

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

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

9 IN THE MATTER OF:

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

14 TRANSCRIPT OF PROCEEDINGS

15 October 27, 2025
16
17

18 HEARD BEFORE:

19 HEARING OFFICER FELICIA ORTH
20

21 COMMISSION MEMBERS:

22 ALBERT CHANG, Chair
23 GREGORY BLOOM, Member (virtual)
24 DR. WILLIAM AMPOMAH, Member
25

COUNSEL TO THE COMMISSION:

MR. ZACHARY SHANDLER, ESQ.

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

2 TRANSCRIPT OF PROCEEDINGS

3 HEARING OFFICER ORTH: Good morning. My
4 name is Felicia Orth, hearing officer appointed by
5 the Oil Conservation Commission to conduct a hearing
6 in OCC 24683. We're on day six of the hearing, which
7 began last Monday, and we have reached another public
8 comment session. We'll take as much public comment
9 as there is to be given before returning to the
10 technical case this morning.

11 Chair Chang and Commissioner Ampomah are
12 here on the dais with me. Commissioner Bloom is on
13 the platform.

14 I'll ask for public comment in the room
15 first and then turn to the platform. Just a few
16 things about public comment. I will ask you to spell
17 your first and last name because we're making a
18 transcript. I will ask you, pursuant to the
19 Commission's rulemaking rules, to swear or affirm
20 that you will tell the truth. I will ask you to keep
21 your oral comments to three minutes.

22 If you have lots more to say, please
23 submit your comments in writing to Sheila Apodaca,
24 the Commission administrator.

25 So let's begin in the room. Who would

1 like to offer public comment during this session?
2 Start over here, sir, if you would come up to the
3 witness stand. Thank you. And spell your first and
4 last name.

5 MR. STAHLECKER: D-A-L-E, and last name
6 Stahlecker, S-T-A-H-L-E-C-K-E-R.

7 HEARING OFFICER ORTH: All right.
8 Stahlecker. Thank you.

9 Do you swear or affirm to tell the
10 truth?

11 MR. STAHLECKER: I do.

12 HEARING OFFICER ORTH: Please go ahead.

13 MR. STAHLECKER: Okay. Commissioners and
14 gathered persons. My name is Dale Stahlecker. I'm a
15 semi-retired wildlife biologist residing in El Dorado
16 at Santa Fe, New Mexico. I am here to speak in
17 support of the proposed bonding and cleanup rules
18 changes before the Commission.

19 Over the last four decades, I have spent
20 time in all of the quote, unquote, oil patches of
21 New Mexico, from northwest to southeast. I have seen
22 what a correctly reclaimed well pad looks like, and I
23 have seen some that no effort has been made to
24 reclaim them. I will repeat what you have heard and
25 will hear again over and over again: Uncapped wells

1 degrade our water our air and expose our wildlife and
2 our humans to unhealthy conditions.

3 Bonding for an individual well should be
4 such that if the state is tasked with reclamation
5 because the last owner is incapable of paying for it,
6 that the total cost is likely to be covered by the
7 bond. Since the current cost to the state is an
8 average of \$163,000, it makes sense that each well be
9 bonded for to that amount, \$150,000. And it does not
10 follow logically that ten wells can be covered by
11 \$150,000 bond, or that a hundred wells can be covered
12 by 250,000 bond.

13 We the taxpayers of New Mexico do not
14 exist to cover those costs with tax dollars sorely
15 needed elsewhere, especially since the majority of
16 well owners that avoid paying for reclamation are not
17 New Mexico residents. If the industry who drills the
18 well reaps profits from that well, then they must be
19 responsible for well capping and cleanup, no
20 exceptions.

21 Ninety-five percent capping and cleanup
22 is not sufficient. I expect 100 percent of wells to
23 be properly capped and the site rehabilitated to
24 provide a safe environment for New Mexico citizenry,
25 plants and wildlife. Thank you.

1 HEARING OFFICER ORTH: Thank you,
2 Mr. Stahlecker.

3 Who would like to offer comment next?
4 Is that you, Mr. Coss? If you would state and spell
5 your first and last name.

6 MR. COSS: My name is David Coss. My first
7 name is D-A-V-I-D, and my last name is C-O-S-S.

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

10 MR. COSS: I do.

11 HEARING OFFICER ORTH: Thank you. I'll
12 start your time.

13 MR. COSS: Okay. You know, I just came this
14 morning to put in my comments on this hearing because
15 I've thought for a very, very long time that it's not
16 fair for us, as taxpayers, to shoulder some of these
17 cleanup costs down in the oil patch and up in the
18 northwest, in the area up there.

19 I've had a long career in natural
20 resources management. I'm pretty familiar with a lot
21 of the issues. I know people when I worked for the
22 State Land Office that saw some of these problems and
23 how expensive they were to fix.

24 In Santa Fe, I was often at the
25 legislature regarding capital outlay for my community

1 for infrastructure and roads. And there was times to
2 find ourselves in competition for outlay to fix
3 things that had happened down in the oil field,
4 especially that giant scene in Carlsbad that was not
5 related to capping a well, but absolutely related to
6 irresponsibility and the public being left holding
7 the bag when it happened. So I think it's just a
8 matter of common sense for New Mexico.

9 I'm not going to question the cost;
10 that's not my expertise. But as a worker in the
11 environmental field for 30 years and as a mayor,
12 former mayor of Santa Fe, I say people need to clean
13 up their own waste. It's a highly profitable
14 business and I think they should be able to afford
15 this.

16 So I just thank you for your time and
17 it's very good to see you again. Thank you.

18 HEARING OFFICER ORTH: Thank you, Mr. Coss.

19 Who would like to go next?

20 MR. GORMAN: Good morning.

21 HEARING OFFICER ORTH: Good morning. If you
22 would state and spell your first and last name.

23 MR. GORMAN: Yes. Thomas Gorman. That's
24 T-H-O-M-A-S, G-O-R-M-A-N.

25 HEARING OFFICER ORTH: And do you swear or

1 him to tell the truth?

2 MR. GORMAN: I do.

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

4 MR. GORMAN: All right. I've been a
5 longtime citizen of Santa Fe, living South of town,
6 off of Highway 14 for 35 years now.

7 And I guess it's a basic concept for me
8 that if you make a mess, you clean it up. And for
9 me, the history of not making people clean up their
10 messes, especially when they involve future
11 destruction to the land and the environment, I think
12 is unacceptable.

13 So I won't say the same things you've
14 heard already, but I'm a strong believer in what
15 these new provisions would provide as far as making
16 accountable those who are making the mess.

17 Okay. That's it.

18 HEARING OFFICER ORTH: Thank you very much,
19 Mr. Gorman.

20 Who would like to go next? Anyone at
21 all, come on up. If you would state your name.

22 MS. EISENMENGER: My name is Eleanor
23 Eisenmenger, E-I-S-E-N-M-E-N-G-E-R.

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

1 MS. EISENMENGER: Yeah.

2 HEARING OFFICER ORTH: Thank you. Go ahead.

3 MS. EISENMENGER: All right. I have a
4 lifelong history -- not history, memory of pollution
5 and polluted areas not being cleaned up. Because
6 when I was a child, I grew up -- we were up near Toms
7 River, New Jersey, which is a famous site where
8 Ciba-Geigy polluted the whole area, and they had
9 enormous health problems.

10 And I remember one of the doctors at
11 Toms River, New Jersey, was a friend of my parents,
12 and used to come to the house and talk with him. And
13 I remember him once saying, "I don't know what is
14 happening, but all my patients are getting cancer."
15 Not almost all of them, you know, but almost all of
16 them.

17 That made a big impression on all of us.
18 And years later, I heard that the Ciba-Geigy people
19 had made no attempt to clean up their chemical mess
20 and it had absolutely polluted the whole area. This
21 made a very important, a very deep impression on me.

22 And I feel now that anybody who is
23 engaging in work that causes a great deal of polluted
24 residue, which can hurt people, cause illness,
25 desecrate an area, should clean up their residue.

1 And I feel that this is just another
2 case of it, and it should not be relegated to local
3 authorities. It's not just a matter of money. The
4 people who have originally worked on the site have
5 the technique and the know-how that the ordinary
6 townspeople might not be able to muster, in addition
7 to the financial question, which of course is
8 important. I feel very, very strongly, because of
9 this lifetime memory of mine, that people should
10 clean up their mess.

11 Do the right thing. Thank you.

12 HEARING OFFICER ORTH: Thank you very much,
13 ma'am.

14 Anyone else?

15 Good morning, if you would state and
16 spell your first and last name.

17 MS. SHAW: My name is Alysha Shaw,
18 A-L-Y-S-H-A, S-H-A-W.

19 HEARING OFFICER ORTH: Do swear or affirm to
20 tell the truth?

21 MS. SHAW: I do.

22 HEARING OFFICER ORTH: Please go ahead.

23 MS. SHAW: Thank you so much for undertaking
24 this critical rulemaking today. It is so important
25 that we ensure that industry cleans up its messes and

1 doesn't harm our state and our children and our land,
2 our earth and our water for future generations to
3 come. Other industries are expected to be bonded for
4 the full cost of remediation for their
5 infrastructure, and it's very important to correct
6 that so that the extraction that takes place within
7 our state is remediated and children and communities
8 can live and drink the water and breathe the air and
9 use our land for the future generations to come.

10 So thank you so much for undertaking
11 that, and I just want to offer my comment and
12 support.

13 HEARING OFFICER ORTH: Thank you, Ms. Shaw.

14 Please state and spell your first and
15 last name.

16 MS. FEIBELMAN: Good morning. I'm Camila
17 Feibelman. It's Camilla, C-A-M-I-L-L-A, last name
18 Feibelman, F, as in Frank, E-I, B as in boy, E-L,
19 M-A-N.

20 HEARING OFFICER ORTH: Do swear to tell the
21 truth?

22 MS. FEIBELMAN: I do.

23 HEARING OFFICER ORTH: Thank you.

24 MS. FEIBELMAN: Thank you. I'm the director
25 of the Sierra Club's Rio Grande chapter and I'm here

1 to deliver close to 900 individual comments in favor
2 of this rulemaking. These are parents, grandparents,
3 professionals, and members of the Sierra Club.

4 I have to admit that I had my feelings
5 hurt when I read Jim Winchester's op-ed in the
6 newspaper, calling groups like mine radical
7 extremists. And I thought, am I a radical extremist?

8 So I tried to dial back to my youth. I
9 grew up in Albuquerque, graduated from Albuquerque
10 High School, and my mom would send me up to the
11 Rancho del Chaparral Girl Scout Camp every year. And
12 we learned so much about how the land works and the
13 role of forest fires in our ecosystem.

14 And we learned about climate change and
15 the power of methane and oil and gas to supersize the
16 problem. So here in New Mexico, we're seeing that in
17 relief. We are seeing generational homes and
18 communities burned to the ground to a level and
19 extreme where we lose our topsoil in the next rain
20 and our kids are carried away in flash floods when
21 they're here on vacation.

22 That is extreme and it requires some
23 radical thinking about what to do. And I think we
24 can start by doing just this commonsense updating to
25 our financial assurances and transfer rules.

1 And I thought, oh, my gosh, is it just
2 our environmental groups that are thinking this? So
3 on the way up, I re-listened to the legislative
4 finance committee hearing on this issue presented by
5 the professionals at the legislature. I saw that the
6 State Land Office is addressing bonding in this
7 forum, but also in their own forum. I saw that EMNRD
8 is really asking for help.

9 And if you just look at the medium level
10 of abandoned or orphaned wells, it's a \$700 million
11 cost. It's not the lowest cost, it's not the highest
12 cost. But who is paying?

13 I just dropped off my little boy at
14 school. My stepdaughter has severe asthma. You look
15 at the American Lung Association rankings for smog
16 grades in our oil and gas producing communities and
17 I'm thinking, okay, there's some income from oil and
18 gas to the state, but there's also some big cost.
19 And that's asthma, that's global warming, it's the
20 cleanup costs, it's the impact to our air and water
21 and climate.

22 So I really appreciate the technical,
23 science-based, thoughtful, financial liability
24 approach to this hearing. We appreciate your
25 service.

1 These 900 members of the Sierra Club are
2 not extremists. They're the people who brought us
3 the national parks, the Clean Air Act and the Clean
4 Water Act. And we're just asking you to do the
5 diligence that our kids, our families and our
6 communities require. So thank you. Thanks for your
7 service.

8 HEARING OFFICER ORTH: Thank you very much.

9 Anyone else? Anyone else this morning
10 in the room? Come on up.

11 Would you say and spell your first and
12 last name, please.

13 MS. MARTIN: My name is Susan Martin.

14 HEARING OFFICER ORTH: Do you swear or
15 affirm to tell the truth?

16 MS. MARTIN: Yes, I do.

17 HEARING OFFICER ORTH: Thank you. Go ahead.

18 MS. MARTIN: Yes, as a Sierra Club member
19 for many years, I associate myself with our executive
20 director's remarks and just want to remind all of us
21 something that we were told by our parents many, many
22 times: Clean up after yourself and be responsible.

23 This is of importance to not just the
24 people who are here in front of us, but the people
25 who will come after us and the next generations.

1 And I thank you very much.

2 HEARING OFFICER ORTH: Thank you,
3 Ms. Martin.

4 Anyone else in the room before I turn to
5 the platform? In the room. No?

6 All right. Sheila, let's go to the
7 platform. Let's see, the two folks I have who
8 indicated a desire to speak this morning from the
9 platform are Clara Simms and Donna Detweiler.

10 Do we have Ms. Simms?

11 MS. SIMS: Should I go ahead and speak?

12 HEARING OFFICER ORTH: Yes. Hello. If you
13 would please spell your first and last name.

14 MS. SIMS: Clara, C-L-A-R-A, and Sims,
15 S-I-M-S.

16 HEARING OFFICER ORTH: All right. Do swear
17 or affirm to tell the truth?

18 MS. SIMS: I do.

19 HEARING OFFICER ORTH: Thank you. Go ahead.

20 MS. SIMS: Good morning, Chair and
21 Commissioners. My name is Reverend Clara Sims, and
22 I'm speaking on behalf of New Mexico Interfaith Power
23 and Light in strong support of the proposed bonding
24 rule changes.

25 At our organization, we support faith

1 communities across New Mexico who are advocating for
2 climate and environmental justice on behalf of this
3 place, our home that is sacred and beloved to us all.

4 A recent poll about bonding shows that
5 New Mexicans overwhelmingly support requiring
6 corporations to pay to clean up wells when they reach
7 their end use. Our communities understand that it is
8 fair and it is just for the industry that is causing
9 pollution to be responsible for addressing their own
10 impacts and remediating the harm done to our air,
11 land, water, and communities, especially those who
12 are living on the front lines.

13 As people of faith and conscience, we
14 understand that our air, land and water are more than
15 resources, they are more than dollar sign values.
16 They are sacred elements that sustain all our lives,
17 and without their health and integrity, there is no
18 future.

19 You already know from expert testimony
20 that oil and gas corporations can drill dozens or
21 even hundreds of wells in New Mexico, while posting
22 cleanup bonds that fall far short of the actual cost.
23 Not only do the current bonding rules fall far short
24 of the monetary value of cleaning up a well, the
25 current bonding rules fall far short of a moral

1 responsibility we all share to ensure that present
2 and future generations do not inherit polluted air
3 that is dangerous to breathe and polluted water that
4 is dangerous to drink.

5 The rule updates that are before you are
6 a chance to finally bring policy into alignment with
7 dignity and fairness for all New Mexicans. They are
8 a chance to make a moral and an ethical choice on
9 behalf of our collective present and our collective
10 future.

11 Please ensure that the corporations who
12 are profiting from New Mexico's lands are fully
13 responsible for cleaning up after themselves
14 100 percent of the time. Please help show us all
15 that here in New Mexico our leaders listen to the
16 people, because we all love this place we call home
17 and we want to help create a future that is just and
18 fair, a future that preserves the immeasurable value
19 of that which sustains our lives.

20 Please vote to adopt stronger bonding
21 rules. Thank you for your time, for your service,
22 and for your leadership.

23 HEARING OFFICER ORTH: Thank you, Reverend
24 Sims.

25 Is Donna Detweiler on the platform?

1 MS. APODACA: I'm not seeing her, so she
2 won't need to raise her hand if she is.

3 HEARING OFFICER ORTH: If there's anyone
4 else on the platform who would like to offer public
5 comment during this session, please raise your
6 virtual hand. If you have phoned in, you can press
7 star 5 to raise your hand.

8 The next public comment session is at
9 4 o'clock this afternoon, and it is one of the public
10 comment sessions in which there is an interpreter
11 available between English and Spanish and Spanish and
12 English. That's at 4:00 p.m. today.

13 So if there are no other public
14 commenters this morning, we will return to the
15 technical case. Thank you all very much.

16 Mr. Cloutier, I believe you said you
17 have a preliminary matter to discuss?

18 MR. CLOUTIER: Yes, Madam Hearing Officer.
19 IPANM spent some time over the weekend going over its
20 witness list, in light of the way the cases come in
21 to date. And I believe all the parties have agreed
22 that IPANM is announcing that it will not be calling
23 witnesses Padgett, McHugh, Bradley, Cantrell, and
24 Andrews. We ask that their testimony be treated as
25 written comments to the Commission. And that appears

1 down our witness list by five witnesses. And hope it
2 enables us to finish on time, if not early.

3 HEARING OFFICER ORTH: Thank you,
4 Mr. Cloutier. I believe I saw a variety of e-mails
5 in response to your e-mail concerning that, and I saw
6 a number of no objections were all in. But let me
7 pause for a moment in the event --

8 MR. CLOUTIER: Let me say one thing. The
9 only qualification was that the Division approved
10 with the caveat that the testimony on Friday from the
11 witness concerning Mr. Padgett's testimony remain in
12 the record. And IPANM has no objection to that.

13 Otherwise all the parties agree, the
14 other parties all agreed. I kept the tally. But
15 you're welcome to poll them if you wish.

16 HEARING OFFICER ORTH: I was just going to
17 pause for a moment in the event someone wanted to
18 speak up. And I did see Mr. Tremaine's caveat, so
19 thank you for just that.

20 MR. TREMAINE: One minor clarification. So
21 I completely agree with Mr. Cloutier. Mr. Powell's
22 surrebuttal did touch on other witnesses. So I would
23 phrase it as we have not withdrawn Mr. Powell's
24 surrebuttal for Friday.

25 HEARING OFFICER ORTH: All right.

1 MR. CLOUTIER: And IPANM has absolutely no
2 objection to that.

3 HEARING OFFICER ORTH: All right. Thank you
4 very much. And would you repeat that, I wasn't
5 taking notes fast enough, the names of the witnesses.

6 MR. CLOUTIER: It's Padgett.

7 HEARING OFFICER ORTH: Padgett.

8 MR. CLOUTIER: McHugh.

9 HEARING OFFICER ORTH: McHugh.

10 MR. CLOUTIER: Bradley.

11 HEARING OFFICER ORTH: Bradley.

12 MR. CLOUTIER: Cantrell.

13 HEARING OFFICER ORTH: Cantrell.

14 MR. CLOUTIER: And Andrews.

15 HEARING OFFICER ORTH: Andrews. Got it.
16 Thank you very much.

17 MR. CLOUTIER: You're welcome.

18 HEARING OFFICER ORTH: Are there any other
19 preliminary matters before we turn to Mr. Powell's
20 surrebuttal? No? All right. Thank you all.

21 Mr. Tremaine.

22 MR. TREMAINE: Thank you, Madam Hearing
23 Officer. I just want to start out this morning by
24 welcoming back everyone, Monday morning, week two. I
25 want to thank the Commission and all the parties for

1 the accommodations last week. OCD staff is spread
2 out throughout a very large state and we had some
3 treacherous commutes, So I think that was quite
4 sportsmanly, and I appreciate it very much.

5 We're prepared to move on with
6 Mr. Powell's surrebuttal.

7 BRANDON POWELL,
8 having first been previously duly sworn,
9 testified as follows:

10 SURREBUTTAL EXAMINATION

11 BY MR. TREMAINE:

12 Q. Good morning, Mr. Powell.

13 A. Good morning. You're still under oath. I
14 want to ask you a couple questions, moving on to
15 surrebuttal related to the rebuttal testimony of
16 Mr. Winchester.

17 MR. TREMAINE: Madam Hearing Officer, I'd
18 like to share a screen.

19 HEARING OFFICER ORTH: Sheila. Thank you.

20 BY MR. TREMAINE:

21 Q. So, Mr. Powell, I'm going to direct you to
22 page 1, line 12, where Mr. Winchester states, "In
23 particular, I believe that there is information in
24 that exhibit," referring to Exhibit 17, "which
25 indicates that some of the wells should no longer be

1 classified as orphaned wells under any rational
2 definition of that term, and to observe that there are
3 other wells listed that are not going to be affected,"
4 carrying over to page 2, "by this rulemaking and never
5 would have been affected by the state of New Mexico
6 financial assurance requirements."

7 How do you respond?

8 A. I would respond to that, Exhibit 17 is a
9 reporting spreadsheet of actions OCD has taken. After
10 we get a hearing, after we get a settlement agreement,
11 wells go on that list. There's not a true definition
12 of "orphan." That list is to show wells that OCD has
13 plugging authority on.

14 Some of those wells will end up being
15 plugged by other entities, but it's wells OCD has
16 already taken action on. It's not a -- and we'll get
17 into this further down, but it's not a tool that's
18 looking at future enforcement action. It's where it
19 is action has already been taken for enforcement
20 action.

21 Regarding what are classified in there,
22 there are wells that are plugged, not released, and I
23 believe that's some of the things Mr. Winchester is
24 alluding to. The Reed Estate that Rosa showed earlier
25 last week is a well that was plugged -- I believe in

1 2015, is what the testimony was, I haven't looked that
2 one up personally -- that we had to go back on and do
3 remediation and that remediation was expensive.

4 So wells even in that condition, doesn't
5 mean we don't still have to do something. I can say
6 historically OCD has used financial assurance for not
7 only the plugging, but the remediation of the well,
8 equipment that's on site, those kinds of things.

9 A rough example, and this isn't any
10 well, if a well, say, had \$100,000 in financial
11 assurance and it cost \$50,000 in plugging, would we
12 really give that other \$50,000 back to the company or
13 the financial institution to then go use other funds
14 to pay for the other \$50,000 and clean up if it
15 needed? That makes fundamentally no sense when
16 everything is tied to that well.

17 Q. I'm going to move on to page 4, line 11,
18 where Mr. Winchester states, "Thus, this indication
19 indicates that at least the plugging work and perhaps
20 all the work has been done on this site to move the
21 well to plugged, site released status once the
22 Division inspects the well and finalizes the
23 appropriate paperwork. Under my definition, these
24 wells are close and perhaps just lacking paperwork to
25 being former orphaned wells."

1 And the status above in line 8 that
2 Mr. Winchester is referring to is plugged, site
3 released. You may have just answered this question,
4 but how do you respond?

5 A. So just to expound on what I mentioned
6 earlier, just because a well is unplugged, not
7 released, it's not as simple as going and doing an
8 inspection.

9 A lot of times, an environmental
10 assessment is done at that site. We're looking for
11 staining. Currently because of schedules, the
12 environmental groups are the ones removing tank
13 batteries, removing beehives, removing separators,
14 removing associated equipment with that well.

15 That work still has to be done at the
16 environmental side of it, before that inspection can
17 occur, so there can be significant costs of that well,
18 even after the well bore is plugged, that are
19 associated with that well.

20 Q. All right. Mr. Powell, I'm going to refer
21 you to page 5 of Mr. Winchester's rebuttal testimony
22 line 8, where he states, "As I testified, most
23 operators are responsible and plug their uneconomic
24 wells. Rounding to the nearest whole number, three
25 quarters of the wells listed on OCD Exhibit 17 are or

1 were operated by 10 operators as follows."

2 And then he includes a list of 10
3 operators from the MOSS. How do you respond?

4 A. So I think what using MOSS for versus what
5 it's actually used for, and then we can dive into, I
6 think, a broader scope, is MOSS, again, is where OCD
7 has taken action to perform reviews or get received
8 hearing orders, receive settlement agreements that
9 have allowed us to put wells on that list. That's not
10 the full scope of what OCD sees as potential
11 enforcement or going through the process of that.

12 I believe we've got something we can
13 pull up that shows some of that enforcement mechanisms
14 that OCD is reviewing and looking at that because in
15 the Exhibit 17, I think they have listed 1,371 wells.
16 That is wells that are on that list where action has
17 been taken. If you don't mind, can you please pull up
18 the operator's list that haven't submitted C-115s?

19 MR. TREMAINE: I'm sharing on screen now,
20 Madam Hearing Officer, a demonstrative aid which had
21 distributed to the parties last Friday, which
22 Mr. Powell prepared as demonstrative for surrebuttal.
23 BY MR. TREMAINE:

24 Q. Please explain.

25 A. So what this list is, is this is actually

1 one of the lists that we use to look at enforcement
2 mechanisms. It's not the MOSS list. So what this
3 list is, is it's a truncated version of unsubmitted
4 C-115s that OCD can run to find operators that aren't
5 even reporting production.

6 So this list is pared down to operators
7 that haven't reported production since August of 2024.
8 And if you scroll down the list, you'll be able to
9 actually see that that's just a portion, as far as a
10 date. Some of these dates go back years of
11 non-production. This is a list of operators that
12 aren't even reporting production to the state in over
13 a year.

14 So when you add up all of this, this is
15 a far greater number than what we included even in
16 MOSS. But these are operators that aren't complying
17 with basic reporting criteria. So looking at this,
18 and it was brought up in cross where I think somebody
19 mentioned maybe 20 operators in MOSS and that at
20 30 percent, it was going to be a little over 100
21 operators.

22 In this list, we've got 113 operators
23 that aren't even reporting production in the state; 76
24 of those own state and private wells. So 113 aren't
25 going to be affected by the presumption of no

1 beneficial use, 76 will have to bond their wells. And
2 that's just taking not reporting production since
3 August of last year.

4 What that looks like as far as wells
5 that are totally out of compliance is 2,318 that
6 include state, private and federal wells. 1,213 of
7 those are state and private wells only. So 1,213
8 wells just there would require the bonding and then
9 potential presumption of no beneficial use.

10 Again, this isn't the whole spectrum of
11 reviews. If IPANM would have reached out to discuss
12 what OCD is looking at in enforcement, we could have
13 provided some of our enforcement mechanisms to them to
14 look at.

15 Another one is Exhibit 16, minus the O
16 column that we provided as a exhibit here. When we
17 originally pooled that, that wasn't for this
18 rulemaking. That was to pool to see where operators
19 were operating in the state as far as production, what
20 their wells looked like, what their wells didn't look
21 like.

22 Hill Corp we discussed was one of those.
23 We found that there was over 100 wells by Hill Corp.
24 And this can be pulled up in Exhibit 16 as needed.
25 But there was over 100 wells on that by Hill Corp.

1 that had less than 10 BOE of production for the year
2 and less than 10 days of production. I think the
3 lowest one was like .1677. So I'm guessing they
4 reported 1 MCF for the year.

5 That is another enforcement mechanism
6 that the OCD looks at when evaluating where to go with
7 enforcement criteria.

8 So based on the unsubmitted C-115s and
9 then based on Exhibit 16 and looking at it, there's
10 potentially thousands of wells out there right now
11 that will fall under this that, again, aren't even
12 making that basic principle of production as far as
13 what they're looking at, what they're producing.

14 Again, if an operator produces 180 days,
15 this rule doesn't apply for anything as far as bonding
16 or presumption of no beneficial use. And if a well is
17 not even capable of that because of mechanical issues,
18 those kind of things, then the operators should be
19 looking at that well and what they're going to do with
20 it.

21 Again, Exhibit 16 is production through
22 the state. It's a really powerful tool. I believe
23 it's been filed in this case record since August. If
24 industry would have reached out, we could have
25 provided that.

1 I also would like to go through a
2 walkthrough of how that can be used as an enforcement
3 mechanism to show, based on Winchester's testimony,
4 what we're really looking at as far as operator
5 compliance.

6 Q. So, Mr. Powell, just a clarification before
7 you move through any walkthroughs or further
8 explanation. I just want to clarify for the
9 Commission, is it true that there is some overlap
10 between the unsubmitted C-115 report and the MOSS,
11 specifically that some subset of the operators on this
12 single tool are in fact already included on the MOSS.
13 For instance, Canyon E&P Company is on both.

14 A. Absolutely. Actually, almost all of the
15 operators on MOSS, if not all of them, are on this
16 list. One of the things we do is look at the best
17 bang for our buck because we're strapped as far as
18 capacities, as well.

19 So you'll see a lot of the operators
20 with the higher number of wells we've already taken
21 action against. You'll also see a lot of operators
22 with one, two, three wells. It takes OCD as much time
23 to pursue compliance on an operator with one well as
24 it does just on the screen that's being shown for
25 Canyon at 203 wells. It takes as much hearing time,

1 polling lists, those kind of things to take all of
2 those. So we're working down the list just on these,
3 but we know, based on this Exhibit 16, that this is
4 just a starting point.

5 Q. So, Mr. Powell, this demonstrative aid lists
6 wells that are universally required to be plugged
7 under the existing rule right now?

8 A. Potentially, because it would still have to
9 go through hearings so we don't have plugging orders
10 on all of these wells. But every well in the state is
11 required to report production monthly, and that's due
12 45 days after that month.

13 So these wells, 2,318 wells, are out of
14 compliance on a per well basis for every month since
15 our last production. So if you look at some of that,
16 at the bottom, I'll pick the first one with a state
17 and private well.

18 Southwest, Inc., they haven't reported
19 any production since 2009. Every month since 2009,
20 those three wells have been out of compliance in the
21 state.

22 Q. So, if you take this list and you remove all
23 of the operators for which OCD has already resolved
24 plugging authority, will OCD still have a substantial
25 number of individual enforcement actions under the

1 current rule, not the proposed rule, but the current
2 rule?

3 A. Absolutely. If testimony earlier last week
4 was true, that there's roughly 20 operators, again, I
5 didn't run those numbers, but if there's 20 operators
6 on MOSS, we've got roughly another 90 operators to go
7 as far as compliance just with the production.

8 The goal of this rule with the bonding
9 is to get some bonding in place so the operators were,
10 one, either addressing their wells as they start to
11 become non-productive, or have bonding in place So
12 when we get to those wells that we can actually plug
13 those wells efficiently.

14 Because as it sits right now, the world
15 of what we're looking at is far greater than what's on
16 the MOSS spreadsheet.

17 Q. And, Mr. Powell, we're talking right now
18 about inactive wells and unsubmitted C-115s. Do you
19 agree that this discussion does not reach to OCD's
20 concerns for those wells which are on the verge of
21 inactivity?

22 A. No. That's where Exhibit 16 is so powerful,
23 is because that's what's showing production in the
24 state. In FY24, industry -- well, anybody can take
25 that list, because that list was intended for all

1 production in the state, the Commission, to see what
2 production was in the state on a well-by-well basis.
3 You can use filters on that, and I'll show some
4 filters in just a moment on how easy that is to
5 navigate and check for compliance.

