to place a well in ATA status for a period of up to 5 years
  - Subject to renewal or reclassification (i.e., return to beneficial use or full plugging and restoration) before expiration
- Operators are limited to the number of TA wells they may hold:
  - 1 well if operating 5 or fewer wells; or
  - Up to one-third of their well count (rounded to the nearest whole number) if they operate more than 5
- This limits the potential for large numbers of idle wells accumulating under a single operator

Existing 19.15.25.13(A)-(F) NMAC "Request for Approval and Permit for ATA"

Direct § III.B.1.ii. at pp. 20-21

- Submit Form C-103 outlining the proposed temporary abandonment procedures
- Wait for division approval before conducting any work
- Provide 24-hour advance notice to the OCD district office before starting field operations
- Demonstrate mechanical integrity for both internal and external components of the well
- Provide financial assurance in compliance with the inactive and certain TA wells statuses under existing 19.15.8.9(D) NMAC (Applicants' proposed (E))
- Comply with the technical standards of 19.15.25.14 NMAC, including pressure testing and logging
- Once approved, the division sets a specific expiration date (maximum five years from issuance)

Existing 19.15.25.14(A)(1)-(3) NMAC "Demonstrating Mechanical Integrity"

Direct § III.B.1.iii. at p. 21

- Demonstrate internal mechanical integrity must be demonstrated via one of the following options:
  - A cast iron bridge plug set within 100 feet of the uppermost perforation or casing shoe, with a 500 pounds per square inch (psi) pressure test for thirty (30) minutes and a maximum allowable pressure drop of 10%;
  - A retrievable bridge plug or packer, with the same pressure and time requirements; or
  - By showing that the well has been completed for less than five years and remains unconnected to a pipeline.

Existing 19.15.25.14(B)(1)-(2) NMAC "Demonstrating Mechanical Integrity"

Direct § III.B.1.iii. at p. 21

- During testing, all casing valves must be opened, any pressure changes or flow must be reported immediately, and the well must be topped off with inert fluid before being left unattended
- Pressure tests must be recorded using a chart recorder (two-hour clock, 1,000 psi spring, calibrated within six months)

Existing 19.15.25.14(C)-(D) NMAC "Demonstrating Mechanical Integrity"

Direct § III.B.1.iii. at p. 22

- Logs and charts must be signed by witnesses and submitted with OCD Form C-103, Sundry Notices and Reports on Well. External mechanical integrity must be demonstrated using any EPA-approved method under 40 C.F.R. § 146.8(c), including
  - Temperature logs
  - Noise logs
  - Radioactive tracer surveys
  - Oxygen activation logs
  - Cementing records (where applicable)
  - Other EPA-approved diagnostics
  - Each method must confirm no significant fluid movement behind casing or between strata that could jeopardize underground sources of drinking water
- The division requires that no integrity test or log be older than 12 months at the time of application

Existing TA Regulations Integrate EPA Standards and Require "Demonstrating Mechanical Integrity" Using EPA-Approved Methods

Direct § III.B.1.iv. at pp. 22-23

- New Mexico's adoption of 40 C.F.R. § 146.8(c) reflects a prudent, risk-based approach to environmental protection
  - Operators are not required to run expensive logs by default, but rather to escalate testing only when justified by preliminary findings
  - This approach aligns with the EPA's original intent: staged verification, not mandatory use of advanced tools in every case
- Currently, operators may demonstrate external mechanical integrity using EPA-approved methods listed under 40 C.F.R. § 146.8(c)
  - This provision allows pressure testing, pressure monitoring, and cementing records to serve as the primary evidence of annular isolation
  - More advanced diagnostic tools, such as temperature logs, noise logs, or radioactive tracer surveys, are only required if these initial methods indicate a possible integrity issue or if cementing records are inconclusive

Existing TA Regulations Integrate EPA Standards and Require "Demonstrating Mechanical Integrity" Using EPA-Approved Methods

Direct § III.B.1.iv. at p. 23

- **A well that passes pressure testing, has adequate cementing records, and shows no signs of leakage or communication should be considered compliant under both state and federal rules**
  - Requiring further logs in such cases offers minimal environmental benefit and imposes unnecessary cost
- To be consistent with NM's current application of EPA's 40 C.F.R. § 146.8(c), **more advanced diagnostic tools, such as caliper logs and casing integrity logs, should only be required if pressure monitoring and/or pressure tests indicate a possible integrity issue with the casing**, ***and even then, as a precursor to potential remediation of the problem***
  - Properly maintained and regularly tested TA wells may pose less risk than actively producing but unmonitored low-rate wells
  - Penalizing operators for maintaining TA wells in compliance with approved procedures contradicts both the letter and spirit of the regulations

Applicants' Changes to Existing 19.15.25.12 NMAC (ATA)

Applicants' PHS Exhibit 1-E

Would require operators to:

- Justify a well's future use to obtain approval from OCD
- Impose excessive and burdensome documentation requests as a part of that process
- Limit ATA status extensions beyond the initial approval period to two years

Direct § III.B.2. at p. 23

19.15.25.~~12~~13 APPROVED TEMPORARY ABANDONMENT:

A. The division may place a well in approved temporary abandonment for a period of up to five years upon a demonstration from the operator that the well will be used for beneficial use within the approved period of temporary abandonment. The operator's demonstration shall include an explanation why the well should be placed in temporary abandonment, how the well will be put to beneficial use in the future including supporting technical and economic data, a plan that describes the ultimate disposition of the well, the time frame for that disposition, and any other information the division determines appropriate, including a current and complete well bore diagram; geological evidence; geophysical data; well casing information; waste removal and disposition; production engineering; geophysical logs, e.g., cement bond logs, caliper logs, and casing inspection logs; and health, safety, and environmental information. If the division denies a request, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

B. Prior to the expiration of an approved temporary abandonment, the operator shall return the well to beneficial use under a plan the division approves, permanently plug and abandon the well and restore and remediate the location, or apply ~~for a new approval to temporarily abandon the well~~ to the division to extend temporary abandonment status pursuant to the procedures for adjudicatory proceedings in 19.15.4 NMAC, except that in any such adjudicatory proceeding any interested person may intervene under 19.15.4.11.A NMAC. To continue in temporary abandonment, the operator must demonstrate to the division that the well will be returned to beneficial use within the requested period of temporary abandonment. The request shall include documentation demonstrating why the well should remain in temporary abandonment; documentation demonstrating why the well was not brought back to beneficial use or plugged and abandoned during the period of temporary abandonment; documentation demonstrating how the well will be put to beneficial use in the future and supporting technical and economic data; a plan that describes the ultimate disposition of the well, the time frame for that disposition; and a health and safety plan demonstrating the well's casing and cementing meet the requirements of Subsections B and C of Section 19.15.25.13 NMAC and the operator has adequate monitoring procedures in place to ensure such requirements will be met. An extended term shall not exceed two additional years, upon which time the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

C. An operator is limited to placing the following numbers of wells in approved temporary abandonment:

~~A.~~(1) one well, if the operator operates between one and five wells; or

~~B.~~(2) one-third of all wells (rounded to the nearest whole number), if the operator operates more than five wells.

D. **Implementation schedule for existing wells.**

(1) **Inactive wells.** Wells that have been inactive for less than three years are eligible for temporary abandonment status. Wells that have been inactive for three or more years are not eligible for temporary abandonment status.

(2) **Wells in approved temporary abandoned status.** Any operator of a well in temporary abandoned status as of [effective date of amendments] shall apply to the division to extend temporary abandonment status in accordance with Subsection B of this Section prior to the date temporary abandonment status terminates. Unless an operator of a well has renewed a temporary abandonment in accordance with this Paragraph, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

(3) **Wells in expired temporary abandoned status.** Any operator of a well in expired temporary abandoned status as of [effective date of amendments] shall apply to the division to extend temporary abandonment status in accordance with Subsection B of this Section. Unless an operator of a well has renewed a temporary abandonment in accordance with this Paragraph, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

E. The timeframes Subsections A and B in this Section shall be implemented consistent with any applicable federal requirements.

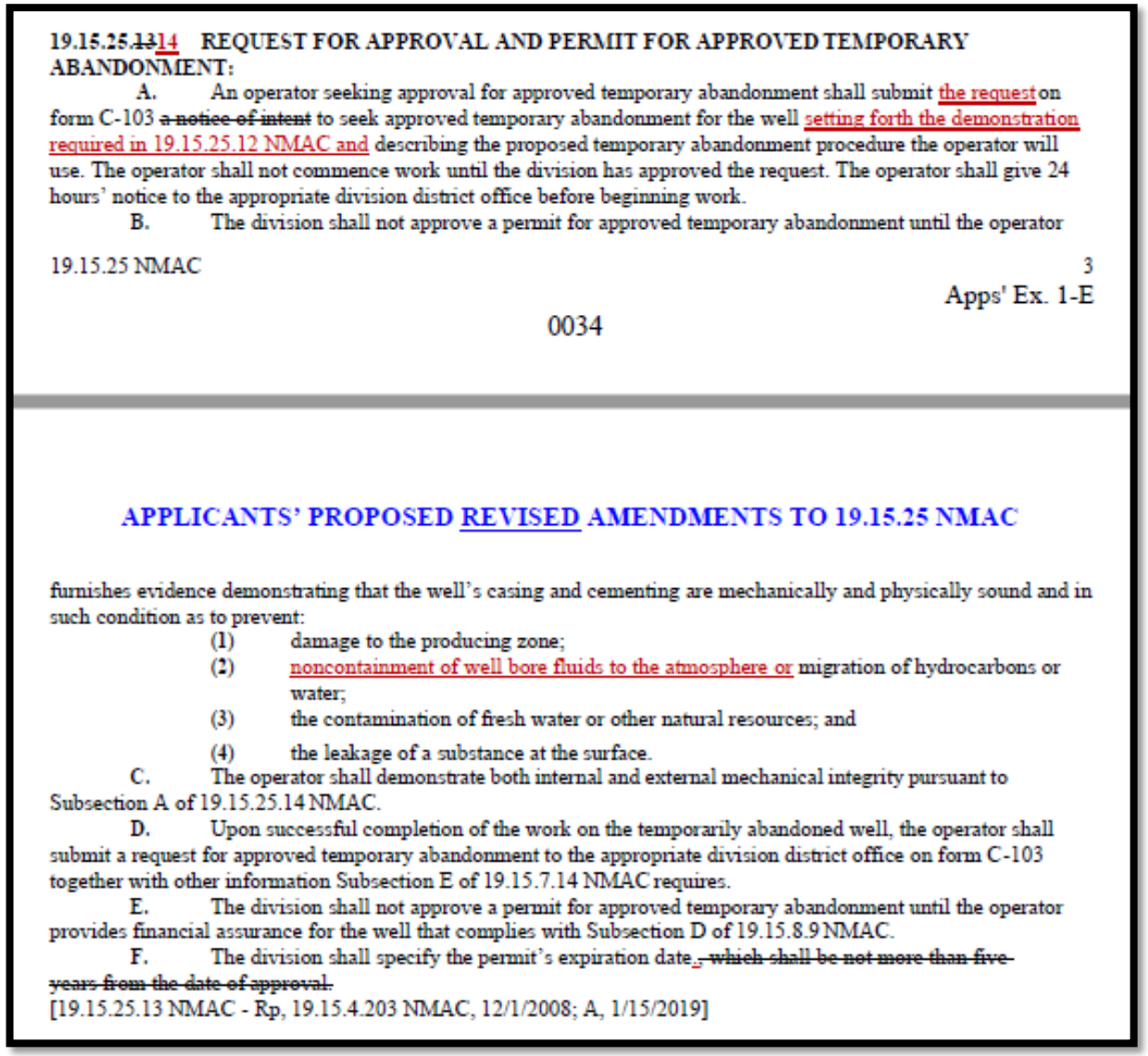
[19.15.25.12 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008; A, 1/15/2019]

Applicants' Changes to Existing 19.15.25.13 NMAC (Request for ATA Approval and Permit)

Applicants' PHS Exhibit 1-E

- What was once a notice is now a request
- Requires by cross reference a "**demonstration from the operator that the well will be used for beneficial use within the approved period of TA . . .**" as proposed under existing 19.15.25.12(A) NMAC (ATA)
- Increased casing requirements

Direct § III.B.2. at p. 23



19.15.25.~~13~~14 REQUEST FOR APPROVAL AND PERMIT FOR APPROVED TEMPORARY ABANDONMENT:

A. An operator seeking approval for approved temporary abandonment shall submit the request on form C-103 ~~a notice of intent~~ to seek approved temporary abandonment for the well setting forth the demonstration required in 19.15.25.12 NMAC and describing the proposed temporary abandonment procedure the operator will use. The operator shall not commence work until the division has approved the request. The operator shall give 24 hours' notice to the appropriate division district office before beginning work.

B. The division shall not approve a permit for approved temporary abandonment until the operator

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APPLICANTS' PROPOSED REVISED AMENDMENTS TO 19.15.25 NMAC

furnishes evidence demonstrating that the well's casing and cementing are mechanically and physically sound and in such condition as to prevent:

(1) damage to the producing zone;

(2) noncontainment of well bore fluids to the atmosphere or migration of hydrocarbons or water;

(3) the contamination of fresh water or other natural resources; and

(4) the leakage of a substance at the surface.

C. The operator shall demonstrate both internal and external mechanical integrity pursuant to Subsection A of 19.15.25.14 NMAC.

D. Upon successful completion of the work on the temporarily abandoned well, the operator shall submit a request for approved temporary abandonment to the appropriate division district office on form C-103 together with other information Subsection E of 19.15.7.14 NMAC requires.

E. The division shall not approve a permit for approved temporary abandonment until the operator provides financial assurance for the well that complies with Subsection D of 19.15.8.9 NMAC.

F. The division shall specify the permit's expiration date~~, which shall be not more than five years from the date of approval.~~

[19.15.25.13 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008; A, 1/15/2019]

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Major Changes from Current Rules

Direct § III.B.2. at pp. 23-24

- Technically, current rules allow indefinite rolling five-year renewals
- The intent behind Applicants' proposal is to force a decision point at 5 years to **either return the well to beneficial use or plug it**, unless a regulator finds good cause to allow it to remain idle longer
    - **Implicating the Applicants' proposal to limit beneficial use to only production and excluding strategic uses like enhanced/tertiary recovery, maintenance, etc. as "speculative"**
    - Thereby limiting the reasons available for a TA'd well to be considered beneficial to avoid automatic triggering of legal obligation to permanently P&A despite strategic use
        - I am going to discuss my full opinions on Applicants' "beneficial" proposals after I finish my summary of my testimony on P&A requirements and assurance

Comparison to Other Jurisdictions

Direct § III.B.2.v. at pp. 23-24

- The key theme across these jurisdictions is maintaining regulatory oversight while still allowing operators the flexibility to manage their wells in accordance with economic and logistical realities

Texas	Does not impose a hard cap on shut-in duration but instead requires periodic reporting and compliance with mechanical integrity standards
Wyoming	Allows TA status in 5-year increments with extension possibilities
Colorado	Colorado's rules allow for extended shut-in if certain conditions are met, including mechanical integrity and field development plans

- New Mexico's current 5-year period assessment and rolling 5-year renewals are well-aligned with this principle and should be preserved

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Major Concerns and Potential Impacts

Direct § III.B.2.vi. at pp. 24-

- Mandatory reapplication for expired TA wells could be interpreted as requiring immediate P&A of hundreds of wells
- Creating hard cutoffs for TA eligibility is shortsighted
- Unnecessarily expands intervention rights beyond interested parties by broadening categories of persons who can intervene in routine TA extension request proceedings
- Strict implementation schedules for all well types

Concerns with Requiring a Beneficial Use Demonstration as Condition for Approval of Extension of TA

Direct § III.B.2.vi. at pp. 24-27

- Reality of requiring future use demonstration and confidential or proprietary documentation required to prove
  - Further implicates the proposed definition of beneficial, excluding speculative uses without defining what "speculative" means exactly in the context of
  - Documentation requirements are vague, excessive, and will further infringe on confidential and proprietary data
  - Mandating detailed pre-implementation submissions forces operators to reveal proprietary redevelopment concepts and trade secrets that give them competitive advantage
  - Subjecting these confidential plans to bureaucratic review invites premature disclosure and subjective gatekeeping; if regulators fail to grasp or accept an operator's innovative concept, the well could be denied TA and ordered plugged, stifling creativity and deterring responsible redevelopment

Changes Proposed to Existing 19.15.25.14 NMAC (Demonstrating Mechanical Integrity)

Applicants' PHS Exhibit 1-E

- What was once a notice is now a request
- Requires by cross reference a "**demonstration from the operator that the well will be used for beneficial use within the approved period of TA . . .**" as proposed under existing 19.15.25.12(A) NMAC (ATA)
- Increased casing requirements

Direct § III.B.3. at p. 23

19.15.25.~~14~~15 DEMONSTRATING MECHANICAL INTEGRITY:

A. An operator may use the following methods of demonstrating internal casing integrity for wells to be placed in approved temporary abandonment:

(1) the operator may set a cast iron bridge plug within 100 feet of uppermost perforations or production casing shoe, load the casing with inert fluid and pressure test to 500 psi surface pressure with a pressure drop of not more than 10 percent over a 30 minute period;

(2) the operator may run a retrievable bridge plug or packer to within 100 feet of uppermost perforations or production casing shoe, and test the well to 500 psi surface pressure for 30 minutes with a pressure drop of not greater than 10 percent over a 30 minute period; or

(3) the operator may demonstrate that the well has been completed for less than five years ~~and has not been connected to a pipeline~~.

(4) Any isolation device used to test mechanical integrity pursuant to Subsection A of this Section shall remain in place for the duration of the temporary abandonment.

(5) The operator shall perform a caliper log and casing integrity log.

B. During the testing described in Paragraphs (1) and (2) of Subsection A of 19.15.25.14 NMAC the operator shall:

(1) open all casing valves during the internal pressure tests and report a flow or pressure ~~change~~ occurring immediately before, during or immediately after the 30 minute pressure test;

(2) top off the casing with inert fluid prior to leaving the location;

(3) report flow during the test in Paragraph (2) of Subsection A of 19.15.25.14 NMAC to the appropriate division district office prior to completion of the temporary abandonment operations; the division may require remediation of the flow prior to approving the well's temporary abandonment.

C. An operator may use any method approved by the EPA in 40 C.F.R. section 146.8(c) to demonstrate external casing and cement integrity for wells to be placed in approved temporary abandonment.

D. The division shall not accept mechanical integrity tests or logs conducted more than 12 months prior to submittal.

E. The operator shall record mechanical integrity tests on a chart recorder with a maximum two hour clock and maximum 1000 pound spring, which has been calibrated within the six months prior to conducting the test. Witnesses to the test shall sign the chart. The operator shall submit the chart, caliper log, and casing integrity log with form C-103 requesting approved temporary abandonment.

F. The division may approve other testing methods the operator proposes if the operator demonstrates that the test satisfies the requirements of Subsection B of 19.15.25.13 NMAC.

[19.15.25.14 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008]

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Concerns with New Requirements

Direct § III.B.2.vi. at pp. 24-

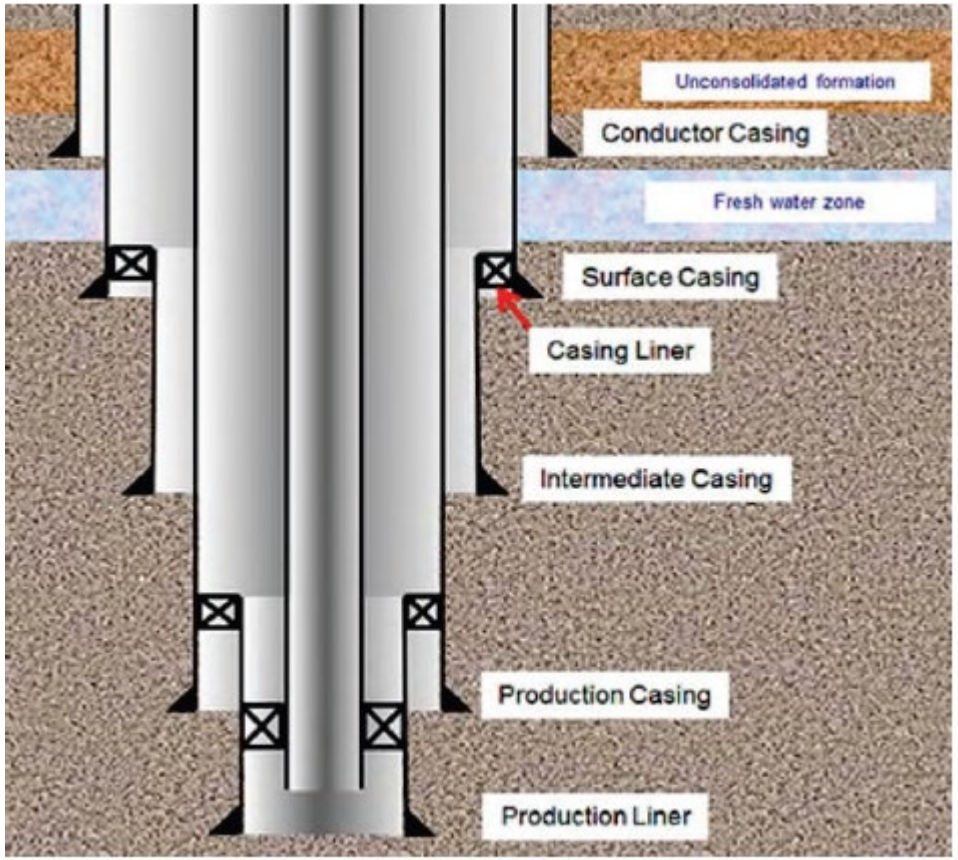

Figure 1 - Wellbore Diagram Showing Concentric Casing

- New requirement that isolation device must remain in place for duration of TA creates risk of conflict with downhole safety, maintenance, and testing
- New caliper and casing integrity log requirements disregard costs and set no criteria for what is passing
- Undermine operator flexibility granted by EPA
- Overlook critical differences in risk between well categories

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Bottom Line Recommendation: Reject or Use Risk-Based Approach to Evaluating Mechanical Integrity

Direct § III.B.3.v. at pp. 40-41

- Proposed changes to mechanical integrity testing are unnecessary, costly, impractical, and inconsistent with broader regulatory norms
- The current rules already provide OCD with the authority and tools to request further testing when needed
  - Without burdening every operator with excessive and unjustified requirements
- I recommend striking WELC's proposed subparagraphs 19.15.25.14(4) and (5) entirely
  - If changes must be made, it is my opinion that a tiered risk-based approach to evaluating mechanical integrity is more appropriate than a one-size-fits-all mandate
  - For example, using pressure testing alone for wells under 10 years old, requiring one integrity log for wells older than 10 years, and using two logs only for the oldest or highest-risk wells would align better with industry standards, reduce unnecessary cost, and improve compliance

Applying Single Definition for "Approved Temporary Abandonment" to Three Defined Terms under 19.15.25.2.7(A)(13) NMAC

Applicants' PHS Exhibit 1-A

(13) **"Approved temporary abandonment,"** **"temporary abandonment," or "temporarily abandoned status"** means the status of a well that is inactive, has been approved in accordance with 19.15.25.13 NMAC and complies with 19.15.25.12 NMAC through 19.15.25.14 NMAC.

(14) **"Aquifer"** means a geological formation, group of formations or a part of a formation that can yield a significant amount of water to a well or spring.

(15) **"ASTM"** means ASTM International - an international standards developing organization that develops and publishes voluntary technical standards for a wide range of materials, products, systems and services.

T. **Definitions beginning with the letter "T".**

(1) **"Tank bottoms"** means that accumulation of hydrocarbon material and other substances that settles naturally below oil in tanks and receptacles that are used in oil's handling and storing, and which accumulation contains more than two percent of BS&W; provided, however, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet to the tank.

(2) **"TDS"** means total dissolved solids.

~~(3) **"Temporary abandonment" or "temporarily abandoned status"** means the status of a well that is inactive.~~

Direct § III.B.4. at p. 41

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Concerns with Applying Single Definition for "Approved Temporary Abandonment" to 3 Defined Terms

Direct § III.B.4.i.-ii. at pp. 41-42

- As Mr. Arthur explains in his testimony, making changes and adding definitions can have wide-ranging effects on other parts of the NM Administrative Code that rely on and reference those terms
- Lumping terms together ignores important distinctions and results in myopic operational and financial planning, and removes graduated guardrails
- Regulatory caps and resource allocation depend on clear definitions

Adding New Single Definition for "Expired Temporary Abandonment" and "Expired Temporary Abandonment Status" under 19.15.25.2.7(E)(8) NMAC

Applicants' PHS Exhibit 1-A

> **(8) "Expired temporary abandonment"** or **"expired temporary abandonment status"** means the status of a well that is inactive and has been approved for temporary abandoned status in accordance with 19.15.25.13 NMAC, but that no longer complies with 19.15.25.12 NMAC through 19.15.25.14 NMAC.

Direct § III.B.4. at pp. 42-43

Concerns with Adding New Single Definition for "Expired TA" and "Expired TA Status"

Direct § III.B.5.i.-iv. at pp. 42-45

- Assigning a single regulatory definition to two (2) defined terms is problematic
- Tying the expiration of a well's TA status to broad compliance issues under multiple regulations creates ambiguity as to when TA status has expired
- The referenced TA approval process compliance provision should not and could not determine TA status expirations
- Proposed definition risks premature or arbitrary reclassification of wells as expired due to technicalities

C) Proposed Changes to **Plugging and Abandonment (P&A) Requirements and Timelines**

Proposed 19.15.25.8 NMAC

Direct § III.C, pp. 45-69

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Timeline from P&A Application to Completion

Direct § III.C.1.i. at pp. 46-48

- Application and approval
- Plugging operations and duration
- Post-plugging cleanup and reclamation
- Final reporting

Mechanical P&A Procedures for Vertical Wells

Plugs, Cement, and Squeezes

Direct § III.C.1.ii. at pp. 48-52

- Isolation of producing zones
- Casing shoes and freshwater protection
- Minimum plug lengths and cement quality
- Plug verification by tagging or testing
- Top-of-cement and squeeze cementing
- Surface plug and wellhead removal
- Unique treatment of horizontal wells and laterals in P&A

Changes to When Wells are to Be Properly Plugged and Abandoned

Proposed 19.15.25.8(B) NMAC

Applicants' Prehearing Statement Exhibit 1-E

Under the existing version of 19.15.25.8(B) NMAC, there is a 90-day compliance window + 3 triggering events. Proposed changes would:

1. Shorten the action deadline from 90 days to 30 days
2. Modify the requirement to place the well in approved temporary abandonment within the compliance window to instead require the operator to apply to do so within the new 30-day timeframe
3. Strike the word "continuously" from the 1-year inactivity

19.15.25.8 WELLS TO BE PROPERLY ABANDONED:

A. The operator of wells drilled for oil or gas or services wells including seismic, core, exploration or injection wells, whether cased or uncased, shall plug the wells as Subsection B of 19.15.25.8 NMAC requires.

B. The operator shall either properly plug and abandon a well or apply to the division to place the well in approved temporary abandonment in accordance with 19.15.25 NMAC within ~~90~~ 30 days after:

(1) a 60 day period following suspension of drilling operations;

(2) a determination that a well is no longer usable for beneficial purposes; or

(3) a period of one year in which a well has been ~~continuously~~ inactive.

[19.15.25.8 NMAC - Rp, 19.15.4.201 NMAC, 12/1/2008]

Direct § III.C.2. at pp. 45, 52-54

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Mirrored Change to Compliance Regulation with 19.15.25.8 NMAC Cross-Reference

Proposed 19.15.5.9(B)(2) NMAC

Applicants' Prehearing Statement Exhibit 1-B

> **(2)** A well inactive for more than 13~~15~~ months creates a rebuttable presumption that the well is out of compliance with 19.15.25.8 NMAC.

Would mean that after 13 months with no production (12 months idle + 30-day grace period), a well must either be permanently abandoned or formally put in TA status to remain legally idle.

Mirrored in WELC's related amendment to existing 19.15.8.9D(3) NMAC which would create a rebuttable presumption a well is out of compliance with 19.15.25.8 NMAC after 13 months of inactivity, which WELC would reduce from the 15-month period current in place.

> **19.15.25.8 WELLS TO BE PROPERLY ABANDONED:**
>
> **A.** The operator of wells drilled for oil or gas or services wells including seismic, core, exploration or injection wells, whether cased or uncased, shall plug the wells as Subsection B of 19.15.25.8 NMAC requires.
>
> **B.** The operator shall either properly plug and abandon a well or apply to the division to place the well in approved temporary abandonment in accordance with 19.15.25 NMAC within ~~90~~ 30 days after:
>
> **(1)** a 60 day period following suspension of drilling operations;
>
> **(2)** a determination that a well is no longer usable for beneficial purposes; or
>
> **(3)** a period of one year in which a well has been ~~continuously~~ inactive.
>
> [19.15.25.8 NMAC - Rp, 19.15.4.201 NMAC, 12/1/2008]

Direct § III.C.2. at pp. 52-54

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Current vs. Proposed Timelines

Direct § III.C.2. at pp. 53-54

Under current law, a well that's been inactive for 1 year can avoid plugging by going into ATA status

- ATA status can be renewed repeatedly (in five-year increments under current rules)

As discussed above, the proposed amendments to the Division's ATA rule would give operators:

- A shortened 2-year initial TA (versus 5) if they can prove future use,
- extensions in 1-year increments up to 5 years total idle time, and
- After that, a mandated decision point (Commission review or plugging)

Proposed Changes to P&A Process and Requirements

Direct § III.C.2.ii. at pp. 54-59

Proposal to Reduce 90-Day Compliance Window to Only 30 Days to P&A or Apply to TA a Well After Triggering Event:

- Compressed **30-day time frame** could result in reduced safety and increased risk of personal, property and environmental injury
- Would mean **simply not producing for 13 months puts a well out of compliance** unless a TA application is filed or P&A started
- Would **create a presumption that any well inactive for more than 13 months is out of compliance**

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Proposed Changes to P&A Process and Requirements

Direct § III.C.2. at pp. 59-61

WELC Would Strike "Continuously" from the 1-Year Inactivity Triggering Event:

- Discourages responsible stewardship of marginally producing but still viable and potentially profitable wells
- Could inadvertently trigger abandonment requirements based on seasonal curtailment, periods of maintenance, or shut-in strategy alone

P&A Triggers in Other Jurisdictions and Legislative Idle Well Efforts

Direct § III.C.3. at pp. 61-64

- Texas
- Colorado
- Wyoming
- Alberta, Canada

P&A Triggers in Other Jurisdictions

Direct § III.C.3. at p. 63

Many states use a framework of "after 1 year idle, do X; after 5 years, do Y."

- Wyoming and North Dakota, generally, allow 1 year idle unless in approved TA status; TA usually limited to 5 years without higher review
- California has an idle well management plan system; idle wells must be tested or plugged on a schedule, and after 15 years idle, California requires plugging or a rigorous risk analysis
- Ohio requires operators to apply for Temporary Inactive status for wells idle >12 months (similar to NM)
    - Under Ohio law (ORC 1509.062), an initial Temporary Inactive status can last 2 years, with possible renewals, but the operator must submit a plan for ultimate disposition. Ohio has been debating stricter limits as well
- Oklahoma and Louisiana require a well to be plugged or temporarily abandoned after 1 year of inactivity, but allow extensions with mechanical integrity tests and additional bonding
- Nebraska (as noted) has one of the stricter policies: 5 years max idle without plugging
- Kansas and Illinois have laws where if a well hasn't produced for 2 years, it's deemed abandoned unless the operator files a yearly intent to maintain it

Risks and Potential Impacts of Proposed Changes

Direct § III.C.4. at pp. 64-69

- Assumes bad faith and disregards legitimate reasons for idling and inactivity
- Unmanageable data burden
- Existing rules already ensure wells only remain idle if the operator proves the well is sound, bonded, and monitored
- Real-world factors that conflict with or complicate the proposed timeline and requirements
  - Regulatory approvals and scheduling delays
  - Crew and rig availability
  - Safety and well condition
  - Surface access and landowner coordination
  - Concurrent workload, resource constraints

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D) Unreasonable Financial Assurance (FA) to Secure P&A Costs

Proposed 19.15.8 NMAC

Direct § III.D, pp. 69-124

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Proposed Financial Assurance Increases for "Active Wells"

Proposed 19.15.8.9(C)

Applicants' Prehearing Statement Exhibit 1-C

Direct § III.D.1. at pp. 69-70

19.15.8.9 CATEGORIES AND AMOUNTS OF FINANCIAL ASSURANCE FOR WELL PLUGGING:

A. Applicability. An operator who has drilled or acquired, is drilling or proposes to drill or acquire an oil, gas or injection or other service well within this state shall furnish a financial assurance acceptable to the division in accordance with 19.15.8.9 NMAC and in the form of an irrevocable letter of credit, plugging insurance policy or cash or surety bond running to the state of New Mexico conditioned that the well be plugged and abandoned and the location restored and remediated in compliance with commission rules, unless the well is covered by federally required financial assurance. The division shall not approve, and the operator shall not proceed with any proposed drilling or acquisition until the operator has furnished the required financial assurance.

B. A financial assurance shall be conditioned for well plugging and abandonment and location restoration and remediation only, and not to secure payment for damages to livestock, range, crops or tangible improvements or any other purpose.

C. Active wells. An operator shall provide financial assurance for wells that are covered by Subsection A of 19.15.8.9 NMAC and are not subject to Subsections D and E of 19.15.8.9 NMAC in one of the following categories:

Apps' Ex. 1-C

APPLICANTS' PROPOSED REVISED AMENDMENTS TO 19.15.8 NMAC

(1) a one well plugging financial assurance in the amount of $150,000 per well; ~~$25,000 plus $2 per foot of the projected depth of a proposed well or the depth of an existing well; the depth of a well is the true vertical depth for vertical and horizontal wells and the measured depth for deviated and directional wells;~~ or

(2) a blanket plugging financial assurance in the amount of $250,000 ~~following amounts~~ covering all the wells of the operator subject to Subsection C of 19.15.8.9 NMAC.~~:~~

~~**(a)** $50,000 for one to 10 wells;~~

~~**(b)** $75,000 for 11 to 50 wells;~~

~~**(c)** $125,000 for 51 to 100 wells; and~~

~~**(d)** $250,000 for more than 100 wells.~~

Proposed Financial Assurance Increases for "Inactive Wells"

Proposed 19.15.8.9(E)

Applicants' Prehearing Statement Exhibit 1-C

Direct § III.D.2. at pp. 70-72

E.~~D.~~ **Inactive wells** and wells in approved and expired temporarily abandoned status. An operator shall provide financial assurance for wells that are inactive and wells in approved and expired temporarily abandoned status, ~~covered by Subsection A of 19.15.8.9 NMAC that have been in temporarily abandoned status for more than two years~~ or for which the operator is seeking approved temporary abandonment pursuant to 19.15.25.13 NMAC in one of the following categories:

(1) a one well plugging financial assurance in the amount of $150,000 per well; ~~$25,000 plus $2 per foot of the projected depth of a proposed well or the depth of an existing well; the depth of a well is the true vertical depth for vertical and horizontal wells and the measured depth for deviated and directional wells;~~ or

(2) a blanket plugging financial assurance equal to an average of $150.000 per well covering all wells of the operator subject to Subsection E~~D~~ of 19.15.8.9 NMAC.~~:~~

~~(e) $150,000 for one to five wells;~~

~~(f) $300,000 for six to 10 wells;~~

~~(g) $500,000 for 11 to 25 wells; and~~

~~(h) $1,000,000 for more than 25 wells.~~

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Proposed Financial Assurance Increases for "Marginal Wells" and Tie to Inactive Inventory

Proposed 19.15.8.9(C)

Applicants'' Prehearing Statement Exhibit 1-C

Direct § III.D.3. at p. 72

D. Marginal wells and inactive wells. Notwithstanding the provisions in Subsection C(2) in this Section:

(1) As of the [effective date of amendments] a transferee operator shall provide a one well plugging financial assurance of $150,000 for each marginal well prior to transfer.