6 You can use filters to see where they're
7 at. Each individual company can check their own
8 information and see really where that's at. And that
9 number is far greater than even what we're showing on
10 the unsubmitted C-115s or MOSS.

11 MR. TREMAINE: Madam Hearing Officer,
12 Mr. Powell has proffered that he would like to run
13 through some examples on the replacement Exhibit 16,
14 is that pleases the Commission?

15 HEARING OFFICER ORTH: All right. Thank you
16 very much.

17 MR. TREMAINE: He will need to share screen
18 from his laptop, as opposed to mine. You do not want
19 me following Mr. Powell's instructions in Excel.

20 A. So let me get to that so I can share. Thank
21 you. I'm used to working with multiple screens, so I
22 apologize. It's taking me just a moment to share my
23 screen.

24 Okay. So this is Exhibit 16. This is
25 the exhibit that, again, everybody's had since August.

1 Again, we're excluding the column O that was
2 previously provided, but all the source data is still
3 the same.

4 You can go and filter it. You can
5 change filters by company. You can change filters by
6 BOE. You can change lots of different filters.

7 One of the filters that we're going to
8 look at is we've pulled new numbers. We'll offer them
9 later to replace what Mr. Garcia showed earlier. But
10 I want to show how easy it is to use this when
11 checking a company by company's experience or status.

12 So I'm going to go in. And I was kind
13 of surprised, one of the companies was testifying was
14 Merrion Oil & Gas because they're a company that's
15 always been known to have a high reputation in the
16 industry and in the community. So I wanted to see
17 what effect this would have on them.

18 So let's go to companies, and we're
19 going to filter just by that one company. So I'm
20 going to go Merrion Oil & Gas. So next is, because
21 this affects different well types, different ways
22 potentially, I'm going to check they only have oil and
23 gas wells.

24 Then I'm going to go over to BOE. I'm
25 going to do a filter. We're going to do the big one

1 first as far as the high volumes. So I want one that
2 is greater than or equal to 90, and I'm going to do
3 one that is less than a thousand. So in that
4 criteria, there are six wells that pop up. As you can
5 see, days in production, all six of them are above 180
6 days. So that means none of those wells are going to
7 require any additional bonding.

8 They are producing those wells, there's
9 constant production in those wells. Even though the
10 BOE is below as currently written, those would require
11 no bonding.

12 If we remove the days, then six wells
13 total, and I believe they have 60 wells would require
14 bonding. But as it's currently written, none of those
15 wells would require that. So we checked that one.

16 I'm going to clear that filter, and I'm
17 going to look now at BOE under 90. So we're going to
18 do less than -- or actually we're going to do a custom
19 filter, because again, zero doesn't, that's already
20 inactive, that's already something that's under OCD's
21 purview. So we're going to pick is greater than zero
22 is less than 90.

23 So they have one well, spud 1964, that
24 is in that criteria. So that well in 2024 produced 15
25 days and 19 BOE.

1 I want to show now how easy it is to
2 look to see kind of what's going on with that well.
3 So I'm going to pull up on our website. I'm going to
4 go to the publicly viewable website, so it's not any
5 tricks or anything that anybody can't do.

6 I'm going to go to OCD permitting. I'm
7 going to go to operator data. I'm going to go --
8 actually I'm going to go to searches -- I'm sorry, I'm
9 going to go to wells. And I'm going to enter in that
10 API number. Again, I'm doing this live and I don't
11 have that good of memory. So 12174.

12 So we're going to pull up that single
13 well's information. I'm going to go to the production
14 on the right. And as you can see, this well has a
15 long history of production. That production continued
16 fairly steadily till about 2015. Looks like they had
17 a potential issue in 2016. There was some production
18 in 2017 through 2019. And then there's been very
19 little production since. Looks like there's some
20 production in 2025 back. But the production volumes
21 is far below what it was prior to 2015.

22 And on historical wells' decline curves,
23 a lot of folks have told me, our experts, that at the
24 end of life, your decline curve is usually fairly
25 solid. And so you're expecting consistent decline

1 through a well. So it appears something's going on
2 potentially with that well. When we pull up that
3 well's files to see what's been reported, to see if we
4 can explain, is it a pipeline issue, is it something
5 else, we pull up the associated images, the last image
6 submitted to OCD was in 2010 and nothing since.

7 So the 2015 is not on there. The
8 current issues aren't on there. What was going on in
9 2024 isn't on there. So OCD, as it sits, has no idea
10 what's going on in that well. So this well would get
11 a presumption of no beneficial use.

12 And it could be productive. It could
13 just be towards the end of its life. And Merrion
14 could say, "We're coming back. We're producing this
15 one on 181 days and so we don't get that presumption
16 of no beneficial use." And that would be fine. But
17 as it sits right now, we don't have that data.

18 But looking at a company that
19 historically has been known to be a reputable company,
20 they have one well that this role applies to.

21 Also, unless the Commission or somebody
22 would like me to go through it, Merrion I don't
23 believe has plugged a well since 2022. So Merrion and
24 their due diligence in plugging and taking care of
25 their wells hasn't needed to plug a well in the last

1 three to four years. And they still only have one
2 well on this list that would apply.

3 Q. Mr. Powell, is that demonstration and your
4 discussion of the Merrion wells, is that consistent
5 with OCD's intent when it proposed the risk proxy
6 production thresholds?

7 A. It was. The OCD intentionally tried to pick
8 volumes low enough that if an operator is operating
9 prudently, is not going to be affected by this rule
10 negatively, that they can continue to operate.

11 What OCD intended to try to capture in
12 this rulemaking is operators that aren't operating
13 prudently, that don't have 25 or 50 percent production
14 in a year. It's similar to having a business that you
15 shutter the doors 75 or 50 percent of the year. That
16 just doesn't make business. Those mineral owners are
17 making any mineral rights during that time.

18 Again, as we discussed earlier,
19 40 percent of the inactive well list is private wells.
20 That's typically private minerals that that mineral
21 owner isn't getting any reimbursement for their
22 minerals, but it's still holding the lease, so no
23 other operators can go in there and explore those
24 mineral rights.

25 MR. TREMAINE: Madam Hearing Officer, I'll

1 share screen again and move back to my questions on
2 surrebuttal.

3 BY MR. TREMAINE:

4 Q. Mr. Powell, I'm looking at page -- moving a
5 little further down the page, line 14, Mr. Winchester
6 states, "The OCD submitted three other lists of wells
7 in exhibits 21, 22 and 23 for which there was little
8 to no explanatory testimony from any of the OCD
9 witnesses."

10 Mr. Powell, how do you respond, and
11 what's the purpose of those three exhibits?

12 A. So, those three exhibits are wells that
13 aren't producing, plain and simple, through different
14 mechanisms. We actually expected more dialogue on
15 those, potentially with industry, of kind of where
16 those were at.

17 Those wells are three lists. One is
18 inactive wells, excluding TA or ACOI wells, one's a
19 list of inactive wells that include the ACOI wells,
20 and one's an inactive list, including the TA wells, to
21 show that those are the wells that aren't being
22 productive. The TA wells have X number of wells that
23 aren't producing. The ACOIs have X number of wells
24 that the Division has agreed to with an operator to
25 correct how many wells they're remediating at any

1 particular time. But those three lists are simply
2 wells that aren't producing in New Mexico today.

3 Q. And, Mr. Powell, do you agree that if a
4 member of the public were to go to OCD's website and
5 run a similar report, that that report would be
6 exported in a printable form, such as PDF as is the
7 form in which they were provided to the Commission and
8 the parties?

9 A. Yes. And if I remember correctly, and it's
10 been a day since I've done that, but you run the
11 inactive well list on compliance on the OCD's
12 permitting website that I just showed going to the
13 other well information. It pulls up a list of wells.
14 And so you don't have to page through each one of
15 those; you can export it to Excel, and I believe
16 that's what I did.

17 Q. Moving on, I'd like to draw your attention
18 to page 8, line 2, where Mr. Winchester states, "As
19 reported on July 1st, 2025, OCD has again recovered
20 \$0.00 from bond forfeitures, making it five years out
21 of the last seven with zero dollars from financial
22 assurance bonds."

23 How do you respond?

24 A. My understanding is OCD has recovered bonds
25 since that. Within the last five or seven years,

1 we've pursued some, I believe, with Cano. There's
2 some out there that we pursued. That's typically done
3 through our legal group, but I am aware that we have
4 claimed some bonds.

5 We haven't gone after as many bonds as
6 we have wells plugged at this point. Canyon is a
7 great example. On Canyon, they have a lot of bonding,
8 I believe, if memory serves me correctly. We can look
9 at MOSS. They were under \$10,000 per individual well
10 bond.

11 So it makes sense to do those in
12 packages because we're working with the same financial
13 institution. So instead of pursuing 100 wells 100
14 times, we can pursue 100 wells one, two or three times
15 and send that financial institution all the supporting
16 data to get that because we can't pool those bonds
17 until after a well is plugged. And when we call that
18 financial information, we have to actually submit over
19 what we did on those Wells, the plugging invoices,
20 those kind of things, so they can reimburse us for
21 that money that we then put back in the reclamation
22 fund.

23 Q. And, Mr. Powell, do you agree and
24 acknowledge that the Cano bond forfeiture has not been
25 updated in OCD permitting?

1 A. Yes, that was my understanding.

2 Q. And is OCD updating that information in
3 earnest?

4 A. Yes, we are.

5 Q. Okay. And do you agree that the other bond
6 forfeitures you referenced are pending as we speak?

7 A. That is my understanding, yes.

8 Q. One moment. Sir, I'd like to refer you to
9 page 10, Mr. Winchester's rebuttal testimony, line 10.

10 "Yes, OCD Exhibits 17, 21, 22 and 23
11 also contain a number of wells that are subject to
12 federal or tribal jurisdiction and therefore outside
13 the scope of this rulemaking proceeding."

14 How do you respond?

15 A. So let's start with the latter first, tribal
16 jurisdiction. This well, this rulemaking won't affect
17 tribal jurisdiction. If operators come to us and say
18 the tribal nation doesn't want anything to happen on
19 those wells, nothing will happen on those wells as far
20 as presumption of no beneficial use, those kind of
21 things. I.

22 Will note that on MOSS, there are some
23 tribal wells in there where the tribe has come forward
24 and asked us to plug wells for them using funding
25 because they didn't have any. So there are tribal

1 wells in MOSS that OCD has plugged.

2 Regarding federal, so that's kind of a
3 two-part answer. On the bonding, OCD doesn't bond
4 federal wells. So the bonding portion of the federal
5 wells will not apply. But the presumption of no
6 beneficial use does apply.

7 However, if an operator gets a
8 presumption of no beneficial use and they have an
9 agreement with the BLM to show that there is some
10 beneficial use to that well, that's something that
11 they can submit with their information showing a
12 beneficial use to the state that the state would then
13 look at.

14 Q. One moment as I pick three. All right.
15 Mr. Powell, I'm going to direct you to page 17. And
16 on line 18 of page 17 of Mr. Winchester's rebuttal
17 testimony, this carries over onto the next page. I'm
18 going to put this up on the screen here rather than
19 read. I'll read a subset of it, but I just want to
20 refer you to this entire question and ask you if
21 you've reviewed this section of Mr. Winchester's
22 rebuttal testimony?

23 A. I have.

24 Q. Specifically, I want to draw your attention
25 to page 18, line 6. And I'll quote, "I have had

1 members inquire whether some sort of fix is in on this
2 rulemaking. And the Division has foreknowledge that
3 the Commission will adopt at least certain portions of
4 the rulemaking despite opposition."

5 Further, Mr. Winchester states, "I find
6 it quite troubling that the Division is promulgating
7 forms or requiring operator certification based on
8 either the Division's extra regulatory judgment or
9 provisions on proposed rulemaking that this Commission
10 has not adopted."

11 And just as a reminder, the section here
12 is referring to the oil conservation Division's change
13 of facility operator form promulgated by the Division.
14 Mr. Powell, how do you respond?

15 A. I would respond, I think Mr. Winchester's
16 members think we're far more nefarious than we are.
17 This form, this process had absolutely zero to do with
18 this rulemaking. This process was actually contingent
19 or an outgrowth of part 27, which is the methane
20 reporting rule. It's the first rule that ever
21 required any facilities to be reported or registered
22 to companies that we actually used that registration
23 and rule.

24 What we found is there was hundreds, if
25 not potentially thousands of facilities out there that

1 were registered to one operator that were actually
2 owned by another operator. So what we were trying to
3 do is create a process where operators could transfer
4 their facilities from one operator to the other and we
5 could have something on record.

6 The percentage of operator -- or if you
7 scroll to the prior page, I want to make sure I quote
8 this right. "No person with an interest exceeding
9 25 percent in the undersigned company information..."
10 that is required when an operator first registers with
11 the state. And I think it would be ludicrous to say,
12 well, once you register, you don't have to comply with
13 that anymore.

14 The second part is every operator that's
15 performed a well transfer in the state for years has
16 initialed this as part of their well transfers because
17 the source form that we used to create the facility
18 operator form was from the well transfer form. It's
19 an existing form. We were trying to duplicate the
20 existing process for facilities tied with those
21 existing wells.

22 Again, these facilities are tied to the
23 wells that they're using that on. Has zero to do with
24 this rulemaking. We didn't even look at connecting
25 the two dots. What we were trying to do is facilitate

1 a request from operators to transfer facilities so
2 they could properly report under part 27.

3 Q. Mr. Powell, did you watch the testimony of
4 Mr. John Garcia?

5 A. I did.

6 Q. Do you recall the questions I'll refer to as
7 "and/or gate"?

8 A. I did.

9 Q. Did you prepare a response to and/or gate?

10 A. I did. But I didn't use and/or or because I
11 don't I can't write code near as well as John Garcia
12 does.

13 Q. I'm going to share screen to offer as a
14 demonstrative the exhibit that Mr. Powell has
15 prepared. Mr. Powell, is this the demonstrative that
16 you have prepared in response to that line of
17 questions?

18 A. It is. It goes through and updates the
19 numbers based on the understanding and the rule. I
20 think a well scatterplot really well demonstrates
21 this, but this gives the actual number to it.

22 As you can see, I tried to show how I
23 filtered these without writing and/or code. So zero
24 BOE, that's just going in that FY24 spreadsheet. And
25 anything that was listed as an oil or gas well,

1 because that's the overall filter that had zero BOE is
2 that number.

3 Next, we move to the greater than zero,
4 just like we did in the Merrion case, and less than 90
5 BOE, and that's the 3914. Then if you add anything
6 that's less than 90 days, is 1842. So it reduces that
7 number from 3900 to 1800.

8 Going to the higher allotment, so above
9 the presumption of no beneficial use. I did the 90
10 to -- or less than 1,000, there's 11,551. And then
11 when you add the less than 180 days, there's, it
12 filters that down to 1652.

13 So what I did is accumulate at the
14 bottom. If you removed the number of days produced,
15 there would be potentially 15,465 wells affected
16 today. If you keep it as it's written currently,
17 there's 3,494 wells that are affected by this
18 rulemaking potentially.

19 Q. And, Mr. Powell, just to clarify for
20 foundation and the understanding of the Commission, is
21 it that you utilized -- when you applied these
22 filters, they were applied to the replacement
23 Exhibit 16, which we referred to earlier in the
24 hearing?

25 A. They were. And I would quote, there was

1 one -- couple stars at the bottom. The first star is
2 in that Exhibit 16. Again, we had pulled that
3 originally for another enforcement overview, not for
4 this rulemaking. It does include federal wells, and I
5 think I actually had a typo and it says this does
6 exclude -- that should be include federal land types
7 that would be unaffected by bonding requirements,
8 because this was all wells in the state.

9 So anything that's on federal wouldn't
10 be affected by the bonding subtypes, and anything
11 that's tribal wouldn't be affected at all. So when we
12 look at that 3494, the number is probably
13 significantly less than that because you then have to
14 exclude the federal bonding requirements and then
15 exclude any tribal wells.

16 Q. So, Mr. Powell, when we're talking about
17 Exhibit 16, I believe you've been clear, but that's
18 using 2024 production data, correct?

19 A. That is correct.

20 Q. Okay. So looking at these numbers today, so
21 things could have changed if production was reported
22 since that time, correct?

23 A. Absolutely. We just had the 2024 because I
24 pulled that for other enforcement. And then also,
25 this rulemaking has started so we started using that

1 for our evaluation.

2 Q. As a baseline for comparison?

3 A. Yep.

4 Q. So barring any changes from reported
5 production, this graphic stands for the proposition
6 that there are 2,489 wells that would need to be
7 plugged under current rule?

8 A. Correct, that would be the assumption.

9 Q. Okay. And that there are 1842 additional
10 wells that would potentially receive a presumption of
11 no beneficial use from the Division?

12 A. Correct.

13 Q. And that there are 1652 wells that would be
14 required to provide individual financial --
15 single-well financial assurance if the proposed rule
16 were promulgated?

17 A. That would be the maximum amount. Again, it
18 would take into consideration the federal wells and
19 the tribal wells, so I would expect that to actually
20 be lower.

21 Q. By what, about half?

22 A. Federal wells account for 50 percent of the
23 wells in the state. But, again, inactive wells are
24 40 percent. It would depend on how operators are
25 treating -- when you're looking at that category, how

1 they're treating the federal and state wells. It
2 could be a higher percentage than half, or it could be
3 half.

4 Q. Do you recall your earlier testimony and
5 surrebuttal testimony regarding proposed concerns with
6 the way in which operators report days of production
7 currently?

8 A. I did.

9 Q. And would you provide any input for the
10 Commission from the Division's perspective on whether
11 there's a benefit to including the days component or
12 the viability of striking the days component?

13 A. I think the including the days component is
14 a noble effort. I think it's really what the Division
15 and the applicant is trying to accomplish is making
16 sure operators are operating their wells prudently.

17 I do think there's some instances where
18 that's currently being abused, that may change in the
19 future, where, say, an operator says they're operating
20 their well 200-plus days and they're still producing
21 very, very little.

22 I think if we keep it as written, the
23 Division is probably going to have to look into those
24 scenarios to find out if it's true days production or
25 if there's something else going on as far as data

1 quality.

2 If the days are removed and we're
3 looking at the bigger scope, then that obligation
4 would fall on operators when they respond to the
5 presumption of no beneficial use, stating how they're
6 using that well.

7 So either way, potentially that days in
8 production is going to have to be investigated in the
9 future, whether it's something the operator uses as
10 their justification for beneficial use or whether it's
11 something that the OCD has to look at and make sure
12 it's not being abused.

13 Q. Mr. Powell, do you recall the testimony and
14 cross-examination of Lauren Diede and Rosa Romero?

15 A. I do.

16 Q. Do you recall lines of questions regarding
17 the rate of occurrence of extreme examples?

18 A. I do.

19 Q. How do you respond to the assertion that OCD
20 deals with such examples only rarely?

21 A. So I've been with the Division for 19 and a
22 half years. Extreme examples pop up more regularly
23 than I would hope for. You know, those were -- I
24 think examples that popped up in the last year and a
25 half. I think that was fairly clarified with other

1 people's experiences.

2 I can say as of Friday, when I was
3 sitting here testifying, the Division was dealing with
4 another extreme case. We've currently got a well with
5 well control issues. We've got 900 PSI on the casing
6 and the tubing, what we moved on. We had a well
7 control -- both a plugging group, environmental group
8 and an extreme well control group on that well.

9 This well was a few hundred yards from
10 the Pecos River. We were out there building berms to
11 contain the fluid so it didn't flow in the river. We
12 had a well control group that was on the well trying
13 to get control of the wellhead.

14 When we tried calling the company, both
15 of their numbers were disconnected. They had seven
16 out of eight wells listed as inactive in the system.

17 It's something we were actively
18 responding to as I was sitting up there that I would
19 call this as an extreme case as well. That happened
20 on Friday that we responded to on Friday and
21 throughout the weekend.

22 To me, this is very similar to what we
23 were dealing with, buckeye high pressures, flow
24 issues. The wellhead was corroded to the point where
25 we can't shut that well in. Now we're flowing that to

1 a frack tank and continuing to empty out the frack
2 tank.

3 We're reviewing actions to see what we
4 can do with that well, whether it's freeze the top of
5 the well with nitrogen so we can replace the wellhead
6 and get well control, what we're going to do. But
7 we're likely going to be starting that well plugging
8 tens of thousands of dollars, if not hundreds of
9 thousands of dollars before we even put a rig on that
10 well to be able to address that well.

11 And those are just the things that come
12 up from this from time to time. We had industry out
13 there. Devon attempting to assist with us, Conoco
14 attempting to assist on this to see what experience
15 that they could provide. And I really appreciate
16 industry stepping up to help where they can.

17 To be honest, if Devon hadn't shown up,
18 the water probably would hit the Pecos River before we
19 got any crew on site. So I appreciate industry
20 stepping up and helping in those ways.

21 And this well, it's not a deep well,
22 it's 5,000 feet. I don't know where the pressure is
23 coming from. I don't know the situation. I believe
24 it's an older well, but I haven't looked at the Spud
25 date, but that's those are the type of scenarios OCD

1 responds to.

2 Q. Mr. Powell, was that well subject to a
3 preexisting settlement or plugging order?

4 A. No, it was not.

5 Q. Did OCD have to issue an emergency order
6 regarding that well?

7 A. We did?

8 Q. Have you looked to see what the last
9 reported production was by that operator?

10 A. I am not. I've been up here instead of
11 looking through case files.

12 MR. TREMAINE: All right. One moment, Madam
13 Hearing Officer. Madam Hearing Officer, I believe
14 that resolves Mr. Powell's surrebuttal.

15 I would proffer the referenced
16 demonstrative aids as surrebuttal exhibits. If
17 approved, I will label those as surrebuttal exhibits
18 and resubmit to all the parties and the clerk. And I
19 would also now move for admission of replacement
20 Exhibit 16.

21 HEARING OFFICER ORTH: Thank you. I'll
22 pause for a moment in the event there are objections
23 to the survival demonstrative aids or replacement
24 Exhibit 16.

25 MR. SUAZO: No objections from NMOGA.

1 MS. FOX: Madam Hearing Officer, I just have
2 one question.

3 When you said that, Mr. Tremaine, the
4 demonstrative exhibits -- A, does that include the
5 first demonstrative A and then the and/or gate
6 demonstrative, both those?

7 MR. TREMAINE: Yes. So to clarify, I can
8 share a screen if that would be beneficial so we know
9 what we're talking about here. Because I haven't
10 done surrebuttal processes much, so I wasn't sure on
11 procedure here.

12 So I believe we're going to be starting
13 at Exhibit 32, but I'll clarify. So I would probably
14 mark this demonstrative with the BOE and the impacted
15 number of wells as 32, but I reserve that.

16 And then the unsubmitted C-115s, I
17 believe that will be Exhibit 33.

18 So those are the two surrebuttal
19 exhibits, and then just admission of replacement of
20 Exhibit 16.

21 HEARING OFFICER ORTH: Thank you for that
22 clarification.

23 MR. CLOUTIER: Could we get the second, the
24 other one, Jesse? There was a typo. It said
25 "exclude" instead of "include." Could we get the

1 typo fixed before we submit it as an exhibit?

2 MR. TREMAINE: Let me put it up and make
3 sure that Mr. Powell can address that, since he -- is
4 this the right one, Mr. Cloutier?

5 MR. CLOUTIER: It is, yes. This does
6 exclude on the first asterisk, and I think, if I
7 understood Mr. Powell correctly, it should say this
8 does include.

9 HEARING OFFICER ORTH: Or does not exclude.

10 MR. POWELL: That is correct.

11 HEARING OFFICER ORTH: All right, great.
12 You just added it.

13 All right. Thank you very much.

14 All right, I think I've paused
15 sufficiently long to hear any objections. So
16 Surrebuttal Exhibits 32 and 33 from the Division are
17 admitted, and replacement Exhibit 16 is admitted.

18 (Admitted: OCD Surrebuttal

19 Exhibits 32, 33 and Replacement

20 Exhibit 16.)

21 HEARING OFFICER ORTH: So it's a quarter
22 after 10:00. Should we take a short break before we
23 begin cross? All right. Let's come back at 10:30.

24 (Recess held from 10:15 to 10:30 a.m.)

25 HEARING OFFICER ORTH: Mr. Cloutier, do you

1 have questions of Mr. Powell.

2 MR. CLOUTIER: I think Mr. Suazo was
3 planning to go first, if that's all right, Madam
4 Hearing Officer.

5 HEARING OFFICER ORTH: That's fine.

6 Mr. Suazo.

7 MR. SUAZO: Thank you, Madam Hearing
8 Officer.

9 CROSS-EXAMINATION

10 BY MR. SUAZO:

11 Q. Mr. Powell, good morning.

12 A. Good morning.

13 Q. I'm Miguel Suazo. I'm with the Beatty &
14 Wozniak. And I represent the New Mexico Oil and Gas
15 Association?

16 And I wanted to start some questions for
17 you, because I think that some of the things that you
18 said on your direct and surrebuttal were illuminating
19 to industry. And I'd like to better understand kind
20 of where you're coming from so we can all kind of
21 contextualize where we are in this proceeding and why.

22 It's fair to say that OCD supports WELC,
23 the applicant's proposal in this rulemaking, correct?

24 A. Correct as written.

25 Q. And listening to WELC's testimony and

1 reviewing their exhibits, they make numerous
2 references to provisions in their proposed rule that
3 were, I guess, essentially proposed by the Division
4 itself, correct?

5 A. That is correct.

6 Q. And is it accurate that applicants WELC
7 adopted much of the language that was proposed by OCD?

8 A. They did.

9 Q. But some of that language is only from WELC,
10 itself, correct?

11 A. Yes.

12 Q. So given the nature of this rulemaking,
13 which is heavily focused on financial assurances and
14 plugging of wells, which are really integral to the
15 work that OCD does because of its technical and
16 regulatory expertise, I think industry would like to
17 know why the Division itself is not the applicant in
18 this case.

19 A. I would say WELC is the one that applied
20 first. There was definitely a need for it. WELC
21 applied and I believe the first application WELC made,
22 there were some things in there we either didn't agree
23 with or we thought could potentially be done
24 differently. So we drafted up a revised suggestion to
25 WELC. They accepted most of what we had submitted.

1 That was actually brought up in a
2 meeting I think initially with WELC and industry in
3 the same meeting, to propose what OCD was looking at
4 doing and why they were proposing the things that they
5 were proposing to tackle the same issues.

6 Q. And when did the Division first receive a
7 copy of the proposed rule changes from applicants?

8 A. Man, that's a long time ago. I'm trying to
9 go off memory. I know it was probably at least when
10 it was initially applied for, but I don't know if
11 we've seen one before they applied.

12 Q. Did you hear WELC's witnesses explain to the
13 Commission that WELC had been working with the
14 Division for at least a year before the rules were
15 actually filed?

16 A. I don't remember them working with us for a
17 year for the rule specifically. I know they were
18 working with us and some of the legislative fixes that
19 I believe EMNRD was trying to do. I think they also
20 had some general conversations with us, but I don't
21 believe in writing the original rule we were part of
22 that.

23 Matter of fact, that's probably why we
24 made the suggestions we did after the rule was filed,
25 because we had suggestions after seeing that version.

1 Q. Now, traditionally, when the Division,
2 itself, is the applicant for rulemaking, isn't there a
3 period of time when the Division would kind of do a
4 thorough job of scoping the rulemaking and seek input
5 from industry?

6 A. I think it depends on the rulemaking. I've
7 seen it work both ways, where there are some initial
8 meetings, some initial follow-up. Depends on the
9 gravity of it; usually large rulemakings, yes.

10 Q. And would you consider this a large
11 rulemaking?

12 A. Yes.

13 Q. I think industry would as well. And so I
14 think, from industry standpoint, can you appreciate
15 how industry might perceive the fact that, because the
16 Division is not the applicant in this case, it's WELC
17 and another group of parties, how engaging for
18 purposes of this rulemaking, might be a little
19 different than if the Division was the applicant?

20 A. You know, if I was industry I probably would
21 have engaged more, simply because the more engagement
22 you have up front, the better understanding and trying
23 to come to a better place.

24 I know when we had that initial meeting
25 that I was in, industry was there. We proposed --

1 stated what we were trying to do as far as the volumes
2 and some of the things. And industry in that meeting
3 stated that they would look at it and get back with
4 us. We didn't hear back from most of industry.

5 Oxy did reach out and we found some
6 consensus in some of what we do. And I think there's
7 potentially going to be some more consensus as it
8 comes up in this rulemaking.

9 But I think engagement helps
10 understanding and even if WELC and, say, NMOGA wasn't
11 directly interacting because of the OCD's involvement,
12 if NMOGA reached out and said, you know, "Exhibit 16,
13 what is that? What are you looking at?" I think we
14 could have had at least some of that dialogue and
15 understanding here.

16 As was obvious in Mr. Winchester's
17 testimony, I don't think that understanding was there.
18 And I think it could have cleared a lot of that up
19 even before this process started this last week.

20 Q. So I keep hearing from you and from WELC's
21 witnesses and from OCD counsel, "We were expecting to
22 hear," "We were hoping to hear," "We want industry to
23 engage," you know, and on and on.

24 And I want to know if you, as the deputy
25 director, are aware that NMOGA did not get a copy of

1 the rules that were ultimately submitted to the
2 Division until a week before they were actually
3 submitted. Are you aware of that?

4 A. I don't know if we got a copy either. But
5 because we got the copy because the rulemaking was
6 filed and it's an important rule, we made the time to
7 make sure that we read it, we understood it, and we
8 wanted to make sure we provided follow-up.

9 And I would say even off that first
10 submission to then what was ultimately brought in this
11 case was a significant difference in language and some
12 of what was looked at based on that feedback and that
13 back and forth.

14 Q. Well, I think industry would want to have
15 that same understanding as the Division. And I would
16 hope that the Division and the Commission can
17 appreciate that when that rulemaking is put in front
18 of NMOGA a week before it's ultimately filed, can't
19 the Division appreciate that that gives a trade
20 association, made up of hundreds of member companies
21 with different perspectives and, you know, things like
22 that, time to vet the actual rule before it's actually
23 on the record?

24 A. I'm sure it was a vast undertaking, but I
25 don't think even a reach-out on basic information was

1 made as well. I don't believe after the revision was
2 placed, that we received reach-out and discussion on
3 any of the points to even try to understand them, let
4 alone change them.

5 Q. Well, is it fair to ask whether you could
6 appreciate that once the rule is submitted on the
7 record and your ideas supported by the Division are
8 essentially what are proposed, how it's more
9 challenging for industry to engage constructively to
10 better shape the rules that are already in front of
11 the Commission for consideration?

12 A. I appreciate that this is a big rule. I
13 don't know that NMOGA asked for an extension to any of
14 the rulemaking to evaluate that. I don't know if
15 there was efforts to reach out that maybe I didn't
16 see.

17 Because it is a big rulemaking, but I
18 don't know that NMOGA tried to extend the timing to
19 try to get a better understanding any of that.