(2) Beginning January 1, 2028, an operator shall provide a one well plugging financial assurance for each marginal well.

(3) An operator with 15 percent or more of their wells in marginal or inactive well status, or a combination thereof, shall provide a one well plugging financial assurance in the amount of $150,000 for each well registered to the operator until the percentage of the operator's marginal and inactive wells is decreased below 15 percent.

(4) An operator may furnish all necessary one well plugging financial assurance in the form of a single instrument.

Other Proposed Financial Assurance Changes

Proposed 19.15.8.9(F)-(G), 8.10

Applicants' Prehearing Statement Exhibit 1-C

Direct § III.D.3. at p. 72

F.~~D.~~ Operators who have on file with the division a blanket plugging financial assurance that does not cover additional wells shall file additional one ~~single~~ well plugging ~~bond~~ financial assurance for any wells not covered by the existing blanket plugging financial assurance ~~bond~~ in an amount as determined by Section 19.15.8.9 NMAC, subject to any limitations in Section 70-2-14 NMSA 1978 ~~or, in the alternative, may file a replacement blanket bond.~~

G. On January 1, 2028 and on January 1 of each successive year, the division may adjust the financial assurance amounts provided by Subsections C(1), D, E and F of this Section by multiplying the financial assurance as of January 1, 2027 by a fraction, the numerator of which is the consumer price index ending in September of the previous year and the denominator of which is the consumer price index ending September 2026; provided that any financial assurance shall not be adjusted below the minimum amounts required in Subsections C(1), D, E and F of this Section as a result of a decrease in the consumer price index. By November 1, 2027 and by November 1 of each successive year, the division shall post on its website the financial assurance requirements in Subsection A through E of this Section for the next year. As used in this subsection, "consumer price index" means the consumer price index, not seasonally adjusted, for all urban consumers, United States city average for all items, or its successor index, as published by the United States department of labor for a 12 month period ending September 30.

[19.15.8.9 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 6/30/2015; A, 1/15/2019]

19.15.8.10 ADDITIONAL REQUIREMENTS FOR CASH AND SURETY BONDS:

A. Surety bonds shall be issued by a reputable corporate surety authorized by the office of the superintendent of insurance to do business in the state. The surety shall be listed on U.S. department of the treasury circular 570.

B. The operator shall deposit cash representing the full amount of the bond in an account in a

Concerns with Annual CPI Adjustment

Direct § III.D.5. at pp. 73-77

- No correlation to P&A cost inflation
- Risk of outpacing bonding capacity in a hardening surety market
- Administrative burden with little practical gain
- Conflict with multi-year capital planning cycles

Comparison to Typical P&A Costs Being Secured

Direct § III.D.6.i. at p. 77-78

- In my opinion, the $150,000 per-well bond (plus inflation) proposed is far above what it actually costs, or should cost, on average, to plug and abandon a typical New Mexico oil or gas well
- P&A costs vary widely from well to well
- A small minority of extreme cases, such as very deep or damaged wells, can cost an order of magnitude more than typical wells, skewing the average cost upward
- In contrast, the median (50% of the cases being below and 50% of the cases being above) cost better represents a “typical” well

Factors Driving Above-Normal P&A Costs

Direct § III.D.6. at pp. 78-80

Key technical factors driving above-normal P&A costs include:

- Well depth
- Well age and condition
- Fluid type and composition
- Surface and environmental factors

Typical P&A Costs Are Far Below $150K for Most Wells

Direct § III.D.6. at pp. 80-84

Median vs. Average P&A Cost per Well (Onshore) at p. 81

Region/State	Median P&A Cost (per well)	Average P&A Cost (per well)
United States (overall)	~$20,000 (plugging only); ~$76,000 including site	~$75,000–$100,000 (mean) (skewed by outliers)
New Mexico	Not reported	$125,000 (plugging only average) ~$35k surface rehab (typical) Apparently, when OCD is managing the plugging average total is ~$150k.
Texas	~$20,000–$40,000 (typical median range)	$30,000–$35,000 (recent average per well)
Oklahoma	~$10,000–$20,000 (shallow well median)	$17,861 (FY2023 state program average)
Colorado	~$50,000 (median depth ~8,000 ft)	$92,710 (state-estimated average **w/ reclamation**)
California	~$50,000 (many shallow old wells)	$111,000 (CalGEM analysis average per well)

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Comparison to Typical New Mexico P&A and Reclamation Costs

Direct § III.D.6. at pp. 84-85

- Well depth is the most significant predictor of P&A costs

Well Depth	*Typical Median P&A Cost*
Shallow Wells < 5,000 ft	~$20,000 – $30,000
Mid-Depth Wells 5,000–10,000 ft	~$50,000 (tens of thousands)
Deep Wells > 10,000 ft	~$100,000+ (up to low six figures)

- *Median cost including plugging and site reclamation, rounded to illustrate scale.*
- *Actual costs vary; deeper wells also have more variability (some >$1M outliers).*
- *The location remediation cost would of course not vary appreciable with depth, and gas wells can be expected to have less surface remediation costs than oil wells.*

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Depth Risk-Based Assessment vs. One-Size-Fits-All

Direct § III.D. at pp. 85-87

- **Depth correlates so strongly with cost that any logical bonding regime should take it into account, rather than impose a flat figure**
- Given the evidence, a flat $150,000 per-well bond is not aligned with the actual risk/cost profile observed in the field
- It far exceeds the P&A cost for the vast majority of low-risk, properly maintained wells. Requiring every well to carry $150k in financial assurance would be technically unjustified overkill
    - An operator of shallow, well maintained, relatively new, oil wells would be forced to post the same bond as an operator with deep, poorly maintained, old, gas wells.
- This level of bond could needlessly tie up capital for the operators of the shallow, well maintained, or otherwise low-risk wells
- Concern is echoed by experts and regulators nationwide (pp. 86-87)

Impact of OCD's 24-Hour Cement Waiting Policy and 2024 Change to Reasonable 4–6 Hour Wait

Direct § III.D.6.iii.c. at pp. 87-88

- It is my understanding that OCD had been requiring operators to wait roughly a day for cement to set between plugs, even though this was not codified in the formal rules
- This unusual "wait on cement" requirement, introduced around 2020, effectively stretched what could be a 1–2 day plugging job into a week or more of crew time
- It is my understanding that the OCD only recently moved to standardize a shorter wait
- To wit, effective 2024, OCD's new guidelines set cement curing times at 4 hours (with accelerator) or 6 hours (regular cement)
- The agency explicitly noted that these published conditions "formalize [an] existing practice" previously enforced in the field without a written rule
- Based on this information, it appears that the OCD had been making plugging contractors wait far longer than was necessary for cement to cure, driving up labor and rig standby costs, but now is correcting course to a reasonable 4–6 hour wait
- This should significantly lower P&A costs

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Impact of OCD's Limited Pool of Plugging Contractors

Direct § III.D.6.iii.c. at pp. 88-89

- It is my understanding that as of late 2022, OCD had entered agreements with only two contractors to handle nearly 200 orphan wells statewide
  - Legislative analysts flagged this lack of competition and recommended that OCD reopen its statewide plugging contract to solicit more bidders by 2025
- Notably, the approved contractors have been based in the San Juan Basin (northwestern New Mexico), but most work is in the Permian Basin in the far SE
- Requires crews and equipment to travel 6–8 hours each way to job sites, incurring substantial mileage, hotel, and per diem expenses
- Unproductive time and travel expense gets billed to the state's plugging program, unnecessarily inflating the per-well cost
- If local Permian-based service rigs could be utilized instead, many of these costs (and delays waiting for crews) could be avoided

Anticipated Decrease in P&A Costs Incurred by OCD

Direct § III.D.6.iii.c. at p. 89

- More likely than not, OCD's procedures have made state-led well plugging more expensive than it could have been
  - Further evidenced by the fact that the average cost for the state to plug a well has surged by about 450% since 2019
- OCD has been faced with a difficult task
- Launching any new large-scale plugging program can be expected to require an expensive learning curve
- Now that OCD's more cautious cement cure times and evolving contracting processes have been evaluated, it is reasonable to assume that OCD will streamline operations and ultimately bring costs down over time

Bottom-Line Recommendation: Retain Risk-Based Assessment

Direct § III.D.6.iii.c. at pp. 90-91

- Most New Mexico wells should not require anywhere near $150,000 to P&A
- A few atypical, higher-risk wells will probably approach or exceed that cost, but those are exceptions that should be handled with targeted financial assurance (e.g., special bonding for deep or high-risk wells)
- **Given the wide variability in plugging costs and the importance of well-specific risk factors, it is far more sensible to adopt a flexible financial assurance scheme rather than a "one-size-fits-all" $150,000 per-well bond**
- Regulators should establish bond levels according to the assessed risk and clearly documented characteristics of specific well categories within an operator's portfolio
- Thereby ensuring that required securities correspond to actual potential P&A liabilities

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Comparison to Other Jurisdictions FA Requirements

Direct § III.D.7. at pp. 91-94

- Trend in other jurisdictions is to improve bonding adequacy by targeting higher-risk wells with higher bonds, not simply imposing an across-the-board figure like $150k, regardless of well size or risk
  - Texas
  - Colorado
  - North Dakota
  - Wyoming
  - Utah
- Most jurisdictions are moving away from flat, across-the-board bond amounts and are increasingly adopting risk-informed, tiered bonding systems that:
  - Charge higher bonds for higher-risk or costly wells, and
  - Allow for blanket coverage for dozens of low-risk wells (unlike a one-size-fits-all $150K reqmt)

Risks and Implications of Adopting Proposed Changes

Direct § III.D.8. at pp. 95-115

- Amendments and additions fail to address real risks and manufacture new risks
- Major concerns for marginal and inactive wells
  - Scenario 1: Small Well-Count Operator (pp. 108-112)
  - Scenario 2: Larger Well-Count Operator (p. 112-115)
- Discouraging moving wells to a planned Approved TA status (where a well could be appropriately prepared for Temporary Abandonment and inventoried for beneficial use in the future)
- Penalizing wells in Approved TA status
- Undermining OCD's established TA Program

Risks and Implications of Adopting Proposed Changes

Direct § III.D.8.iii.-iv. at pp. 115-124

- Impact of concentrated idle-well bonding requirements in New Mexico
- Unanticipated effects on obtaining new and maintaining existing assurance instruments
  - Surge in bond demand and market capacity constraints
  - Surety providers' view of a hostile regulatory environment
  - Consequences and costs of risk concentration will mean less providers will issue FA and for fewer clients
  - Operators with lower working capital and large numbers of legacy wells may be unable to obtain the new FA require
  - NMOGA assurance expert Douglas Emerick speaks more on these effects

Other Proposed Financial Assurance Changes

Proposed 19.15.8.9(A)

Applicants' Prehearing Statement Exhibit 1-C

19.15.8.9 CATEGORIES AND AMOUNTS OF FINANCIAL ASSURANCE FOR WELL PLUGGING:

A. Applicability. An operator who has drilled or acquired, is drilling or proposes to drill or acquire an oil, gas or injection or other service well within this state shall furnish a financial assurance acceptable to the division in accordance with 19.15.8.9 NMAC and in the form of an irrevocable letter of credit, plugging insurance policy or cash or surety bond running to the state of New Mexico conditioned that the well be plugged and abandoned and the location restored and remediated in compliance with commission rules, unless the well is covered by federally required financial assurance. The division shall not approve, and the operator shall not proceed with any proposed drilling or acquisition until the operator has furnished the required financial assurance.

E) Proposed **New Classification of "Marginal Wells" and Financial Assurance Obligations**

Proposed 19.15.2.7(M)(2) and 19.15.8.9(D) NMAC

Direct § III.E, pp. 124-27

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The Importance of Marginally Producing Wells

Direct § III.E.1. at pp. 124-125

- Many marginal wells are maintained for reasons that go beyond short-term volume, including strategic lease retention, pressure support, or as future candidates for EOR projects
- In EOR contexts, these wells may become injection wells, pilot wells for reservoir evaluation, or part of a broader field-wide development plan
- Additionally, maintaining marginal production can preserve access to the subsurface estate and keep valuable leases active, avoiding costly re-leasing or unit restructuring
- For many operators, particularly small and mid-sized independents, marginal wells are the backbone of sustained cash flow and long-term asset value
- Marginal wells and stripper wells account for a significant share of U.S. oil and gas production

New Definition of "Marginal Well" Under Consideration

Proposed 19.15.2.7(M)(2) NMAC
Applicants' Prehearing Statement Exhibit 1-A

"oil or gas well that produced less than 180 days and less than 1,000 BOE within a consecutive 12-month period."

Direct § III.E.2 at p. 125

APPLICANTS' PROPOSED REVISED AMENDMENTS TO 19.15.2 NMAC

M. Definitions beginning with the letter "M".

(1) **"Marginal unit"** means a proration unit that is incapable of producing top proration unit allowable for the pool in which it is located.

(2) **"Marginal well"** means an oil or gas well that produced less than 180 days and less than 1,000 barrels of oil equivalent within a consecutive 12 month period.

~~(2)~~(3) **"Market demand percentage factor"** means that percentage factor of one hundred percent or less as the division determines at an oil allowable hearing, which, when multiplied by the depth bracket allowable applicable to each pool, determines that pool's top proration unit allowable.

~~(3)~~(4) **"MCF"** means 1000 cubic feet.

~~(4)~~(5) **"MCFD"** means 1000 cubic feet per day.

~~(5)~~(6) **"MCFGPD"** means 1000 cubic feet of gas per day.

~~(6)~~(7) **"Measured depth"** means the total length of the well bore.

~~(7)~~(8) **"Mg/l"** means milligrams per liter.

~~(8)~~(9) **"Mg/kg"** means milligrams per kilogram.

~~(9)~~(10) **"Mineral estate"** is the most complete ownership of oil and gas recognized in law and includes the mineral interests and the royalty interests.

~~(10)~~(11) **"Mineral interest owner"** means a working interest owner, or an owner of a right to explore for and develop oil and gas that is not subject to an existing oil and gas lease.

~~(11)~~(12) **"Minimum allowable"** means the minimum amount of production from an oil or gas well that may be advisable from time to time to the end that production will repay reasonable lifting cost and thus prevent premature abandonment and resulting waste.

~~(12)~~(13) **"Miscellaneous hydrocarbons"** means tank bottoms occurring at pipeline stations; oil storage terminals or refineries; pipeline break oil; catchings collected in traps, drips or scrubbers by gasoline plant operators in the plants or in the gathering lines serving the plants; the catchings collected in private, community or commercial salt water disposal systems; or other liquid hydrocarbon that is not lease crude or condensate.

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Risk of Misclassification and FA Implications

Direct § III.E.3. at pp. 125-127

- 12-month assessment window is too short
- Valid reasons for intermittent production
- New marginal well financial assurance implications under proposed 19.15.8.9(D) NMAC (Direct § III.D.3. at p. 72)

> **D. Marginal wells and inactive wells.** Notwithstanding the provisions in Subsection C(2) in this Section:
>
> (1) As of the [effective date of amendments] a transferee operator shall provide a one well plugging financial assurance of $150.000 for each marginal well prior to transfer.
>
> (2) Beginning January 1, 2028, an operator shall provide a one well plugging financial assurance for each marginal well.
>
> (3) An operator with 15 percent or more of their wells in marginal or inactive well status, or a combination thereof, shall provide a one well plugging financial assurance in the amount of $150.000 for each well registered to the operator until the percentage of the operator's marginal and inactive wells is decreased below 15 percent.
>
> (4) An operator may furnish all necessary one well plugging financial assurance in the form of a single instrument.

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Bottom Line Recommendation: Do Not Add a Definition of "Marginal Well"

Direct § III.E.4 at pp. 127-28

- New Mexico's oil and gas landscape is diverse and full of marginal wells that serve long-term strategic functions
- Also noted in Dan Arthur's testimony, the proposed definition, while intended to flag truly uneconomic wells, risks sweeping in far too many productive or strategically maintained wells, with negative economic and environmental consequences
- **I recommend that the definition as proposed not be adopted**
- But if a definition is to be adopted, then a more flexible definition that reflects the operational realities and economic diversity of marginal production should be considered instead

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F) Restrictions on **Operator Registrations and Change of Operator** (i.e., Asset Transfers)

Proposed 19.15.9.8(B)-(E), 9.9(C), (E) NMAC

Direct § III.F, pp. 128-34

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Well Operator Proposed Changes

Proposed 19.15.9.8 and 9.9 NMAC

Applicants PHS Exhibit 1-D

19.15.9.8 OPERATOR REGISTRATION:

A. Prior to commencing operations, an operator of a well or wells in New Mexico shall register with the division as an operator. Applicants shall provide the following to the financial assurance administrator in the division's Santa Fe office:

(1) an oil and gas registration identification (OGRID) number obtained from the division, the state land office or the taxation and revenue department;

(2) a current address of record to be used for notice and a current emergency contact name and telephone number for each district in which the operator operates wells; and

(3) the financial assurance 19.15.8 NMAC requires.

B. Prior to commencing operations, an operator shall provide to the division a certification by an officer, director, or partner that the new operator is in compliance with federal and state oil and gas laws and regulations in each state in which the new operator does business; a disclosure of any officer, director, partner in the new operator or person with an interest in the new operator exceeding 25 percent, who is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC; and a disclosure whether the new operator is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC.