20 You know, at the end of the day,
21 rulemaking is set a certain way by statute and we have
22 to follow that, I would imagine. Again, I don't know
23 those rules offhand. That's for OCC to ensure and the
24 attorneys in the room to ensure we're making those
25 milestones. But I don't know of any requests for

1 extension or extension of time to give additional
2 understanding that were made.

3 Q. And I don't want to belabor this point any
4 further, Mr. Powell, but would it surprise the
5 Division to know that NMOGA did not get a copy of the
6 complete rulemaking until after it was filed?

7 A. Again, I don't think OCD did either.

8 Q. So I'm going to move on to statutory
9 authority for new bonding categories, and this is in
10 your rebuttal slides.

11 You rely on statute 70-2-14A for the
12 authority to create new categories of financial
13 assurance, correct?

14 A. Correct.

15 Q. Okay. And the statute says that OCD, and I
16 quote, "shall establish categories of financial
17 assurance"; is that right?

18 A. That sounds correct.

19 Q. Okay. But would you agree that that same
20 statute also caps blanket bonding at \$250,000?

21 A. I would say it caps that specific category.

22 Q. There's no express statutory language
23 authorizing \$150,000 per well bond though in that
24 statute, is there?

25 A. I would say not expressly. But it does give

1 a test at the end if you meet other sets of criteria
2 that other categories can be created.

3 Q. So, is it fair then to say that what you're
4 really relying on is the Division's own interpretation
5 of what is meant by "categories"?

6 A. So I'm not a lawyer, so I don't try to
7 interpret statutes. I try to use them and see how
8 they're being used. But I would say that the way the
9 statute is written it says the Division shall create
10 categories, it gives a few categories that are
11 standard or given as examples, and then it states a
12 list of items if you're to establish new categories
13 that you have to fulfill.

14 Q. So bottom line is, you think that you can
15 create categories based upon the Division's own
16 interpretation of that statute?

17 A. I don't know that it's the Division's own
18 interpretation. I just think it's plain language
19 what's in there.

20 Q. Now, you also discussed the legislative
21 finance committee's recommendations as support. Would
22 you acknowledge that those recommendations are
23 basically advisory only?

24 A. Yeah, I think they were advising us to
25 promulgate rules.

1 Q. But the LFC does not have any of its own
2 regulatory authority, correct?

3 A. No. But again, I think they found a problem
4 that we also had seen and looked at. And their
5 advisement was to promulgate rules, and that's what
6 we're doing here.

7 Q. Now, in your direct, you testified that
8 OCD's average orphan well plugging costs justify a
9 \$150,000 bond, correct?

10 A. Yes.

11 Q. And OCD plugs the most challenging wells,
12 according to your testimony, and that's why those
13 costs are higher, correct?

14 A. I wouldn't state that. I think we look to
15 find wells that are the most protective, as far as
16 when we're doing ranking, those kind of things. And
17 then we also plug other wells in the vicinity of those
18 wells so we can help avoid costs.

19 A lot of the challenging aspects that
20 we're seeing, if that contribute to costs, aren't
21 things that we've even seen on the surface to make
22 that well a challenging well.

23 Example of that is a gas leaking out of
24 a wellhead. You know, we're going to try to move on
25 to that well to get the gas stopped. But that's not

1 going to tell you that we've got a casing shear
2 downhole that we can't get over say 2,000 feet into
3 the well bore and we're trying to mill, we're trying
4 to do some of those jobs.

5 So the surficial aspects of the well
6 that we would be ranking off of aren't the aspects
7 that cost the most.

8 Q. Okay. So then I guess I'm trying to
9 understand why the \$150,000 bonding is necessary, as
10 you're saying. Because on the one hand, you're doing
11 the most challenging wells, but on the other hand,
12 you're doing I guess more wells that are, you know, of
13 higher priority to the Division for whatever reason,
14 correct?

15 A. No. I think I stated that we're trying to
16 move on the wells that, again, have the biggest
17 surface impact. But the surface impact doesn't
18 necessarily contribute to your downhole costs.

19 Q. Right.

20 A. The downhole costs, we've moved on the wells
21 we didn't think were going to have much downhole costs
22 that end up costing a lot. I gave that in my examples
23 of two wells we didn't expect to cost a lot when we
24 moved on, that one cost, I believe, \$70,000, one was
25 over \$200,000.

1 And we had no clue that one was going to
2 be any different than the other. So the downhole
3 costs, what we use the \$150,000 is what we're actually
4 seeing for downhole costs, but those aren't based on
5 risk ranking that we're using to identify which well
6 to plug first, because that's more surface.

7 The only exception potentially to that
8 was maybe the Buckeye well because we had fluid
9 flowing to the surface. But again, I didn't know when
10 we moved on to that well we were going to end up
11 needing a snubbing unit to do work on that well
12 because we could never get fluid control.

13 Q. But you acknowledge that typically the cost
14 to plug a well would be cheaper for industry than it
15 would be for the Division, right?

16 A. Absolutely. They're plugging them typically
17 years ahead of the Division.

18 Q. Right. And the reason for that, in part, is
19 because you said by the time the Division is the one
20 to be in the position to plug the well, there's all
21 kinds of other associated issues out of the costs,
22 correct?

23 A. Absolutely.

24 Q. So I think it's fair to ask if the Division
25 can appreciate that industry feels like the proposal

1 for a one-well financial assurance is particularly
2 high, correct?

3 A. So I would agree, but I think you have to
4 look at the rule on making that category. It doesn't
5 say bonding on what the industry is going to pay for
6 that well. It's bonding to pay for what OCD is going
7 to use to plug that well.

8 Q. Right. And so let me ask you this. The
9 Division has not conducted a statistical study of
10 plugging costs across a representative sample of wells
11 that the Division typically plugs, has it?

12 A. So I think the estimate was based on
13 plugging costs in FY24. There was over 100 wells, I
14 believe, plugged that year. And that's based on
15 current market conditions.

16 There was a significant upcharge in, I
17 think, all industries seen in the last few years.
18 Especially post COVID, where all costs are going up.

19 So if we did an evaluation of what it
20 cost us to plug ten years ago, I don't think that
21 would apply today, because we're seeing costs rise.
22 We're also subject to the procurement process with the
23 state.

24 We put the plugging contract out to bid.
25 We accepted every plugging contractor that bid, and I

1 believe we have three or four that bid, and that's who
2 we're using to plug. And we haven't seen any
3 significant difference between those vendors across
4 the board and their plugging costs.

5 Q. When comparing OCD's actual costs with
6 industry's actual costs across a broader, more
7 representative sample of wells, probably over a longer
8 period since 2024, give the Commission a better idea
9 of what the costs actually are?

10 A. I don't think so, because of the challenges
11 OCD experiences when they're out there plugging. As
12 in my direct, I've overseen thousands of wells plugged
13 by industry. I've seen hundreds of wells plugged by
14 OCD. And the failure rate, and I didn't run the
15 actual statistics, but based on my experience, we see
16 far more casing failures.

17 I've seen far more challenges on a
18 well-to-well basis with OCD's plugging because of the
19 wells being neglected. I can tell you it was either a
20 Cano or Canyon, we had to look at the wells because
21 there was fluid causing the red beds to swell and it
22 was sheared off casing on multiple wells in that
23 field. Then we had to identify what we could do in
24 those cases to, one, make it as cheap as possible and
25 still provide protection.

1 So we evaluated a whole set of wells
2 expecting that same failure of significant casing
3 failure where the red beds swelled and sheared off
4 casing. I've never seen -- I've never done that
5 review with an operator of wells as far as that kind
6 of broad review.

7 Q. Okay. But you haven't asked to do that kind
8 of review with operators or industry, have you?

9 A. Well, operators and industries submit our
10 plugging sundries to the OCD and on something at that
11 level, I didn't see it when I was directly reviewing
12 it and staff hasn't brought those challenges to me on
13 a widespread basis to make those kind of decisions.

14 Q. Now, staying with the LFC report just for a
15 couple of more questions, you're aware that the LFC
16 report said that part of the Division's procurement
17 practices are responsible for the inflated cost of
18 P&A, is that correct?

19 A. I did see that.

20 Q. So when you -- well, okay, I'll move on.

21 Now, you touched on when OCD last
22 recovered a bond. I think you said that it's not
23 accurate that they haven't recovered a bond since
24 2018, correct?

25 A. I never said that. I think Mr. Winchester

1 stated that. I believe we have collected bonds.
2 Again, legal does that, but it's my understanding that
3 at least on some of the Cano wells, we've collected
4 bonds.

5 The Division did inaccurately state I
6 believe online that those hadn't been recovered.
7 We're working to address that. And we're currently in
8 the process of recovering bonds through Cano through
9 our legal department. Or not Cano. Canyon.
10 Apologize.

11 Q. But you did testify that you haven't
12 recovered very many bonds, correct?

13 A. Correct. A lot of times the bonds are so
14 small that it makes more sense for us to package
15 those. Because usually we're working with the same
16 financial institution to recover multiple bonds all at
17 one time. Instead of going after each \$6,000 bond, it
18 may make more sense to go after them when those bonds
19 get to \$300,000.

20 Those bonds don't go away if we're not
21 pursuing them, but what we do is we build them up to a
22 point where it makes more sense to get those in a
23 package versus doing them \$6,000 at a time as far as
24 our time to get that, because it takes attorney time.
25 That attorney time is crucial when we're also going

1 after enforcement.

2 As we stated there's 118 operators or 13
3 operators, whatever that new exhibit was, that haven't
4 even reported production. Those are next steps on OCD
5 enforcement. If we've got 20 or 30 of those, we've
6 got another 80. The same attorney that's doing our
7 bonds is also doing that enforcement.

8 Q. So I think that raises a really critical
9 issue in this proceeding that I'm not sure has been
10 sufficiently fleshed out, and that is, under the
11 proposed rules, it would be \$150,000 financial
12 assurance per well, correct?

13 A. Correct.

14 Q. And you just said, you know, if it's a
15 \$6,000 bond, it's probably not worth the Division to
16 pursue that bond, correct?

17 A. I didn't say it wasn't worth it. I just
18 stated that it makes more sense to do it as a package.

19 Q. Well, there's currently \$250,000 blanket
20 bonds that operators are required to have, correct?

21 A. Correct.

22 Q. How many \$250,000 blanket bonds has the
23 Division pursued in the last eight years, say, if you
24 know that?

25 A. You'd have to talk to our attorneys. I

1 don't know offhand how many we've pursued. I do know
2 as far as that's something we look at. I think if you
3 look in MOSS, that MOSS spreadsheet, it identifies
4 anytime there's a blanket bond attached.

5 I will state, a lot of the operators,
6 because they were non-compliant even with the 2018
7 bonding requirement, a lot of those aren't even
8 250,000. Some of those may still be 50,000.

9 Q. Have you identified internally as a Division
10 the price point at which you would pursue a bond?

11 A. Again, I don't think we've put a price
12 point. But I think at \$6,000, it's more efficient to
13 lump multiple of those together, because they don't go
14 away. Theoretically, they're supposed to be
15 non-revocable.

16 Even if it was \$150,000, if we're out
17 plugging Cano or Canyon and, say, we plug 100 wells in
18 a year, it may make more sense to package 100,000 to
19 150,000 together to pursue those.

20 Q. So the short answer to the question is you
21 have not identified a price point at which the
22 Division would pursue a bond?

23 A. I think short answer is I don't think there
24 is a price point.

25 Q. Well, there is a price point for the single

1 well, \$150,000 FA requirement, correct?

2 A. And we would pursue that just as we're
3 pursuing the \$6,000 bond.

4 Q. Well, I hope that's the case if it's
5 adopted. But there's nothing in the current rules
6 that requires the Division to pursue that \$150,000
7 bond or any other bond, correct?

8 A. Boy, if we had a few hundred million dollars
9 in unsecured bonds out there, I think we'd get in
10 trouble if we didn't.

11 Also, the BIL federal funds requires us
12 to proactively go after bonds as well. And as part of
13 our funding package, that's another reason why we
14 continue to look at bonds.

15 Q. Okay. But my question was whether there's
16 anything in the current rules that requires the
17 Division to pursue a bond.

18 A. No.

19 Q. By delaying pursuing bonds, doesn't that
20 also delay putting funds in the reclamation fund?

21 A. Yes.

22 Q. So let's move one to beneficial use and
23 marginal wells. I think the Division has been clear
24 that they support a presumption of no beneficial use
25 and at this point, I think that the BOE is less

1 relevant than the 180 days, correct?

2 A. Well, the presumption of no beneficial use
3 is a BOE. And not 180 days, it's 90 days.

4 Q. Now, is it accurate, to your knowledge, that
5 the LFC data shows that most wells are plugged closer
6 to two BOE per day?

7 A. I did see that, yes.

8 Q. And that's approximately, I don't know,
9 eight times higher than your cutoff at OCD?

10 A. Well, I think they had the two as the low
11 producing, which our comparison to the low producing
12 is a thousand, which is 2.7.

13 Q. Right.

14 A. So you're a difference between 2 and 2.7 BOE
15 per day.

16 Q. And you heard Mr. Wrinkle in his testimony
17 say that 2.7 is economic, correct?

18 A. I think he said that there was a potential
19 that there's no extenuating circumstances. But I
20 would also state, I don't think we ever stated that
21 the 1,000 BOE, every well that was below 1,000 was
22 uneconomic. I think we stated that that was at risk
23 of potentially becoming an orphan in the future, and
24 because of that risk, we were looking at bonding.

25 I don't think we ever stated that that

1 was uneconomic. And I think in my testimony last
2 week, I stated I wish we hadn't used "marginal"
3 because it makes it that implication. We could have
4 called it "a well at risk of plugging," but it not
5 necessarily 100 percent economic or non-economic.

6 Q. I'm glad you brought that up, because I
7 wanted to touch on that just for additional
8 understanding of what the proposals are versus what it
9 sounds like the Division might decide they could be.

10 And it sounds to me like the marginal
11 well definition itself is problematic because it has a
12 certain understanding within industry itself, correct?

13 A. Well, I think the name itself, I think the
14 way it's applied in this rule is fairly simple.

15 Q. But it still could probably be more exact.
16 Because it sounds like the Division is more concerned
17 with a certain type of well that's more high risk and
18 a certain type of operator, than maybe the rules; is
19 that fair?

20 A. That's kind of a compound question. I
21 wouldn't say it's a certain type of operator. I would
22 say it's more of a certain type of well and how the
23 operator utilizes that well.

24 That's why we try to include the days in
25 that, because what I'm concerned with is if a well

1 isn't mechanically capable enough to produce 180 days
2 a year, that may be a reason to look at that well.
3 And if an operator is not looking at that well and
4 taking that risk, should the state allow them to
5 continue taking that risk, that that well could end up
6 not being produced for years and end up on our
7 inactive list.

8 Q. All right. Let's move on to.

9 So, Mr. Powell, under the current rules,
10 when a well becomes inactive, the operators are
11 required to either plug or place it in temporary
12 abandonment within 90 days, correct?

13 A. No. I believe it's a year and 90 days
14 currently in the rule, if that's your question.

15 Q. So 15 months?

16 A. Yes.

17 Q. Okay. Now, you said that one of OCD's
18 challenges is that it can't, I guess, take action
19 until a well has been inactive for that 15-month
20 period, correct?

21 A. Well, that's another broad statement. If
22 there's a suspected defective casing, the operator is
23 supposed to report that within 15 days in pursuit of
24 diligence. But if you're talking solely inactive
25 wells, then it would be, yes, that 15 months.

1 Q. So I guess the problem, I guess from the
2 Division's perspective, is that the rules as currently
3 drafted fail to require timely plug-in. Is that fair?

4 A. No. I think the way the rules are currently
5 drafted, it has a beneficial provision even in Part 25
6 currently, but that's not defined. And the0 inactive
7 wells that we're currently pursuing aren't the concern
8 that we have.

9 And I believe it's in my direct
10 testimony, there was roughly 1,400 wells that produced
11 less than 10 BOE in 10 days in an entire year. Those
12 are the wells that we believe are on the cusp or are
13 having potential defective casing issues because we've
14 seen that, where a well's not consistently produced,
15 and when the operator finally moves on, we find that
16 it's not consistently producing because it has a
17 casing failure or a wellhead seal issue or those kind
18 of things, there's more of a mechanical problem that
19 makes it where that well can't produce, than just
20 simply not opening the valve.

21 Q. And I think you said that 29 out of 60 ACOIs
22 were out of compliance. Do I remember that correctly
23 from your testimony?

24 A. Boy, if you wanted my exact number, we'd
25 have to pull it up, but that sounds about right.

1 Q. Yeah, I think generally speaking those
2 numbers are what I recall you said.

3 So would you say that some of the issues
4 are not necessarily related to the rules but perhaps,
5 you know, related to OCD's ability to enforce these
6 ACOIs?

7 A. Boy, it's not -- to try to sound flip, it's
8 not our ACOI, so it's not us complying with it. It
9 would be the operators. Yes, we have to follow up
10 with the operators, but at the end of the day, if
11 there's non-compliance, it's the operators'
12 non-compliance with that ACOI.

13 Q. I guess I'm just trying to understand the
14 resources the Division has at its disposal. I know
15 that they're limited. I'm just asking, would more
16 resources enable the Division to better enforce those
17 ACOIs?

18 A. I would always advocate for more resources.
19 I'd love to double my staff, but I can't do that
20 through this rulemaking.

21 Q. Understood?

22 A. You know, ACOIs aren't even specifically
23 written into the rule. It's a courtesy that OCD tries
24 to extend to operators that are taking these
25 challenging wells where the operator comes and agrees

1 to a schedule to bring them back into production,
2 those kind of things. So it's not something that's
3 written in the rule. It's a courtesy that OCD tries
4 to help accommodate new buyers or existing operators
5 to get back into compliance and bring these wells into
6 a productive status.

7 Q. And I hate to jump around, but let's tie
8 that kind of concept back to the Division's ability to
9 pursue the bonds. Does the Division even have the
10 resources to pursue bonds if these financial assurance
11 requirements are adjusted?

12 A. Well, I think I just previously stated OCD
13 is pursuing bonds. We do plan on pursuing bonds. If
14 we're pursuing \$150,000 bonds versus \$6,000 bonds,
15 that's going to help the reclamation fund I think
16 considerably and plug more wells in the long term.
17 But the OCD is pursuing bonds and plans to pursue
18 bonds going forward.

19 Q. So I think that's great testimony and I'm
20 sure the Commission appreciates hearing it.

21 Is the Division able to provide a
22 quantification of the number of bonds they've actually
23 pursued in the last, say, years?

24 A. So I don't do that directly, you would have
25 to ask our attorneys for that.

1 Q. Are your attorneys able to provide that
2 information?

3 A. I don't know. That's not something we had
4 prepped for this case.

5 MR. TREMAINE: Madam Hearing Officer, I
6 would just proffer, to help move this along, I'm
7 happy to share our three more recent FA forfeitures
8 with the parties.

9 HEARING OFFICER ORTH: Thank you,
10 Mr. Tremaine.

11 MR. SUAZO: How am I doing on time, Madam
12 Hearing Officer?

13 HEARING OFFICER ORTH: Thirteen minutes.

14 BY MR. SUAZO:

15 Q. Mr. Powell, let's talk a bit about the
16 high-risk operator portfolio and the thresholds. This
17 is under Rule 19.15.8.9D(3). You mentioned that the
18 15 percent threshold might be a bit aggressive,
19 correct?

20 A. I didn't say aggressive. I said
21 conservative.

22 Q. Conservative?

23 A. I also said I expected industry to have some
24 dialogue on that to see where that should be properly
25 set.

1 Q. But you think that it could be a workable
2 number if it was, say, 30 percent?

3 A. I think it's definitely something to take a
4 look at, whether it's one in five wells or two in five
5 wells that aren't productive, I think it's still
6 looking at the same threshold of making sure an
7 operator is properly producing their wells.

8 Q. Am I correct in my recollection that with
9 respect to temporary abandonment, you would support
10 greater flexibility with assessing how and why wells
11 are put in that status?

12 A. I don't think I had testimony on that yet.
13 But speaking of greater flexibility on temporary
14 abandonment, I think if operators ran the logs that
15 were requesting to be added, showing that the well has
16 mechanical integrity, showing the well is keeping that
17 bridge plug downhole, which BLM already does, having
18 those, showing that well has no mechanical issues, and
19 then having industry go to hearing and state what
20 their long term plan is, as long as that long term
21 plan is viable, has reasons for it, I think that makes
22 a lot of sense.

23 If they don't have a plan and they're
24 just TA'ing it with no plan to hold the minerals but
25 not ever let anybody produce it, I wouldn't say that's

1 a good plan.

2 But if they offered a good plan to show
3 where they're planning on making that well a
4 beneficial use, then I'm all for it, as long as it
5 meets those conditions.

6 Q. Did you hear Commissioner Ampomah ask -- I
7 can't remember which of WELC's witnesses it was. But
8 he essentially was concerned with flexibility for
9 temporary abandonment in the case of EOR and CCS,
10 things like that?

11 A. I did. CCS, I would be really careful with
12 because of the criteria that the wells have to be
13 constructed with, my understanding.

14 EOR is something that the Division looks
15 at. And, you know, there's times where we look at
16 casing integrity on EOR.

17 I don't know that I would even limit it
18 to EOR. I think you could have -- Hill Corp is a
19 great example in the Northwest. I think they're doing
20 a strong re-complete process. They're perforating
21 other zones. If they brought in a plan that says,
22 "We're going to TA all of these types of wells and
23 we've identified this zone and here's our plan to
24 develop it," that would make some sense.

25 So I don't know that it's just EOR, but

1 I think it needs to be a well thought out plan.

2 Q. Okay. That's fair.

3 Does the Division support applicant's
4 proposed change to the definition of beneficial use as
5 also encompassing what they're terming speculative
6 purposes?

7 A. I think on the speculative purposes, I see
8 what the applicant is looking at. I call it -- I
9 refer to it as the pie-in-the-sky argument, you know,
10 coming in, "I plan on using that well in the future.
11 I don't know how, but I'm going to use it." I would
12 say that's speculative purposes.

13 I think with a good plan, operators have
14 a solid plan on what they plan on doing. And then
15 they have speculative results until they do it. And
16 that's where I would advocate as making sure you have
17 a solid plan proposal. Because again, this isn't due
18 until I believe it's after the first five years, so if
19 an operator hasn't developed a good plan in those five
20 years, then that should be something that's looked at.

21 Q. Did you hear Commissioner Ampomah ask WELC's
22 witness whether if they adopted the definition of
23 beneficial use and stopped right at the point where it
24 goes into speculative purposes, if that wouldn't meet
25 the requirements?

1 A. I would leave that to the Commission and the
2 lawyers on that as far as what it meant and what it
3 looked like and, we would look. But as I stated, the
4 speculative purposes I would want some something
5 concrete if they took it to hearing, those kind of
6 things. You're more looking at speculative results
7 but you should have a solid plan after the first five
8 years.

9 Q. When you say something more concrete, do you
10 mean like a definition of speculative purposes,
11 itself?

12 A. No. I mean concrete when the applicant
13 brings their plan is I want something concrete --

14 Q. I see.

15 A. -- and not the pie-in-the-sky analogy.

16 Q. Okay. Now, before this rulemaking, I
17 believe the Division has assessed beneficial use or
18 purpose through guidance documents more than anything
19 else, correct?

20 A. You know, as far as in current rule, if
21 we've done it through guidance documents, I can't
22 think of one offhand. I'm not saying there isn't one,
23 but I don't think we fully -- I don't remember ever
24 defining what beneficial use is as it's currently
25 written.

1 Q. I think that's right. I think, as I recall,
2 beneficial use is in the rules, but nowhere is it
3 defined until this current proposal, correct?

4 A. Correct. I believe Part 25 just says a well
5 no longer being used for a beneficial purpose.

6 Q. Would it not be sufficient to keep terms
7 like beneficial use and purpose to the realm of
8 guidance because they're inherently broad and vague
9 because any number of things could be beneficial or
10 speculative; is that fair?

11 A. Boy, I think that's tough as a regulator. I
12 think you get in the same scenario that I discussed
13 with Mr. Winchester, where you assume something. Or
14 if we then issued guidance on what beneficial was, I
15 think industry would call us arbitrary.

16 Q. Well, I guess wouldn't you agree that it's
17 still arbitrary if the definition is fairly broad and
18 is subject to substantial interpretation? Correct?

19 A. I think, to me, the way the definition is
20 applied in this rule has a very clear standard at
21 least to make that first step of the 90-90. And then
22 operators can bring in their personal information and
23 then it's based on technical information that we're
24 making those decisions. And if it's based on
25 technical information that an operator provides, it's

1 no longer arbitrary.

2 Q. With the time I have left, I'm just going to
3 touch on various provisions that I would like to get
4 your take on.

5 You're familiar with, I guess, the
6 agreement that Oxy negotiated with WELC on the
7 certification of compliance with various laws, aren't
8 you?

9 A. Very broadly. That was really legal heavy,
10 and I kind of stayed out of that realm.

11 Q. So I think the way that came down is that,
12 you know, the operator, upon transfers or
13 registration, would affirm that they would -- you
14 know, affirm to the Division that they were compliant
15 with state and federal laws. Is that accurate?

16 A. That is my understanding.

17 Q. Now, is it your understanding that that
18 "state" means the State of New Mexico, specifically?

19 A. If I remember right, it wasn't just
20 New Mexico-centric. And it wasn't based on
21 accusations. It's non-compliance -- if I remember
22 correctly, it was non-compliance with any open
23 violation.

24 So if an operator, say, had a violation
25 in Ohio and they resolved it, then that wouldn't be

1 taken into consideration. But if they had an open
2 violation in Ohio and then that was then out of
3 compliance, I think that's what they were looking at
4 but.

5 Again, this was really legalese and I
6 try to stay at a high level because I get lost when I
7 try to play lawyer.

8 Q. I mean, I think it's concerning to the
9 industry as to whether the Division even has the
10 ability to look beyond New Mexico's borders at all
11 sorts of other potential violations in other states.
12 Isn't that a concern?

13 A. Boy, I'd leave that up to the the
14 Commission. But if an operator in, say, Texas was
15 severely out of compliance and owed the State of Texas
16 millions because of their own program, I sure wouldn't
17 want them as an operator in New Mexico.

18 Q. Are you aware that many companies have
19 altogether different teams of staff and professionals
20 in other states than they do in the state of
21 New Mexico?

22 A. I am aware of that. I've also worked with
23 some of those teams when we've pursued non-compliant
24 operators. We've reached out to some of -- most
25 states to see if they're having the same issues with

1 the operators, and a lot of times, they are.

2 Q. So given that you've testified as to the
3 Division's limited resources in various areas, are you
4 not concerned, as the director, that if operators are
5 forced to get data from all kinds of other states,
6 that the Division will actually have the ability to
7 evaluate what's in front of them?

8 A. So first thing, I'm not the director.

9 Q. Deputy director.

10 A. I don't want that title.

11 But I think it's -- first it's a
12 certification, and then it's the operator making a
13 certification to the Division. So if we're looking at
14 a certification then that's one thing.

15 If we're then diving into all of their
16 non-compliances, I think it is prudent for us to look
17 at those non-compliances as needed and depending on
18 what's identified.

19 HEARING OFFICER ORTH: Four minutes,
20 Mr. Suazo.

21 MR. SUAZO: All right. Let me find other
22 things I want to ask about with the time I have.

23 BY MR. SUAZO:

24 Q. Just one more thing to touch on. I want to
25 make sure that I got kind of this recalculation that

1 you had in your surrebuttal accurate.

2 I think Mr. Garcia reported that 3900
3 wells would be marginal under the proposed definition
4 and, therefore, subject to the 150k single-well bond;
5 is that right?

6 A. I don't remember what Mr. Garcia's slides
7 had for specific numbers. If you pulled up our
8 surrebuttal, or our attorney, he can pull it up, and I
9 can testify to that. Because those were the numbers I
10 currently ran.

11 Q. Okay. But that chart that you put up and
12 just went over with Mr. Tremaine, I think you said
13 that only 1600 and change of wells were classified as
14 marginal under that proposed definition when the word
15 "and" is used; is that correct?

16 A. Yeah, I believe so. So that would be
17 marginal as far as that by itself. The other wells
18 that are the 90-90 would probably still be considered
19 as needing bonding, but just between the 90 and 1,000
20 plus the 180 days or less, it was that category.

21 But if you're looking for bonding, you
22 would probably have to add up the below 90 and 90, and
23 then that one to look at what's going to be considered
24 for bonding. I tried to put in there what filters I
25 used for which.

1 Q. So I guess with your revised Exhibit 16
2 there would be 3,494 wells impacted by the proposals,
3 correct?

4 A. Yes.

5 Q. That sounds correct, yes. And that number
6 represents the high-risk wells that have historically
7 proven problematic for the Division in terms of
8 plugging and P&A costs?

9 A. I think that number would include a gamut of
10 things. It would include the 90-90, the less than
11 1,000. It does not include the wells that are already
12 inactive.

13 Q. And just to be clear, the 60,000 wells
14 referenced in the LFC report and by applicants, those
15 are not representative of the type of wells the OCD
16 intends to target through this proposal, through this
17 rulemaking, correct?

18 A. I think there's -- it's a subset of the
19 60,000, I think. And what I provided was oil and gas
20 alone. There's going to be other SWD wells that will
21 be affected by this that -- because Mr. Garcia didn't
22 provide it and nobody asked for it, I didn't run those
23 numbers.

24 There will be other wells that aren't in
25 there that are used for -- like, CO2, acid gas, some

1 of those things I don't believe are affected. So the
2 filters I ran at the top in getting the numbers that
3 you have in surrebuttal are for oil and gas wells
4 only.

5 HEARING OFFICER ORTH: Please wrap up,
6 Mr. Suazo.

7 MR. SUAZO: Thank you, Mr. Powell.
8 Appreciate your time.

9 THE WITNESS: Thank you.

10 HEARING OFFICER ORTH: Thank you.

11 Mr. Cloutier, do you have anything?

12 MR. CLOUTIER: Thank you, Madam Hearing
13 Officer.

14 CROSS-EXAMINATION

15 BY MR. CLOUTIER:

16 Q. Good morning again, Mr. Powell. We said
17 hello off the record, but appreciate you being here.

18 Let me start off with bonding questions.
19 Mr. Winchester testified, and you commented on it,
20 that the last -- well, first of all, do you know what
21 the annual reclamation fund report is?

22 A. Oh, I would be speculating, but I think it
23 was 60 to 70 million-ish.

24 Q. I'm sorry do you know what the report itself
25 is, that the director submits to the governor, the

1 legislature?

2 A. I'm sure I've pulled numbers for it, but
3 without looking at it --

4 Q. I'm not asking for any numbers.

5 A. -- I couldn't give you details.

6 Q. I'm sorry, I'm not asking for any numbers.
7 I'm just asking if you know what the report is.

8 A. Generally, yes.

9 Q. Okay. And do you have an understanding that
10 each year, the director has a category of income for
11 the reclamation fund that is bond forfeitures, salvage
12 and reimbursement recoveries?

13 A. So I don't pull numbers for that. That
14 wouldn't surprise me for this conversation. But I
15 don't pull that information, so I haven't dealt with
16 it.

17 Q. And do you dispute Mr. Winchester's
18 testimony that in five of the last seven of these
19 annual reclamation fund reports, the number in that
20 category has been zero?

21 A. With it being a public document, I'll take
22 your word for it.

23 Q. And that in the two years that there was
24 collections in those seven years, that amounted to
25 just a little under \$250,000?

1 A. Again, I haven't looked at it specifically.
2 But it's a public report, so I'll take your word for
3 it.

4 Q. And they're all in evidence, and I'm trying
5 to be accurate, Mr. Powell.

6 And would you agree that until your
7 testimony today, there wasn't really any public
8 information that any of the Cano bonds had been
9 collected?

10 A. I believe, my understanding and, again, it's
11 a very high level, we missed updating that properly in
12 the database. And we are working to rectify that.
13 But that does not surprise me. It's very unfortunate,
14 but it does not --

15 Q. And so for instance, Exhibit 29, which is a
16 spreadsheet about financial assurances, still shows
17 zero to every one of the Cano bonds in terms of what's
18 been redeemed. That wouldn't surprise you?

19 A. It wouldn't.

20 Q. Would you understand with information
21 publicly available like that, the reclamation fund and
22 a notorious offender as far as the reclamation fund,
23 Cano, showing zero that industry would think that
24 maybe bonding isn't that effective to protect the
25 reclamation fund?

1 A. I think if industry would have reached out,
2 we could have had a conversation that we do plan on
3 pooling that. Again, we try to do it as a lump sum.
4 I won't talk about hiring to a full extent, but the
5 attorney that was working on inactive left at one
6 point. We've had some turnover through the agency.
7 That position has been filled. We started doing that
8 again.

9 I think versus what we're spending out
10 there, the focus has been staying out there and doing
11 the plugging. And so that's where our number one
12 focus was, to make sure we had wells to plug that
13 needed to be plugged. And then we're working on
14 packages of bonding to then reconcile.

15 Q. Mr. Winchester also testified about
16 Secretary Shelton's testimony before the LFC this
17 summer, where he testified, when asked about bonding
18 collections and the low amounts of it, he said, quote,
19 "The juice is not worth the squeeze."

20 A. On a well-by-well bonding, I would agree
21 with the deputy secretary. You know, there's times
22 where we've got a \$6,000 bond and it takes hundreds of
23 thousands of dollars to plug the well. So until you
24 package it as a package, pursuing them individually
25 doesn't make any sense.

1 MR. CLOUTIER: If I can ask Ms. Tripp to be
2 able to share screen, Ms. Apodaca, and ask her to
3 share slide 12 of Ms. Romero's PowerPoint that's been
4 submitted. Slide 12 of the OCD Exhibit 12. There we
5 go. There it is.

6 BY MR. CLOUTIER:

7 Q. On the first bullet point, Ms. Romero states
8 "Operators who are not compliant with regulations
9 related to site remediation and reclamation are more
10 likely to leave wells unplugged and sites unreclaimed
11 after ceasing operations."

12 Do you see that?

13 A. Mm-hmm.

14 Q. And I think in her testimony, she testified
15 that this is based on her experience, not on any
16 data-driven inquiry. Would your experience be similar
17 and your observation be similar?

18 A. Very much so. If an operator is not
19 expending the money to address their non-productive
20 wells, they're probably not expending money to clean
21 up those well sites either.

22 Q. Sure. And you, for instance, just today
23 testified about a new exhibit that listed operators
24 who are out of compliance on C-115s.

25 A. Yes.

1 Q. And I think you said 78 of those operators
2 would have state or fee wells that would be subject to
3 the bonding rules?

4 A. Yes, 76 or 78. And then there's a subset of
5 a little -- I think it was 12- or 1400 wells that are
6 state and private specifically.

7 Q. Do you have any reasonable expectation to
8 tell the Commission that you would expect any of those
9 operators to comply with increased bonding
10 requirements?

11 A. Boy, I don't think any of those operators
12 are. I'm just hoping that future operators don't get
13 to that position.

14 MR. CLOUTIER: If we could get the statute,
15 70-2-14A up, please, Ms. Tripp?

16 BY MR. CLOUTIER:

17 Q. There after the \$50,000 there in the middle
18 it says, "...and one-well plugging financial assurance
19 in amounts determined to be sufficient to reasonably
20 pay..." out the plugging.

21 Do you agree that the amount of a
22 single-well bond, if the Commission agrees it has the
23 power to adopt this rulemaking, should be a reasonable
24 amount?

25 A. I think it should be a reasonable amount to

1 pay for the plugging of the wells. And, again,
2 because of the where that's orientated, it is plugging
3 of the wells by the OCD, not by industry.

4 MR. CLOUTIER: Let's turn to Applicant's
5 Exhibit Number 4, page 24, which is -- that's going
6 to be the LFC report, please, Ms. Tripp.

7 BY MR. CLOUTIER:

8 Q. I'll tell you that the yellow highlighting
9 is stuff I've added to the exhibit. The other
10 highlighting was, I believe, as submitted.

11 And I think the first yellow
12 highlighting, which is a fair enough comment, is that
13 the Division is not particularly well-equipped to deal
14 with accounts payable issues with plugging
15 contractors.

16 And I want you to understand that I
17 agree it's a complicated area, and I'm going to ask
18 you some questions, and it's not by way of criticism,
19 it's just by way of fact. Okay?

20 A. That's fine. And I think if you'd like to
21 discuss that, I think there are some accounts payable
22 things that was not captured in this LFC report I can
23 elaborate on as far as our processes that we have
24 reached out later on and explained.

25 But if we'd like to talk about accounts

1 payable, I think if you'd like me to elaborate, I can
2 dive into that a little bit.

3 Q. Well, let me ask you some specific
4 questions, if I can, Mr. Powell. And then, if you
5 think your answers are pertinent to those questions,
6 please include, and truly responsive, please do so.

7 As I appreciate it, the Division has
8 been using, in the Permian Basin, contractors out of
9 the San Juan Basin and even out of Kansas to plug
10 wells. Is that --

11 A. So I don't know about out of Kansas. That
12 may have been one of our other contractors,
13 environmental or our methane monitoring.

14 But the plugging companies that the OCD
15 is utilizing, most of those are orientated, or at
16 least they were when the contract was acquired, out of
17 the San Juan Basin because they were who applied. I
18 don't believe any southeast part of New Mexico
19 plugging companies even applied to be a vendor in the
20 state.

21 Q. We requested invoices, and the Division
22 provided them. And I'd like to go through some
23 examples. Exhibit 45(a), if we can.

24 So do you see this Drake invoice? And I
25 believe it's dated June 20th.

1 A. Yes.

2 Q. Okay. And if we could scroll down to the
3 last entry.

4 MS. TRIPP: Just a second, you want 45(a),
5 Drew?

6 MR. CLOUTIER: That's what I have, yeah.

7 MS. TRIPP: Okay. Just a second.

8 MR. CLOUTIER: Thank you.

9 MS. TRIPP: I apologize. I have 45(b) ready
10 for the analysis.

11 MR. CLOUTIER: It's okay. Still (b), but
12 let's look at that. If we can go to the work ticket
13 on this B, please, Ms. Tripp, we'll just ask this
14 question?

15 I'm sorry about this. Just trying to
16 coordinate remotely and Ms. Tripp trying to make up
17 for my inadequacies at screen sharing.

18 BY MR. CLOUTIER:

19 Q. So you see that you're being charged here,
20 the Division's being charged, for overnight per diem,
21 which is a result of a charge incurred because this is
22 a Farmington-based operator plugging in the Cano unit
23 in Chaves County, correct?

24 A. Correct.

25 Q. And their ability for ten people for

1 overnight per diem --

2 A. That's what I see there, yeah.

3 Q. -- the Division?

4 MR. CLOUTIER: If we could go back to the
5 work ticket, please, Ms. Tripp.

6 BY MR. CLOUTIER:

7 Q. You understand that these work tickets are
8 part of the attachments to invoices? The operator
9 submits paperwork justifying the invoice?

10 A. Yes.

11 Q. And if we can get out to the number of
12 employees there. So you're being billed for work by
13 four employees, but paying per diem on ten, correct?

14 A. Yes. But I would please caution on that.
15 That's the number of employees specifically tied to a
16 rig. Without actually looking into a specific well
17 details, I don't know if there's a truck driver from
18 that company there. I don't know if there are
19 cementers included there. I don't know if there's a
20 welder included there. Those four employees are
21 typically tied to a rig.

22 If you look at our actual contract, the
23 rig requires a certain number of employees that's tied
24 to the rig. All I can speculate is the other ten may
25 be truck drivers, welders, cementers, those kind of

1 things.

2 Q. And I will just tell you, Mr. Powell, I
3 didn't see a work ticket listing anybody else other
4 than these four for that day.

5 A. I don't review these directly. Dating 2022,
6 I would have to go back and look at the specific or
7 get a request from the contractor to find out what
8 they actually did and why. Without that I would have
9 a hard time speculating what the other six people
10 were.

11 MR. CLOUTIER: Did we get to 4(a),
12 Ms. Tripp?

13 MS. TRIPP: Just a second, I will find it.

14 MR. CLOUTIER: June 20 invoice.

15 BY MR. CLOUTIER:

16 Q. Would it surprise you that on this June 20
17 invoice that that's the date of the invoice you were
18 being billed for work that supposedly was going to
19 occur on June 28?

20 A. That seems highly unusual, but I don't know
21 if that's planned wellhead fed off or those kind of
22 works and they would bill it, and then if it was
23 wrong, correct it. I don't know. I would have to
24 look. And I probably couldn't speculate here. I
25 don't know why they did that. I would have to look at

1 that specific occurrence and go back and see what
2 information I could provide.

3 MR. CLOUTIER: Do you have S, T and U ready,
4 Ms. Tripp?

5 MS. TRIPP: Yes. You should be seeing
6 45(s).

7 MR. CLOUTIER: Seeing nothing yet.

8 MS. TRIPP: Sorry, I'm not sharing the
9 screen. Do you now see 45(s)?

10 MR. CLOUTIER: Ms. Tripp, to the welder
11 mileage, please.

12 BY MR. CLOUTIER:

13 Q. So we've got at the Cano 49, we've got a
14 welder cut-off, four hours worth of work, 200 miles
15 driven, correct?

16 A. Yes.

17 Q. And same day for the 27, we've got a welder
18 for four hours, drilling five hours for a well in the
19 same unit, the Cano San Andres unit. The wells are in
20 the same general geographic area, correct?

21 A. Correct.

22 Q. Well, just east of Roswell, north of Highway
23 380. It's a discrete geographic area where this Cano
24 San Andres unit is, correct.

25 A. So I guess if my question -- I hate to ask

1 questions. But it seems like the question is, is why
2 are those both 200 when they're already in the field?
3 I would say it's probably vastly farther to drive out
4 of Farmington to down there than 200 miles.

5 My only thought is maybe they took the
6 mileage and split it between two wells, so they split
7 equal amounts to each well so they could spread that
8 drive mileage down instead of accumulating it all on
9 one bill. I don't know.

10 Q. Yeah. And actually this same welder appears
11 billed three different times for the same day for the
12 200 miles?

13 A. I don't know the mileage between Farmington
14 and in that well, but I would assume it's significant.

15 Q. Let's talk about your plugging regulation,
16 if you can, for a bit.

17 It's 19.15.25.10. You're familiar with
18 that regulation?

19 A. Yes.

20 Q. And it requires, among other things, that in
21 plugging, it's, quote, "...in a manner that
22 permanently confines all oil, gas and water in the
23 separate strata in which they're originally found"?

24 A. Correct. Yep.

25 Q. And it indicates that the operator, quote,

1 "...may accomplish this by using mud-laden fluid,
2 cement and plugs singularly or in combination as
3 approved by the Division"?

4 A. Correct.

5 Q. Is mud-laden fluid permissible plugging
6 practice currently under Division guidance?

7 A. So where mud-laden fluid was predominantly
8 used, and I believe it's still used in some wells, is
9 in between the cement plugs. So that is still
10 allowed, is to have the mud-laden fluid.

11 And the reason why that was in there is
12 if the casing or the cement ever deteriorated, that
13 there would be mud between those plugs, which also
14 would help with the cross flow.

15 Q. Where does the Division currently require
16 that plugs be placed in a well?

17 A. Generally or specifically? .

18 Q. Let's say Yeso well in southeast New Mexico.
19 It's not a test of every formation, but --

20 A. So we do have plugging guidance out. Any
21 individual formation must have a plug that covers the
22 inside of the casing and the outside of the casing.

23 If an operator circulated cement on the
24 outside, we only spot additional inside casing plugs.
25 We also spot anywhere where there's a DV tool, those

1 kind of things, where there has a higher potential of
2 potentially leaking in the future.

3 So it's mainly formation tops as they
4 come up. Each individual formation separated from
5 each other.

6 Q. Okay. And so -- and again, I'm promising
7 it's not a geology, but in a Yeso well, I would
8 normally expect there to be Grayburg and San Andres
9 and maybe even Yates above it and maybe some other
10 formations. Is that consistent with your recollection
11 of the geology?

12 A. That sounds correct. When I'm dealing with
13 southeast geology, I don't have it memorized. If you
14 want to talk northwest geology, I have that pretty
15 well memorized.

16 Q. And I want the record to be clear and you to
17 be clear. I'm not asking you to -- I'm not trying to
18 trick you. I'm just trying to get us in a
19 conversation?

20 A. Yeah, that sounds correct.

21 Q. So in that situation, let's say the inside
22 the casing was cemented in place and so an operator is
23 placing plugs, of course at the top of the Yeso
24 formation. Is that correct?

25 A. Sounds correct.

1 Q. Okay. That's the one they're producing
2 from in our --

3 A. Yes.

4 Q. -- hypothetical example and if the Grayburg
5 Formation occurs in that area, is there a plug on the
6 top of the Grayburg?

7 A. I would hypothetically say yes.

8 Q. Okay. And why is that, if the Grayburg is
9 not perforated?

10 A. Because casing and cement deteriorate over
11 time. So it's after we leave the well and casing
12 and/or cement and the well deteriorates, you don't
13 start getting cross-flow between that potential
14 deterioration and other potential deteriorations.
15 That's why we require each formation to be isolated
16 separately.

17 Q. And that answers my question. Thank you.

18 And then I would expect if there's
19 groundwater in the area, to be a plug set slightly
20 below the groundwater level; is that correct?

21 A. There could even be multiple groundwater
22 plugs if there's multiple groundwater formations.

23 Q. And that was going to be my follow-up
24 question, so you answered both of them in one. Thank
25 you.

1 Are you familiar that in 2024, January
2 1, 2024, the Division issued guidance indicating,
3 among other things, that after setting a plug with
4 cement, that the cure time of four to six hours needed
5 to be observed before the next plug is in?

6 A. Yeah, I'm familiar with that.

7 Q. What was the purpose of that?

8 A. So it was a standardized -- in my
9 understanding, that's industry standard. Six hours is
10 for neat cement, four hours is if they add 2 percent
11 KCl to the cement.

12 What we don't want an operator doing is
13 tagging early because we're, again, looking for that
14 solid plug at a formation top. If you tag early with
15 either cement or with wire line, specifically after
16 cement starts to set up, if you're then pushing into
17 that cement, you create a void inside of it with your
18 tubing before you get resistance, and then you come
19 out.

20 So now you've created a void that after
21 the cement starts setting up, it's not going to then
22 reconsolidate back down, too. So it's to make sure we
23 get a good tag and reduce the risk of then taking away
24 that perspective as a solid plug.

25 Q. And do you understand that this creates

1 downtime for the crew that's doing the plugging while
2 they're waiting for the curing to occur?

3 A. They could do other work around the well, I
4 guess. But theoretically, you're not doing anything
5 downwell during that time, right?

6 Q. And do you understand that that has driven
7 up the cost of plugging quite a bit with all these
8 events?

9 A. Frankly -- I heard that mentioned in this
10 rulemaking. I'm surprised it has because I bought
11 thought that was industry standard, API standard. If
12 that's not standard and it's curing faster, I'd like
13 to have that conversation.

14 But again, the goal is to not create a
15 void in the cement plug you just spent your time to
16 put in so you don't create another void that then you
17 have to replug again.

18 Q. And I'm not questioning the wisdom one way
19 or the other. That's beyond this lawyer's --

20 A. I would say if that's not what an operator
21 was doing and they were tagging early and creating
22 voids before that guidance came out, I'm glad we
23 created the guidance.

24 Q. And did you observe, at the beginning of
25 2024, that your plugging contractors charges went up

1 after this guidance was issued?

2 A. Again, I thought they were doing that
3 beforehand. But if they weren't, I'm glad we issued
4 the guidance. Because again, that -- I've been with
5 the Division for 19 and a half years. I can tell you
6 that's what is starting -- in 2011, I started
7 overseeing plugging in the San Juan basin and that was
8 always a requirement that I gave in the San Juan basin
9 because that was a requirement that was relayed to me
10 as industry standard.

11 MR. CLOUTIER: How am I doing on time, Madam
12 Hearing Officer?

13 HEARING OFFICER ORTH: You have 19 minutes.

14 MR. CLOUTIER: Okay. Good. I'm going to be
15 wrapped up early, I think.

16 BY MR. CLOUTIER:

17 Q. I want to talk about the data issue with
18 Mr. Garcia's testimony. You were present when he
19 testified?

20 A. I was.

21 Q. And you have offered a demonstrative, and I
22 think it's been admitted into evidence, and evidence
23 that corrects the number of wells that the 2024
24 production data would suggest would be affected by
25 this rulemaking, correct?

1 A. Correct.

2 Q. And you understand that Mr. Garcia's numbers
3 were presented for marginal wells and then no
4 beneficial use wells in a manner -- they were
5 calculated in a manner that was not consistent with
6 the definitions of those in this rulemaking, correct?

7 A. Correct.

8 Q. Mr. Garcia testified that you instructed him
9 to so present the data. Did you?

10 A. I did, and I'll explain that. I believe I
11 hit that in my direct last week.

12 But I had asked for Mr. Garcia to run
13 the number so we could show what was affected.
14 Unfortunately, I did not look at his slides before
15 they were put into the record. I don't think I'd even
16 seen the slides before his testimony.

17 One of the things that I think was
18 unclear in the direction that he was given, it says 90
19 days and 90 BOE, almost like they are two categories.
20 It might have been clearer if that was 90 days, which
21 only produced less than 90 days. That may have been
22 clearer.

23 I will say that WELC's scatterplot of
24 wells is what was intended when we wrote that and what
25 I gave numbers to in my surrebuttal.

1 Q. And you would agree that Mr. Garcia did not
2 talk about in his testimony, scatterplot, correct?

3 A. Absolutely.

4 Q. I want to be clear on my question. Did you
5 instruct Mr. Garcia to present the data in a manner
6 that was inconsistent with the definitions in the
7 rulemaking?

8 A. No. I would say all of our intent,
9 including Mr. Garcia's, was to present it in the
10 proper manner. It was unfortunate that it was not
11 what was intended.

12 Q. Did you hear that he testified that he was
13 so testifying as a, quote, warning shot, close quote,
14 to industry?

15 A. I think he used that verbiage. I think if
16 you were to remove the days, as suggested in my
17 rebuttal, that may be -- I think my numbers were
18 probably more consistent with his. But with the days
19 in there, I would say his is incorrect.

20 Q. Do you understand that had IPANM not brought
21 that fact to the Commission's attention, that the
22 Commission could have been relying on inaccurate
23 numbers when it was considering this rulemaking?

24 A. Definitely conflicting information, because
25 it looked like the OCD's information and WELC's

1 information were very different.

2 Q. Ms. Romero was very candid about how she
3 applied her definition of marginal well. Are you
4 aware of any other testimony or exhibit that the
5 Division submitted that represents itself as being
6 consistent with the definitions of the rulemaking that
7 is not?

8 A. Other than my "exclude" versus "include" in
9 my surrebuttal, I believe we caught it all. And I
10 apologize for those.

11 I think Ms. Romero was very explicit on
12 how she did it. I think Mr. Wrinkle's, when he's
13 talking marginal, he was talking more economics and
14 not necessarily the definition.

15 Q. That's a fair caveat I should have included,
16 Mr. Wrinkle, because he was quite candid about how he
17 did it, too.

18 A. Other than that, not that I'm aware of.

19 Q. Thank you. How does OCD go about issuing
20 requests for proposals for contractors to bid on
21 plugging work and reclamation work done using
22 reclamation fund monies?

23 A. So the way we're doing it now, first, all of
24 our vendors are on the statewide price agreement.
25 Those are prices that the vendors locked in on a

1 statewide price agreement.

2 After the LFC report came out, we looked
3 at that and understood that there may not be as much
4 clarity as we would like in that process. So we have
5 moved on any time we have a job coming up, we identify
6 that job, we send it out to the vendors to bid on that
7 job now and provide us a scope of work. We evaluate
8 their scope of work and their costs to evaluate which
9 vendor we then picked to perform that job.

10 Q. Okay. And did I understand your testimony
11 earlier to say that the financial assurance aspects of
12 the rulemaking would not apply to federal wells, but
13 the presumptions of non-beneficial use would?

14 A. That's correct. We don't bond federal
15 wells.

16 Q. If BLM's looking out after the federal
17 wells, why are you creating a presumption that's
18 applicable to federal wells in this rulemaking?

19 A. So, I would say us and BLM work together.
20 As in surrebuttal on that extreme case that we're
21 dealing with currently, that's a federal well that OCD
22 is moving out of using reclamation fund money to
23 respond to because of the government shutdown.

24 We've also worked with BLM on other
25 projects. OCD has been BLM's grant administrator for

1 plugging, I believe, a \$5 million grant. OCD has
2 always taken the stance that has authority,
3 co-authority on federal lands, working with BLM.

4 If we give a presumption of no
5 beneficial use on federal lands and the BLM has a plan
6 for that well, the operator would simply need to
7 provide us with that plan and we would more than
8 likely side with BLM.

9 Q. I'd like to conclude with two questions.
10 First one is, how does this rulemaking prevent
11 underground waste?

12 A. The way I hope it prevents underground waste
13 is requiring operators to utilize their wells
14 properly. A well that's out there not producing isn't
15 providing any tax or royalties to the State of Mexico,
16 versus a well that's operating 50 percent of the time
17 is providing tax and royalties to the state.

18 Q. And those taxes and royalties are beneficial
19 to the state?

20 A. Absolutely.

21 Q. How does the proposed rulemaking assist the
22 Commission in its duty of protecting correlative
23 rights?

24 A. Again, very similar. When you're looking at
25 correlative rights and mineral ownership, if an

1 operator is not properly utilizing those correlative
2 rights, getting them either to A, utilize them or plug
3 them so another operator can move in to utilize them,
4 I would say it's protecting correlative rights.

5 Q. Do you have an understanding that there are
6 interest owners besides the operator in any given
7 well?

8 A. Yes.

9 Q. And do you have the understanding that among
10 the working interest owners, for instance, if they're
11 not satisfied with what the operators are doing, they
12 can make their own proposals?

13 A. I don't deal with working interest owners a
14 lot in my side of it. I believe, like, State Land
15 Office does. I know there's been lawsuits where
16 working interest owners take over as the operator and
17 we have to transfer to those operators. But we
18 typically work with the registered operator with the
19 state -- or with the OCD, I should say.

20 Q. It's a fair enough comment. You don't hold
21 yourself out as having any expertise, for instance, in
22 joint operating agreements?

23 A. Correct.

24 Q. Let me follow up with things that came up in
25 our testimony and I didn't anticipate having the time.

1 So let me ask you, are you familiar with
2 the concept of constrained takeaway?

3 A. No, I'm not.

4 Q. Are you familiar with the fact that
5 gathering systems are sometimes shut down so that
6 producers and gas wells can't produce any gas?

7 A. I am familiar with that. I know on, say,
8 new wells, there's times where it takes time for
9 infrastructure to be built to the well. And I also
10 know there's times where, on existing wells, a
11 gathering company is having issues with corrosion,
12 those kind of things, where they have to shut down a
13 pipeline. And then it's evaluated whether they expend
14 the dollars to put in a new pipeline or they work with
15 the operator to then install new pipelines.

16 Q. And in this rulemaking, there's no exception
17 for an operator who can't meet, for instance, the 180
18 days if part of the reason for doing so in a 12-month
19 period is because they didn't have any outlet for
20 their gas production?

21 A. I think that's a very good point, but I also
22 think it's something to be careful about. Because,
23 again, it's a year plus. If it's changed to 30 days
24 from 90, it'll be 13 months or 15 months. If there's
25 a pipeline issue that extends past that, I have known

1 of operators that a pipeline was never extended to
2 their well. So as that well is sitting out there, if
3 that operator -- if that's an operator's entire
4 portfolio, that well may never be utilized again.

5 So that's where the high risk and the
6 bonding would come into play if there's no long-term
7 plan for that well or the operator can't work with the
8 pipeline takeaway to get a new pipeline connection in.
9 Sometimes it's a meter issue and all of that cost.
10 And I know there's times where a pipeline operator
11 will defer those costs to the operator to some extent.

12 Q. And you've mentioned, as far as the 13
13 months, would you agree, that bonding requirement
14 could kick in for an operator simply because a
15 Midstream company did not provide takeaway to the well
16 for a period of time?

17 A. And I would say not -- it wouldn't be
18 initial takeaway, but it would be prolonged takeaway.
19 Because most wells we're talking about are wells that
20 have been in production for long periods of time. So
21 there would have to be a reason why that takeaway was
22 then canceled, either a contract issue or an integrity
23 issue of the takeaway.

24 MR. CLOUTIER: All right. Mr. Powell, I
25 appreciate your time. Thank you for answering my

1 questions.

2 THE WITNESS: Thank you.

3 HEARING OFFICER ORTH: Thank you,
4 Mr. Cloutier. You've brought us very close to noon,
5 so let's take our lunch break until 1:00 p.m.

6 (Lunch recess held from 11:56 a.m.
7 to 1:00 p.m.)

8 HEARING OFFICER ORTH: We are back after a
9 lunch break and we'll return to Mr. Powell's
10 cross-examination.

11 Let's see, is Ms. Sayer with us? No?
12 Or Ms. Bradfute, perhaps on the platform. No?

13 All right. Mr. Rankin, do you have
14 questions of Mr. Powell.

15 MR. RANKIN: Thank you, Madam Hearing
16 Officer. I do.

17 CROSS-EXAMINATION

18 BY MR. RANKIN:

19 Q. Good afternoon, Mr. Powell. How are you
20 today?

21 A. Doing well.

22 Q. Good. Adam Rankin. I'm here representing
23 Oxy. And I just want to say at the outset, thank you
24 to the Division and yourself for engaging with Oxy
25 during the course of the lead-up to this rulemaking to

1 discuss some of the issues and take into consideration
2 some of Oxy's requests, appreciate it.

3 Obviously, we are weren't able to reach
4 agreement on everything, at least prior to the
5 rulemaking hearing. So that's where my focus is going
6 to be today, is on the areas we haven't yet reached
7 agreement.

8 In your testimony, in your written
9 direct testimony, I see statements about the
10 Division's support for certain aspects and different
11 specific provisions in the rule. And, for example,
12 I'm going to pull up on my screen here one
13 particular -- oh I got bumped off. One second.
14 And I got bumped up big time.

15 MR. RANKIN: Madam Hearing Officer, I have
16 to re-log on to the system. I apologize. Can you
17 give me just two minutes to do that.

18 HEARING OFFICER ORTH: All righty.

19 MR. RANKIN: I apologize. I didn't realize
20 I got bumped off. Actually, I'm okay. I'm back on.
21 All right. Good. Let's see, but it's not letting me
22 share just yet for some reason. It looks like I have
23 sharing authority, but it is not letting me share
24 Well, I'll try to work through this without my screen
25 and sharing ability.

1 BY MR. RANKIN:

2 Q. On page 4 of your direct testimony, line 6
3 to 8, I don't know if you have it in front of you, but
4 you state, "Essentially, OCD supports the requirement
5 for single-well financial assurance once wells reach
6 production threshold Where operators tend to plug and
7 abandon the well."

8 Did I read that correctly? Do you call
9 that from your testimony?

10 A. I do. I don't have it in front of me, but
11 I'll believe in your reading of it.

12 Q. And my understanding is that that statement
13 is the Division's support for the proposed new
14 marginal one-well financial assurance category in the
15 proposed rule, correct?

16 A. Yes.

17 Q. And let's see if I can get back on to
18 sharing again, because it's so much easier to share.
19 There we go.

20 And that's this provision under the
21 proposed Rule 19.15.8.9D Subpart (2), which requires
22 the proposed one-well financial assurance for marginal
23 wells, correct?

24 A. Correct.

25 Q. Now, this addresses one aspect of the

1 specific regulatory recommendations made by the LFC in
2 that LFC report that's Division Exhibit 18, correct?

3 A. I believe so.

4 Q. And that's the recommendation to provide for
5 a definition of marginal wells and then provide for
6 additional financial assurance for those wells,
7 correct?

8 A. Correct.

9 Q. But I don't see anywhere in your testimony,
10 in your written testimony or your rebuttal testimony,
11 where you say expressly that the Division supports
12 applicant's proposed creation of a new operator
13 financial assurance category that Mr. Peltz testified
14 about where operators with 15 percent or more marginal
15 wells and/or inactive wells in the portfolio are
16 required to pay \$150,000 financial assurance for each
17 of their marginal wells and/or inactive wells and each
18 of their active producing wells.

19 Do you say anywhere in your direct
20 testimony that you actually support that provision?

21 A. Well, one, the 15 percent I think originally
22 came from the OCD. I think I addressed it last week
23 when I was talking through some of the percentage
24 things, the general overview of that provision. I
25 think we were hoping, expecting some dialogue back and

1 forth about the 15 percent.

2 And where I specifically addressed this
3 as I was going through my direct was in my slides,
4 where I went through the rule section by section.

5 Q. Okay. I'll pull that up because I know
6 exactly what you're talking about, and I'll go to that
7 in just a moment.

8 Just for ease of reference, I'm going to
9 just refer to this category. And this is under
10 Subpart (3) in this rule here that I'm highlighting on
11 your screen, agree, where an operator with 15 percent
12 or more wells triggers the inclusion of all the other
13 wells that they operate under this one-well financial
14 assurance provision, correct?

15 A. Correct.

16 Q. So I'm just going to refer to that provision
17 going forward. I'm going to call it the "marginal
18 operator provision," okay?

19 A. Sounds good.

20 Q. So when I read your testimony carefully, I
21 see that you identify expressly three benefits that
22 arise from the proposed rule that address the problems
23 that you and the Division witnesses have identified in
24 your testimony. I'm going to just walk through those.
25 Okay? Go back to your direct on page 2.