~~B.~~**C.** The division may deny registration as an operator if:

(1) the applicant is not in compliance with Subsection A of 19.15.5.9 NMAC;

(2) the applicant is out of compliance with federal and state oil and gas laws and regulations in each state in which the applicant does business;

(~~2~~3) an officer, director, partner in the applicant or person with an interest in the applicant exceeding 25 percent, is or was within the past five years an officer, director, partner or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC;

(~~3~~4) the applicant is or was within the past five years an officer, director, partner or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC; or

(~~4~~5) the applicant is a corporation, ~~or~~ limited liability company, or limited partnership and is not registered or is not in good standing with the New Mexico secretary of state ~~public regulation commission~~ to do business in New Mexico.~~; or~~

~~**(5)** the applicant is a limited partnership and is not registered with the New Mexico secretary of state to do business in New Mexico.~~

~~**C.**~~**D.** An operator shall inform the division of its current address of record and emergency contact names and telephone numbers by submitting changes in writing to the division's financial assurance administrator in the division's Santa Fe office within 30 days of the change.

~~**D.**~~**E.** ~~The division may require an~~ An operator shall ~~or applicant to~~ certify compliance annually of ~~identify~~ its current and past officers, directors and partners and its current and past ownership interest in other operators consistent with 19.15.9.8.C(2) and (3) NMAC.

[19.15.9.8 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

19.15.9.9 CHANGE OF OPERATOR:

A. A change of operator occurs when the entity responsible for a well or a group of wells changes. A change of operator may result from a sale, assignment by a court, a change in operating agreement or other transaction. Under a change of operator, wells are moved from the OGRID number of the operator of record with the division to the new operator's OGRID number.

B. The operator of record with the division and the new operator shall apply for a change of operator by jointly filing a form C-145 using the division's web-based online application. If the operator of record with the division is unavailable, the new operator shall apply to the division for approval of change of operator without a joint application. The operator shall make such application in writing and provide documentary evidence of the applicant's right to assume operations; a certification by an officer, director, or partner of the new operator that the new operator is in compliance with federal and state oil and gas laws and regulations in each state in which the new operator does business; a plugging and abandonment plan; a disclosure of any officer, director, partner in the new operator or person with an interest in the new operator exceeding 25 percent, who is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC; and a disclosure whether the new operator is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC. The new operator shall not commence operations until the division approves the application for change of operator. The plugging and abandonment plan shall be certified by an officer, director, or partner of the new operator and shall demonstrate that the new operator has and will have the financial ability to meet the plugging and abandonment requirements of 19.15.25 NMAC for the well or wells to be transferred in light of all the operator's assets and liabilities. The division may request the operator to provide additional information including corporate credit rating, corporate financial statements, long-term liabilities, reserves and economics report, records of the operator's historical costs for decommissioning activities, estimate of the operator's decommissioning obligations, and history of inactive wells and returning wells to production.

C. The director of the director's designee may deny a change of operator if:

(1) the new operator is not in compliance with Subsection A of 19.15.5.9 NMAC; ~~or~~

~~**(2)** the new operator is acquiring wells, facilities or sites subject to a compliance order requiring remediation or abatement of contamination, or compliance with 19.15.25.8 NMAC, and the new operator has not entered into an agreed compliance order setting a schedule for compliance with the existing order.~~

(2) the new operator is out of compliance with federal and state oil and gas laws and regulations in each state in which the new operator does business;

(3) any officer, director, partner in the new operator or person with an interest in the new operator exceeding 25 percent, who is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC;

(4) the new operator is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC;

(5) the applicant is a corporation, limited liability company, or limited partnership and is not registered or is not in good standing with the New Mexico secretary of state to do business in New Mexico; or

(6) the certification or disclosure requirements set forth in Subsection B of this Section disclose a substantial risk that the new operator would be unable to satisfy the plugging and abandonment requirements of 19.15.25 NMAC for the well or wells the new operator intends to take over.

D. In determining whether to grant or deny a change of operator when the new operator is not in compliance with Subsection A of 19.15.5.9 NMAC, the director or the director's designee shall consider such factors as whether the non-compliance with Subsection A of 19.15.5.9 NMAC is caused by the operator not meeting the financial assurance requirements of 19.15.8 NMAC, being subject to a division or commission order finding the operator to be in violation of an order requiring corrective action, having a penalty assessment that has been unpaid for more than 70 days since the issuance of the order assessing the penalty or having ~~more than the allowed number of~~ wells out of compliance with 19.15.25.8 NMAC. If the non-compliance is caused by the operator having ~~more than the allowed number of~~ wells not in compliance with 19.15.25.8 NMAC, the director or director's designee shall consider the number of wells not in compliance, the length of time the wells have been out of compliance and the operator's efforts to bring the wells into compliance.

E. No well, facility or site that is out of compliance with Subsection A of 19.15.5.9 NMAC, 19.15.29 NMAC, or 19.15.30 NMAC shall be transferred unless, prior to transfer, the current operator brings the associated well, facility or site into compliance or the new operator submits a schedule of compliance approved by the division.

[19.15.9.9 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

Problems and Potential Impacts of Proposed Changes

Direct § III.F. at pp. 128-132

- Legally infeasible and operationally burdensome (pp. 129-130)
- Policy will drive capital investment and operators out of state (p. 130)
- Delays operator transfers by making approval contingent on pre-approved P&A plans and financial scrutiny (pp. 131-132)
  - Unlike Texas, where compliance is post-transfer under Rule 15
  - Creates vague discretion—OCD would have undefined authority to demand solvency documents with no clarity on standards or thresholds
  - Increases administrative burden—especially in multi-state transactions, requiring detailed project-level P&A and financial plans up front instead of structured deadlines after transfer

Burdensome and Excessive Compared to Other Jurisdictions

Direct § III.F. at pp. 132-133

- In Texas, Operator changes are processed via Form P-4, which requires:
  - Certification of responsibility for plugged or inactive wells under Rule 14 at time of filing—meaning paperwork is rejected if plugging isn't planned or completed; and
  - Evidence of bonding adequate to cover current operations and transferred wells, as specified in the instructions
  - There's no requirement to submit detailed P&A plans or financial documents beyond bond proof. Any deferred plugging must follow Rule 15, giving operators six months after change-in-operator approval to execute P&A or obtain extensions
- In Louisiana, new operators must post financial security for wells being transferred before approval of the operator change, but compliance standards are objective and narrow, centered on bonding and technical capability, not subjective solvency or P&A planning
  - Transfers aren't stalled by vague agency discretion

Why the Proposed Changes are Problematic

Direct § III.F. at pp. 133-134

- Requiring upfront certification of a P&A plan and subjective proof of operator solvency injects transactional uncertainty, inhibits investment, and renders due diligence burdensome or even impossible
  - Consider a scenario where a private-equity-backed operator seeks to acquire a portfolio of 200 wells across multiple states, including New Mexico
  - Under the proposal, the buyer would need to gather and certify P&A plans for every inactive well across all the states involved before operator status is approved in New Mexico, despite many of those wells being planned for continued operation or structured for sale, and demonstrate financial resources sufficient to carry out those plans
  - For private firms or smaller operators with rolling capital strategies, this effectively ends the deal unless financial contingencies are met long in advance, elevating risk and discouraging participation

Seller Cannot Realistically Certify Buyer's Compliance Across Other Jurisdictions

Direct § III.F. at p. 134

- Seller cannot realistically certify the buyer's compliance across other jurisdictions
- Oil and gas rules differ widely among states
  - For example, Texas requires Rule 14 plugging certification with P-4 filings
  - In contrast, Louisiana requires only notification and financial assurance within 6 months, yet WELC's rule would impose a rigid, one-size-fits-all standard
- This conflicts with interstate commerce norms and data privacy
  - Operators would be forced to expose competitive information such as planned investments, proprietary P&A cost models, and internal bonding strategies, information typically kept confidential and unless required by law
  - That would not only violate trade secret norms but also potentially trigger renegotiation of deals or breach confidentiality clauses in purchase agreements

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OVERARCHING RECOMMENDATIONS

Recommendations

Direct § IV, pp. 134-35

1. Avoid rigid production-based thresholds or presumptions that could misclassify viable wells as not capable of beneficial use, marginally producing, or required to be permanently P&A, and which discourage responsible operational practices like lease-level cycling.
2. Preserve and strengthen the existing TA program, recognizing its value in preventing unnecessary plugging and enabling future beneficial use.
3. Allow pressure testing to serve as the primary means of demonstrating mechanical integrity, with additional logging required only when warranted by test results or well history.
4. Adopt a risk-based bonding framework that differentiates between well types, ages, and conditions, rather than imposing a uniform per-well amount.
5. Collaborate with industry to define realistic cost benchmarks for financial assurance, drawing from actual plugging data and national best practices.
6. Facilitate responsible operator transitions by streamlining registration and bonding processes during asset transfers, particularly for low-risk or fully compliant wells.

A Note on My Recommendations

Direct § IV, pp. 134-35

- I respectfully offer my recommendations to better achieve the shared goals of environmental protection, responsible well stewardship, maintaining tax revenue for the State of New Mexico, continued job creation and economic growth in the state, and contributing to the long-term energy security of the United States of America
- These recommendations are presented in the spirit of constructive engagement and reflect lessons learned from decades of practical experience
- They are intended to support the New Mexico Oil Conservation Division's mission while safeguarding the long-term viability of responsible oil and gas development in New Mexico

REBUTTAL TESTIMONY

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Overarching Concerns with Applicants' Case

Rebuttal § III.A.1.-4. at pp. 2-13

1. Varying definitions of orphan wells create skewed data across direct
2. Applicants' and the agency's experts characterize held-by-production wells as "speculative"
3. Applicants' experts equate speculative uses and marginal production with end-of-life and ignore repurposing potential
4. Acceptance of bankrupting or driving small operators out of business is inconsistent with applicants' stated objectives

Consistent and Categorical Errors, Inconsistencies, and Issues I Noted With Applicants' P&A Cost Data That They Based Their Estimated Average Well P&A Costs And Financial Assurance Changes On

Rebuttal § III.C.3.i.-viii. at pp. 17-29

i. Actual average P&A cost per well using only MOSS wells with financial information available is $128,645.84

ii. Self-reported operator data with admittedly manual "corrections" and double-counting

iii. Artificial reliance on third-party vendor datasets lacking validation or disclosure

iv. Selective, non-random (AKA "cherry-picked") historical cost samples

v. Heavy, questionable reliance on the environmental contractor's 2021 estimate (Vertex) for costs

vi. The Purvis "holdback" concept – not an accepted industry practice, not replicable, not reliable

vii. Purvis analysis overlooks opportunity loss

viii. Use of dissimilar out-of-state costs as a proxy for New Mexico

Closing Note on Financial Assurance to Secure P&A Costs

Rebuttal § III.C.4.-5. at pp. 29-30

- Applicants' own "Fact Sheet" for failed Senate Bill 418, The New Mexico Oil and Gas Justice and Reform Act, admits OCD has found the average cost to P&A a well is only approximately $70,000
- Therein, WELC also confirms that the controlling New Mexico Oil and Gas Act has a hard cap of $250,000 on the blanket financial assurance the Division can require
- I found the alternatives utilized for federal offshore oil and gas assets that Arthur and Emerick raised persuasive
  - Only require supplemental financial assurance if the government's decommissioning estimate is greater than the assurance currently on file
  - Allow the value of reserves and presence of co-lessee or co-grantee – or even a predecessor in the chain of title – with an investment-grade credit rating to eliminate the requirement, even where less than the P&A cost on file

APPENDIX A –
TRANSITION FROM VERTICAL TO HORIZONTAL DEVELOPMENT

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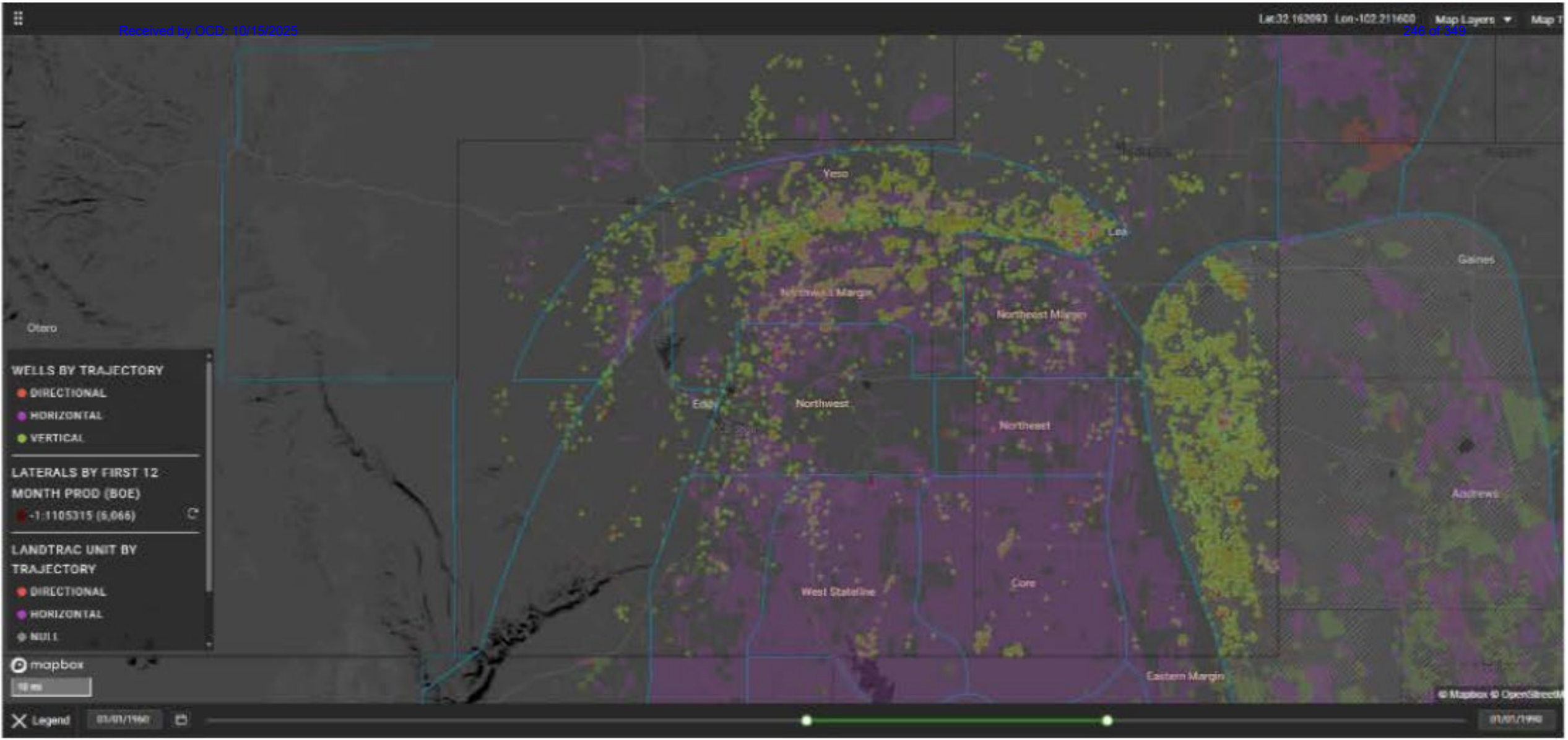
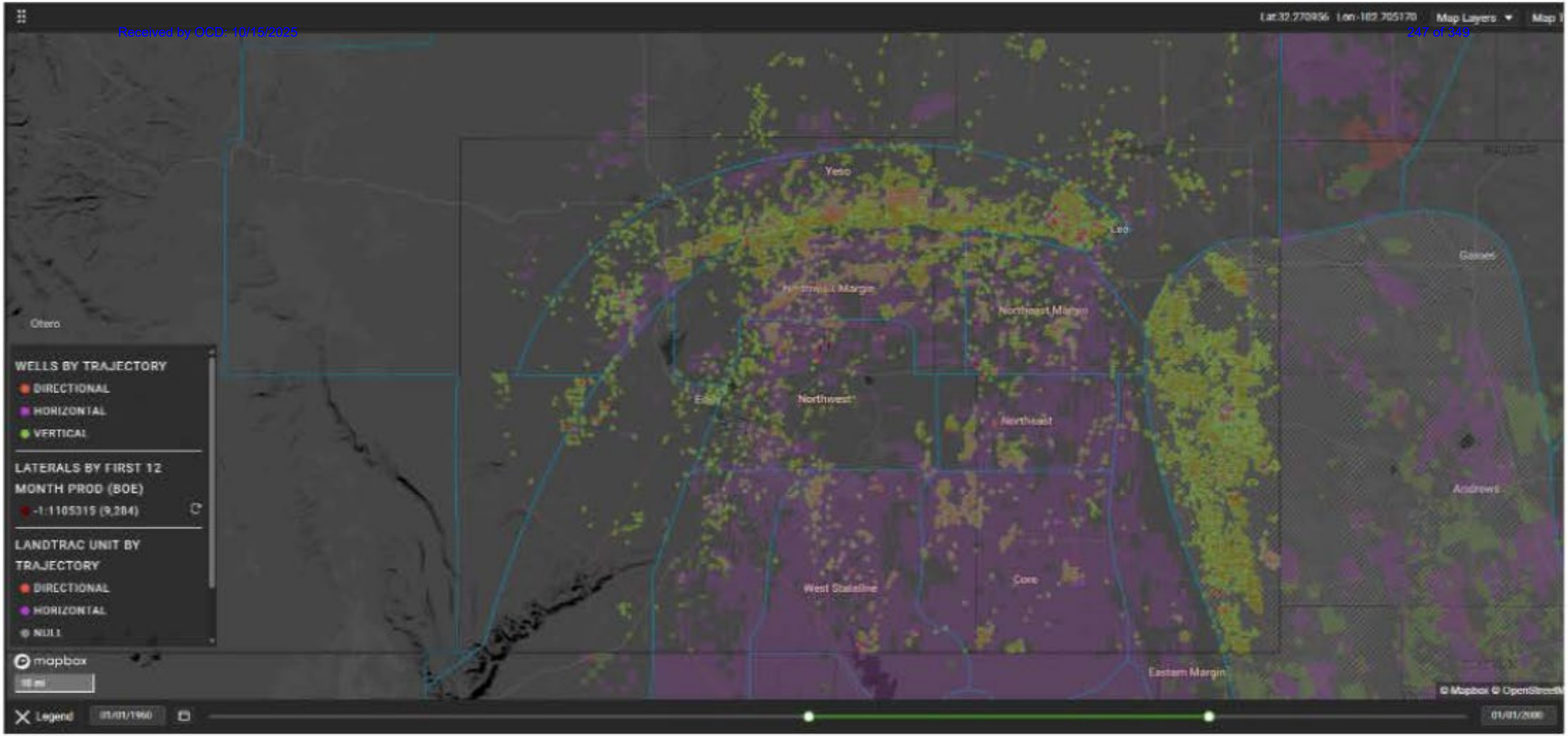
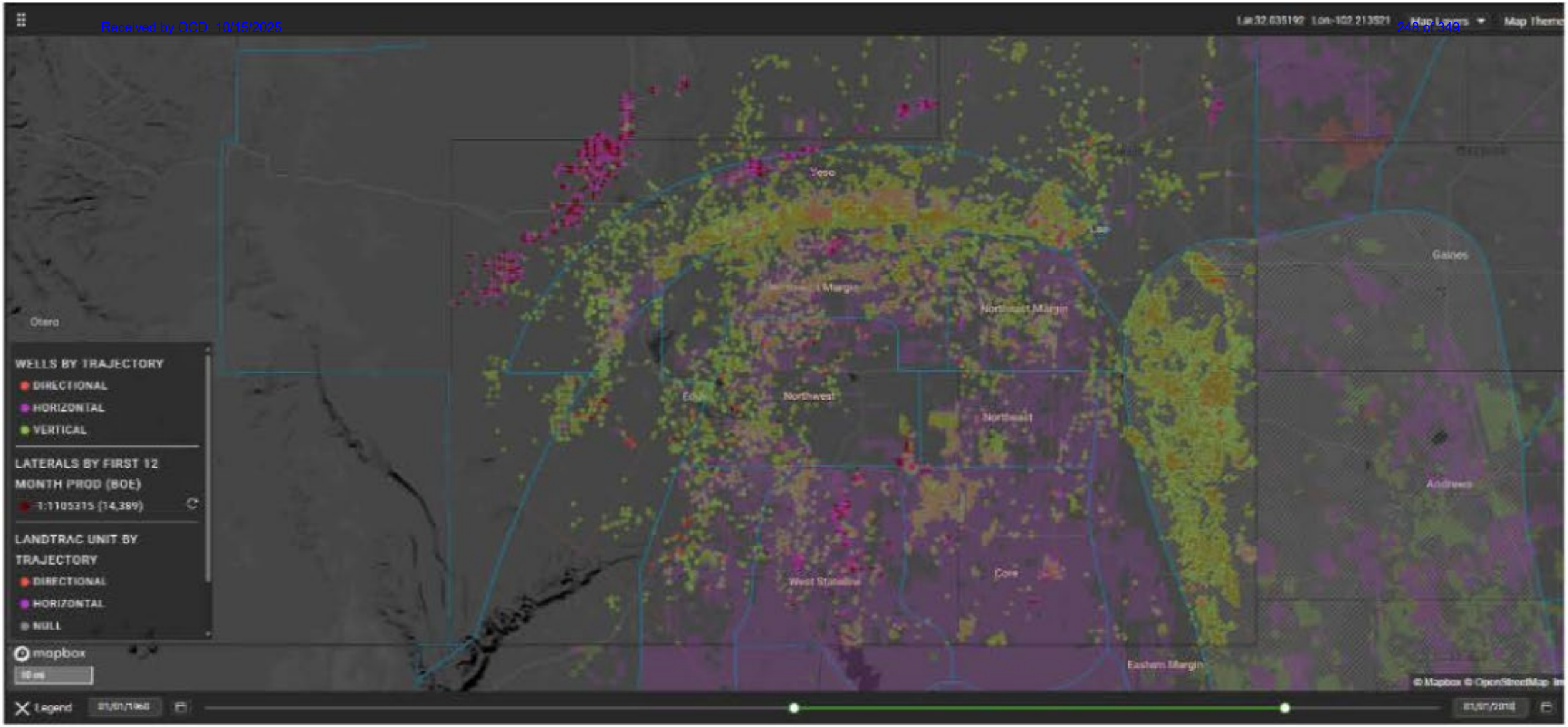