1 And I've got them. Again, rainbow.
2 Okay? Because it's so much easier to track. Okay?
3 First one's in yellow. Okay?

4 "The proposed rule would increase
5 bonding for wells that are at or near the end of their
6 productive life cycle, at which point they generally
7 present a higher cost for plugging and remediation."

8 So this is the first benefit that you've
9 identified, and this is addressed by having the new
10 marginal well financial assurance category for
11 one-well financial assurance applicable to wells that
12 meet the marginal well criteria. Agree?

13 A. Yes.

14 Q. And again, this is for, as you testified,
15 wells that are at or near the end of their productive
16 life, correct?

17 A. Yes.

18 Q. And the second benefit that you've
19 identified here is in green. And that's, "The
20 proposed rule provides structure around temporarily
21 abandoned wells, allowing wells that have a reasonable
22 possibility of staying productive, a path to do so,"
23 but then also requiring if they're simply being -- you
24 know, delayed being plugged, then they're required to
25 do so in a more expedited fashion, correct?

1 A. Yes.

2 Q. And this concern or benefit is addressed by
3 the specific proposal to modify the rules around
4 temporary abandoned wells and to identify earlier in
5 that abandonment process wells that have no beneficial
6 use, creating a pathway for them to be plugged without
7 having to go through an NOV compliance process,
8 correct?

9 A. Correct.

10 Q. Okay. So those are two very specific,
11 targeted ways that the rules is designed to prevent
12 wells from being orphaned. Agree?

13 A. Yes.

14 Q. And then the third here, as the blue
15 provision states, that the new proposed rule provides
16 structure to improve OCD's ability to oversee the
17 transfer of wells in the higher risk category -- in
18 the higher risk category to companies that may have
19 compliance history issues or insufficient capital to
20 meet their plugging obligations, correct?

21 A. Yeah.

22 Q. And then this provision or this concern of
23 the Division is addressed by the registration and
24 certification provisions that are in the rule, right?

25 A. Yes.

1 Q. Now, these three benefits are the result of,
2 I would say, tell me if you agree, relatively narrow,
3 tailored, targeted provisions that are proposed to be
4 adopted in the proposed rule. Agreed?

5 A. Yes. They're related to provisions in the
6 rule.

7 Q. But I don't see anywhere here in your direct
8 or rebuttal where you expressly identify the benefit
9 of the purpose or endorse this marginal operator
10 category that we're talking about.

11 A. I don't know if I specifically endorse it in
12 my direct. It's been a day since I've looked at my
13 own testimony as whole. But I will say generally we
14 endorse it because we're the ones that proposed it.

15 Q. So if I go to your PowerPoint, you mentioned
16 that in your direct testimony slides, and this is, I
17 think, the slide you're referencing, slide 17 of your
18 Exhibit 15, you do point out there's this provision
19 that provides for the inclusion of these additional
20 wells if an operator has more than 15 percent in the
21 marginal well category, right?

22 A. Correct.

23 Q. Yeah, but again, in these notes, you just
24 say what it does, but you don't actually say that the
25 Division endorses it, right?

1 A. Yes.

2 Q. But you're telling me that the Division does
3 endorse the general approach of having this marginal
4 operator category?

5 A. Yeah. So as I explained in my direct
6 testimony, this was a portion we actually expected
7 dialogue back and forth from industry on, whether
8 15 percent is appropriate, 30 percent is appropriate.

9 What we see is, operators, when their
10 wells start failing, it's kind of a cascading effect
11 that they continue to fail. And at some point if we
12 can get bonding on all those wells, we reduce the
13 risk. Because once an operator reaches the point, as
14 we showed on the C-115 list, all other wells then
15 become our problems and not just the problem wells.

16 Q. So, now, talking about this provision, the
17 marginal operator provision, as we discussed, would
18 capture more than, as Mr. Purvis testified, and his
19 slides show that it would capture more than half the
20 state's oil and gas operators, forcing them to pay
21 one-well financial assurance not just for the marginal
22 wells, right, but for every other well that's active
23 and producing in their portfolio, agree?

24 A. Yes and no. I think there's some nuance to
25 that that I think was evident in the C-115. I would

1 say that if this well went in effect, it wouldn't be
2 half starting tomorrow that would apply to. Because,
3 as I showed on the C-115 list, there's 25 percent of
4 the operators in the state that are already inactive
5 and are not reporting production. So it may affect
6 15 percent, maybe another 25 percent of the operators.

7 Q. But we don't have analysis of what that
8 impact would be other than what Mr. Purvis presented,
9 correct?

10 A. You would have to do a review of our
11 Exhibit 16 data to see kind of what wells fell in
12 there and then count the operators.

13 Q. And same thing with Purvis, you have to do a
14 cross-check with Mr. Purvis' data and figure out what
15 those operators are, and that hasn't been done, right?

16 A. Not that I'm aware of.

17 Q. So all we know is that up to 51 percent of
18 the current operators in the state are going to be
19 impacted by this proposed rule, right?

20 A. Well, I'm thinking 25 percent of that
21 51 percent probably aren't going to pay for extra
22 bonding because they're not in compliance today. So
23 in that math, maybe 26 percent may incur additional
24 bonding.

25 Q. And you're saying that because that list on

1 the C-115, those operators are defunct, you're saying,
2 and they're not going to come back and pay for
3 additional bonding?

4 A. Unless they're intentionally not reporting
5 production for over a year.

6 Q. But I guess the bottom line, though, is that
7 51 percent of the operators, whether they pay or not,
8 are going to be impacted by this rule, correct?

9 A. Yes.

10 Q. So now, was it the Division's intention,
11 then, to have a rule that not only would it affect
12 51 percent of the operators, but it's going to affect
13 18 percent of wells?

14 And I can pull up Mr. Purvis' slide here
15 just so we can quickly see it, because it's always
16 helpful to see the actual numbers. But on its slide,
17 28 of this Exhibit 52, with 15 percent of the wells
18 incorporated into the rule, it would have an impact on
19 51 percent of the operators, 18 percent of all the
20 wells statewide, and 2.3 percent of the production.

21 Was it the Division's intent to have a
22 rule that would have such a wide-ranging impact beyond
23 what you identified and what we walked through as the
24 three specific, narrowly targeted benefits in the
25 rule?

1 A. I guess that number slightly surprises me,
2 that we have 50 percent -- or 18 percent of the wells
3 out there aren't even producing 50 percent of the
4 time. That was kind of a shocking statistic, that we
5 have that many wells not producing on a normal basis.

6 I didn't have a specific goal in mind
7 when we selected that. I think if you look at that
8 slide at the 30 percent, that's probably most of the
9 inactive well list that I provide, or the inactive
10 wells that I provided on the C-115.

11 Honestly, I expected to land somewhere
12 in between the 15 and 30 percent in discussions, but
13 those discussions didn't happen on that level. But I
14 was shocked that 18 percent of the wells in the state
15 weren't producing at least 50 percent of the time.

16 Q. And you were shocked because you hadn't done
17 that analysis to determine what the impact would be
18 prior to making that proposal, right?

19 A. Yeah. I would have never expected operators
20 were not producing one in five wells.

21 Q. So prior to this rule coming up with a
22 number of 15 percent that you proposed to applicants,
23 the Division didn't itself do an analysis to
24 evaluate -- and prior to receiving Mr. Purvis'
25 analysis in his testimony, did the Division do its own

1 analysis to determine what the potential impact would
2 be?

3 A. No, not on a percentage basis like this, no.
4 We pulled up the different thresholds in Exhibit 16,
5 went through the different thresholds, did some spot
6 checking of wells to see if it looked like they were
7 being produced regularly, looked at seeing if there
8 was issues with that and we didn't see any major
9 issues. If an operator was producing, again, that
10 1,000 barrels or 50 percent of the time, those wells
11 looked like they were being beneficially used, so
12 that's what we looked at, was mainly in Exhibit 16
13 when we were looking at that. But I didn't put
14 together any statistics or numbers.

15 Q. Just sort of a high level scoping
16 essentially.

17 A. Mm-hmm.

18 Q. Now, was the first time, then, that you saw
19 Mr. Purvis' analysis when he filed his testimony and
20 his study as part of this case?

21 A. It was.

22 Q. Did OCD do any kind of analysis to confirm
23 his evaluation of the potential impacts?

24 A. To be honest with you, I didn't even look at
25 the -- all the applicant's testimonies before this

1 Commission started, so I saw this live.

2 Q. We're keeping you pretty busy, aren't we?

3 A. And I have a day job on top of that.

4 Q. I know we are. I know we are. I send you
5 e-mails at least a couple times a week.

6 Now, did the Division then do any kind
7 of analysis to evaluate the potential impact of this
8 marginal operator approach on the wells and the
9 operators in the state?

10 A. Not a formal analysis, no.

11 Q. So none of the Division's witnesses,
12 including yourself, testified on the potential impacts
13 to operators' wells or production in the state that
14 might occur by adopting, as proposed, applicant's
15 proposed rulemaking, especially with respect to the
16 marginal well, the marginal operator provision, right?

17 A. So we didn't do an all-out analysis. I
18 looked at the numbers again. I looked at some of the
19 companies through other enforcement data. So these
20 numbers, again, 18 percent surprised me.

21 But getting to that 33 percent,
22 8 percent didn't surprise me a whole lot because of
23 enforcement I was doing in other places and numbers of
24 wells we were looking at there.

25 Q. Okay. And then also based on the scoping

1 you've done and to date, none of the Division's
2 witnesses, including yourself, testified to the
3 Commission whether the proposed rule and the marginal
4 well definition or the marginal operator provision
5 would prevent waste, correct?

6 A. I think I was actually asked that in my
7 testimony by IPANM shortly ago. And I believe it
8 would reduce waste if an operator was producing their
9 well 51 percent of the time instead of one day a year.

10 Q. But that's just a belief you have, right?
11 You haven't done any kind of study to evaluate whether
12 that's the case or whether the impacts as a result of
13 the financial assurance would actually overwhelm any
14 benefit that you believe may occur?

15 A. Well, I think that information is simply
16 available in Exhibit 16. And I believe that's in my
17 direct testimony. I believe there was 1,400 wells or
18 so that produced less than ten BOE in ten days in that
19 calendar year. So I would say those wells, if they
20 started producing, if they were capable of production,
21 that would increase tax and revenue to the state, and
22 those wells would be used beneficially.

23 Q. Sure. And then on the other hand, there may
24 be some operators out there who walk away, do not seek
25 to revamp or revitalize the wells, and then the

1 Division goes and unplugs them.

2 Even though maybe that reservoir has
3 remaining primary production capabilities, wouldn't
4 that potentially result in reduction in ultimate
5 recovery if the Division goes in and plugs wells that
6 otherwise would be capable of continuing production?

7 A. Again, with 51 percent of production days,
8 not just production, I means there's a lot of times
9 reservoirs may have producing quantities but the well
10 is no longer capable of producing. And then that's
11 the problem that we see when we get these abandoned
12 wells, is the wells have severe neglect, downhole
13 casing issues, stuck tubing, those kind of things.

14 And if the operators aren't paying to
15 bring those wells back on, then I don't think this
16 rule will change and I think it may -- they may leave
17 that well sooner, but I don't think it changes the
18 overall outcome that that well could get left.

19 Q. So in terms of evaluating the pros and cons,
20 the benefits and the adverse effect of this proposed
21 rule, the Division itself hasn't done any kind of
22 study to determine what the overall impact will be,
23 whether you can say, based on the study or analysis of
24 the data or what you think may occur, that there's
25 actually going to be as a result of implementing this

1 rule as proposed?

2 A. Well, again, we don't make operator
3 decisions. And I would say why we didn't do a
4 specific study to what you asked, Exhibit 16 is an
5 entire year of production for the entire state, and we
6 did look at that extensively.

7 Q. Okay. So we know you looked at one aspect
8 of the potential impact, but the other aspect, what
9 the effect of the financial assurance might be on
10 operators and whether it would cause premature
11 plugging has not -- that aspect of the potential has
12 not been evaluated by the Division, correct?

13 A. So that level of data is actually what we
14 expected industry to bring, because we don't have
15 every company's credit worthiness. We don't have all
16 of their financial information and know what they can
17 and can't do. We don't know what their long-term
18 plans are on each of these wells. That information,
19 based on the data that we had, we set a standard, but
20 we don't have their individual company's information
21 on credit worthiness.

22 That's part of the reason why that on
23 transfers, those kind of things, we can ask for that
24 in this proposed rule, is to be able to get to some of
25 that as needed.

1 Or if a presumption of no beneficial use
2 is made, the operators can bring some of that data in
3 their presumption of no beneficial use for evaluation.
4 As we open those doors for operators to bring that
5 data to us to show us what's going on with those
6 wells.

7 Q. So as we sit here today, as the Commission
8 is considering the proposed rule, the Commission has
9 not yet been presented by applicants or the Division
10 with a comprehensive analysis assessing whether or not
11 the proposed rule would result in waste. Agreed?

12 A. I think there's general understanding what
13 may happen. But as far as company-specific
14 information, I don't think anybody that's testified up
15 till now has been able to have that information
16 because that's information held by the company.

17 Q. Even on a more general basis, even not on a
18 company-specific basis, what the potential impact
19 would be on production statewide as a result of the
20 additional financial burdens imposed on the industry
21 overall. Right, we don't have that analysis currently
22 before the Commission?

23 A. I think if industry wants that on a
24 production statewide, they can pull it out of 16,
25 Exhibit 16, because it's all there.

1 When we looked, again, we looked -- it
2 includes an entire year's worth of production. It
3 includes an entire year's worth of days produced for
4 each well. I think the data is there if somebody
5 wants to do that study.

6 Q. So, you heard the testimony from applicants
7 to engineering witnesses, Mr. Purvis and
8 Mr. Alexander, and they testified that they had
9 prepared no study or analysis addressing whether the
10 proposed rule would prevent waste or protect
11 correlative rights. Agree?

12 A. I believe there was no extensive study in
13 that specific realm, no.

14 Q. And because they had not, they were unable
15 to testify that the proposed rule would prevent waste
16 or protect relative rights. Agree?

17 A. I believe so.

18 Q. And none of the witnesses, including
19 yourself, have prepared an analysis that will allow
20 the Division to draw those conclusions based on actual
21 data. Agree?

22 A. I don't agree, because I think on actual
23 data, we presented that in Exhibit 16. I think the
24 new list that I provided on the number of wells plus
25 the C-115, I think you can calculate roughly how many

1 wells that is. If you wanted to look and quantify
2 that, I think the data is there if you'd like to do
3 that. But I believe the data is there and has been
4 presented.

5 Q. But in terms of then -- I mean, so you're
6 saying that you think you can draw the data out from
7 the database that was provided, but that analysis
8 hasn't yet been done or presented, correct?

9 A. Well, the information's been presented, but
10 an analysis in the scope that you're talking has not
11 been done.

12 Q. All right. Now moving back to Mr. Purvis'
13 testimony, we know, based on Mr. Purvis' testimony,
14 that the 15 percent marginal well threshold proposed
15 under the rule for the new marginal operator category
16 is going to impact 51 percent of the operators, just
17 without consideration about whether you think they're
18 going to actually pay or not pay or whether to fund or
19 not fund. Just based on a company number basis,
20 51 percent of the state's operators are going to be
21 drawn within that scope of that marginal operator
22 provision, and at least 2.3 percent of the state's
23 production, which is about 17 million barrels, based
24 on 2020 for production data. Do you agree? Do we
25 recall that testimony from Mr. Purvis?

1 A. I do. And I'm hoping actually it's not that
2 high, because if I remember correctly the provisions
3 of the rule give three years for that to take effect.
4 So operators have three years to work with that unless
5 they transfer wells. And I would hope in those three
6 years, they increase their productive standing.

7 Q. So in your surrebuttal testimony, you were
8 referring -- I think this is going to be Division
9 Exhibit 32, I think, where you've pulled the filter
10 from the -- I think it's revised Exhibit 16, correct?
11 Is that right?

12 A. I believe so.

13 Q. Okay. And I think I heard you say that the
14 impact of the proposed rule would be only to 3,494
15 wells.

16 A. I believe -- you would have to pull -- oh,
17 you've got it up. The 3,494 is a total of both of the
18 columns above and does not include inactive. So that
19 would be yes.

20 Q. Okay. And that also doesn't include the
21 additional active producing wells that will be pulled
22 in under the marginal operator provision for any
23 operator that has more than 15 percent wells that
24 qualifies as marginal, correct?

25 A. Correct.

1 Q. Okay. So it's not totally accurate to say
2 that this number is going to reflect the total extent
3 of the wells impacted by the rule. Agree?

4 A. Well, I think this is the number of wells
5 that are impacted based on a volumetric basis, and if
6 the operators correct these 3,494 wells, it won't
7 affect the others.

8 Q. Sure. But nevertheless, based on the
9 language of the rule as proposed, if it were to be
10 implemented today, this number does not incorporate
11 those additional wells that will be pulled in under
12 the marginal operator provision. Agree?

13 A. Correct.

14 Q. Okay. Now, going back to that same
15 discussion here that we're having about marginal well,
16 the marginal operator category, I didn't see anywhere
17 in the Division's testimony, including yourself, where
18 there's been an analysis of any kind showing that 51
19 percent of the state's operators are actually at risk
20 of orphaning their wells, any wells that they operate,
21 that qualifies as marginal wells under the proposed
22 rule.

23 A. Again, I don't know if 51 percent are going
24 to be at risk by the time it goes into effect. I
25 don't know their financial standing. I don't know if

1 26 percent of the operators in the state don't have
2 financial standing to cover their wells.

3 If they continue to operate the way they
4 are, if they don't have that financial standing, they
5 may be heading where the other 25 percent are. And
6 that would be an indicator.

7 Q. And I think I heard you say in response to
8 one of my earlier questions that what you had expected
9 to see was something between 30 percent, 50 percent,
10 more along the lines of the number of operators that
11 showed up on that C-115 list. Agree?

12 A. No. I expected it to be between the 15 and
13 30 percent as far as numbers of wells. Because I was
14 surprised the 30 percent was so in line with the no
15 production, that those wells are likely not properly
16 evaluated as far as company growth because it's
17 already there. So it wouldn't pick up very many
18 additional companies that are failing; it more
19 identified those companies that already failed.

20 Q. So the 30 percent threshold for the marginal
21 operator category would be more targeted towards the
22 operators and wells that you think are most at risk
23 for being orphaned; is that fair to say?

24 A. So that's what I was trying to say. Maybe I
25 didn't do it very eloquently. I think after seeing

1 the numbers and then seeing the C-115 numbers, it's
2 not showing what's at risk, it's showing what's
3 already failed. So the proper number may be somewhere
4 in between there.

5 Q. But we don't know, based on -- because the
6 Division hasn't done that analysis, we don't know what
7 that that is right now, correct?

8 A. Well, we know the number that's already
9 failed. And those were the numbers I showed earlier.

10 Q. On the C-115 list?

11 A. On the C-115 list.

12 Q. That C-115 list, all we know is that those
13 operators haven't been reporting production. And that
14 happens sometimes. I have experience, right?
15 Sometimes operators think that a consultant is filing
16 the C-115s and they're not actually, and then there's
17 a correction that's made and those C-115s get filed.
18 And it's not because the well isn't producing, but
19 it's because a third-party consultant may not be
20 filing those production reports?

21 A. So those production reports are due 45 days
22 after the end of the month. Those operators haven't
23 reported any production since August of 2024. That
24 would have been an extreme failing. And following the
25 NOV statutes that are in place of \$200,000 per well,

1 or per violation cap, each one of those wells would
2 more than likely hit that cap. And then you're
3 talking those violations set on what was it, 3000
4 wells or so? All of them could be potentially at that
5 cap. So that would be a big oops.

6 Q. It would be a big oops. But nevertheless,
7 we don't know exactly the reason for why those
8 production reports aren't being made, so we?

9 A. All I can say is that's a major failing on a
10 company because that's one of the most fundamental
11 things when it comes to being an operator, is properly
12 reporting your production.

13 Q. So back to my question about the 51 percent.
14 Somewhere between 51 percent of operators and some
15 lower number may be more appropriate. Because you
16 agree with me that the actual number of operators with
17 wells at risk of being orphaned is something less than
18 51 percent of operators. Agree?

19 A. I agree. And that's probably something over
20 25 percent.

21 Q. So you agree also that there's been no
22 steady analysis presented to the Commission showing
23 that increasing the marginal well threshold from
24 15 percent to 20 percent would prevent waste. Agree?

25 A. Agree. By no parties that are involved in

1 this case.

2 Q. Same thing for a 25 percent threshold,
3 right? There's no analysis showing that a 25 percent
4 threshold is going to prevent waste.

5 A. Well, I think the 25 percent threshold I
6 already showed was already out of compliance. But I
7 would consider all of that waste if there's no
8 production.

9 Q. So, the fact is, we don't know how high the
10 Division would need to go to set a threshold for
11 marginal wells to know that the rule is going to
12 actually prevent waste?

13 A. I think it's fair to say it's somewhere in
14 between there and it's up to the Commission on what
15 they choose to pick based off the data that was given.

16 Q. Now, looking at Mr. Purvis' discussion about
17 the 15 percent threshold, so he testified that he
18 believed the impact was going to be -- I believe he
19 used the word at least one time "minute," but he could
20 not say what portion of the 2.3 percent of production
21 17 million barrels of oil in 2024 production would be
22 lost. Do you recall that discussion?

23 A. Vaguely.

24 Q. Okay. Do you agree with me that he did not
25 do an analysis and he couldn't say What portion of

1 that affected or impacted production might be lost as
2 a result of the implementation of this rule as
3 proposed?

4 A. I would agree with that. And similar to
5 Mr. Purvis, I couldn't tell you either, because that
6 would be trying to anticipate what operators are going
7 to do with their own production.

8 Q. Right. So we don't know what the potential
9 impacts going to be?

10 A. It could increase production.

11 Q. And how would that occur? Do you think by
12 incentivizing operators to go out and stimulate their
13 wells?

14 A. Or just produce them. Again, it falls on
15 this list if they have below 180 days of production.
16 If they just produce their wells, that production may
17 go up.

18 Q. Isn't part of the incentive of the rule to
19 encourage operators to plug wells?

20 A. Plug the wells that need to be plugged that
21 are mechanically no longer available to operate. But
22 if an operator can produce it, I think there's also a
23 fair incentive that they produce it.

24 Q. Again, there's been no analysis to discern
25 what the ultimate impact is going to be on the rule,

1 whether it's going to increase production or cause
2 waste, right?

3 A. Again, I don't control an operator's
4 business on what they choose to do, so I don't think
5 you can do that study.

6 Q. So, nevertheless, no study has been done,
7 right? No analysis.

8 MR. TREMAINE: That's been answered, I think
9 that's the fifth time.

10 HEARING OFFICER ORTH: It has. Mr. Rankin,
11 please move on.

12 BY MR. RANKIN:

13 Q. All right. So, but what we do know from
14 Mr. Purvis, is that using a 30 percent threshold,
15 instead of 15 percent would impact only 33 percent of
16 operators, correct?

17 A. Yes.

18 Q. Okay. And that would be a decrease of about
19 18 percent in the number of operators impacted by the
20 proposed rule, correct?

21 A. Correct.

22 Q. And that 30 percent threshold would impact
23 only about .6 percent of statewide production, I
24 agree.

25 A. Theoretically, yes.

1 Q. According to Mr. Purvis' analysis, right?

2 A. Yes.

3 Q. Okay. So, if I were to go back to the 2024
4 production numbers that I have, that I ran through
5 with Mr. Purvis. And when I was discussing with
6 Mr. Purvis, we did the calculation for the total oil
7 production in 2024 multiplied by 23 percent, which
8 represents the 15 percent threshold. We got 17
9 million barrels, and then we calculated that that
10 value is about 1 billion bucks, okay, based on the
11 production from 2024.

12 And I go back to his screen. If I look
13 at 30 percent, which is about 0.6 percent production,
14 that gives me about 4 million barrels impacted based
15 on 2024 production. Do you agree with that
16 calculation?

17 A. I agree that that's what you did in your
18 calculation.

19 Q. And you agree that using that impact
20 analysis from Mr. Purvis, that that would be the
21 estimated impact using 2024 production?

22 A. Potentially, yes.

23 Q. Again, based on Mr. Purvis' analysis, right?

24 A. Well, again, I don't know that we can say
25 it's going to fully cost the state that .6 percent

1 because of what operators do. They could always
2 choose to operate their wells more. My understanding,
3 based on prior OCD administrations, when OCD first
4 took the inactive well list prior to me starting, but
5 working with somebody that actually testified in that
6 rule, production in the state actually increased after
7 the first inactive well rule went into place.

8 Q. So then if I do the same analysis I did with
9 Mr. Purvis and looked at the value of that production,
10 multiply it using the same value of \$60 per barrel,
11 it's about \$266 million. Again, just doing the same
12 analysis I did with Mr. Purvis, but using the
13 30 percent threshold analysis that he conducted. Do
14 you agree with that calculation? It's the same
15 calculation, but using his different numbers for the
16 30 percent threshold.

17 A. Again, working with operators in the past,
18 I'd say your calculation is correct. But if it was
19 that lucrative, I think more operators would produce
20 more.

21 Q. So I understand that that's your view.
22 That's the Division's view on how it may turn out.
23 Correct?

24 A. Well, I would say that's most businesses'
25 view, is to make money, and if they think they can

1 make money, they will make money.

2 Q. So if I look at the potential impact and go
3 back again, I'm just keeping those numbers in mind,
4 increasing the threshold to 30 percent on marginal
5 operators and increasing the threshold to 30 percent
6 from 15 percent would approximately reduce the
7 potential impact on production by about one-quarter.
8 Is that about right?

9 A. I think I've answered this. I don't know
10 that I fully agree because I don't know what an
11 operator is going to.

12 Q. But again, just based on Mr. Purvis'
13 analysis, right?

14 A. That's what Mr. Purvis' analysis shows.

15 Q. Same thing with the dollar figures, right?
16 It would reduce the potential impact by about --

17 MS. FOX: Objection. He's misstating
18 Mr. Purvis' testimony, which was that those numbers
19 reflect a ceiling.

20 HEARING OFFICER ORTH: Right. Mr. Rankin.

21 MR. RANKIN: Well, the record stands for
22 itself. I mean, I think that was the potential
23 impact, the ceiling, the biggest impact it could
24 have. I don't disagree.

25 BY MR. RANKIN:

1 Q. So the potential impact would be up to 17
2 million at 15 percent threshold, up to 4.4 million for
3 a 30 percent threshold; is that fair?

4 A. I think you had Mr. Purvis do the math.
5 You're asking me my opinion. I don't know that I
6 agree with that testimony. And that's what I'm trying
7 to explain.

8 Q. Very good. And you don't agree with it just
9 based on Exhibit 16, then, on Division's Exhibit 16.

10 A. I'm sure that numbers are right, but as far
11 as Exhibit 16 doesn't say how the operators are going
12 to respond to this rule.

13 Q. Right. And that's the issue, I guess.
14 That's the question. Or what wells may have to be
15 shut in or what may not have to be shut in? We don't
16 know?

17 A. Or what wells are even capable of production
18 or not capable of production.

19 Q. But let me say it this way. You would agree
20 with me that increasing the threshold of 30 percent
21 would have less of an impact on operators and the
22 production in the state. Would you agree?

23 A. I do.

24 Q. And so here, considering the impact of this
25 rule, wouldn't you agree that it might be prudent,

1 when starting out with a new rule, that for the first
2 time proposing to prohibit operators from using
3 statewide blanket bond that's mandated by statute
4 under our view and forcing them to pay \$150,000 in
5 financial assurance for every well they operate, and
6 then not having done any real deep analysis to
7 determine whether the rule will cause waste or
8 imperative rights, don't you think it's maybe at least
9 prudent to start on the lower end of the potential
10 impact?

11 A. Again, I think I explained I actually expect
12 this to be a negotiating factor back and forth. And
13 30 percent may be more prudent. We also expected
14 operators to need some time to get to that point of
15 evaluating their wells while in production.

16 That's why the caveat of the up-bonding
17 not even going into place for three years is in there,
18 because it's going to take some time to properly
19 identify, digest and move forward.

20 If you're asking if I'm okay with the
21 30 percent, I was looking anywhere between 15 and
22 30 percent as a gut reaction. The C-115 that I showed
23 earlier, it may be a little less than 30 percent, but
24 I was really looking at between 15 and 30 percent.

25 Q. And then in addition to looking at, you

1 know, reducing potentially the marginal well threshold
2 to reduce the potential impact when we're uncertain
3 about what it's going to be, another way to also lower
4 the impact would be to reduce the production portion
5 of the definition for marginal well from 1,000 barrels
6 of oil equivalent to 750 barrels of oil equivalent.
7 Agree?

8 A. I haven't run the numbers, but that would be
9 in line with the LFC. And if I remember correctly,
10 when we looked at those numbers there's not a big
11 difference between those two.

12 Q. And, in fact, if I go to Mr. Purvis' slides
13 where he does an analysis that incorporates his
14 logarithmic scale over here, if I look at where a 2
15 BOE would fall, this is for the Permian Basin, if I
16 look at where the 2 BOE would fall, that would capture
17 up to the 25th percentile of wells in production,
18 wouldn't it, that he identifies as being most at risk?

19 A. So I'm not a hundred percent familiar with
20 that graph, but that seems to be roughly correct.

21 HEARING OFFICER ORTH: Mr. Rankin, five
22 minutes.

23 MR. RANKIN: Thank you very much.

24 BY MR. RANKIN:

25 Q. And if I look at the same figure he did for

1 the San Juan Basin, it's the same thing, 2 BOE would
2 capture up to the 25 percent of the percentile of the
3 wells and production that he identified as being most
4 at risk for orphan wells, right?

5 A. Correct.

6 Q. So if the Commission were to play it safe
7 and adopt a go-slow approach using a lower value for
8 the marginal well definition, 750 BOE, and 30 percent
9 for the marginal well threshold, doesn't the rule
10 still have the presumption of no beneficial use that
11 would function as a safety net to capture any wells
12 that are identified specifically as being imminent
13 risk of being orphaned?

14 A. Yes.

15 Q. Okay. And doesn't that provision
16 effectively provide a fail-safe for the Division to
17 identify any individual wells that are at risk of
18 being orphaned?

19 A. I believe so.

20 Q. And that's a more targeted approach. Agree?

21 A. Yeah. It's just an alternative. But I see
22 where you're going.

23 Q. I'm not going to have time to get through
24 all the other aspects that I lined out for you,
25 Mr. Powell, I don't think. But I'll see how far I can

1 get in a few minutes I have left.

2 Let me ask you about the TA status. As
3 proposed, the rule limits the TA or temporary benefit
4 status to a period not to exceed eight years based on
5 a maximum initial TA period of five years and a
6 one-time extension of up to two years. Is that your
7 understanding?

8 A. Yes.

9 Q. And OCD generally supports that provision as
10 proposed, or are you open to modifications based on
11 the testimony?

12 A. I think I already answered this with NMOGA's
13 counsel, that we're open as long as there's firm plans
14 built into that.