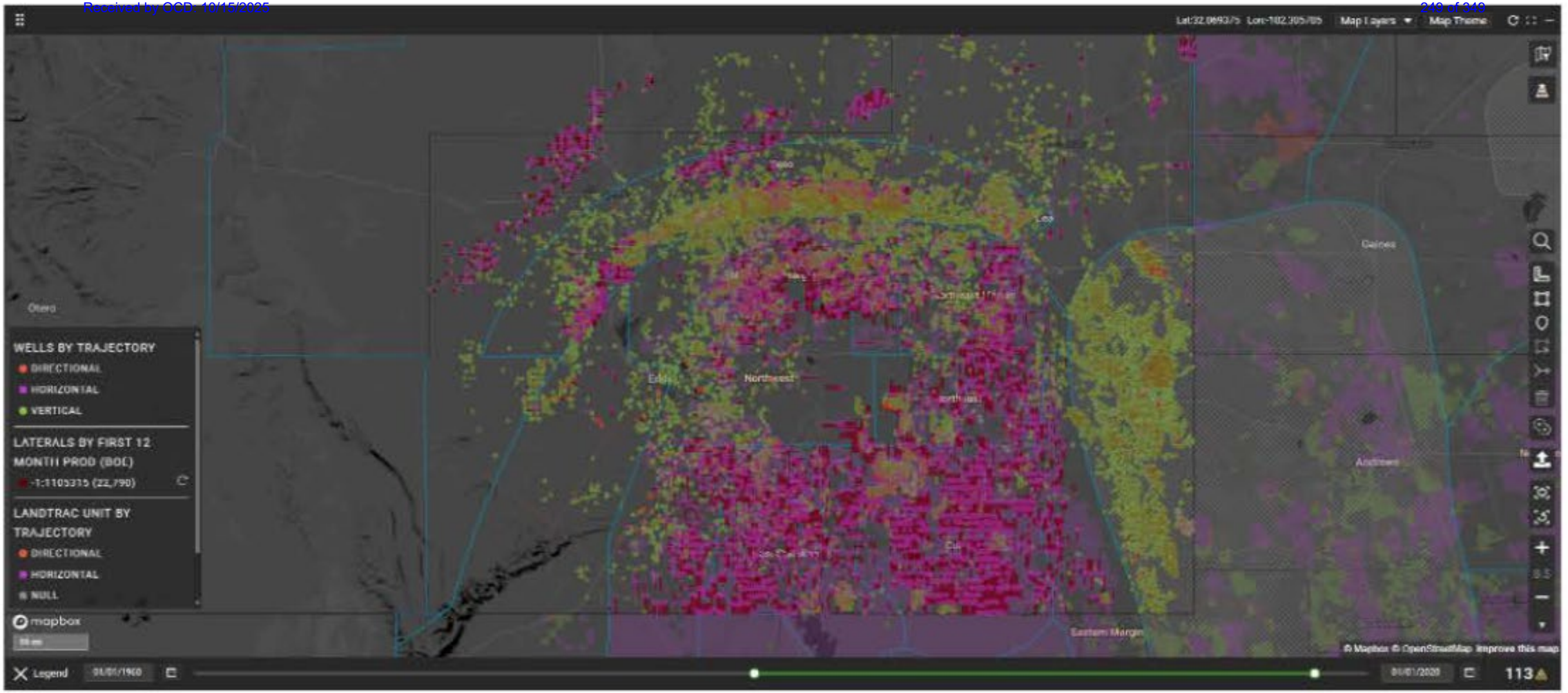
1 New Mexico Permian w/Vertical & Horizontal wells & Land Units - 1960-1990



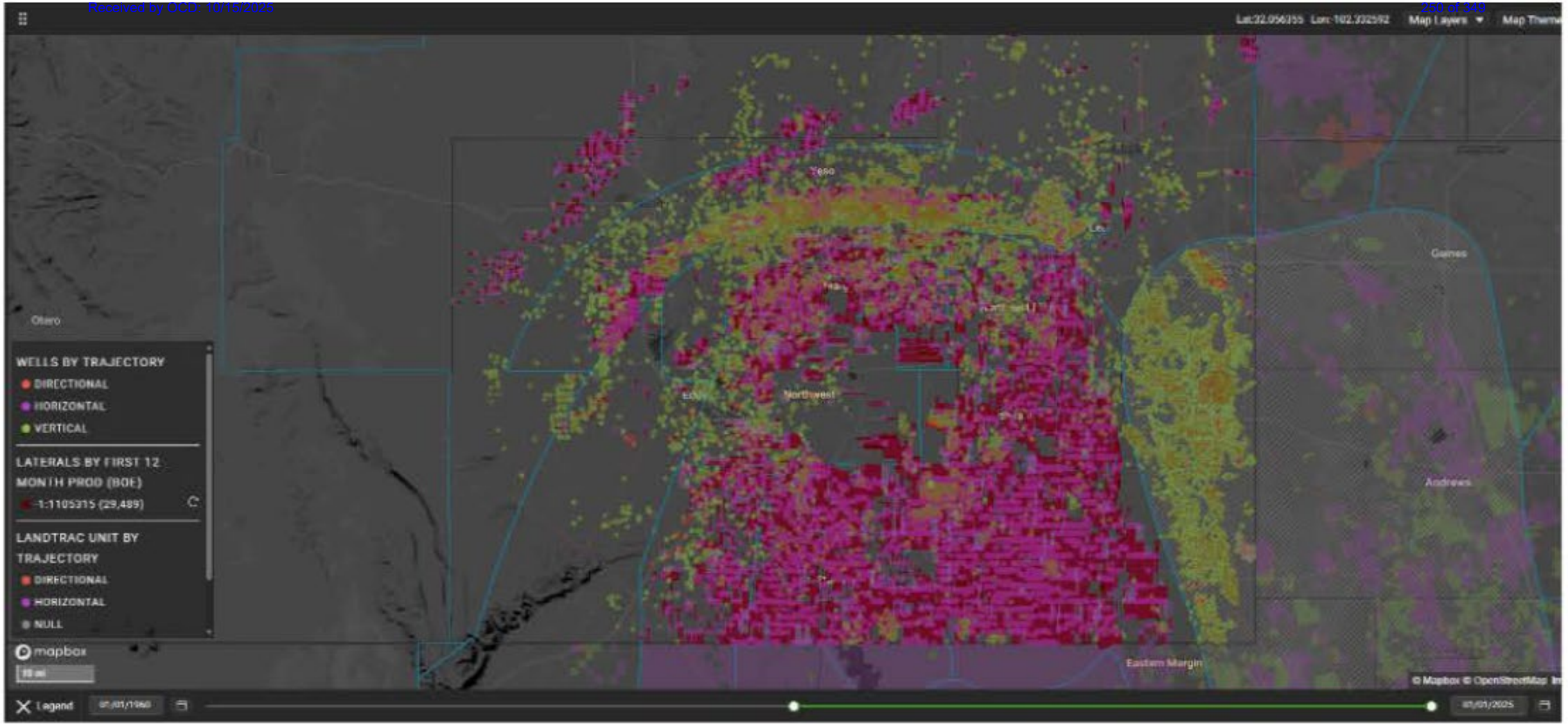
2 New Mexico Permian w/Vertical & Horizontal wells & Land Units - 1960-2000



3 New Mexico Permian w/Vertical & Horizontal wells & Land Units - 1960-2010



4 New Mexico Permian w/Vertical & Horizontal wells & Land Units - 1960-2020



5 New Mexico Permian w/Vertical & Horizontal wells & Land Units - 1960-2025

6 New Mexico Permian - Zoomed In - Horizontal Units and Vertical Acreage (units in magenta)

Created by hmcgo | Thursday, September 18, 2025

APPENDIX B –
REDEVELOPMENT EXAMPLES

Comparative Analysis of Redevelopment Strategies in New Mexico

- A comparative analysis of redevelopment strategies in New Mexico's mature basins reveals a consistent pattern of how operators generated new value from aging assets
- Firms targeted portfolios of low-rate vertical producers and applied modern unconventional technologies such as long-lateral horizontal drilling, multi-stage hydraulic fracturing, and pad development
- These methods allowed declining conventional fields to be converted into high-return unconventional developments. This approach has not only extended the productive life of New Mexico's basins but also established a model for unlocking latent hydrocarbon potential in "stripper well" plays once regarded as economically exhausted
- The following case studies illustrate how this redevelopment model has been implemented across different geologic settings in New Mexico
- The following case studies illustrate how this redevelopment model has been implemented across different geologic settings in New Mexico

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Case Studies: **Examples of Stripper Redevelopment in New Mexico**

- **Hilcorp Energy – San Juan Basin Gas Redevelopment (2017 Acquisition)**
- **DJR Energy – Mancos Oil Redevelopment (2017–2018 Acquisitions)**
- **Enduring Resources – Gallup Oil Horizontal Program (2018 Acquisition)**
- **BP Lower 48 – NEBU Mancos Shale Project (2015–2017 Initiative)**
- **ExxonMobil (XTO) – Permian Delaware Revitalization (2017 Bass Acquisition)**
- **EOG Resources – Legacy Yates Acreage Horizontal Program (2016 Combination)**
- **Spur Energy Partners – Northwest Shelf Yeso Revitalization (2019 Acquisition)**
- **Marathon Oil – New Mexico Delaware Re-Development (2017 Acquisition)**

Additional Examples of Horizontal Redevelopment of Legacy Vertical Wells in New Mexico

- **Abstract:** Riley Permian announced the acquisition of assets in the shallow Yeso Trend of Eddy County, noting over 100 horizontal drilling locations. The release frames the deal as a horizontal redevelopment of a long-producing vertical play. Importantly, Riley highlights that stable legacy production underpins financing and allows predictable growth with modern frac-enabled horizontals.
- **Abstract:** The JV announcement details Chaveroo Field's original vertical development on 40-acre spacing and its ongoing transformation with ten horizontal infill wells on 20-acre spacing. The bulk of production now comes from these horizontals. The companies emphasize how legacy vertical production demonstrated reservoir quality, enabling new capital investment.
- **Abstract:** LOGOS reported multiple record-setting horizontal wells in legacy San Juan Basin acreage. The company framed historic vertical well performance as 'proof of hydrocarbons in place,' which de-risked horizontal expansion. This legacy evidence was central in attracting outside equity partners.
- **Abstract:** Longfellow describes its position in Loco Hills, with more than 100 producing vertical wells and 43 horizontal wells targeting San Andres/Yeso intervals. The juxtaposition of verticals and horizontals demonstrates how legacy production serves as infrastructure and reservoir proof, while new horizontals deliver uplift.

Additional Examples of Horizontal Redevelopment of Legacy Vertical Wells in New Mexico Cont.

- **Abstract:** EON raised capital to begin horizontal drilling in mature waterfloods, explicitly citing the hundreds of legacy vertical wells as the basis for securing financing. This illustrates the theme that existing, even low-output production can unlock new capital for redevelopment.
- **Abstract:** Discusses horizontal drilling and modern completions bringing a resurgence to mature San Andres fields across the Northwest Shelf and Yeso trend. Notes that legacy vertical well performance provided the base for redevelopment strategies.
- **Abstract:** Provides a comprehensive overview of horizontal Yeso development in southeastern New Mexico, detailing how operators use existing infrastructure and legacy wells as steppingstones to implement large-scale redevelopment.
- **Abstract:** Details horizontal infill development in legacy vertical acreage, analyzing parent-child well interference. The study demonstrates both risks and opportunities of redeveloping vertical legacy areas with new horizontals.
- **Abstract:** Reviews the regional shift from vertical to horizontal development in the Yeso Formation, documenting operator strategies, EUR uplift, and capital reallocation. Underscores how legacy wells provided data and justification for redevelopment.

Summary

- Legacy vertical wells, even low-output or marginal producers, enable financing, de-risk horizontal investment, and provide infrastructure for redevelopment
- **When paired with modern technologies (gas lift, recompletions, multi-stage fracturing), these fields can generate extreme upside and transform mature basins into profitable horizontal plays once again**

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Miguel Suazo | Shareholder
Santa Fe, New Mexico

Clayton Sporich, J.D.

NMOGA Legal Expert

Direct and Rebuttal Testimony in OCC Case No. 24683| October- November 2025

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Role and Background

- Clayton Sporich, J.D., Executive Vice President of Land & Legal, Tap Rock Resources
- Approx. 15 years of oil and gas industry legal and land experience
- NMOGA's legal expert

Purpose of Testimony

Purpose of Direct Testimony: As NMOGA's legal expert, I find that some of Applicant's proposals exceed the authority granted by the New Mexico Legislature under the New Mexico Oil and Gas Act, N.M. Stat. Ann. 1978 (NMSA), §§ 70-2-1 et seq. It is my legal opinion that many of these provisions should be stricken or, at the very least, substantially modified to comply with applicable law.

Purpose of Rebuttal Testimony: The purpose of my rebuttal testimony is to respond to certain arguments and assertions made in the rebuttal testimonies of WELC and OCD witnesses, and to explain why NMOGA maintains that the Applicants' proposals are legally flawed and contrary to the Oil and Gas Act.