15 Q. Now, what about hearings? The rule proposes
16 that each extension of a TA be required to go to a
17 hearing before a Division examiner. Based on the
18 Division's current docket capacity and pressures, in
19 your opinion, does it make sense to require those
20 extensions to go to hearing, or is it something the
21 Division can handle administratively?

22 A. I think the first five years, obviously, I
23 think administratively is sufficient. After that, if
24 there was a hearing and an operator brought a 15-year
25 plan, or whatever it was, to the OCD Division hearing,

1 I think that'd be pertinent to give an entire plan and
2 lay out criteria in that. I think testing should be
3 at a five-year interval at the most to ensure wells
4 aren't degrading.

5 But I think if you went to one hearing
6 and laid out an entire plan of development for a set
7 of wells and you're meeting those criteria, I don't
8 see why you would have to keep continue going back to
9 hearing.

10 Q. And let me ask you this, then, on the
11 hearing question, because it's not identified in the
12 in the application or in the proposed rule, I don't
13 think. Who would be given notice of an application
14 for an extension.

15 A. Boy, it's been a long time since I've looked
16 at those provisions in the rule, so I wouldn't opine
17 on that.

18 Q. So if it's not clear in the rule and it's
19 not clear who would be required to get notice, how is
20 the Commission to determine --

21 MS. FOX: Objection misstates the evidence.
22 He didn't say that the rule was unclear. He said he
23 didn't recall it.

24 HEARING OFFICER ORTH: That's right.

25 BY MR. RANKIN:

1 Q. So, Mr. Powell, you don't recall what the
2 rule provides, but you don't know one way or the other
3 whether the rule provides or specifies who would get
4 notice under a TA extension request?

5 A. That's one of the few rules I don't have
6 memorized.

7 Q. Okay. Would it surprise you that the rule
8 as proposed doesn't actually identify who's required
9 to get notice?

10 A. I don't know.

11 Q. Okay. And do you recommend that the
12 Division will authorize or the Commission will
13 authorize parties that don't have standing to
14 intervene in a TA extension case?

15 A. Not knowing the rule, I don't want to
16 recommend what that would be to the Commission.

17 Q. But you're not clear yourself, based on the
18 rules proposed, who would be required notice?

19 A. I'm sure the rule is very clear, but I'm
20 not -- I didn't prepare for that number testimony.

21 HEARING OFFICER ORTH: Please wrap up,
22 Mr. Rankin.

23 MR. RANKIN: Ms. Officer, you know, I do
24 have some more questions to walk through. I wasn't
25 able to get through them all. If possible, I would

1 ask for just a short extension, give me another 10 to
2 15 minutes to get through my questions.

3 HEARING OFFICER ORTH: So I didn't offer
4 that to any of the other examiners, so I would feel
5 funny about offering it to you.

6 MR. RANKIN: I didn't ask for it either,
7 but, you know, just I'll make the request. I don't
8 want to defer. If people think that my questioning
9 is not, you know, helpful, then I'm happy to hold off
10 and then pass the witness.

11 HEARING OFFICER ORTH: Thank you so much. I
12 think to the extent that commissioners need more
13 information through cross-examination, they're going
14 to do that.

15 Let's see, Mr Maxwell, do you have
16 questions of Mr Powell?

17 MR. MAXWELL: No questions for Mr. Powell.

18 HEARING OFFICER ORTH: Thank you.
19 I don't know if Ms. Nanasi is on the
20 platform.

21 Mr. Moore, do you have questions of
22 Mr. Powell?

23 MR. MOORE: I do have a few questions.
24 Thank you, Madam Hearing Examiner.

25

1 CROSS-EXAMINATION

2 BY MR. MOORE:

3 Q. Good afternoon. Mr. Powell. My name is
4 Richard Moore. I represent the Commissioner of Public
5 Lands and the State Land Office in this proceeding.
6 Thank you for your testimony this afternoon. I just
7 have a handful of questions about the financial
8 assurance required to be provided to the to the OCD.

9 Can the State Land Office draw on
10 financial assurance provided to the OCD if an operator
11 has failed to properly plug and abandon a well on
12 state trust land?

13 A. So the State Land Office cannot draw that
14 directly. We've done work in coordination with the
15 State Land Office, but State Land Office wouldn't have
16 access to that, to my knowledge.

17 Q. Can the State Land Office cannot draw on the
18 financial assurance provided to the OCD if there's
19 surface work or remediation that is required at a well
20 site that is on state trust land?

21 A. That would be a similar answer, that I don't
22 believe the State Land Office could draw that
23 directly.

24 Q. Thank you. So then, based on those answers,
25 do you agree that for the State Land Office to be in

1 the position to be able to directly access financial
2 assurance to plug wells or address contamination or
3 conduct other surface work on state trust land, it
4 would need to require its own financial assurance
5 separate from that provided to the OCD?

6 A. I think there could be some overlap between
7 what State Land Office and OCD requires regarding some
8 contamination and surface reclamation. But I believe
9 there's also other reclamation that state land has a
10 surface management agency that oversees that OCD would
11 not oversee. So if a State Land Office needed bonding
12 for that or something outside of OCD's scope, they
13 would need to acquire their own.

14 Q. And are you aware of how many wells the
15 State Land Office has forced to be plugged under its
16 accountability and enforcement program?

17 A. I am not.

18 MR. MOORE: I believe those are all the
19 questions I have for you Mr. Powell, thank you for
20 your testimony.

21 THE WITNESS: Thank you.

22 HEARING OFFICER ORTH: Thank you, Mr. Moore.

23 Ms. Fox, do you have questions,
24 Mr. Powell?

25 MS. FOX: Ms. Hearing Officer, I have a few,

1 thank you.

2 CROSS-EXAMINATION

3 BY MS. FOX:

4 Q. Good afternoon, Mr. Powell. My name is
5 Tannis Fox. I'm a lawyer with the Western
6 Environmental Law Center and I represent applicants in
7 this proceeding. Thank you very much for your
8 testimony.

9 You testified that you wish you would
10 have termed the term "marginal well" differently in
11 your proposal. And do you have another term that you
12 would prefer to use, like low producing well? Or you
13 mentioned in your testimony this morning at-risk wells
14 for plugging. Do you have another term?

15 A. I didn't. I didn't brainstorm a term since
16 then, but I think I would just stand that marginal is
17 used in lots of different ways.

18 Q. In 19.15.25.8, which is the Commission rule
19 having to do with wells being inactive for 12 months,
20 needing to either be plugged and abandoned or go into
21 TA status, are you familiar with that rule?

22 A. I am.

23 Q. And applicants and OCD proposed to change
24 the time period within which a well must be P&A'd or
25 to into TA from 90 to 30 days, correct?

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1 A. That is correct.

2 Q. And I believe you gave testimony on Friday
3 that an operator has the 12 months and the 30 days to
4 plan for what it's going to do with that well,
5 correct?

6 A. Correct.

7 Q. Under the rules right now, if an operator
8 chooses to P&A its well, are there circumstances under
9 which an operator is going to P&A its well and that
10 work takes more than 90 days?

11 A. I think if an operator is on site plugging
12 the wells, there is a potential that it takes longer
13 than the 30 days. I don't know if it's taken 90, but
14 I think we've had a few that have gone over 30.

15 Q. And if an operator needed more than 30 days
16 to P&A its well based on good cause, would OCD have
17 the authority to grant that extension?

18 A. I don't know if we would grant an extension,
19 but I think we could use our discretion to allow
20 working with the operator. Usually if an operator is
21 actively trying to comply with something, we don't
22 pursue them for enforcement action.

23 Q. And has that happened in the past with
24 regard to this provision, when an operator is
25 attempting to P&A well?

1 A. I would say most of the wells in the ACOIs
2 are some of that intent, where we're giving operators
3 longer than the 90 days to work through a plugging or
4 a compliance list.

5 Q. And same sort of question with regard to
6 presumptions of no-beneficial-use provision in
7 proposed 19.15.25.9. Under that provision, operators
8 have 30 days to rebut an administrative -- the
9 preliminary administrative determination of no
10 beneficial use. If an operator needed additional time
11 beyond the 30 days and had good cause, does what OCD
12 grant that extension?

13 A. I would say as long as we're going back and
14 forth, we probably wouldn't enter in a final
15 determination until we've gotten all the information
16 we need.

17 Q. Turning to the time period within which
18 applicants in OCD proposed that a well be plugged
19 instead of stay in TA status, you testified something
20 along the lines of if an operator made a showing that
21 it had a plan to use a well, you would be open to an
22 extension, something like that?

23 A. Yeah. So if my memory serves me, I believe
24 there's been one operator that I can remember offhand
25 that came with a proposal similar to that. It was

1 actually Oxy, where they were planning on doing a CO2
2 EOR. They came in and, based on building
3 infrastructure for it, based on doing meeting specific
4 thresholds, they were asking to extend TAs based on
5 that plan. And that was a very specific plan, very
6 specific deadlines, thresholds, and it made sense in
7 that case.

8 Q. Did you either hear Mr. Alexander's
9 testimony on the principles that he would apply for an
10 extension or read his principles in his rebuttal
11 testimony?

12 A. I don't remember reading his principles in
13 his rebuttal, but I did hear his testimony. And I
14 think we're very similar in what we're looking at
15 there.

16 Q. Mr. Alexander testified that he would be
17 agreeable to that type of an extension or exception if
18 the exception were limited in scope, say to EOR, as
19 one example, limited in time, subject to OCD periodic
20 review, based on sound engineering, technical,
21 economic and administrative information, not based on
22 guesswork, hunches, speculation or the like, and that
23 any such language would have to be carefully crafted
24 to avoid any kind of loophole leading to abuse.

25 Do you agree with all those principles?

1 A. I do and I believe that's something that
2 should be presented at the end of the first five
3 years, because at that point the operators had five
4 years to make an evaluation of that well to determine
5 what the future of that well is.

6 Q. Industry has objected to the definition that
7 OCD and applicants propose with respect to beneficial
8 purposes and beneficial use and specifically object to
9 the terminology prohibiting or stating that beneficial
10 use does not include speculation? Are you familiar
11 with that testimony, or objection?

12 A. I am, and I believe I addressed that
13 earlier.

14 Q. Did you ever read or were you present for
15 Mr. Purvis' testimony with respect to sort of a rubric
16 that could be used to assess speculation based on the
17 Society of Petroleum Engineers manual on the use of
18 reserves, what can support the category of reserves
19 and how speculative and how certain they are to be
20 economic.

21 A. I don't remember all the details of that
22 testimony. I'm sure I heard it. I've been listening
23 since it started. But I do believe that a plan is
24 more than just looking at reserves, because, as stated
25 previously, I think there's times where you can still

1 have reserves left in place and you don't have a well
2 capable of producing those reserves any longer.

3 So I think more than just reserves, I
4 think an operator needs a plan of either repairing a
5 well if needed, re-completing a well, EOR, whatever
6 that be. It's more than just what reserves are left
7 in place. It would be a plan to get to those
8 reserves.

9 Q. Mr. Purvis offered that rubric as either
10 guidance or requirement for making a determination
11 about whether a use was speculative, and so I was
12 wondering if you could support that testimony or not?

13 A. It sounds like it makes a lot of sense. I
14 don't remember that one to the fullest, so I can't
15 100 percent agree. But I think we're very near the
16 same place where I think there's times where the
17 speculation should be on whether it's successful, but
18 not the plan to implement it.

19 Q. And finally, there's been a lot of testimony
20 from industry witnesses that the OCD and applicants
21 proposed rules will result in premature plugging and
22 therefore waste of the resource. Are you familiar
23 with that testimony?

24 A. I am.

25 Q. What is your general response to that

1 testimony?

2 A. Again, I think it's going to be on how
3 operators respond to it. I think operators have the
4 choice of producing their well more efficiently or
5 plugging the well. And I think it'll depend on the
6 condition of that well, because I don't see an
7 operator plugging a well that they could produce
8 beneficially.

9 It's the wells that are having downhole
10 issues that are going to incur an additional costs and
11 what Mr. Wrinkle brought up, that aren't going to pay
12 for that additional work that are typically going to
13 be the wells that are plugged. If it's simply turning
14 on a well onto production, then that production would
15 happen.

16 MS. FOX: Thank you for your testimony.
17 That's all the questions I have.

18 THE WITNESS: Thank you.

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

20 Mr. Tremaine, do you have redirect?

21 MR. TREMAINE: I do have a couple of
22 questions, Madam Hearing Officer.

23 REDIRECT EXAMINATION

24 BY MR. TREMAINE?

25 Q. Mr. Powell, you were asked a number of

1 questions on cross about OCD's limited resources
2 and implications regarding those resources for orders,
3 financial assurance, forfeiture, et cetera. So I want
4 to ask you a couple questions about such orders.

5 So you referred in your testimony to
6 ACOIs, right?

7 A. Correct.

8 Q. And would you agree, just for the record,
9 that that stands for agreed compliance orders for
10 inactive wells?

11 A. Yes.

12 Q. I believe we also referred to settlements,
13 notices of violation, which often referred to as SFOs,
14 stipulated final orders, correct.

15 A. Correct.

16 Q. Okay. Would you agree that the the first
17 order provision in any ACOI or settlement document
18 related to inactive wells is that the operator must
19 plug the wells? Correct?

20 A. Correct.

21 Q. Okay. And would you agree that, for the
22 most part, those orders all alternatively provide
23 authority for OCD to step in and plug the wells if the
24 operator fails to comply?

25 A. The current ones, yes.

1 Q. Okay. Thank you. If an operator fails to
2 comply with such an order, does OCD have a specific
3 mechanism to go out and actually physically force the
4 hand of the operator to plug the wells?

5 A. No. I think it's somewhere along the lines
6 of bleeding blood from a turnip.

7 Q. We can get an order that says you have to
8 plug the well, we can get a court order that says you
9 have to plug the well, we can issue a settlement
10 agreement that says you have to plug the well,
11 correct?

12 A. Correct.

13 Q. But what happens when an operator doesn't
14 comply with any of those things? Those wells go on
15 the MOSS?

16 A. The wells go on the MOSS, OCD plugs it, and
17 if OCD thinks there's any way to get anything back out
18 of the operator, they can sue the operator, they can
19 forfeit the bonding. I can't think of any cases where
20 OCD actually sued the operator, because they didn't
21 think there was anything to get at that point.

22 Q. As part of your job, are you regularly
23 involved in the negotiation and negotiated terms of
24 the settlement agreements that I've referenced?

25 A. I am.

1 Q. And in your opinion, has OCD made every
2 effort to define reasonable compliance terms for ACOIs
3 and stipulated final orders that allow an operator to
4 come back into compliance?

5 A. I have. And actually, typically those time
6 frames, those processes are negotiated with the
7 operator on what the operator feels that they can do.
8 We look at what they stipulate as their availability
9 to plug things or availability to return to
10 production, and so that time frame is negotiated
11 directly with the operator.

12 I would say at the end of the day, all
13 of those agreements are with the thought process that
14 the operator agreed to those time frames as far as
15 getting compliance.

16 Q. Despite the negotiated nature of those
17 settlement agreements, and OCD's willingness to work
18 with operators, you agree that a substantial
19 percentage of those settlement agreements have
20 resulted in wells being placed on the MOSS and plugged
21 by OCD?

22 A. Yeah, I would say there's lots of good
23 intentions, but at the end of the day not all of them
24 are successful.

25 Q. I want to move on and ask you a couple of

1 questions about Mr. Cloutier's cross-examination.

2 You were confronted with a series of
3 invoices from OCD's contract plugger, Drake. Do you
4 recall that?

5 A. Yes.

6 Q. Okay. So some of these average plugging
7 costs have been bandied about, so I want to clarify
8 that the \$163,000 average plugging cost, that's for
9 OCD-conducted plugging during the fiscal year 2024,
10 correct?

11 A. Yes.

12 Q. Okay. And do you recall from those invoices
13 that you were confronted with that the dates on those
14 invoices were 2022?

15 A. Yes.

16 Q. So would you agree that any issue with those
17 invoices would not be reflected in the fiscal year '24
18 average plugging costs for OCD?

19 A. Correct.

20 Q. Okay. Were you confronted with any examples
21 from 2024?

22 A. I don't believe so.

23 Q. Okay. There were a number of questions that
24 were posed to you regarding or suggesting that OCD is
25 not forfeiting substantial FA or particularly

1 financial assurance that resides in the form of
2 \$250,000 blanket bonds. Do you recall that testimony?

3 A. I do.

4 MR. TREMAINE: Madam Hearing Officer, I'm
5 going to share screen and share for Mr. Powell the
6 OCD Exhibit Number 29, the Financial Assurance
7 Report.

8 HEARING OFFICER ORTH: Thank you.

9 BY MR. TREMAINE:

10 Q. So, Mr. Powell, this is already entered into
11 evidence and admitted, but this is the Financial
12 Assurance Report. You had this pulled in preparation
13 for the hearing, correct?

14 A. Yes.

15 Q. And do you agree that column G here is the
16 base amount for financial assurance that says the
17 amount of the bond that's listed in the OCD system?

18 A. Yes.

19 Q. And from your testimony earlier, you had
20 indicated on these sheets that these are filterable,
21 correct?

22 A. Correct. I will say sometimes that they're
23 restricted, the filterability is affected.

24 Q. Yeah, let me pull it up from my -- let me
25 pull up a local copy.

1 A. And typically, while you're pulling that up,
2 we restrict those so the core data can't be changed.
3 But if other parties wanted to take that information,
4 it would be a simple copy and paste into another Excel
5 sheet to then filter.

6 Q. Thank you. And that is, I believe, what's
7 going on here, because that's from the file, so that
8 one was protected. I'm using a local copy from my
9 desktop.

10 All right. So back to the base amount
11 in column G. If this is filterable, we can turn off
12 all the filters for the small bonds and look at
13 blanket bond amounts from clicking on 250,000, 500,000
14 and 1 million, which are blanket amounts. And these
15 are the current blanket bond amounts that are payable
16 to the to the OCD, correct?

17 A. Yes.

18 Q. When you review this list, are we able to
19 identify any financial assurance that is attributable
20 to an operator that has been deemed out of compliance
21 with inactive wells and for which OCD has plugged
22 their wells?

23 A. So to identify that, you would look at the
24 bonding amount that has been reclaimed, I believe, or
25 redeemed.

1 Q. Is that "sum of redemption" in column H?

2 A. Yes.

3 Q. I removed the zeros here. So there's one
4 blanket bond here, which is showing a redeemed amount?

5 A. Yes. And I think part of your problem
6 looking at operators to see if we redeemed \$250,000
7 bonds is because most of the operators in MOSS did not
8 have the \$250,000 blanket bond.

9 Q. Yeah. So my line of questions here is just,
10 is there anything else that you would add that would
11 be beneficial in reviewing the sheet to allow the
12 other parties to look and see if there were actually
13 any payable blanket bonds under wells subject to OCD
14 enforcement.

15 A. So if you wanted to filter this, let's just
16 pick one of them under operator name, pick Canyon. I
17 think you still have another filter on, because I see
18 from line 1 to 38, it skips. So if you clear all your
19 filters.

20 Q. This is what I said earlier. We don't want
21 me doing Excel changes here. So this is a better way.
22 Thank you for that, Mr. Powell.

23 So here we have all of Canyon E&P
24 Company's bonds? So if we look at --

25 A. So if you look at G and H, that shows the

1 base amounts. Again, that's what I referenced in my
2 testimony, the 6,000 per well individual bond. And
3 then it shows the redemptions on the bonds that OCD
4 has currently redeemed and the plans to redeem more.

5 That 50,000 at the bottom box that you
6 see, so if you un-highlight, it'll pull up Canyon's
7 blanket bond. So you can see in Canyon specifically,
8 OCD has already redeemed the blanket bond for Canyon
9 so the only thing that OCD can now pursue is the
10 individual well bonds.

11 Q. To your knowledge, are you aware of any
12 currently payable larger blanket bonds that OCD is
13 able to take action on?

14 A. Not that I'm aware of offhand. Typically
15 the blanket bonds is what OCD starts with, as far as
16 trying to redeem the bonding. There may be
17 one on some of the most recent pool, maybe like an
18 Energy Acumen, just because that was more recent
19 plugging. But usually the blanket bonds were the
20 first thing we go after because they're so small in
21 comparison to plugging.

22 Even if we pursue one individual well
23 bond or two, then we then attach the blanket bond with
24 those pools and pool that, as well.

25 Q. Mr. Powell, I'm going to move on. You've

1 been asked numerous questions about prevention of
2 waste and correlative rights. As deputy director, are
3 you comfortable stating that it's also the Division's
4 job to manage the reclamation fund?

5 A. It is.

6 Q. And to plug orphan wells using whatever's
7 available in the reclamation fund?

8 A. Yes.

9 Q. Is it also the Division's obligation to
10 regulate to require the remediation of releases,
11 specifically environmental contamination?

12 A. Yes.

13 Q. And are there also, similarly, provisions
14 that protect various different types of water
15 resources in the state from impacts of oil and gas
16 development, production, et cetera?

17 A. Yes.

18 Q. Okay. Do you recall the waste rule, Parts
19 27 and 28?

20 A. Yes.

21 Q. Under the rule, and in your opinion, is
22 venting of natural gas a waste?

23 A. If it's venting natural gas for no
24 beneficial purpose, then yes.

25 Q. What percentage of wells monitored for

1 methane or natural gas venting or emissions as part of
2 the orphaned well program are leaking methane?

3 A. Sixty percent.

4 Q. So orphaned wells are causing waste through
5 venting of natural gas?

6 A. Sixty percent of them, yes.

7 Q. After going through this hearing, reviewing
8 the testimony listening through the hearing, do you
9 have any recommendations for the Commission regarding
10 the production threshold criteria for the production
11 of no beneficial use? I'm also going to ask you about
12 marginal wells.

13 Let's start at presumption of no
14 beneficial use. Do you have any recommendations,
15 based on the record of hearing, for the 90 BOE and 90
16 days of production?

17 A. You know, I think there was a lot of
18 discussion, a lot of questions that were asked about
19 tracking production days, those kind of things,
20 whether it's useful, whether OCD has done it in the
21 past. And 90 BOE is extremely low threshold; it's
22 less than one barrel of oil per day. So I think that
23 would be a hard threshold to make if an operator was
24 really utilizing their well.

25 So I think, as in my rebuttal, where I

1 recommended things could happen, I think removing the
2 days provision of the 90 BOE would probably be
3 sufficient. And then if the operator wanted to come
4 in and justify why they weren't producing, they could
5 always do that as a presumption of no beneficial use.
6 It would move that threshold from an operator or from
7 an OCD threshold and enforcement tool to an operator
8 required threshold.

9 Q. All right. Does that address any of the
10 concerns raised during the hearing or some of the
11 conflicting testimony about inconsistencies in days
12 reported for production by some operators or operator
13 practices?

14 A. It would. And I think Mr. Purvis'
15 scatterplot, when the Commission looks at it, I think
16 is a good illustration of that. Because there's some
17 wells that have very, very low production, like just a
18 few barrels, but are showing 2-, 300 days of
19 production. I think, unless there's an issue with
20 that well, that's probably just an operator filling a
21 box without looking into it further.

22 Q. I have the same question for you. We've
23 heard a lot of discussion about the marginal well
24 definition of 1,000 BOE and production for 180 days.
25 And we've had all of the "and/or" discussions.

1 As we wrap up, this is my last question,
2 is it the Division's position that it's still
3 appropriate to maintain both the 1,000 and, to be
4 very, very clear, and 180 days of production there?
5 How do you respond?

6 A. So I think at that level of well, I think
7 having the 180 days is beneficial to have that
8 provision to show that an operator is legitimately
9 trying to produce their well. It's a 50 percent
10 provision.

11 I think there's probably ample evidence
12 that decline curves are stabilized near the end of a
13 well's lifetime. So even if it's a low producing, if
14 it's a constant production, then that's something that
15 should be considered. Whether it's 1,000 or 700, as
16 LFC recommended, I'm not going to opine on one of
17 those or the other. I think they both accomplish the
18 goals OCD is looking for and what they're looking at.

19 But I think the 180 days is a good test.
20 If a well can produce 150 percent of the year or just
21 over 50 percent of the year, then an operator is
22 legitimately trying to produce that well.

23 MR. TREMAINE: Madam Hearing Officer, pass
24 the witness. Thank you.

25 HEARING OFFICER ORTH: Thank you,

1 Mr. Tremaine.

2 Commissioner Ampomah, do you have
3 questions?

4 COMMISSIONER AMPOMAH: Yes, I do.

5 EXAMINATION

6 BY COMMISSIONER AMPOMAH:

7 Q. Thank you, Mr. Powell, for your testimony
8 today.

9 COMMISSIONER AMPOMAH: Is it possible for us
10 to get the comparison of the rules app? It would be
11 much easier for me.

12 MR. TREMAINE: The PowerPoint, the visual
13 aid, Mr. Powell's first visual aid?

14 COMMISSIONER AMPOMAH: Yeah. The ones that
15 are comparing WELC's proposal and OCD's comments.

16 MR. TREMAINE: I will put that up in one
17 moment.

18 COMMISSIONER AMPOMAH: I appreciate that.
19 Thank you. I want to start from slide number 5.
20 Thank you.

21 BY COMMISSIONER AMPOMAH:

22 Q. So, Mr. Powell, there has been a lot of
23 discussion about speculative purposes and I've asked a
24 lot of questions about that. There has been a lot of
25 discussion about that.

1 My question to you is, have you looked
2 at NMOGA's proposed definition for beneficial purposes
3 or use?

4 A. I may have, but I don't remember it offhand.
5 I apologize.

6 Q. I'll read that. So that one was -- so that
7 was rebuttal testimony from the applicant. So out of
8 266, I'm going to read from page 53. So I would just
9 read that.

10 So there was a question to the
11 applicants and they provided this definition here.
12 "So beneficial purposes or beneficial use means that a
13 well is being used or is reasonably expected to be
14 used in a productive, operational or regulatory
15 capacity consistent with X intended purpose. This
16 includes, but not limited to, production, injection,
17 monitoring, regulatory compliance or participation in
18 reservoir management, pressure maintenance, all
19 infrastructure optimization programs."

20 That is their first paragraph. And they
21 do have another paragraph saying, "In determining
22 whether a well is being used for beneficial purposes,
23 the Division may consider operational records,
24 production, all injection history, regulatory filings,
25 and operator submitted plans or supporting

1 documentation. The Division shall provide the
2 operator reasonable opportunity to demonstrate
3 beneficial use prior to making any contrary
4 determinations."

5 What is your assessment of this
6 definition compared to what the applicant and OCD have
7 proposed?

8 A. I think that adds a lot of variability and
9 vagueness in the first part where it said "reasonably
10 expected to be used." I think every operator, if you
11 ask them, is expecting to use the will at some point.
12 But whether, how they plan on doing that or what time
13 frame is always up for subject.

14 I've seen wells that have been TA'd for
15 over ten years. If you ask the operator, they state,
16 "I'm still planning on using that well." So I think
17 that adds a vagueness to it.

18 I think towards the end in the NMOGA's,
19 they said before a determination is made. You know,
20 OCD has to ask for all that information before any
21 determination is made. I think by OCD making that
22 preliminary determination, it incentivizes the
23 operator to bring that to the OCD, instead of the OCD
24 having to request that and get it from the operator
25 beforehand. I think that process works a lot smoother

1 as currently submitted.

2 Q. Now, so there was a discussion about the
3 speculative purposes tied to the petroleum resource
4 management system. You know, I went back and forth
5 with Mr. Purvis on that because I was a little bit
6 confused about how you can connect that PRMS
7 classification to, let's say, a well.

8 And you touched on that, again, where
9 you said there might be a reserve there but probably
10 the well cannot produce.

11 So do you believe that that assertion of
12 the Commission, more or less, so that OCD tie in some
13 rubrics to the PRMS completely are, let's say,
14 appropriate?

15 A. I think the way the Division -- in the
16 application, it's set up where the Division can
17 consider basically anything after the preliminary is
18 sufficient, because if the operator comes in and shows
19 well history, shows productive purposes, those kind of
20 things, I think that's important. It's not in this
21 definition here, but it's in how it's used in another
22 part of the rule.

23 I think that's something that the
24 Commission or the Division could look at, but I don't
25 think that's the sole thing that they look at because

1 there's lots of different variables that could go in
2 with each well.

3 Q. So just focusing on the applicant's
4 definition, without the speculative purposes, you
5 believe that OCD does have a strong understanding of
6 this provision and they are in a strong position to
7 implement this?

8 A. So I think the speculative purposes adds a
9 little bit of clarity, that it's not that
10 pie-in-the-sky type speculative purpose. If the
11 Commission wishes to strike it, they could strike it.
12 But I think that's what it's to avoid.

13 Because there's always going to be
14 speculative results of a plan. I think what the
15 applicant is trying to do here is not to get
16 hypotheticals that are not well thought out in that
17 ask.

18 Q. So let's move to slide number 8, the
19 definition of marginal wells. So I just want to
20 confirm, based on the redirect, it sounds like OCD's
21 position is still between 750 and 1,000 BO, but you
22 want us to keep the 180 days intact; is that correct?

23 A. I think if an operator is legitimately
24 trying to produce its well over 50 percent of the year
25 or right at 50 percent of the year and is successful

1 with that, I think it's beneficial to the state. So I
2 think the 180 days, especially when you're looking
3 towards those end-the-life wells that are unstable,
4 decline curves, those kind of things, could still be
5 beneficial to the state.

6 Q. Thank you. Let's go to slide number 17. So
7 in your direct, you said something, and I quote, as
8 long as an operator is producing a well, more than 180
9 days, and I'm sure probably said it now, too, they
10 don't need to put up their requested bond. Do you
11 recall something like that?

12 A. I do.

13 Q. Okay. So then my first question to you on
14 this is, let's say on the number 3 item, why should we
15 not strike that? Because with or without that, your
16 assertion is correct that as long as we've identified
17 wells to be marginal wells, all of these will be
18 bonded?

19 A. So 3 is for an entire operator's portfolio.
20 So if, say, that over 15 percent of their wells, they
21 don't produce at least 180 days, again, that would be
22 over 15 percent of their total wells. If over
23 15 percent they're not producing at least 180 days,
24 that shows that operators are operating at a high
25 risk, so that provision is to bond all their wells

1 because they're operating in a risk environment
2 instead of just bonding the particular marginal wells.

3 Q. Yeah, but the problem with that, you know,
4 those 15 percent also impact active wells. So based
5 on the quote that, you know, I just read to you, you
6 were saying that if a well is not a marginal well,
7 they shouldn't be subjected to this 150 bonding.

8 A. So they wouldn't be subject to the 150 on an
9 individual well basis, but operators operating at a
10 high percentage of those well types are operating in a
11 risk environment?

12 So, like, the C-115 list I showed,
13 they're 100 percent in that. But you can have
14 operators that we've seen that are operating at a high
15 number of risk wells because those operators are
16 taking individual wells to failure.

17 This would allow, as that company is
18 taking those wells to failure, to act on all of their
19 wells sooner in a portfolio rather than later.