Overarching Concerns

1. Applicants' proposals promote waste and exceed statutory authority.
2. Applicants' proposed changes to New Mexico's existing oil and gas financial assurance regime conflict with the statutory text and purpose of this Commission and the Division's enabling Act.
3. Numerous independent violations of the Act's limited financial assurance authority in Applicants' proposed amendments to 19.15.8.9 NMAC.
4. OCD lacks jurisdiction to require that operators certify compliance with the laws of *other states*, as currently proposed under Applicants' updates to 19.15.9.8(B), (C), and (E) NMAC, governing operator registrations, and 19.15.9.9(B) and (C) NMAC, governing transfer of operatorship.

Overarching Concerns, cont.

Violations of OCC and OCD's statutory mandate to prevent waste and protect correlative rights contained in NMSA 1978, § 70-2-11

WELC Proposal	Statutory Provision Preventing Adoption
WELC's Proposed Definition of Beneficial Purpose 19.15.2.7(B)(7) NMAC	Definition so narrow that it violates OCC's statutory mandate to prevent waste and protect correlative rights
WELC's Presumption of No Beneficial Use 19.15.25.9 NMAC	Sweeps in wells capable of production in violation of OCC's statutory mandate to prevent waste and protect correlative rights
Financial Assurance for Marginally Producing Wells 19.15.8.9(D) NMAC	Rigid and impractical new "marginal well" standards facilitate waste
Heightened Requirements for Marginally Producing Wells - 19.15.8.9(D) NMAC	Could lead to premature abandonment of marginally economic and shut-in wells and prevent full recovery

Overarching Concerns, cont.

Violations of the express financial assurance provisions contained in NMSA 1978, § 70-2-14(A)

WELC Proposal	Statutory Provision Preventing Adoption
WELC's Financial Assurances for Active, Inactive, and Temporarily Abandoned Wells 19.15.8.9(C),(E), and (F) NMAC	Violates statutory mandate that one-well financial assurance *must* be "in amounts determined sufficient to reasonably pay the cost" of plugging the wells covered by the financial assurance
WELC's Financial Assurances for Active, Inactive, and Temporarily Abandoned Wells 19.15.8.9(C),(E), and (F) NMAC	Violates statutory mandate that OCD *must* consider "the depth of the well involved, the length of time since the well was produced, the cost of plugging similar wells, and such other factors as the oil conservation division deems relevant."
WELC's Financial Assurances for Active, Inactive, and Temporarily Abandoned Wells 19.15.8.9(C),(E), and (F) NMAC; AND Financial Assurance for Marginally Producing Wells (19.15.8.9(D) NMAC); AND Annual Consumer Price Index Adjustments to Financial Assurance Requirements – 19.15.8.9(G) NMAC	Violates the express $250,000 blanket statutory plugging cap and express $50,000 statutory cap for temporary abandoned wells

Overarching Concerns, cont.

Proposals that are outside bounds of OCC/OCD's enabling statute

WELC Proposal	Statutory Provision Preventing Adoption
WELC's Annual Consumer Price Index Adjustments to Financial Assurance Requirements 19.15.8.9(G) NMAC	The Act does not allow for annual price adjustments and previous attempts to legislate the exact same provision have failed
WELC's Proposal to Require OCD to Deny Acquisitions Based on Financial Assurance 19.15.8.9(A) NMAC	OCC/OCD statutory authority does not extend to regulating acquisitions or private property transactions
WELC's Operator Registration (19.15.9.8(B-E) NMAC) and Changes of Operator Restrictions (19.15.9.9(B), (C), and (E) NMAC)	OCC and OCD's authority is limited by the Act to the laws of "*this* state"

Adding a Definition for "Beneficial Purposes" or "Beneficial Use" (19.15.2.7(B)(7) NMAC)

- Primary Concerns:
  - Unnecessary subjectivity for what is considered beneficial
  - Constraints to operational flexibility
  - Could trigger premature enforcement or plugging requirements
  - Conflicts with legal term of art used in water law
- Prohibition on "speculative purpose" use does not align with historical acceptance of beneficial uses as those that don't constitute "waste" under the Act
- For Example: the proposal would not allow for purposes such as secondary and tertiary recovery, monitoring, other compliance issues
- **Bottom Line: A definition that is broad and flexible, so as not to constrain future beneficial uses is essential to prevent waste and protect correlative rights.**

Solution: (i) Strike WELC's proposal OR (ii) adopt NMOGA's alternate language

""Beneficial purposes" or "beneficial use" means that a well is being used, or is reasonably expected to be used, in a productive, operational, or regulatory capacity consistent with its intended purpose. This includes, but is not limited to, production, injection, monitoring, regulatory compliance, or participation in reservoir management, pressure maintenance, or infrastructure optimization programs.

In determining whether a well is being used for beneficial purposes, the Division may consider operational records, production or injection history, regulatory filings, and operator-submitted plans or supporting documentation. The Division shall provide the operator a reasonable opportunity to demonstrate beneficial use prior to making any contrary determination.

Use of a well shall not be deemed non-beneficial solely because: It has produced or injected below a specific volumetric threshold; It has been temporarily inactive due to maintenance, market conditions, infrastructure limitations, or field-wide optimization; It is not producing in paying quantities on a standalone basis but contributes value to a unitized or pad-level operation. Use of a well for speculative or indefinite purposes with no planned operational role may be deemed non-beneficial after consultation with the operator."

Presumption of No Beneficial Use (19.15.25.9 NMAC)

- Primary Concerns:
  - Overly rigid and operationally unrealistic
  - Could deprive parties of private property rights
  - Notice and due process concerns
- Myriad of things lead to pauses in production; could unnecessarily trigger the provision
- For Example: the proposal does not account for wells with variable production, maintenance downtime, or wells waiting on infrastructure
- **Bottom Line: This provision cannot be adopted because it: (i) conflicts with the Oil and Gas Act's core charges to the Commission to prevent waste and protect correlative rights, and (ii) risks depriving operators of property rights without legal justification.**

Presumption of No Beneficial Use (19.15.25.9 NMAC) – Example Impact

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Presumption of No Beneficial Use, cont.

Solution: The Commission should retain the current rebuttable presumption framework already embedded in the inactive well rules (e.g., 19.15.5.9(B)(2)NMAC), which offers a fairer, more administrable standard without shifting burdens prematurely.

Presumption of No Beneficial Use, cont.

NMOGA's Proposed Existing Language Contained In 19.15.5.9(B)(2)NMAC): A well inactive for more than 15 months creates a rebuttable presumption that the well is out of compliance with 19.15.25.8 NMAC.

Financial Assurances for Active, Inactive, and Temporarily Abandoned Wells - 19.15.8.9(C),(E), and (F) NMAC

WELC Proposes the Following Changes to Financial Assurances that Conflict with the Act:

1. Operators would be required to provide individual financial assurance of $150,000 **for each active well**, whether through a bond, letter of credit, or insurance policy. Alternatively, operators could obtain a blanket bond of $250,000 to cover all active wells.

2. WELC alone proposed an additional option of a $200,000 blanket bond **for operators with five (5) or fewer active wells** in its proposed amendment to the current version of 19.15.8.9(C)(2) NMAC.

3. Operators would be required to provide individual financial assurance of $150,000 per well, whether through a bond, letter of credit, or insurance policy, **for each inactive well or well assigned approved, pending, or expired temporarily abandoned status**. This requirement is written with no flat blanket bond alternative in its proposed amendment to 19.15.8.9(E)(2) NMAC.

4. WELC also proposes adding a requirement under 19.15.8.9(F) NMAC that **a $150,000 single well bond be obtained for each well not covered by blanket financial assurance, and would remove the blanket bond alternative in place under the existing rule**.

Financial Assurances for Active, Inactive, and Temporarily Abandoned Wells - 19.15.8.9(C),(E), and (F) NMAC, cont.

Statutory Conflicts with NMSA 1978 § 70-2-14(A) Abound

One-well financial assurance *must* be "in amounts determined sufficient to reasonably pay the cost of plugging the wells covered by the financial assurance."

OCD *must* consider "the depth of the well involved, the length of time since the well was produced, the cost of plugging similar wells, and such other factors as the oil conservation division deems relevant."

"Such categories shall include a blanket plugging financial assurance, which shall be set by rule in an amount not to exceed two hundred fifty thousand dollars ($250,000), a blanket plugging financial assurance for temporarily abandoned status wells, which shall be set by rule at amounts greater than fifty thousand dollars ($50,000)[.]"

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Financial Assurances for Active, Inactive, and Temporarily Abandoned Wells - 19.15.8.9(C),(E), and (F) NMAC

Current Financial Assurance vs. WELC's Unauthorized Increases

Financial Assurance Authorized by Statute	WELC's Proposed Increases
"Such categories shall include a blanket plugging financial assurance, which shall be set by rule in an amount not to exceed two hundred fifty thousand dollars ($250,000), a blanket plugging financial assurance for temporarily abandoned status wells, which shall be set by rule at amounts greater than fifty thousand dollars ($50,000)[.]" AND One-well financial assurance *must* be "in amounts determined sufficient to reasonably pay the cost of plugging the wells covered by the financial assurance."	• $150,000 **for each active well**, or a blanket bond of $250,000 to cover all active wells • Option of a $200,000 blanket bond **for operators with five (5) or fewer active wells** • $150,000 **per well**, for each inactive well or well assigned approved, pending, or expired temporarily abandoned status, with no blanket bonding alternative • **$150,000 single well bond be obtained for each well not covered by blanket financial assurance**
OCD *must* consider "the depth of the well involved, the length of time since the well was produced, the cost of plugging similar wells, and such other factors as the oil conservation division deems relevant."	WELC removes the explicit depth consideration from the financial assurance provisions of NMAC altogether

19.15.8.9(C),(E), and (F) NMAC, cont.

Solution: A $250,000 maximum blanket bonding amount should be utilized across the board, regardless of the number of wells, in accordance with the maximum amount of assurance set forth in the Act.

19.15.8.9(C),(E), and (F) NMAC, cont.

- The New Mexico Legislature established the Oil and Gas Reclamation Fund in 1977 as a non-reverting fund for use by OCD in carrying out the Act.

- Historically, the Fund has been used primarily for the plugging and reclamation of wells and related infrastructure that lack a locatable or financially viable operator.

- As of April 2025, the Reclamation Fund's balance was at $66,700,000. Despite the high balance, New Mexico has made minimal expenditures from the Reclamation Fund in the last two years, instead using federal grants to pay for plugging orphaned wells.

Heightened Requirements for Marginally Producing Wells - 19.15.8.9(D) NMAC

WELC Proposes the Following Changes to Financial Assurances that Conflict with the Act:

1. A $150,000 **single well financial assurance for each marginal well involved in an operator transfer**
2. A $150,000 **single well bond financial assurance for every marginal well**, required effective January 1, 2028
3. If the amount of marginal and inactive wells registered to an operator, or a combination thereof, makes up at least 15% or more of their total New Mexico wells, then WELC would require a $150,000 single well financial assurance for **every well registered** to that operator, not just marginal wells

Heightened Requirements for Marginally Producing Wells - 19.15.8.9(D) NMAC, cont.

- Primary Concerns:
  - Vague and overly broad
  - Penalize producing wells instead of providing mechanisms to reduce costs associated with marginal well production
  - Could lead to premature abandonment of marginally economic and shut-in wells and prevent full recovery
- For Example: the proposal is so broadly worded it could be extended to operator changes and asset transfers, assignments, and various types of transactions
- **Bottom Line: The language is arbitrary, not risk-based, and risks penalizing operators that have acquired troubled assets in good faith. The Commission should therefore reject this proposal.**

Rebuttal Slide 1: 19.15.8.9(C)(1) and 19.15.8.9(E)(1) NMAC

The single well financial assurance requirements for active wells under 19.15.8.9(C)(1) NMAC, and inactive wells under proposed amendments to 19.15.8.9(E)(1) NMAC are not compliant with existing statutory requirements and therefore, cannot be adopted by OCD.

Both proposals impose a flat $150,000 per-well requirement, disregarding the statutory mandate that financial assurance amounts must be (i) reasonable in relation to actual plugging costs and (ii) tailored to well-specific factors such as depth, production history, and comparable plugging costs.

Rebuttal Slide 2: 19.15.8.9(C)(1) and 19.15.8.9(E)(1) NMAC, cont.

The New Mexico Supreme Court has repeatedly held and long made clear that the OCC and OCD, as creatures of statute, must act strictly within the bounds of their enabling legislation.

- Sims v. Mechem, 1963-NMSC-103, ¶ 11, 72 N.M. 186, 382 P.2d 183 (holding the Commission lacked authority to issue a compulsory pooling order where it failed to make the statutorily required finding of waste).
- The Court emphasized that the Commission "must fully comply with its creating law to possess any jurisdiction in a matter."

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Rebuttal Slide 3: 19.15.8.9(C)(1) and 19.15.8.9(E)(1) NMAC, cont.

- Here, pursuant to NMSA 1978, § 70-2-14(A), the OCD must set one-well financial assurance "in amounts determined sufficient to **reasonably** pay the cost of plugging."
- Furthermore, the statute requires that OCD "shall consider the depth of the well involved, the length of time since the well was produced, the cost of plugging similar wells, and such other factors as the oil conservation division deems relevant." NMSA 1978, § 70-2-14(A).
- **Applicants' proposed changes to 19.15.8.9(C)(1) NMAC disregard both of these statutory requirements and are therefore unlawful.**

Rebuttal Slide 4: 19.15.8.9(C)(1) and 19.15.8.9(E)(1) NMAC, cont.

Evidence in the Record Supporting NMOGA's Claims of Statutory Overreach:

- The record is rife with evidence that many wells can typically be plugged for far less than $150,000, especially for wells drilled to shallower depths.
- Dan Arthur states that "the cost of plugging and abandoning an oil and gas well can vary enormously" and describes his personal knowledge of "many wells" being plugged and abandoned for $20,000 or "even less."
- Harold McGowen, states that "the $150,000 per-well bond (plus inflation) proposed by Applicants is far above what it actually costs, or should cost, on average, to plug and abandon a typical New Mexico oil or gas well."
- Applicants' proposed changes to 19.15.8.9(C)(1) and (E)(1) NMAC explicitly strike the depth considerations from the existing rule language. Eliminating those factors directly contravenes § 70-2-14(A) and exceeds OCD's statutory authority.

Rebuttal Slide 5: 19.15.8.9(C)(1) and 19.15.8.9(E)(1) NMAC, cont.

When it enacted the Act, the New Mexico Legislature created the OCC and gave "the Commission and Division two major duties: the prevention of waste and the protection of correlative rights."

Santa Fe Expl. Co. v. Oil Conservation Comm 'n, 1992-NMSC-044, ¶ 27, 114 N.M. 103, 835 P.2d 819 (citing NMSA 1978, § 70-2-11(A))

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Rebuttal Slide 6: 19.15.8.9(C)(1) and 19.15.8.9(E)(1) NMAC, cont.

Here, the record shows that WELC's proposals will result in waste:

- Dan Arthur discusses in detail that designating a well as "temporarily abandoned" is not always indicative of the well truly being inactive or ready for plugging from a conservation perspective.
- Applicants' current proposal will force operators to plug some wells that they have strategically designated as "temporarily abandoned" for operational reasons in order to avoid noncompliance, even though the wells may be productive in the future.
- The result is a waste of natural resources, which OCD is statutorily mandated to prevent.

Rebuttal Slide 7: 19.15.8.9(D) NMAC

- NMSA 1978, § 70-2-14(A) states wells in a "temporarily abandoned" status will remain under the $250,000 blanket financial assurance coverage for an initial two-year period.
- The pertinent portion of the statute states explicitly, "[t]he oil conservation division shall require a one-well financial assurance on any well that has been held in a temporarily abandoned status **for more than two years**."
- Inexplicably, Applicants seek to ignore this statutory mandate in its proposed changes to 19.15.8.9(D) NMAC, which would require operators to supply one-well financial assurance for temporarily abandoned wells before the statutorily proscribed two-year period has concluded.

Rebuttal Slide 8: 19.15.8.9(E)(2) NMAC and 19.15.8.9(F) NMAC

- Applicants' proposed regulation 19.15.8.9(E)(2) NMAC, requiring any blanket bonding for inactive and pending, approved, or temporarily expired abandoned wells to provide blanket bonds with a total of $150,000 **for each well secured**.
- By definition, any blanket instrument calculated on a per-well basis would exceed the $250,000 statutory ceiling once it covers more than one or two wells.
- This directly conflicts with the Act's Section 70-2-14(A) and renders the proposal unlawful.

Annual Consumer Price Index Adjustments to Financial Assurance Requirements – 19.15.8.9(G) NMAC

- Primary Concerns:
  - Regulations must comply with the limited grant of statutory authority under the applicable enabling act.
  - Nothing within the Act remotely discusses annual adjustments.
  - Moreover, the annually adjusted inflation amounts are contrary to the plain language of the statute since there are statutory caps, which would be exceeded if adjusted for inflation.

Annual Consumer Price Index Adjustments to Financial Assurance Requirements – 19.15.8.9(G) NMAC, cont.

- H.B. 133 § 4(B) attempted to introduce a CPI adjustment to financial assurances but it failed to pass in the legislature.
- WELC now seeks to bypass the separation of powers and asks the Commission to adopt the CPI adjustment via an ultra vires act.
- **Bottom Line: Nothing within the Act remotely discusses annual adjustments. Moreover, the annually adjusted inflation amounts are contrary to the plain language of the statute since there are statutory caps, which would be exceeded if adjusted for inflation.**

Proposal to Require OCD to Deny Acquisitions Based on Financial Assurance (19.15.8.9(A) NMAC)

- Primary Concerns:
  - Provision lacks statutory authority under the Act.
  - Grants OCD “gatekeeper” authority over acquisitions and transactions.
  - Under the Act, OCD’s authority is expressly limited to preventing waste and protecting correlative rights. It does not extend to regulating acquisitions or private property transactions.
  - Expanding OCD’s role into approving or denying acquisitions exceeds statutory authority.

Proposal to Require OCD to Deny Acquisitions Based on Financial Assurance (19.15.8.9(A) NMAC), cont.

- H.B. 133 and 257 both attempted to expand OCD's regulatory authority into the regulations of acquisitions and both house bills failed to pass into law.
- These unsuccessful attempts exemplify the lack of statutory authority for the Division or Commission to regulate acquisitions of oil and gas assets.
- In fact, WELC even recognized this fact in its participation in H.B. 133 - stating "HB 133 protects against the growing orphaned and abandoned well problem *by providing new authority for the state to block the transfer of oil and gas assets*."
- **Bottom Line: Under the Act, OCD's authority is expressly limited to preventing waste and protecting correlative rights. It does not extend to regulating acquisitions or private property transactions. Expanding OCD's role into approving or denying acquisitions exceeds statutory authority.**

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19.15.8.9(A) NMAC, cont.

It is well established law that **"[a]n agency may not create a regulation that exceeds its statutory authority."**

Gonzales v. N.M. Educ. Ret. Bd., 109 N.M. 592, 595, 788 P.2d 348, 351 (1990)

Solution: OCD must strike this provision as an ultra vires amendment which improperly extends OCD's jurisdiction into property acquisition transactions, risks regulatory overreach, and will subject this Commission to litigation.

Financial Assurance for Marginally Producing Wells (19.15.8.9(D) NMAC)

- Primary Concerns:
  - New “marginal well” definition will lead to misclassification of productive wells.
  - Application of new “marginal well” definition to financial assurance may may also affect regulatory enforcement, leasehold rights, and interpretations of “economic production” or “paying quantities.”
- For example: wells are often prudently shut in for the duration of nearby drilling or hydraulic fracturing—which in today’s world of multi-well pad development may last for varied periods of time.

Financial Assurance for Marginally Producing Wells (19.15.8.9(D) NMAC), cont.

- Under WELC's proposal, classification as a marginal well would trigger the heightened financial assurance requirements for marginal wells proposed by WELC and OCD through 19.15.8.9 NMAC.
- Because it is unclear how the definition will be applied by OCD, (i.e., whether it will trigger automatic classification or only apply only in financial assurance determinations), adding a new definition of "Marginal Well" may also affect regulatory enforcement, leasehold rights, and interpretations of "economic production" or "paying quantities."

Financial Assurance for Marginally Producing Wells (19.15.8.9(D) NMAC), cont.

Another Conflict With OCD's Statutory Duties: Marginal and non-marginal units are currently used in the regulatory sense to prevent waste, manage correlative rights, and incentivize production. WELC's proposal will eliminate this flexibility and instead impose rigid and impractical standards that instead facilitate waste.

Solution: OCD should reject WELC's proposed definition of "marginal well" because OCD lacks authority under existing statutes to mandate single-well financial assurance for low-producing wells.

Financial Assurance for Marginally Producing Wells (19.15.8.9(D) NMAC), cont.

NMOGA's Recommendations Should Commission Move Forward:

- The proposed definition of "Marginal Well" is only relevant to this rulemaking if the Commission concludes that it has authority under existing statutes to mandate single-well financial assurance for low-producing wells.
- If, as I believe, the Commission lacks such authority, then the proposed definition is unnecessary.
- Even if the Commission finds some basis to consider defining "Marginal Well," it remains unclear how the proposed definition would interact with existing definitions, regulatory uses, and established practices.
- Moreover, potential conflicts with statutory language and the current common law framework could create legal uncertainty and invite future litigation

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Rebuttal Slide 9: Financial Assurance for Newly Created "Marginal Well" Category

- NMSA 1978, Section 70-2-14(A) sets out the categories of financial assurance and expressly caps the amounts.
- Any new categories—such as Applicants' proposed "marginal well" requirement—would require legislative amendment before they could lawfully be adopted by regulation.

Rebuttal Slide 10

NMOGA Agrees With Oxy That:

In an effort circumvent the Act's express financial assurance provisions for active 'marginal' wells, Applicants asks the Commission to:

(a) define a 'marginal well;'

(b) remove these active wells from the $250,000 blanket financial assurance authorized by Section 70-2-14;

(c) impose a 'one-well' plugging financial assurance in the amount of $150,000 'for each' of these active 'marginal' wells; and

(d) if 'over 15 percent' of an operator's wells are considered 'marginal or inactive, or a combination thereof,' then that operator must provide financial the amount of $150,000 'for each' of the wells registered to that operator, including active wells producing above what Applicants considers a 'marginal' threshold.

Accordingly, any changes to the financial assurance categories and amounts set by statute would require amendments at the legislative level.

Rebuttal Slide 11: 19.15.8.9(D) NMAC, cont.

Applicants' proposal undermines one of OCD's core statutory mandates: preventing waste.

Testimony from NMOGA experts Daniel Arthur and Harold McGowen demonstrates that imposing $150,000 per-well assurance on marginal wells will incentivize premature plugging of wells that remain mechanically sound, strategically valuable, or potentially productive in the future.

This is the very definition of waste and directly contravenes one of OCD's primary statutory directives under NMSA 1978, Section 70-2-11(A).

Approved Temporary Abandonment (19.15.25.13 NMAC)

WELC's Problematic ATA Proposals Would:

- Require a beneficial use demonstration for ATA approvals and extensions;
- Mandate extensive documentation (seismic data, economic projections, HSE plans, etc.);
- Broaden public intervention rights;
- Impose hard cutoffs for ATA eligibility; and
- Require operators of expired ATA wells to re-apply or plug.

Approved Temporary Abandonment (19.15.25.13 NMAC)

- Primary Concern: disclosure of confidential and proprietary information.

- For example: seismic and geophysical data is subject to rigorous confidentiality provisions; economic forecasts are proprietary, subject to frequent change, and may be restricted from disclosure by other regulatory regimes.

- **Bottom Line: OCC should reject these changes. OCC should allow operators to continue using Form C-103 with narrative explanations and proposed timeframes, leaving OCD discretion to impose conditions or call hearings thereby preserving regulatory flexibility.**

Definition of Approved Temporary Abandonment (19.15.2.7(A)(13) NMAC)

- Primary Concerns:
  - Redundancy with existing definition in 19.15.25.12 NMAC
  - Produces operational/regulatory confusion for industry
- The proposed distinction between “temporary abandonment” and “approved temporary abandonment” lacks a defined purpose and could complicate compliance.
- For example: 19.15.25.12 NMAC already requires OCD approval for TA wells. WELC’s addition of an unapproved “temporary abandonment” term may imply a status not recognized by OCD, potentially misclassifying wells as abandoned without oversight. This risks conflating such wells with “orphan wells,” defined in existing 19.15.2.7(A)(13) NMAC, as those without a responsible operator.

Definition of Approved Temporary Abandonment (19.15.2.7(A)(13) NMAC), cont.

NMOGA's Recommendations:

1. To avoid regulatory confusion and unnecessary burdens, the Commission should reject WELC's proposed amendments or require clarification of its intent for purposes of identifying a more appropriate amendment.
2. The Commission must also ensure that this terminology is harmonized across the sections that deal with Approved Temporary Abandonment in NMAC, and particularly with 19.15.25.12 and 19.15.2.7(A)(13) to ensure clarity.

Definition of Expired Temporary Abandonment (19.15.2.7(E)(8) NMAC)

Here, WELC Proposes:

- Adding a new definition that would classify a well as in “expired temporary abandonment” or “expired temporary abandonment status” under a new provision codified in 19.15.2.7(E)(8) if it has been approved for temporary abandonment status in accordance with existing 19.15.25.13.
- **However**, this no longer complies with 19.15.25.12 through 14 NMAC.

Definition of Expired Temporary Abandonment (19.15.2.7(E)(8) NMAC), cont.

- Primary Concerns:
  - Lacks clarity and workable standards
  - Fails to identify events that trigger a shift from “approved” to “expired,” how long a well would have to remain out of compliance, or the seriousness of the issue that would justify a change
- For example: without further clarification, OCD could deem a well “expired” for minor infractions or temporary compliance lapses, such as delays in conducting mechanical integrity tests, minor lapses in required financial assurances, or even paperwork delays.
- That kind of ambiguity creates uncertainty for both operators and the Division, and it invites inconsistent enforcement.

Definition of Expired Temporary Abandonment (19.15.2.7(E)(8) NMAC), cont.

- WELC's proposal confuses the process for regulatory compliance with the legal status of a well.
- The Commission's rules already address temporary abandonment under 19.15.25.13 NMAC, which establishes the process for ATA approval—not the framework for evaluating ongoing compliance or revocation.
- Relying on 19.15.25.13 NMAC to define "expired ATA" is not only illogical, but also legally unsound.
- **Bottom Line: OCC should reject these changes to avoid uncertainty for regulators and operators. The existing NMSA 1978, §§70-2-14(B) and 70-2-31(A), and 19.15.5.5.9(B) and 19.15.5.10 NMAC properly address compliance involving temporary abandonment, define procedures, timelines, enforcement measures, informal compliance agreements, cessation orders, and plugging mandates.**

Operator Registration (19.15.9.8(B-E) NMAC) and Changes of Operator Restrictions (19.15.9.9(B), (C), and (E) NMAC)

- Primary Concerns:
  - No statutory authority to require compliance with laws of other states
  - Administrative overreach

- The Act limits OCC/OCD's authority to "the laws of *this* state." Therefore, The OCD may not enforce or condition operator registration on compliance with laws outside of New Mexico.

- **Bottom Line: OCC must strike the provision mandating out-of-state compliance in its entirety under proposed 19.15.9.8(B) and (C) and proposed 19.15.9.9(B).**

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Operator Registration (19.15.9.8(B-E) NMAC) and Changes of Operator Restrictions (19.15.9.9(B), (C), and (E) NMAC), cont.

- The proposal by WELC is also an administrative overreach. Imposing a broad certification obligation constitutes overreach by expanding OCD's role beyond in-state enforcement to policing nationwide compliance.
- It burdens operators with vague, potentially unlimited reporting on unrelated activities.
- While the Act allows the OCD to examine records, collect data, and provide for the keeping of records and reports relating to the ownership of oil and gas properties, **the Act does not allow for the result of those examinations, inquiries, and records to serve as a barrier to commercial transactions within the state**.
- The OCD may not enforce or condition operator registration on compliance with laws outside of New Mexico.

Denial of Change of Operator (19.15.9.9(C)) and Proposed New Subsection (E)

Currently, the Division may deny a change of operator if the acquiring operator is out of compliance or the assets are under a compliance order with no schedule for resolution.

Here, WELC Proposes:

- (1) If the new operator is out of compliance with oil and gas laws in each state where it does business;
- (2) any officer/director/≥25% interest holder is/was within 5 years affiliated with an entity not in compliance with 19.15.5.9(A);
- (3) the applicant is not properly registered or in good standing with the NM Secretary of State; and
- (4) the applicant cannot meet plugging/abandoning requirements.
- WELC would also add a new Subsection (E) to prohibit transfer of non-compliant wells/facilities unless brought into compliance or under a compliance schedule.

Denial of Change of Operator (19.15.9.9(C)) and Proposed New Subsection (E)

- Primary Concerns:
  - Negative implication for corporate structure requirements
  - “Good standing” requirement is redundant with NM SOS requirements and is vague
  - “Substantial risk” standard for P&A capacity is too vague

- **Bottom Line: OCC should strike WELC’s (C)/(E) changes.**

Rebuttal Slide 12: Applicants' Proposal and Form C-145

Since 2017, the Division has already been enforcing the proposed amendments to 19.15.9.8 NMAC 19.15.5.9 NMAC by inserting these requirements into its forms—specifically Form C-145—absent any statutory or regulatory basis for doing so.

Now, through this rulemaking, the Division seeks to retroactively legitimize the very requirement it has unlawfully imposed for nearly a decade.

While the New Mexico State Rules Act allows an agency to adopt a rule in the "case of an emergency", it is inconceivable that an "emergency" has persisted continuously since 2017 to justify the Division's ongoing enforcement of a rule that was never validly adopted.

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Rebuttal Slide 13: Applicants' Proposal and Form C-145

- The New Mexico Supreme Court has consistently recognized that an agency's authority is confined to the powers expressly granted by the Legislature. (See, e.g., New Mexico State ex rel. Taylor v. Johnson.)
- The Division has unilaterally incorporated this extraterritorial requirement into Form C-145 without any lawful authority to do so.
- Because the regulation at issue also implicates other agencies—most notably the State Land Office, which issues the leases upon which OCD permitting depends—it underscores why this requirement cannot be shielded from the filing and publication requirements of the SRA.
- The Division's proposed requirement that operators certify compliance with other states' laws is regulatory overreach on its face. That overreach is compounded by the Division's eight years of enforcing the requirement through Form C-145 without statutory or regulatory authority.

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NMOGA's Recommendation

1. **NMOGA recommends that the Commission refrain from adopting any of the proposed amendments at this time.**

2. **At a minimum, the Commission must strike all provisions that do not comply with New Mexico law.**

NMOGA's Recommendations in the Event the Rulemaking Goes Forward

1. Reject Proposals Beyond Statutory Authority – The Commission must decline amendments that exceed its authority under the Oil and Gas Act, including:

- Applicants' changes under proposed 19.15.8.9(C)(1) and (E)(1) NMAC, pertaining to one-well financial assurance for active and inactive wells.
- Applicants' proposed expansion of the definition of "inactive" for purposes of financial assurance requirements under proposed 19.15.8.9(E) and (D) NMAC.
- Applicants' attempted circumvention of the statutory requirement that OCD allow wells in temporary abandoned status to remain under the $250,000 blanket financial assurance for an initial two-year period under proposed 19.15.8.9(E) NMAC.
- Applicants' creation of the "marginal well" category under proposed new 19.15.8.9(D) NMAC, which exceeds the statutory restrictions contained in NMSA 1978, Section 70-2-14(A), and will result in waste in contravention of NMSA 1978, Section 70-2-11(A).
- Applicants' proposed blanket bonding requirements for inactive wells and certain temporarily abandoned wells under proposed 19.15.8.9(E)(2) NMAC, and supplementing incomplete blanket assurance under proposed 19.15.8.9(F) NMAC.
- Applicants' proposed addition of 19.15.9.8 NMAC governing operator registration, and 19.15.9.9 NMAC governing changes of operator, mandating certification to OCD of full compliance with the laws of other states prior to commencement of operations.

NMOGA's Recommendations in the Event the Rulemaking Goes Forward, cont.

2. Amend Form C-145 – I recommend the Commission order OCD to strike the unauthorized requirement that well operators certify compliance with other states' laws from its Form C-145.

3. Beneficial Use Definition – No new definition or presumptions of "beneficial use" should be added. If the Commission considers such a definition, it must be substantially amended to recognize beneficial uses beyond production or injection volumes.

4. Beneficial Use Presumption – The Commission should reject the proposed presumption provision 19.15.25.9 NMAC. The Commission should retain the current rebuttable presumption framework already embedded in the inactive well rules (e.g., 19.15.5.9(B)(2) NMAC), which offers a fairer, more administrable standard without shifting burdens prematurely.

5. Reject a New "Marginal Well" Definition – A new definition risks misclassifying viable wells and injecting investment uncertainty. If the Commission considers such a definition, it must clarify how it would be applied and whether it would automatically trigger heightened bonding requirements.

NMOGA's Recommendations in the Event the Rulemaking Goes Forward, cont.

6. Temporary Abandonment – No changes should be made to the existing Temporary Abandonment program. Current rules already provide sufficient protection through mechanical integrity requirements and established procedures, whereas the proposed amendments are ambiguous and unworkable in practice.

7. Financial Assurance – The existing risk-based individual well and tiered blanket bond framework should be retained. The Commission cannot adopt those financial assurance provisions that exceed the statutory authority granted under the Act.

8. Reject CPI Adjustment – The Commission should reject the annually adjusted inflation amounts because they are contrary to the plain language of the Act's statutory caps, which would be exceeded under this provision.

9. Reject OCD's Authority to Regulate Transactions - The Commission should reject the WELC amendment to 19.15.8.9(A) NMAC as an ultra vires amendment which improperly extends OCD's jurisdiction into property acquisition transactions, risks regulatory overreach, and introduces substantial market and administrative harm.

NMOGA's Recommendations in the Event the Rulemaking Goes Forward, cont.

10. Operator Registration and Change of Operator – The Commission must strike the provision mandating out-of-state compliance in its entirety under both proposed 19.15.9.8(B) and (C), as it lacks the jurisdiction to adopt these provisions. The Commission should also strike the proposed requirement to mandate disclosure if any current or past officers or owners with more than 25% interest were affiliated with non-compliant operators in the past five years. Finally, the Commission should strike proposed 19.15.9.9(C)(6) NMAC, under which OCD can deny a change of operator if certifications or disclosures show a "substantial risk" that the new operator can't meet plugging and abandonment requirements, as overly broad and unworkable.

11. Recognize and Utilize the Reclamation Fund – The Reclamation Fund should be used and relied on as an alternative to excessive bonding.

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Miguel Suazo | Shareholder
Santa Fe, New Mexico

Andrea Felix

NMOGA Witness

Direct & Rebuttal Testimony in OCC Case No. 24683 | October-November 2025

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Role and Background

- Andrea Felix, Vice President of Regulatory Affairs, NMOGA
- Two decades of New Mexico oil and gas experience
- Specializes in operational, regulatory, and policy issues
- **Purpose of Testimony: To highlight operational and industry-wide consequences of the proposed amendments, to provide an integrated industry perspective on the portions of the proposed rules that are unworkable for industry, and to recommend practical alternatives that maintain protection without undermining New Mexico's oil and gas sector.**

Overarching Concerns

1. Applicants mischaracterize data on orphan, marginal, and inactive wells, and rely on inflated cost figures from OCD procurement processes.
2. Applicants' proposals promote waste, exceed statutory authority, and destabilize New Mexico's energy sector.
3. Plugging costs – are lower for industry – addressed by Arthur and McGowen.
4. The LFC Report itself underscores that statutory changes—not this rulemaking—are a necessary predicate to implement many of the measures Applicants propose. The LFC Report also highlights OCD's flawed procurement practices that lead to the inflated averages Applicants use as the baseline for proposed financial assurance requirements.