20 Q. So definitely, OCD would like some type of
21 number 3 to be in the rule?

22 A. Yes. Whether it's 15 percent or up to
23 30 percent, I would leave that to the Commission. But
24 I think there is a number there, whether if they're
25 operating one in five wells or two in five wells,

1 whatever that comes out to. If they're operating that
2 high of a percentage of their wells in that high risk
3 environment, as OCD sees it, they're operating on the
4 verge of failure potentially.

5 Q. And you touched on that you really wanted
6 some discussion back and forth with the operators.
7 And it sounds like the attorneys are proposing
8 something in the range of 30 percent. I believe you
9 also support that?

10 A. I think wherever the Commission lands
11 between that 15 and 30 percent and those other
12 percentages in between there on Mr. Purvis' slide,
13 that would be up to the Commission.

14 Q. And based on Mr. Purvis' analysis, OCD will
15 still achieve the objective if that 80 percent is
16 implemented?

17 A. Yes.

18 Q. Thank you. Thank you. Let's go to slide
19 number 20. So on slide number 20, so if you read
20 through it, I don't see any timeline. So is there any
21 time frame for this provision, and do you need to add
22 any timeline to this provision for more clarity or
23 probably not needed?

24 A. I believe it's in another provision so I
25 don't believe it's needed. Because as written, they

1 have three years to comply with the bonding provision
2 unless they go to transfer those wells. And then
3 those affected wells would need to be bonded so I
4 don't believe they need it here.

5 Q. Let's go to slide number 21. So there's
6 been a lot of discussion about, you know, giving some
7 kind of discretion to OCD on some of the exceptions
8 that we've been discussing here. So I just want to
9 read something here just to confirm that we used -- so
10 I'm reading from the first line. "On January 1, 2028,
11 and on January 1 of each successive year, the Division
12 may adjust the financial assurance."

13 So the use of "may" do you believe gives
14 OCD that room, in terms of the discretion, to increase
15 or more or less decrease the financial assurance?

16 A. Yes.

17 Q. Now, another question is, will OCD consult
18 stakeholders prior to the increment of the cost, or is
19 this going to be a decision by OCD?

20 A. The way I would see this occurring is OCD
21 would do an evaluation of their plugging costs before
22 that. Because as the LFC provision, we went over,
23 stated it's for actual cost of plugging the well. So
24 if costs continue to go up, as they have been, and
25 that consumer price index goes up, then OCD would look

1 at needing to increase that bonding amount. If costs
2 for plugging go down or stay the same, even if the
3 price index goes up but costs don't go up, then I
4 don't see OCD using this provision.

5 Because of the overall statute, it's
6 supposed to be based on what it actually costs to plug
7 a well.

8 Q. And I think the applicant did a great job
9 really establishing why the 150,000 is the actual cost
10 to OCD and not necessarily to the industry. So I
11 think that one is much clearer, and I will not ask you
12 any question on that.

13 But let's go to slide number 25. So the
14 slide number 25, you know, does this provision impact
15 working interest owners or is it just strictly going
16 to be on the operator on record?

17 A. I guess I missed the question. I apologize.

18 Q. Okay. So the question is, is this
19 provision, you know, just going to impact only the
20 operators, or it's going to be going down to the
21 working interest owners for that particular well?

22 MR. TREMAINE: Commissioner, if I may. So
23 when talking about the implementation of FA dates and
24 this provision, I think there's later versions in the
25 rebuttal testimony. So I just want to make sure

1 we're clear on those two sections, that those were
2 updated?

3 This was, I believe, updated in a later
4 submission, which I know I don't have on hand, that
5 changed that language. We've talked about that. And
6 so that's going to be an important distinction.

7 And then the effective date was changed
8 from January to May in OCD's proposal. I don't have
9 those up. And sorry to interject, but I just wanted
10 to make sure that that's -- during the course of the
11 hearing, I think, or during the course of direct
12 rebuttal testimony, those have been updated.

13 A. But I think I can answer your question
14 whether it's just the operator or if it extends down
15 to working interest owner, those kinds of things.

16 Historically, we have just held the
17 operator responsible. There's actually even a
18 25 percent clause when an operator registers. This
19 would be giving more of a certification, so it'd be
20 more of a positive-type interaction. But
21 historically, the Division has not pursued working
22 interest owners involved in the well, as there can be
23 few or several. We look more as the operator of
24 record to OCD.

25 I know State Land Office, others look

1 more at the working interest owners and lease holders
2 and those kinds of things. But that's not something
3 the Oil Conservation Division has typically done.

4 Q. Yeah. So if working interest owners are not
5 really part of that, don't you believe that we've not
6 really fully assessed the risk? Because there might
7 be working interest here, but they might be more or
8 less, not necessarily -- but they might be more or
9 less combining efforts on other wells, you know, and
10 that has these kind of issues, and we'll probably not
11 fully address that.

12 A. I don't know if we've addressed that. I
13 think as far as OCD is concerned, we always look at
14 the operator. And I think if the operator is
15 negotiating with a working interest owner that's
16 causing them issues, that may be something the
17 operators self-regulate and not work with those
18 working interest owners in the future.

19 But if the Commission would like to
20 explore that, they certainly can.

21 COMMISSIONER AMPOMAH: Yeah. Thank you,
22 Mr. Tremaine for pointing out that. I was just
23 focusing on this one line by line. So thank you for
24 that correction there.

25 BY COMMISSIONER AMPOMAH:

1 Q. So let's go to slide number 26. So on slide
2 number 26, I know there were a lot of discussions
3 going back and forth on this one, but I just want to
4 be clear.

5 You know, how is OCD going to implement
6 this in terms of verifying operators operations in
7 other states? Do you have any mechanism in place that
8 you're going to use or is going to be provided by the
9 operator itself?

10 A. I believe we've seen this as being provided
11 by the operator, or if there's questions and
12 discussions, asking the operator for additional
13 information.

14 Q. So you're going to rely solely on the
15 information that the operator provides to you. But
16 what about if they are missing some information or
17 they are hiding some information, do you have any
18 mechanism to really prove that they are giving you all
19 the true statements or information?

20 A. If we feel that they are hiding information,
21 OCD does have subpoena authority to get additional
22 information, if that's your question.

23 Q. Yes. But you need to have a mechanism to
24 know that they are hiding information, so that is my
25 question. Do you have that mechanism?

1 A. I know our legal group has reviewed
2 corporate filings and different things in the past.
3 So we have done some searches of companies and
4 corporations. We have reached out to other states to
5 see if they're having similar problems with the
6 specific operator that they're doing work in. So we
7 have done some of that.

8 Q. So let's go to slide number 33. So you made
9 mention that the 30 days and the 90 days was one of
10 the items that you really you wanted industry feedback
11 on. But it sounds to me that you explained clearly as
12 to why you prefer 30 days, because now everything is
13 filed electronically.

14 Do you still want the Commission to
15 probe, you know, to get some consensus from the
16 industry on this 30 days?

17 A. I may have misspoke. I don't believe this
18 was one that we were looking at needing back and forth
19 with industry because the 30 days is on top of the one
20 year. So once a well is having issues, if operators
21 start routinely planning on that wells use or
22 production, at that point, they've got essentially 13
23 months to look at it.

24 But I would leave this at the discretion
25 of the Commission, because in the life of a well, an

1 additional 60 days isn't that much.

2 Q. Let's go to slide number 34. So we've
3 discussed a lot of these exceptions that OCD might
4 implement, and it sounds like OCD is in agreement to
5 that, but it's not clearly stated in the rule. So is
6 it possible for OCD to provide some guidance let's say
7 in the closing for the Commission's consideration with
8 regard to how we can frame the exceptions into the
9 rule, if necessary?

10 A. I think that would be appropriate to do in
11 closing. It may be the Commission may want to also
12 ask for a proposed red line from each of the
13 applicants as part of the closing. But that's
14 definitely something the Commission could ask for.

15 Q. Appreciate that. Let's go to slide number
16 37. Okay. So the provision number 1, "Documentation
17 demonstrating the well is reasonably projected to
18 produce in paying quantities."

19 Can you elaborate a little bit on how
20 you intend to implement this? Is it going to be based
21 on the 90-90, 90 barrels equivalent and then the 90
22 days, or how are you going to implement this?

23 A. So this is a preliminary determination for
24 non-beneficial use. So this would be off my
25 recommended 90 BOE, which also had the 90 days

1 attached to it, but I'm recommending taking the 90
2 days off and just keeping it 90 BOE.

3 So any of the wells that they get a
4 preliminary determination of non-beneficial use based
5 off that 90 barrels, the operator then could bring
6 this documentation to OCD and make a case for whether
7 or not they feel that well is still being used in a
8 beneficial manner.

9 Q. And will this apply to slide number 38? So
10 you do have economic data in there, too. Will your
11 explanation also apply to the requested economic data?

12 A. The economic data, yeah. It would be the
13 operator making a case where that well is still being
14 used in a beneficial way. That would include any
15 economic data that they wanted to show, showing that
16 it's producing in paying quantities, showing where
17 it's capable of production and doesn't have a downhole
18 issue. Or if it does have a downhole issue, how they
19 plan on repairing that and still having a productive
20 well at the end of the day.

21 It's really giving some high level
22 requests and asks, and then up to the operator to make
23 that demonstration based on those high level requests.

24 Q. Let's go to slide number 39. So I
25 highlighted, "Any interested person may intervene

1 under the rules." Can you explain a little bit that
2 provision?

3 A. I believe that provision was written in so
4 members of the public, if a well was being requested,
5 a TA, any person could intervene in that even, if
6 they're not an owner of the well, working interest
7 owner those kind of things. I didn't write that so
8 that's not something that I'm as familiar with.

9 Q. Okay. But I will still ask you one more
10 thing there. So in the last paragraph -- well, let's
11 say the last three lines, "An extended term shall not
12 exceed two additional years."

13 So the use of "shall" means that's it,
14 right?

15 And we've talked about the potential
16 flexibility that we want to provide to OCD on this.
17 So would you be okay if we change the "shall" to "may
18 not," at least to give you the room to implement the
19 potential beneficial use to cover some of these
20 exceptions?

21 A. Or even rephrasing that the extended term
22 may not per -- may have to meet these particular
23 items. I think WELC did a good job of elaborating on
24 those, but I think after that first five years for
25 additional extensions, just the operator having a

1 solid plan of that well's development in the future
2 and proposed timelines is critical on the continuation
3 of TA.

4 Q. So would OCD provide some good sentence on
5 that to really clarify this?

6 A. Certainly.

7 Q. Okay. Thank you. And the same thing, so
8 let's go to slide number 40. So the second line,
9 "Wells there have been inactive for three or more
10 years are not eligible for temporary abandonment
11 status."

12 So on that one, too, I was thinking, can
13 we more or less put in, "may not be eligible" to still
14 give you the flexibility?

15 A. You can certainly do that. The intent of
16 this one -- because we have operators that unless we
17 catch them doing something, they're not going to do
18 it, unfortunately.

19 This was to encourage them to be more
20 proactive in coming to the Division and requesting
21 that TA before they're significantly out of
22 compliance, where if they come to us within those
23 three years, which roughly two years of that would be
24 non-compliance, but if they came to us before that
25 three years, then we would work with them. But if

1 they're essentially avoiding their duties as an
2 operator for three years, that they would just be
3 ineligible. But it's certainly up to the Commission
4 if they'd like to change that.

5 Q. So it sounds to me that you believe that, as
6 it is written now, it still provides OCD the
7 flexibility to implement this rule.

8 A. Yes.

9 COMMISSIONER AMPOMAH: Okay. Thank you for
10 that. Thank you for your time. Now I really have a
11 clear understanding and know the questions that I'm
12 going to ask the operators. Thank you, sir, for your
13 time.

14 THE WITNESS: Thank you, Commissioner.

15 HEARING OFFICER ORTH: Commissioner Bloom,
16 do you have any questions of Mr. Powell?

17 COMMISSIONER BLOOM: I do, yes. Thank you.
18 Excuse me for not being there today, I'm still under
19 the weather. Flu or something. It's been a bad run.

20 EXAMINATION

21 BY COMMISSIONER BLOOM:

22 Q. Mr. Powell, thank you for your time today.
23 We've had you up there for a while.

24 Just a fundamental question. Can OCD
25 call multiple bonds if one bond doesn't pay for a

1 single well's P&A costs?

2 Let me give you an example. Imagine
3 that we are under these rules as proposed and Company
4 A has five wells bonded at \$150,000, and the PA costs
5 for well one is \$250,000. Can the OCD call more than
6 one bond to cover that, or only the one bond for that
7 single well?

8 A. So the way I would see it in this
9 circumstance is, OCD would first call the single-well
10 bond. If that bond is not sufficient, it would then
11 call the blanket bond as an umbrella-type bond in that
12 scenario. And if it's not sufficient, then obviously
13 we would look at potential of other routes as needed.
14 But we absolutely have and would look at using both
15 bonds, the single well and then the blanket bond if
16 the single well was insufficient.

17 Q. Okay. Thank you. That's helpful.

18 Mr. Moore asked some questions of you
19 about the land office, and I think Mr. Rankin may have
20 touched on this as well, but do you know if the OCD
21 notices the land office on TA extensions?

22 A. I don't believe they -- I don't believe as
23 written currently OCD does or that it's required to.

24 Q. Yeah. Would that be something you would
25 have issue with, say a requirement that OCD notice

1 lessees in the land office.

2 A. As a mineral owner, if they have a solid
3 plan, I would think that an operator would be working
4 with a mineral owner similar with BLM or SLO on a long
5 term plan, especially if they were pursuing things
6 such as EOR, those types of applications to make sure
7 their lease agreements applied with that.

8 Q. I can tell you that many times there is not
9 coordination between operators and lessees and the
10 land office, and so that's why I'm asking, you know,
11 could there be notification from OCD to the land
12 office on TA extensions?

13 A. I think there definitely could be. And I
14 think that's something, especially if it goes past
15 that first five years and they're looking at a longer
16 term plan, that I think could be prudent.

17 Q. I've mentioned this a few times in other
18 cross-examinations, but one of IPANM's witness'
19 comments, and it might have been Mr. Ezzell, was that
20 bonds -- or perhaps Mr. Emerick, bonds can't be
21 canceled once required for a marginal well or
22 non-beneficial well.

23 Is that your understanding of this rule,
24 that once a well has been restored to production above
25 that of a marginal well, that the bond can't be

1 dropped?

2 A. I don't think that's ever been our look at
3 an individual well bond, that if an operator then
4 achieves compliance that we don't release. So I see
5 continuing that even with this rule. If an operator,
6 say, decides to use their well 180 days where they
7 previously weren't, we would then release that bond.

8 Q. I was going to ask you about the 180 days
9 and 1,000 barrels, but Dr. Ampomah went over that, so
10 I appreciated your discussion of that. Thank you.

11 Yeah, and I'll skip my question about 30
12 versus 90 days of notification.

13 Regarding differences in plugging costs,
14 and I talked about this a little bit earlier, I'm
15 questioning whether we can even compare OCD P&A costs
16 with those of industry. You might be looking at
17 apples and oranges here, where operators that are
18 engaged in P&A or companies that are following the
19 law, intended to follow the law, our OCD regulations,
20 and have kept their wells in some sort of working
21 order, whereas, when companies that are orphaning
22 their wells, these might have been folks on hard times
23 that have neglected regular upkeep or have left
24 orphaned their wells many years back, and so you have
25 two totally different classes of wells.

1 Can you speak to this?

2 A. Yeah. I think I hit that fairly extensively
3 in both my direct and rebuttal. I believe operator
4 plugging and OCD plugging are definitely apples to
5 oranges when you're looking at it. They're all wells,
6 but the conditions of the wells are significantly
7 different.

8 They time the period between last
9 production and plugging is significantly different.
10 Most operators, if their well fails and they're
11 prudent, they'll either plug that well or do a
12 workover on that well at that point.

13 But a lot of times, the wells we're
14 seeing is that operator takes that well to failure,
15 complete failure, and then they leave it there until
16 enough of their portfolio reaches complete failure
17 that OCD takes action. So those wells are sitting out
18 there for years, if not decades, being unplugged and
19 unresolved, and during that time, because you're not
20 using corrosion inhibitor, you've got corrosion,
21 you've got scale, you've got all kinds of things going
22 on in that well.

23 And if you have a casing leak, you could
24 have an influx of water, you could have an influx of
25 sand, you could have a lot of different things going

1 on in that well during that neglected period.

2 Q. And finally, you spent some time discussing,
3 you know, on NMOGA and IPANM not engaging with
4 applicants and the OCD on this rulemaking. I think
5 we're in agreement that the first draft notice from
6 the applicants was published here April 2024, is that
7 correct, about 18 months ago?

8 A. That sounds correct, yeah.

9 Q. So that would have given parties plenty of
10 time to come to the table, look through this and
11 discuss it if they thought there were issues that
12 could be worked out, right?

13 A. That's the stance OCD took. I don't
14 remember seeing the rule application before it was
15 filed. And once it was filed, there were some things
16 that OCD requested of the applicant to change and
17 modify and they were very receptive to those changes.
18 And there were some definite changes that OCD
19 recommended that the applicant took in their
20 rulemaking process.

21 And there was even changes that when Oxy
22 approached the applicant and then the OCD, that
23 changes were made in looking at it.

24 So it's definitely something OCD, once
25 the application was made, pursued.

1 Q. Yeah. When I read through IPANM's witness
2 testimony and rebuttal, I saw a good number of
3 recommendations that some of the witnesses were
4 making. There are some good questions, as well.

5 But on the recommendations, I did not
6 see any red line of the applicant's proposal. I
7 didn't see, you know, backup data for those
8 recommendations that we could act on. Mr. Powell,
9 have you reviewed those, that testimony? Do you have
10 any reaction?

11 A. I have reviewed a lot of it, and I wouldn't
12 say exhaustively, so there may be something in there I
13 didn't catch. But I didn't see any recommended red
14 lines, suggestions, those kind of things.

15 COMMISSIONER BLOOM: Mr. Powell, no further
16 questions. Thank you for your time today.

17 THE WITNESS: Thank you, Commissioner.

18 HEARING OFFICER ORTH: Thank you.

19 Chair Chang, do you have questions?

20 CHAIR CHANG: I do not. Thank you.

21 HEARING OFFICER ORTH: I have just one. How
22 many barrels did you get out of that leaker next to
23 the Pecos?

24 THE WITNESS: So since Friday, through the
25 weekend, as of this morning, I believe it was just

1 under 6,000 barrels were released.

2 HEARING OFFICER ORTH: Thank you very much.

3 All right. Any reason not to excuse
4 Mr. Powell?

5 Thank you very much, Mr. Powell.

6 Take a 15-minute break. That brings us
7 back at 3:05. And I believe we might be hearing from
8 Ms. Marks next.

9 (Recess held from 2:50 to 3:05 p.m.)

10 HEARING OFFICER ORTH: I believe now we turn
11 to the State Land Office for Mr. Moore and Ms. Marks.

12 Mr. Moore.

13 MR. MOORE: Thank you, Madam Hearing
14 Examiner. Good afternoon, Madam Hearing Examiner and
15 Members of the Commission. My name is Richard Moore.
16 I'm representing the commissioner of public lands and
17 the State Land Office. I just have a short opening
18 statement before we proceed to the direct testimony
19 of Ms. Marks.

20 OPENING STATEMENT BY MR. MOORE

21 The commissioner, through the State Land
22 Office, manages millions of acres of state-owned land
23 across the state as state trust land. There are over
24 5,000 active oil and gas leases on that state trust
25 land, with tens of thousands of oil and gas wells on

1 those state oil and gas leases.

2 While the commissioner and State Land
3 Office regulate the leases to state trust land, the
4 commissioner and State Land Office do not directly
5 regulate wells or the transfer of operator-ship of
6 wells and as such, the commissioner and State Land
7 Office have entered into this proceeding to provide
8 support to the applicants and their proposed
9 amendments to the regulations at issue and provide
10 the limited testimony of Allison Marks, the director
11 of the Oil, Gas and Minerals Division of the State
12 Land Office, with limited clarifying edits.

13 And so with that, I would turn to
14 Ms. Marks' testimony.

15 HEARING OFFICER ORTH: Okay. Thank you. Is
16 Ms. Marks on the platform?

17 THE WITNESS: I am.

18 HEARING OFFICER ORTH: Hello. Let's get you
19 pinned here.

20 THE WITNESS: I'm okay with not being
21 pinned.

22 HEARING OFFICER ORTH: All right. Would you
23 spell your first and last name for the transcript,
24 please.

25 THE WITNESS: Sure. A-L-L-I-S-O-N. Last

1 name, Marks. M-A-R-K-S.

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

4 THE WITNESS: I do.

5 HEARING OFFICER ORTH: Thank you.

6 Go ahead, Mr. Moore.

7 MR. MOORE: Thank you, Madam Hearing
8 Examiner.

9 ALLISON MARKS,
10 having first been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. MOORE:

13 Q. Ms. Marks, I know you just said your name,
14 but could you state your name and your position at the
15 State Land Office?

16 A. Sure. Allison Marks. I'm the director of
17 the Oil, Gas and Minerals Division at the State Land
18 Office.

19 Q. And did you prepare written direct testimony
20 that was attached to the commissioner of public
21 lands' prehearing statement in this matter?

22 A. I did.

23 Q. And are there any corrections or
24 clarifications that you would like to make to that
25 direct testimony?

1 A. There are.

2 Q. If you could go through the corrections and
3 clarifications that you would like to make.

4 A. So there's a typographical error where
5 there's a reference on -- I believe, let's see, it's
6 on page 3 of the submittal under direct testimony of
7 Allison Marks. It references 19.15.12.13B, and that
8 should be referenced to 19.15.25.13B. So the 25
9 should replace the 12.

10 And I'd also like to make -- to work on
11 two points of clarification. Under 19.15.9.8C(5), the
12 current proposed application, if I tracked everything
13 correctly, because there are a lot of applications, I
14 feel like, and we're pretty understaffed and I was
15 doing other work this whole time, but it lists limited
16 partnerships, and it would be more inclusive to list
17 both limited partnerships and limited liability
18 limited partnerships. And that would seem to align
19 with 54-2A-108 of NMSA.

20 If you don't mind me for a second,
21 54-2A-108 of New Mexico Statutes Annotated says, "The
22 name of a limited partnership may contain the name of
23 any partner because each partnership that is formed
24 pursuant to the Uniform Revised Limited Partnership
25 Act or that elects to be governed by that act shall be

1 a limited liability limited partnership. The name of
2 such limited liability limited partnership shall
3 contain the phrase limited liability limited
4 partnership or the abbreviation LLLP or L.L.L.P.,
5 period, and shall not contain the abbreviation LP or
6 L.P.

7 And then Subpart B says, "Subject to the
8 provisions of Subsection F of this section, the name
9 of a foreign limited partnership that is not a limited
10 liability limited partnership shall contain the phrase
11 limited partnership," and that goes on.

12 So that is the suggestion to include the
13 point limited liability and limited partnership.
14 There's a little bit of ambiguity under this statute
15 54-2A-102, so I think it's better to be more inclusive
16 than under-inclusive and erase any sort of ambiguity
17 under that law.

18 And then, since submitting my direct
19 testimony, I noted the definition of "approved
20 temporary abandonment," along with -- I hadn't seen
21 this at the time -- there's a definition of "expired
22 temporary abandonment" includes the words in the
23 definition of, "A well status of inactive." And it
24 may be better to eliminate that phrasing and insert a
25 time period of non-production since OCD doesn't

1 actually have a well status of inactive on its OCD
2 permitting page. And in particular, with expired
3 temporary abandonment, this could cause great
4 confusion.

5 At the land office, we are always
6 looking to see if a lease is in good standing. So
7 when we look in OCD permitting, there's not actually a
8 well status of inactive. A well can be in the status
9 of active for ten years, but it hasn't -- it will say
10 active, but the well has actually been not producing
11 for ten years and it will say "active." So I think
12 that's just a better -- it would be better in the rule
13 to actually put a time period.

14 That is it Mr. Moore.

15 Q. Thank you. And is your direct testimony,
16 including the corrections and clarifications that you
17 just went through, true and correct to the best of
18 your knowledge.

19 A. It is.

20 Q. And do you adopt your direct testimony,
21 including the corrections and clarifications you just
22 went through?

23 A. I do.

24 MR. MOORE: At this point, Madam Hearing
25 Examiner, the commissioner would move to admit

1 Ms. Mark's testimony as attached to the
2 commissioner's prehearing statement into this matter.

3 HEARING OFFICER ORTH: All right. I'll
4 pause for a moment in the event there are any
5 objections. Thank you. It's admitted.

6 (Admitted: NM SLO Exhibit
7 Marks Direct Testimony.)

8 MR. MOORE: And rather than have Ms. Marks
9 provide a further oral summary of her testimony, we
10 would submit her testimony inclusive of her
11 corrections and clarifications just made and allow
12 cross-examination should the parties request.

13 HEARING OFFICER ORTH: Thank you, Mr. Moore.

14 Mr. Cloutier, do you have questions of
15 Ms. Marks?

16 MR. CLOUTIER: Very few questions, Madam
17 Hearing Officer.

18 CROSS-EXAMINATION

19 BY MR. CLOUTIER:

20 Q. Good afternoon, Ms. Marks. As you know, I'm
21 Andrew Cloutier of Hinkle, Shanor and I'm representing
22 IPANM here today. I've coordinated with other
23 industry counsel and we had a few questions for you,
24 and I was the one who drew the straw.

25 In 2018, you were the deputy director of

1 the Oil Conservation Division and you testified to the
2 Commission about the contents of the financial
3 assurances rulemaking that was proposed at the time,
4 correct?

5 A. That's correct.

6 Q. And you gave truthful testimony that was
7 accurate to the best of your knowledge at the time?

8 A. That's correct.

9 Q. The commissioner and the State Land Office
10 has recently announced some -- I don't want to
11 mischaracterize it, but examining State Land Office
12 bond requirements and there are some listening
13 sessions or public meetings on that scheduled for
14 mid-November. Did I get that correct?

15 A. I can't -- I know the question is about some
16 meetings. But if it's mid-November, that sounds about
17 right. I know it's at the end of this year. I'm not
18 probably the best point person on the bonding rule
19 public comment.

20 Q. You gave me the information I was looking
21 for. I apologize for being so precise about the dates
22 of the public meeting.

23 Is it possible that the commissioner may
24 adopt rules concerning bonding of state leases that if
25 this rulemaking were adopted would result in double

1 bonding?

2 A. I believe that the commissioner is looking
3 at bonding state leases as well as to make sure
4 there's adequate bonding for land office leases.

5 Q. And last question, has the land office made
6 any review or analysis of the potential economic
7 effects of this proposed rulemaking?

8 A. Not that I'm aware of.

9 Q. Right.

10 MR. MOORE: Ms. Marks, thank you for your
11 time and appreciate your public service.

12 HEARING OFFICER ORTH: Thank you,
13 Mr. Cloutier.

14 Mr. Suazo?

15 MR. SUAZO: Yes, just a couple of questions
16 Madam Hearing Officer.

17 CROSS-EXAMINATION

18 BY MR. SUAZO:

19 Q. Ms. Marks, good afternoon. How are you?

20 A. I'm doing well. Thank you.

21 Q. Excellent. I just wanted to clarify the
22 question that Mr. Cloutier asked you, because he
23 covered most of the questions that I had for you. And
24 I just wanted to confirm that I guess the proposal for
25 the bonding from the land office is on a lease-wide

1 basis; is that correct?

2 A. Okay. So I don't -- I don't want to
3 misstate anything regarding the bonding rule. I did
4 not brush up on the bonding rule in preparation for
5 this. So I believe -- the proposed bonding rule. I'm
6 sorry.

7 I believe the land office is looking at
8 bonding for individual leases. I believe that is
9 correct. Do you want to re-state your question? I'm
10 sorry.

11 Q. Sure. And I wasn't trying to trick you, I
12 just wanted to confirm. And the reason why I wanted
13 that clarification is just so the Commission could be
14 cognizant of the fact that there's a potential
15 proposal from SLO that is lease-wide, whereas, in this
16 proceeding, we're looking at individual well types of
17 bonding?

18 Is that your understanding generally?

19 A. In general, yes. The land office is looking
20 at a new bonding rule that would cover leases that
21 lessees have with the land office.

22 Q. Okay.

23 A. Oil and gas leases.

24 Q. And I understand that, you know, all this
25 stuff is, you know, subject to change. But I did just

1 want to, I guess, ask you whether that could result in
2 double bonding if SLO and the Commission don't kind of
3 assess the impact of these bonding proposals. Is that
4 fair?

5 A. The -- I would say that -- again, I have to
6 reread the SLO proposal again, but I know that part of
7 it has to do with the number of wells on a lease. And
8 so, again, I'd have to dig deep and reread the land
9 office proposal on bonding. Again, it's not something
10 that I have spent an enormous amount of time looking
11 at.

12 Q. Understood. Understood. I think that's
13 understandable, given that they're fairly new
14 proposals. I think that covers what our initial
15 concerns are between the two, from SLO and based on
16 what's in front of the Commission.

17 MR. SUAZO: So, Ms. Marks, is always, always
18 a pleasure to listen to you testify and really
19 appreciate your time.

20 THE WITNESS: Thank you, Mr. Suazo.

21 HEARING OFFICER ORTH: Thank you, Mr. Suazo.

22 Mr. Sayer, do you have questions of
23 Ms. Marks? No? All right.

24 Mr. Rankin, do you have questions of
25 Ms. Marks?

1 MR. RANKIN: I do not have questions of
2 Ms. Marks.

3 Thank you for your time, Ms. Marks. No
4 questions on behalf of Oxy.

5 HEARING OFFICER ORTH: Thank you.

6 Mr. Maxwell, do you have questions of
7 Ms. Marks?

8 MR. MAXWELL: No questions, your Honor.
9 Thank you.

10 HEARING OFFICER ORTH: Thank you.

11 Ms. Nanasi, I'm not sure if you're with
12 us on the platform. No?

13 Mr. Tremaine, do you have questions of
14 Ms. Marks?

15 MR. TREMAINE: I have two, I believe.

16 CROSS-EXAMINATION

17 BY MR. TREMAINE:

18 Q. Good afternoon, Ms. Marks. I'm Jesse
19 Tremaine, representing the Oil Conservation Division.

20 Ms. Marks, are you aware of
21 circumstances where operators of wells on state leases
22 report extremely low volumes of production, having the
23 effect of those wells not triggering inactive well
24 plugging under OCD's current rules?

25 A. I'm sorry, but can you break that up into

1 multiple questions?

2 Q. Are you aware of circumstances where
3 operators, operating on state leases, report very low
4 volumes of production on their wells?

5 A. Yes.

6 Q. Okay. And do you agree that such low
7 reported production prevents those wells from falling
8 into inactive status under OCD's current rules?

9 A. Well, I don't -- I don't believe there's an
10 inactive -- well, are you saying under 5.9?

11 Q. Yes 25.8 and 5.9. I understand that they're
12 the actual well status and OCD permitting will remain
13 active, but let me rephrase.