Adding a Definition for "Beneficial Purposes" or "Beneficial Use" (19.15.2.7(B)(7) NMAC

- Primary Concerns:
  - Cuts against definition used for decades
  - Ignores that what is "beneficial" depends on evolving technologies, markets, infrastructure, and geology
  - Narrow definition undermines OCC's ability to evaluate real-world circumstances on a case-by-case basis
- Prohibition on "speculative purpose" lacks objective criteria, effectively conditioning well uses on whether regulators *think* they are speculative. It unduly constrains operators and regulatory discretion.
- **Bottom Line: A definition that is broad and flexible, so as not to constrain future beneficial uses is essential to prevent waste and protect correlative rights.**

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Presumption of No Beneficial Use (19.15.25.9 NMAC)

- Primary Concerns:
  - Applicants presume a well incapable of beneficial use if 90-day production thresholds unmet within a 12-month period
  - There is a 30-day window to rebut that lacks specifics as to when 30-day window begins
  - Does not account for many viable wells
  - A well-by-well presumption undermines lease-level operations
  - Rebutting the presumption could require submission of sensitive trade secrets like financial models, production forecasts, or operational strategies
- For Example: wells in enhanced oil recovery, pilot testing, or temporarily shut-in for maintenance would fall below the threshold. Applying a blanket volumetric test misclassifies producing or strategically maintained wells as abandoned.
- **Bottom Line: This provision cannot be adopted because it conflicts with the Oil and Gas Act's core charges to the Commission to prevent waste and protect correlative rights.**

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Presumption of No Beneficial Use, cont.

Solution: Decline to adopt WELC's proposals until further analysis is conducted with stakeholder engagement. At a minimum, rules must reflect real regulatory and operational considerations before being adopted.

Proposal to Require OCD to Deny Acquisitions Based on Financial Assurance (19.15.8.9(A) NMAC)

- Primary Concerns:
  - Provision lacks statutory authority under the Act
  - Grants OCD “gatekeeper” authority over acquisitions and transactions
- As Mr. Sporich testified, OCD’s authority is limited to preventing waste and protecting correlative rights. It does not extend to regulating acquisitions or private property transactions.
- **Bottom Line: OCC should reject this provision. If the Commission does explore it, changes must be made to: limit application strictly to operational approvals, distinguish ownership from operations, define clear triggers for financial assurance, and engage stakeholders in designing a workable framework.**

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Disproportionate Impact on Smaller Operators and Marginal Wells

Primary Concerns:

- The new pre-transfer and operational bonding disproportionately affects small and mid-sized operators
- The 15% trigger is arbitrary (not tied to risk or performance) and penalizes portfolio composition rather than compliance or plugging risk
- **Stripper/marginal wells make up ~54% of oil wells and ~81% of gas wells in New Mexico**, magnifying the impact

Real-World Operational and Economic Consequences

- As Mr. Arthur and Mr. McGowen testified, WELC's proposals cause significant administrative burdens, budgeting complications, and impediments to flexible development; a "waterfall" of internal capital and compliance impacts, added legal review/transaction costs, and closing delays
- As Mr. Emerick testified, the surety market already has limited appetite for oil & gas risk; securing high volumes of individual and/or blanket bonds would be difficult if not impossible for many; that risks pushing responsible operators out of the market
- **Bottom Line: OCC should reject the proposals as drafted because they constitute regulatory overreach, create heavy administrative burdens (especially well-by-well tracking), and would inhibit asset transfers, particularly for depressed/marginal assets. NMOGA believes that the legislature should make statutory changes before these rules can be adopted.**

Financial Assurances for Active Wells 19.15.8.9(C)(1)-(2) NMAC

- WELC proposes $150k, or
- A $250k blanket bond regardless of the number of wells in a portfolio
- This is in addition to any blanket bond already in place

Financial Assurances for Inactive and Temporarily Abandoned Wells 19.15.8.9(E) NMAC

- Primary Concerns:
  - WELC proposes a $150k bond per active well, or a $250k blanket bond regardless of well count and an additional $150k bond for marginal wells
  - Provision lacks statutory authority under the Act
  - Creates a moving target, forcing constant recalculation as wells change status
  - The Reclamation Fund, existing financial assurance rules, and OCD oversight already cover plugging costs in insolvency or abandonment cases
- As Mr. Sporich testifies, OCD's statutory authority only allows financial assurance amounts sufficient to cover *reasonable* plugging costs. WELC's proposal removes depth as a factor and sets requirements disconnected from actual costs, exceeding statutory limits.

Financial Assurances for Inactive and Temporarily Abandoned Wells 19.15.8.9(E) NMAC, cont.

Solution: NMOGA recommends retaining fixed, tiered blanket structures tied to well counts and statuses. If revisions are made, they should:

- Preserve blanket bond options
- Use risk-based approaches tied to compliance history
- Apply prospectively, not retroactively
- Avoid expanding OCD's authority beyond statute

Incomplete Blanket Financial Assurances (19.15.8.9(E) or (F) NMAC)

- Primary Concerns:
  - The current rule requires operators to post a single-well bond or replace it with a blanket bond for their full portfolio
  - Lacks statutory authority
  - Redundant to existing 19.15.8.9(E) that already provides cure for under-coverage
  - Burdensome; will require tracking of ever-changing well inventories and strain Division resources to monitor in real time
- As Mr. Sporich testifies, a $150,000 average per well could quickly exceed the statutory cap (e.g., $250,000 for blanket bonds) under NMSA 70-2-14(A), making WELC's approach legally unsound.
- **Bottom Line: OCC should reject these changes. If amended at all, the rule should expressly allow replacement blanket bonds to cure under-coverage, preserve operator choice between single-well and blanket coverage, and include a clear transition period for securing replacement coverage.**

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Annual Consumer Price Index Adjustments to Financial Assurance Requirements – 19.15.8.9(G) NMAC

- Primary Concerns:
  - Introduces volatility and uncertainty into capital planning
  - Yearly changes disrupt long-term compliance and financing strategies
  - Inconsistent with oilfield service costs that do not track the CPI

- **Bottom Line: OCC should reject WELC's CPI proposal. Instead, it suggests 5–10 year review intervals, tied to real plugging cost data, risk profiles, and bonding market conditions—not broad consumer inflation indices.**

Financial Assurance for Marginally Producing Wells (19.15.8.9(D) NMAC)

- **Primary Concerns**:
  - WELC proposes a two-prong test to identify marginal wells: less than 180 producing days and less than 1,000 bbl over 12 months
  - New "marginal well" definition promotes misclassification of productive wells
  - Application of new "marginal well" definition to financial assurance is not workable
- **Financial Assurance for Marginal Wells:**
  - $150k bond for each marginal well
  - $150k bond must be in place prior to well transfer
  - 15% marginal well portfolio trigger starting January 1, 2028

Financial Assurance for Marginally Producing Wells (19.15.8.9(D) NMAC)

- **Solution:**
  - Adopting a risk-based approach rather than categorical thresholds
  - Preserving and improving the blanket bond option
  - Clarifying administrative mechanisms before requiring per-well assurances
  - Eliminating the arbitrary 15% trigger
  - Convening a stakeholder group to shape workable bonding rules

Marginal Wells: LFC Report vs. Proposals

- **Differences:**
  - Applicants propose a 1000 BOE threshold
  - LFC Report proposes a 750 BOE threshold
- **Characterization: “High risk”**
- **Reality: Marginal ≠ High Risk**
- **Implication:**
  - Bonding obligations expanded
  - Force premature plugging
  - Reduced severance and ad valorem tax revenues
- **Authority**: LFC Report identifies that statutory change needed for marginal well financial assurance

Wells to be Properly Abandoned (19.15.25.8(B) NMAC)

- **Primary Concerns**:
  - Current rule: requires P&A or approved TA within 90 days of 60-day drilling suspension or determination well no longer used for beneficial purposes or 1 year of continuous inactivity
  - 30 days is unrealistic; fails to account for contractor availability, weather, and landowner coordination
  - Could result in environmental and safety risks by forcing operators to reprioritize arbitrarily
- **Solution:** NMOGA urges the Commission to adopt the alternative language in NMOGA's prehearing statement (Exhibit A), which provides practical enforceability without sacrificing environmental protection.

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Approved Temporary Abandonment (19.15.25.13 NMAC)

- **Primary Concerns**:
  - **Current Rule**: Allows operators to request ATA status while maintaining MIT
  - **Proposal**: Require a beneficial use demonstration for ATA, extensive documentation, public intervention expansion, cutoffs for ATA, and reapplication for ATA
  - Requires disclosure of sensitive information
  - Will require OCD to analyze voluminous technical data
  - Proposed expansion of protest rights politicize what should be a technical and administrative process
- **Bottom Line: OCC should reject these changes. OCC should allow operators to continue using Form C-103 with narrative explanations and proposed timeframes, leaving OCD discretion to impose conditions or call hearings thereby preserving regulatory flexibility.**

Definition of Approved Temporary Abandonment (19.15.2.7(A)(13) NMAC)

- Primary Concerns:
  - **Current Rule**: ATA tied to inactivity but obtained OCD approval, subject to renewal
  - **Proposal**: Requires showing of beneficial use
  - Shifts definition from regulatory status to substantive determination of future utility
  - Conflates issues of mechanical safety with future beneficial use

- **Bottom Line: OCC should reject these changes to avoid confusion.**

Definition of Expired Temporary Abandonment (19.15.2.7(E)(8) NMAC)

- **Primary Concerns**:
  - **Proposal**: New rule with definition of “expired temporary abandonment” or “expired temporary abandonment status” and compliance with 19.15.25.13 but that no longer complies with 19.15.25.12 through .14 NMAC
  - Lacks clarity and workable standards
  - Fails to identify events that trigger a shift from “approved” to “expired,” how long a well would have to remain out of compliance, or the seriousness of the issue that would justify a change
- **Sporich Legal Concerns**: This kind of ambiguity creates uncertainty for both operators and the Division, and it invites inconsistent enforcement. Unclear what triggers move from “approved” to “expired.” Conflates regulatory compliance with legal status of well.
- **Bottom Line: OCC should reject these changes to avoid uncertainty for regulators and operators. OCC should rely on existing provisions in 19.15.25.13–.14 NMAC, which already address ATA expiration and renewal procedures adequately.**

Operator Registration (19.15.9.8(B-E) NMAC) and Changes of Operator Restrictions (19.15.9.9(B), (C), and (E) NMAC)

Current Rule: Requires details of change on C-145

Proposal: Compliance certifications, disclosure of any officer ≥25% ownership, P&A plan, ability for OCD to request credit ratings, corporate financials, decommissioning history

Concerns:

- Lack materiality thresholds for "non-compliance" (inviting arbitrary enforcement)
- Create retroactive/vicarious liability via affiliation-based disclosures regardless of operational role
- Conflict with fiduciary/corporate-governance duties
- OCC lacks statutory authority to require compliance with laws of other states

- As Mr. McGowen testified, it's impractical—many transferred wells are not ready to be plugged, so forcing a P&A plan at transfer is nonsensical and adds delay and cost without regulatory benefit.

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Operator Registration (19.15.9.8(B-E) NMAC) and Changes of Operator Restrictions (19.15.9.9(B), (C), and (E) NMAC), cont.

- **Bottom Line: OCC must strike the provision mandating out-of-state compliance in its entirety under proposed 19.15.9.8(B) and (C) and proposed 19.15.9.9(B).** NMOGA opposes WELC's (B) changes and recommends replacing the 25% affiliation test with a control-based test, and—if any showing of P&A "capacity" is required—adopting clear, objective standards.
- Impractical to require compliance in other states.
- **Solution**: NMOGA urges the Commission to limit denial grounds to two things: (a) material, final violations in New Mexico, and (b) failure to meet New Mexico bonding requirements.

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Denial of Change of Operator (19.15.9.9(C)) and Proposed New Subsection (E)

- **Current Rule**: Denial for noncompliance or under ACOI with no compliance schedule.
- **Primary Concerns**: Out of compliance in other states, 25% interest holder is/was within 5 years, not properly registered with NM SoS, cannot meet P&A requirements, transfers prohibited transfers of non-compliant wells unless made compliant.
- **Primary Legal Concerns** (Sporich):
  - Negative implication for corporate structure requirements
  - "Good standing" requirement is redundant with NM SOS requirements and is vague
  - "Substantial risk" standard for P&A capacity is too vague
- **Primary Operational Concerns** (Arthur & McGowen):
  - Verifying compliance across multiple jurisdictions and legacy entities is often impossible
  - Proposal will heighten due-diligence burdens, delay deals, raise costs
  - Sellers also cannot realistically certify a buyer's multi-jurisdictional compliance
- **Bottom Line: OCC should strike WELC's (C)/(E) changes.**

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WELC/NMOGA Consultation

"From NMOGA's perspective, what is truly 'regrettable' is not the lack of post-filing meetings, but WELC's deliberate decision to bypass the industry altogether in developing its proposals."

- Felix Rebuttal, Page 65, Lines 1473-1475

OCD Guidance Documents and Form C-145

Since 2017, the Division has already been enforcing the proposed amendments to 19.15.9.8 NMAC and 19.15.5.9 NMAC by inserting these requirements into its forms—specifically Form C-145—absent any statutory or regulatory basis for doing so.

It is concerning because the Division has been making law through guidance and forms, rather than through regulations approved by the Commission.

OCD has spent nearly 8 years enforcing language it never had authority to impose, and now Applicants argue a new rule is "necessary." It undermines the credibility of the proposals and shows the risks of regulatory shortcuts.

NMOGA's Recommendation

NMOGA recommends that the Commission refrain from adopting any of the proposed amendments at this time.

NMOGA's Recommendations in the Event the Rulemaking Goes Forward

1. Reject Proposals Beyond Statutory Authority – The Commission should decline amendments that exceed its authority under the Oil and Gas Act, such as creating new bonding categories for marginal wells, imposing CPI auto-escalators, or conditioning transfers on multi-state compliance. These provisions are legislative matters, not proper for agency rulemaking.

2. Preserve Risk-Based and Tiered Bonding Structures – Retain the current system of risk-based individual well bonds and tiered blanket bonds tied to depth and risk factors, rather than adopting flat $150,000 per-well requirements. This framework reflects actual plugging costs and statutory caps, while preserving flexibility.

3. Provide Compliance Flexibility – At a minimum, remove unnecessary cross-references, add a compliance grace period for newly acquired assets, and recognize exceptions for temporary noncompliance. These refinements keep the framework workable and consistent with market realities.

4. Temporary Abandonment as a Conservation Tool – Retain the current Temporary Abandonment program, which already provides oversight through mechanical integrity requirements and renewal. Reject arbitrary time cutoffs, adjudicatory extensions, or burdensome documentation demands that would make TA unworkable in practice.

NMOGA's Recommendations in the Event the Rulemaking Goes Forward, cont.

5. Reject Presumptions of No Beneficial Use – Production or injection thresholds should not be used to define "beneficial use." The Commission should preserve case-by-case discretion, recognizing beneficial purposes such as lease preservation, reservoir management, future recompletions, and field development planning.

6. Reject a New "Marginal Well" Definition – A new definition risks misclassifying viable wells and injecting investment uncertainty. If the Commission considers such a definition, it must clarify how it would be applied and whether it would automatically trigger heightened bonding requirements.

7. Reject Proposed Waste Prevention Changes – The amendments to waste prevention should be rejected, as they are unnecessary, impractical, and duplicative of existing protections.

8. Operator Registration and Change of Operator – Reject, or at minimum substantially amend, new requirements that would tie registration or transfers to multi-state compliance, affiliations of 25% owners, or vague standards like "substantial risk." Limit review to (a) material, final violations in New Mexico; (b) failures to meet New Mexico bonding requirements; and (c) specific well integrity findings.

NMOGA's Recommendations in the Event the Rulemaking Goes Forward, cont.

9. Expand Use of Targeted Enforcement Tools – Rather than discarding ACOIs, OCD should refine and expand them to prioritize highest-risk wells with enforceable milestones, while allowing lower-risk wells to be managed under phased schedules.

10. Recognize and Utilize the Reclamation Fund – The Reclamation Fund, supported by conservation taxes, should remain a central part of New Mexico's plugging framework and be considered alongside any bonding changes.

11. Adopt Balanced Alternatives – If adjustments are deemed necessary, NMOGA supports phased-in, risk-based assurance increases, light-touch idle-well certifications, and periodic evidence-based reviews instead of automatic CPI escalators.

12. Beneficial Use Definition – No new definition or presumptions of "beneficial use" should be added. If the Commission considers such a definition, it must be substantially amended to recognize beneficial uses beyond production or injection volumes.

Rebuttal Slides: 19.15.8.9(D) NMAC

- **WELC proposal conflicts with LFC Report** – For "marginal well", WELC proposes <1,000 BOE/year, sweeping in thousands of viable wells. The LFC Report recommended <750 BOE/year.
- **Unintended consequences** – WELC's "marginal well" definition will artificially expand bonding obligations, force premature plugging, and reduce severance and ad valorem tax revenues.
- **"Marginal" ≠ "at-risk"** - many small/independent operators depend on marginally producing wells to support jobs, generate royalties, and provide income to local communities. These wells are managed safely and profitably for decades, contrary to the idea that they should be treated as liabilities.
- **OCC lacks authority to pass this definition** – even LFC report acknowledges as much.

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