14 So if an operator reports 1 MCF of gas
15 in the previous 12 months, do you agree that that well
16 will not fall onto the quote, unquote, inactive well
17 list?

18 A. Under 5.9, yes, that's correct.

19 Q. And in that, case do you agree that that
20 well would not have to be plugged under 19.15.25.8?

21 A. That is correct under 25.8. Now, the land
22 office itself may take different measures because
23 there's a paying quantities determination that the
24 land office may assess under the lease. So under our
25 accountability enforcement program, we've been taking

1 other means to ask operators to plug wells.

2 But yes, under 25.8 and 5.9, that is
3 correct under OCD's rules.

4 Q. Existing rules, right. Thank you. So my
5 question to you is, in that circumstance where an
6 operator is reporting an extremely low amount of
7 production and it's on a state lease, but yet that
8 operator remains quote, unquote, in compliance with
9 OCD, does that fact pattern have a potential impact on
10 SLO's interest in the beneficial use of state
11 minerals?

12 A. Well, as I -- as I noted, you know, we
13 have -- our leases say that a lease has to be in
14 paying quantities. So we do a paying quantities
15 determination and we will send out paying quantities
16 letters to operators at times.

17 It's more difficult, I would argue, that
18 operators sometimes try to -- sometimes we will see
19 operators backdate production after we send out a
20 no-production letter, and then they backdate
21 production to falsely report production, which is an
22 issue. We then don't accept that production from the
23 land office side, which is a whole other set of
24 issues.

25 But if they're just reporting like 1 MCF

1 or -- like 1 MCF, if it's in a com well, for example,
2 that won't hold, that won't hold the com. Because if
3 there's a more than 60-day break in production on a
4 com well, that will -- the com will terminate on its
5 own. There's a whole set of factors related to the
6 land on the land office side.

7 Or like one barrel after six -- if after
8 60 days, then there's a break in production, after 60
9 days that com would terminate and then the lease --
10 the underlying lease would terminate. So there's a
11 lot of factors.

12 If it's just a vertical -- if there's
13 one vertical well holding the lease that had one
14 barrel that would -- again, that -- that you have to
15 look at the lease terms, but that would not hold a
16 lease for a year either, because the lease would have
17 had a break in -- or you have to have a certain amount
18 of production to hold the underlying lease.

19 MR. TREMAINE: Okay. Thank you, Ms. Marks.
20 No further questions.

21 HEARING OFFICER ORTH: Okay. Thank you.

22 Ms. Fox, do you have questions?

23 MR. TISDEL: Thank you, Madam Hearing
24 Officer just a few questions.

25 CROSS-EXAMINATION

1 BY MR. TISDEL:

2 Q. Good afternoon, Ms. Marks. My name is Kyle
3 Tisdell. I'm an attorney with the Western
4 Environmental Law Center and represent the applicants
5 in this matter. Thank you for your testimony today.

6 In your direct testimony, you state that
7 the commissioner strongly supports the proposed rule
8 amendments; is that correct?

9 A. That's correct.

10 Q. And that's upon a full review of the rule
11 that has been proposed and that is the subject of this
12 rulemaking?

13 A. I've -- I did not review the entire rule. I
14 only reviewed the portions related to well transfers.

15 Q. But the commissioner strongly supports the
16 entirety of the proposed rule, or just --

17 A. I believe that's correct.

18 Q. Okay. Wonderful. Thank you.

19 The State Land Office has had tremendous
20 success in its accountability and enforcement program
21 for plugging wells. Is that true?

22 A. That's correct.

23 Q. Would you, please, yeah, just describe that
24 program a little bit for us.

25 A. Sure. So under the accountability and

1 enforcement program, the land office has -- I believe
2 to date, we've had 746 wells plugged and abandoned,
3 and that is by asking the lessees of operators to make
4 sure on the -- on the leases, the leases that we have
5 issued, to make sure those operators have -- make sure
6 the operators on those leases -- sorry. I apologize.

7 For example, if we issue a lease to
8 somebody, we will make sure that the lessee of record
9 goes after whomever they have parsed out certain debt
10 severances to or someone they -- they have maybe an
11 override, but they have allowed another person to be
12 an operator record on that lease.

13 Then we will pursue that lessee of
14 record to P&A that well, but that is no longer active
15 in producing. Say an operator has left the state, it
16 has become insolvent, filed for bankruptcy, it's
17 just -- or in another case, for example, they've
18 created a huge environmental mess, we will pursue the
19 lessee of record to clean up those messes.

20 We've filed, I believe, 38 -- 38 cases
21 that have been filed, we've resolved 18 of those. A
22 lot of these can be resolved without filing a lawsuit,
23 and there's a lot of good operators that we work with.
24 But a lot of the operator -- or sorry, I said
25 operator -- good operators, we work with good

1 operators, but they're also lessees, a lot of those
2 lessees have stepped up and actually plugged and
3 abandoned the not so great operators' wells on those
4 leases.

5 Q. Thank you. 746 wells is a lot. Over how
6 many --

7 A. In addition to those, I'm sorry, we also do
8 lease assignment reviews within my Division. So in
9 addition to those 746 under the accountability and
10 enforcement program, we also get a number of kind of
11 more very poor performing wells. We get those plugged
12 separate from the accountability and enforcement
13 program.

14 So we'll get spills cleaned up and wells
15 plugged under the unit review process or just the
16 lease assignment review process. So that's in
17 addition to wells that have been plugged or sites
18 cleaned up vis-a-vis the accountability and
19 enforcement program.

20 Q. Over how many years would you say that the
21 746 wells that have been plugged, over how many years
22 has that program been in operation to get those wells
23 plugged?

24 A. Either four or five years.

25 Q. And the relationship between the State Land

1 Office, I think you spoke to this earlier, the
2 relationship is somewhat unique in that those
3 enforcement matters are going to the lessee rather
4 than just the operators; is that correct?

5 A. Yes. Often we'll reach out to the lessee of
6 record, and sometimes we reach out to the operator, as
7 well. But yes, we reach out to the lessee of record
8 because obviously we have a contract, a lease is a
9 contract. So we will reach out to the lessee of
10 record and say, "Here's an outstanding liability on
11 your lease."

12 Q. And so those 746 wells, are those all wells
13 that were not producing for some period of time before
14 the enforcement action was taken?

15 A. So I don't want to just say a definitive
16 yes, that they were not all -- not producing, but more
17 than likely the answer is yes. But a lot of them
18 could have been very poor stripper wells or they could
19 have had, as Mr. Tremaine said, they could have had
20 one barrel of oil and then they could have had, you
21 know, a break of five months, and then another barrel
22 of oil, and then they were plugged then.

23 I do know we had one company who was a
24 lessee of record and then another operator had -- you
25 know, there was a farm agreement where this operator

1 was producing and had a well on that lease, and then
2 the operator was falsifying production records,
3 submitting them with OCD, and then that led to this,
4 like, one barrel and then a break in six months and
5 then another barrel.

6 Meanwhile, the lessee of record had very
7 prolific wells on that lease and so that lease was
8 otherwise being held by great production in lower
9 formations, but the shallow formation had a -- had at
10 least one terrible well on it that needed to be
11 plugged.

12 Q. And then I believe your testimony was in
13 addition to the accountability and enforcement
14 program, you also run a lease assignment review
15 program that also catches wells that are
16 underperforming?

17 A. Correct, yeah. So before a -- before a
18 lease can be assigned to a new lessee, we make sure
19 that the lease is in good standing. So that includes
20 doing an environmental review and also looking
21 holistically at the wells on the lease.

22 We have to make sure that they are
23 not -- they're not inactive wells, that they're in
24 compliance with OCD rules. And then there are other
25 factors as well to make sure that the lease is, quote,

1 in good standing? Yeah, it's under 19.2.100.41, I
2 believe, of the New Mexico Administrative Code.

3 Q. I don't want to belabor the point, but on
4 the lease assignment review, that is a process by
5 which a lease could be basically reassigned from one
6 lessee to another lessee. Is that what I'm hearing
7 from your testimony?

8 A. That's correct. And we also do it for units
9 as well, so one unit going from one unit operator to
10 another unit operator.

11 Q. And the intention of that is to basically
12 have that lease or unit put into more productive use
13 than the prior lessee; is that correct?

14 A. I wouldn't necessarily characterize it that
15 way. So a lease could go from, say, Chevron to
16 Conoco. And, you know, certain times companies do
17 trades with one another, and so there's various leases
18 that leases change hands.

19 Q. Okay. And I imagine you haven't been
20 sitting through the entirety of testimony that we've
21 been going through up to this point.

22 A. I haven't.

23 Q. No. Okay. There was some testimony that we
24 heard earlier about just well plugging that has taken
25 place over 2024, and there was roughly three

1 categories of wells that were plugged in 2024 in that
2 testimony.

3 One category was OCD plugging, the wells
4 that OCD itself is plugging. Another category of
5 wells were the wells that operators are plugging
6 themselves. And then there was a third category that
7 people were having a hard time pinning down, but that
8 was called "forced plugging."

9 Are you aware, generally speaking, of
10 those three categories of wells?
11

12 A. I would -- I'm not sure -- I mean, I can
13 speculate what the term "forced plugging" means. I'm
14 guessing that's when the land office is asking
15 somebody to plug a well. Is that -- I don't know, so
16 might refresh me. But I'm guessing.

17 Q. I believe that is correct, I was just
18 wondering if -- but I'm not testifying, obviously, in
19 this case. I was just wondering whether you had any
20 information that you could help shed light on that
21 category. But thank you so much. Yeah.

22 A. I do know we asked people to plug wells, so
23 if that is what that is referring to, yes. We do
24 force companies, like I mentioned earlier. We have
25 sent out numerous demand letters, and before we will

1 approve an assignment or certain changing unit
2 operators or, you know, these certain suits that have
3 been filed or certain settlements, we do require
4 certain lessees of record to make sure certain wells
5 are plugged. A lot of companies have been great to
6 work with and have plugged those wells.

7 MR. TISDEL: Great. Thank you so much,
8 Ms. Marks. Those are all the questions that I have.
9 Thank you.

10 HEARING OFFICER ORTH: Thank you,
11 Mr. Tisdell.

12 Commissioner Ampomah, do you -- oh,
13 wait, sorry, I forgot to ask. Mr. Moore, do you have
14 any redirect?

15 MR. MOORE: Just a very limited hearing,
16 Madam Hearing Officer. Thank you.

17 REDIRECT EXAMINATION

18 BY MR. MOORE:

19 Q. Ms. Marks, your direct testimony in this
20 case concerns the rules, the rule amendments at issue
21 in the application and not any potential upcoming
22 changes to State Land Office regulations; is that
23 correct?

24 A. That's correct.

25 MR. MOORE: All right. I think that is it

1 for redirect. Thank you, Madam Hearing Examiner.

2 HEARING OFFICER ORTH: Thank you, Mr. Moore.

3 Commissioner Ampomah, do you have
4 questions of Ms. Marks?

5 COMMISSIONER AMPOMAH: No, I do not. Thank
6 you.

7 HEARING OFFICER ORTH: Commissioner Bloom.

8 COMMISSIONER BLOOM: Yes, thank you.

9 Thank you, Ms. Marks.

10 EXAMINATION

11 BY COMMISSIONER BLOOM:

12 Q. Just a couple questions. And thanks for
13 being here. We put up a firewall at the land office,
14 so as I started preparing for this hearing, that was
15 the first time I saw that the land office was going to
16 be here as a participant, so thank you.

17 Well, Ms. Marks, I just wanted to clear
18 up some things. I think we got off a little bit of a
19 tangent about the land office's bonding efforts. But
20 you mentioned that the land office bonding effort is
21 focused on bonding the lease, correct?

22 A. I believe it is, yes.

23 Q. Yeah. But I think you said maybe it depends
24 on the number of wells on the lease. Are you sure
25 about that? It was not my recollection and I don't

1 believe it to be the case, but I'm want to let you
2 reconsider that answer?

3 A. I am not sure about that, and so I have
4 not -- I read that quite some time ago and I have not
5 read it again. So I guess that's why I was stumbling
6 quite a bit through that. So I will -- I will move to
7 strike my own answer there, because I do not -- that
8 is a -- quite a piece of a rule that I have -- I have
9 yet to read again. So yes, if the court reporter
10 would strike my answer, that would be great.

11 Q. Okay. I believe this is more of an effort
12 coming out of the Office of General Counsel than it is
13 your Division, correct?

14 A. That is very correct.

15 Q. And then, Ms. Mark, you received some
16 questions regarding double bonding. I don't know if
17 you heard testimony today, but I believe Mr. Powell
18 answered on cross-examination that the land office
19 cannot call or take OCD bonds. Is that your
20 understanding?

21 A. Yes. The land office cannot, to the best of
22 my knowledge, demand that OCD pull a bond.

23 Q. And then just to make sure we don't have any
24 misunderstandings coming out of this hearing, under
25 the land office's proposal under Section E, called

1 "Periodic Adjustment and Review of Bonding Levels,"
2 point number 3 says: In the event that a well bond or
3 other financial assistance on file with the New Mexico
4 Oil Conservation Division would cover operations on a
5 particular lease in the Oil and Gas Act and New Mexico
6 Oil Conservation Commission rules are changed to allow
7 the commissioner to access such bond or other
8 financial assurance, the commissioner may adjust
9 downward the monetary value of the bond required under
10 this rule by the amount of the bond or other financial
11 assurance on file with the New Mexico Oil Conservation
12 Division that is applicable to wells on state trust
13 land.

14 So as I read that, it says that
15 currently the land office does not believe it can
16 access OCD bonds, and therefore, we're not seeing
17 overlapping bonding to this point because the land
18 office can't take those bonds. Does that make sense
19 to you?

20 A. I'm sorry. Were you reading from this
21 current rule before the Commission?

22 Q. No. That was the land office draft for its
23 own bonding effort.

24 A. Sorry. Do you want to reread that and then
25 I can answer it.

1 Q. I'll withdraw the question. I don't think
2 it's particularly germane. Well, no, I'm sorry. I
3 will read parts of that again for you.

4 This is E.3, and it says that: In the
5 event that a well bond or other financial assurance on
6 file with the New Mexico OCD would cover operations on
7 a particular lease and the Oil and Gas Act and
8 New Mexico Oil Conservation Commission rules are
9 changed to allow the commissioner to access such bond
10 or other financial assurance, the commissioner may
11 adjust downward the monetary value of the bond
12 required under this rule.

13 So I'm hoping that again underscores
14 that the land office cannot call or take OCD bonds.
15 Again, would that be your position?

16 A. I agree, if the -- with the way -- the way
17 any rule and statute reads right now, I do not believe
18 the land office can currently call any OCD bond.

19 COMMISSIONER BLOOM: Okay. Thank you.

20 And, Madam Hearing Officer, I don't know
21 if it would be appropriate, but just for ease of
22 document management, would the land office be able to
23 submit their proposed changes as a red line?

24 HEARING OFFICER ORTH: Typically at the end
25 of a rulemaking, I invite all parties who would like

1 to submit kind of a final proposed red line or any
2 written closing arguments to do that.

3 Is there any reason that wouldn't be
4 appropriate in this case? We'll pause to hear from
5 the petitioners or anyone else? No?

6 All right. Commissioner Bloom, I'm not
7 hearing any objections to that plan, which again is
8 our usual practice in a complex rulemaking.

9 COMMISSIONER BLOOM: Thank you very much
10 Madam Hearing Officer. So I think that'd be helpful
11 for managing, I think, a few different versions of
12 the rule currently. And we've seen a few different
13 ones come around, and so having that final submission
14 from parties that would wish to submit them I believe
15 would be helpful.

16 Ms. Marks, thank you. I don't have any
17 further questions for your land office. Thanks for
18 your time.

19 THE WITNESS: Thank you.

20 HEARING OFFICER ORTH: Thank you,
21 Commissioner Bloom.

22 Chair Chang, do you have questions of
23 Ms. Marks?

24 CHAIR CHANG: I do not. Thank you.

25 HEARING OFFICER ORTH: All right. Thank you

1 very much, Ms. Marks.

2 THE WITNESS: Thank you.

3 HEARING OFFICER ORTH: We'll excuse you.

4 Do we have time here for Oxy's opening
5 statement?

6 MR. RANKIN: Madam Hearing Officer, thank
7 you. I actually haven't timed myself on this, but if
8 the Commission wants to take a break before public
9 comment, I would say no. But if we want to go
10 straight up to public comment, I may be able to
11 squeeze it in.

12 HEARING OFFICER ORTH: Yeah, we've only been
13 going 40 minutes, so let's squeeze it in. And if you
14 go a few minutes after 4:00, that's fine. I only
15 have four folks who asked to offer comment at 4:00
16 p.m. So I think we'll be fine.

17 OPENING STATEMENT BY MR. RANKIN

18 Thank you, Madam Hearing Officer. Madam
19 Hearing Officer, Commissioner Chang, Commissioners
20 Ampomah and Bloom, thank you very much for
21 consideration of Oxy's presentation of its case and
22 consideration of its post modifications to the rules
23 submitted by applicants.

24 Oxy supports reasonable targeted and
25 administratively efficient and effective regulations

1 governing financial assurance requirements for
2 operators of well and gas wells in the state that
3 make sufficient funds available to the Division to
4 cover the plugging of wells on state or fee lands in
5 the event an operator becomes insolvent. But the
6 regulations should narrowly focus on the operators
7 and operations most at risk of orphaning wells and
8 stay within the legislative grant of authority.

9 Section 70-2-14 of the Oil and Gas Act
10 authorizes the Oil Conservation Division and
11 Commission to require operators in New Mexico to
12 provide financial assurance for plugging wells on
13 state and fee lands. Subsection A of that statute
14 sets out the reach and limits of the authority.

15 But rather than stay within the scope of
16 the framework, the proposed rule, while well
17 intended, strains the language of the statute beyond
18 breaking and beyond what the legislature intended or
19 authorized. That puts the rule as proposed at risk
20 of being challenged and overturned and because the
21 proposed rule steps outside the confines of the
22 statutory framework, increases the chances of
23 unintended adverse consequences proliferating if it
24 is adopted without modification.

25 The statute sets out two mandates that

1 are ignored and violated, in our view, of the
2 proposed rule. First, the statute requires and
3 provides for operators to have the option for
4 one-well financial assurance or to elect blanket
5 financial assurance capped at \$250,000.

6 Second, it authorizes increased
7 financial assurance through one-well bonds only after
8 a well has been held in temporarily abandoned status
9 for more than two years.

10 Oxy does not object to applicant's
11 proposed increase of the financial assurance required
12 for active or inactive wells. However, applicant's
13 proposal to create a new category of financial
14 assurance for what it deems as marginal wells and
15 marginal operators exceeds the statutory restrictions
16 under the statute.

17 Applicant's further efforts to remove
18 the two-year period provided for under the statute
19 for wells in temporarily abandoned status, while
20 allowing them to remain under an operator's active
21 blanket financial assurance is also improper.

22 Applicants seek to create a new
23 financial assurance category for what it defines as
24 marginal wells by imposing a new category or new
25 requirement for these active producing wells that

1 removes them from the \$250,000 blanket financial
2 assurance option provided under the statute and
3 requires instead a one-well financial assurance of
4 \$150,000 for each well.

5 Applicants also seek to create a new
6 category for marginal operators that would require
7 operators with more than 15 percent of their marginal
8 or inactive wells in their portfolio to pay a
9 one-well financial assurance of \$150,000, not just
10 for each marginal well, but for each of its other
11 active producing wells, even though those active and
12 producing wells do not meet the rules definition for
13 a marginal well.

14 That, in our view, is regulatory
15 overreach and not targeted towards the wells and
16 operators that the Division says are the problem.

17 It's also contrary to the plain language
18 of the statute in the legislature's intent. And we
19 know this by reviewing the statute's history.

20 Section 70-2-14A has been periodically modified by
21 the legislature with the most recent amendments in
22 2015 and 2018.

23 The 2015 amendment created a category of
24 financial assurance for temporarily abandonment
25 status wells, and authorizes a new category of

1 financial assurance to exceed \$50,000. At the time
2 of the 2015 amendment, before the \$250,000 cap was
3 set, the statute did not allow financial assurance to
4 exceed \$50,000, that was the limit. But this 2015
5 amendment, therefore, specifically authorizes
6 financial assurance for temporarily abandonment
7 status wells to exceed the general statutory cap of
8 \$50,000.

9 Then in 2018, the legislature increased
10 the general statutory restriction on financial
11 assurance by a factor of five from \$50,000 to
12 \$250,000. Accordingly, the statute today instructs
13 that an operator is authorized to elect a blanket
14 plugging financial assurance that cannot exceed
15 \$250,000. The blanket plugging financial assurance
16 for temporarily abandonment status wells must exceed
17 \$50,000. And one-well plugging financial assurance
18 is authorized for a well that has been held in
19 temporarily abandonment status for more than two
20 years. But an operator has the option to place these
21 wells under a blanket financial assurance.

22 Applicant's proposed financial assurance
23 for active wells recognizes and remains within the
24 \$250,000 statutory cap that the legislature
25 established back in 2018. However, in an effort to

1 work around that statutory restriction for its
2 proposed new category of financial assurance
3 addressing active marginal wells, the applicants
4 asked the Commission to define a marginal well,
5 remove the active wells from the \$250,000 financial
6 cap, require a one-well plugging financial assurance
7 in the amount of \$150,000 for each of these active
8 marginal wells, and if over 50 percent of an
9 operator's portfolio is considered to be marginal or
10 inactive or a combination, then the operator is being
11 required to provide financial assurance of \$150,000
12 not just for each marginal well, but for each of its
13 wells overall, including wells that are not defined
14 as marginal.

15 Unlike in 2015 when the legislature
16 created the financial blanket bond for temporarily
17 abandonment status wells that expressly authorized
18 the category of financial assurance to exceed the
19 statutory cap, the legislature has not taken any
20 steps to authorize the Commission to exceed the cap
21 for active marginal wells or any other category of
22 financial assurance. The legislature also has not
23 authorized the Commission to remove active producing
24 wells from the \$250,000 cap that's in place, nor they
25 authorized them to require -- the Commission to

1 require one-well financial assurance for each of
2 these active producing wells.

3 Instead, the legislature has limited the
4 one-well financial assurance authority to a well that
5 has been held in a temporarily abandonment status for
6 more than two years. If, as applicants suggest, the
7 Commission can always require one-well financial
8 assurance for any category of well, then the \$250,000
9 financial assurance restriction that's been in place
10 and the specific one-well financial assurance
11 authorized set forth under the statute have no
12 meaning and are rendered superfluous.

13 And as noted in the statement filed by
14 Oxy witness Tiffany Wallace, any concerns with
15 marginal wells can be addressed by the presumption of
16 the no-beneficial-use provision that's proposed by
17 applicants.

18 As proposed, a notice of no beneficial
19 use is triggered if in a consecutive 12-month period
20 the well is not produced at least 90 days and has not
21 produced 90 barrels of oil equivalent. That
22 provision is narrow and targeted and allows the
23 Division to take action against specific operators
24 for specific wells that are at risk of truly being
25 orphaned and to do so early in the process of

1 abandonment, just as the Division says it needs to be
2 able to do.

3 Now, this presumption and the subsequent
4 notice required and response required by the
5 provision addresses any concerns with marginal wells
6 without running afoul of the statutory limits.

7 We'll talk about inactive wells real
8 quick. Oxy does not object to applicant's proposal
9 to increase the financial assurance for inactive
10 wells. However, the proposed change to inactive well
11 financial assurance do not comply with the financial
12 assurance statute. The current financial assurance
13 rule complies with the statute and recognizes that
14 increased financial assurance applies only to any
15 well that has been held in temporarily abandoned
16 status for more than two years.

17 In adopting this rule back in 2005, the
18 Commission recognized that the statutory restriction
19 is in place which rests on the fact that a well in
20 approved TA status has been vetted by the Division,
21 including a review of the condition of its casing and
22 cement and can therefore remain covered under the
23 statutory blanket bond of \$250,000 at least for the
24 first two years.

25 Applicant's proposed changes instead

1 requires increased financial assurance for wells in
2 improved temporary abandoned status immediately, as
3 soon as they're put into that status. Now, this
4 constitutes, in our view, the legislative directive
5 allowing wells in approved TA status to remain under
6 the \$250,000 cap for at least the first two wells --
7 two years. Forgive me.

8 On to operator certification and
9 registration. Oxy supports the rule revisions that
10 are designed, in our view, to determine whether new
11 operators seeking authority to operate in the state
12 and existing operators looking to acquire new assets
13 in New Mexico do not have a history of financial
14 assurance forfeitures in other states. As noted in
15 the statement of Oxy's witness, Tiffany Wallace, Oxy
16 has proposed modifications to the operator
17 registration and change of operator provisions that
18 are designed to provide a certification that can be
19 met by large operators with diverse portfolios in
20 multiple states.

21 These proposed modifications are
22 efficient, administratively efficient, and they
23 provide the Division with information to gauge
24 whether an operator has had difficulty meeting
25 financial obligations in other states.

1 And we understand the applicants in the
2 Division have accepted Oxy's considerations and
3 proposal, and we're grateful for that consideration.

4 On the presumption of no beneficial use,
5 Oxy supports the proposal as presented. And as
6 explained by Oxy's witness, Tiffany Wallace, Oxy has
7 proposed only a few modifications designed, in our
8 view, to avoid unnecessary mandatory submissions of
9 categories of information that are repetitive or may
10 not fit a particular circumstance, giving OCD
11 discretion to request submission of relevant
12 documents only.

13 On the amendments to the TA status
14 wells, Oxy supports reasonable and administratively
15 efficient regulations governing the placement of
16 wells in TA status, but strongly urges the Commission
17 to ensure that the Division retains discretion to
18 approve TA status for additional discrete periods,
19 such as five-year increments, based on reasonable and
20 relevant information to support the request.

21 Oxy proposes to retain much of
22 applicant's proposals for what is required for the
23 initial TA approval, but proposes modifications to
24 allow the Division approvals for additional TA
25 periods, as we've discussed.

1 As to the adjudicatory requirements for
2 TAs going beyond the initial extension period
3 requiring those to go to hearing, Oxy proposes that
4 all TA extension requests go to the Division --
5 applicants propose that all the TA extension requests
6 beyond the first one go to the Division hearing, and
7 that any interested party be allowed to intervene to
8 participate.

9 As noted by Oxy's witness, Tiffany
10 Wallace, in her testimony, the Division's current
11 dockets for adjudicatory hearings are at capacity.
12 There's no administrative reason to further burden
13 the docket with requests for extensions of an
14 approved temporary abandonment status; similar to the
15 request to eliminate the requirement that an
16 interested party demonstrate standing first to
17 intervene in an adjudicatory hearing is unnecessary,
18 inappropriate and, in our view, will further burden
19 the Division's crowded hearing docket.

20 With that, let me just give you a quick
21 overview of our witnesses. Oxy has two witnesses who
22 have presented both direct and rebuttal testimony.
23 First is Tiffany Wallace. Ms. Wallace has previously
24 testified before the Commission on rulemaking issues
25 in her capacity as the deputy director of the

1 Division previously. She currently manages policy
2 and external affairs for Oxy in the lower 48 states,
3 including New Mexico, and has had several engineering
4 and leadership positions in the oil and gas industry
5 for 20 years before she joined the Division in 2020.

6 Prior to joining the Division, she was
7 the development director for Marathon, overseeing oil
8 and gas assets in the Delaware Basin in New Mexico.
9 And her responsibilities include overseeing more than
10 100 employees on subsurface geoscience, reservoir
11 engineering, and planning-type support groups,
12 including production, engineering and operations and
13 regulatory.

14 And her direct testimony provides an
15 overview of Oxy's recommended modifications and
16 provides reasons for the requested changes. Her
17 rebuttal testimony responds to specific assertions
18 that marginal wells hold little value other than to
19 hold a lease by providing case studies of specific
20 wells that would qualify as marginal under the
21 definition of the proposed rule that Oxy was able to
22 return to improved production, demonstrating their
23 value. She will have a short surrebuttal as well.

24 Second witness is Ms. Kelly Montgomery.
25 She has a bachelor of science in mechanical

1 engineering and is a registered professional engineer
2 in Texas. She serves as Oxy's regulatory manager for
3 the Permian Basin for more than ten years and has
4 testified before the Commission on new and expanded
5 enhanced well-recovery projects, and is familiar with
6 the Division's regulatory process.

7 She's currently Oxy's vice president for
8 air programs and has a BS as well in mechanical
9 engineering and is a registered professional engineer
10 in Texas. I think I said that already.

11 Her direct rebuttal testimony is focused
12 on a narrow issue of the rules changes to the TA
13 status, approvals and extensions, and the impacts
14 potentially on Oxy's enhanced oil recovery program,
15 which covers more than 15,000 acres and involves more
16 than 500 wells that have been or will be converted
17 over time to injection, producing wells or monitoring
18 wells. She explains that EOR projects are sensitive
19 to economics and benefit from a large inventory of
20 wells for use as injectors, producers, or monitoring
21 wells in the future.

22 This testimony in combination highlights
23 the risks that this proposed rule poses for causing
24 waste and impairing correlative rights, and we
25 appreciate your attention to Oxy's testimony today.

1 Thank you.

2 HEARING OFFICER ORTH: Thank you,
3 Mr. Rankin.

4 Sheila, do we have our interpreter on
5 the platform?

6 MS. APODACA: I'm not seeing her on here
7 yet, and I have the company contacting her to see if
8 maybe she signed in under a different name or
9 something, but I haven't heard from her.

10 HEARING OFFICER ORTH: All right. Let me
11 just ask, if you are our interpreter for public
12 comment today and you're on the platform, please
13 raise your virtual hand. No?

14 Okay. Let's see here. I think, first,
15 while we wait for the interpreter to arrive, I'll
16 invite those who are not requesting interpretation
17 between Spanish and English or English in Spanish. I
18 have four names on the sheet.

19 Just a few things about public comment.
20 I will ask you to spell your first and last name for
21 the transcript. I will ask you, pursuant to
22 Commission rules, to swear or affirm that you will
23 tell the truth, and I will ask you to keep your
24 comments verbally to three minutes.

25 If you have more to say than can fit in

1 that time, please submit your comments in writing to
2 Sheila Apodaca, the Commission clerk.

3 So I see a GR raising their hand,
4 Sheila. This is a Giovanna Rossi.

5 Ms. Rossi, can you unmute yourself?

6 MS. ROSSI: Yes. Thank you. I was raising
7 my hand just to give public comments. I'm not an
8 interpreter.

9 HEARING OFFICER ORTH: No, that's fine. If
10 you don't require an interpreter, I'm happy to take
11 your comment now? Would you spell your first
12 sentence last name for the transcript.

13 MS. ROSSI: Yes. Giovanna, Rossi,
14 G-I-O-V-A-N-N-A, R-O-S-S-I.

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

17 MS. ROSSI: I do.

18 HEARING OFFICER ORTH: Go ahead.

19 MS. ROSSI: Good afternoon, Chair and
20 Commissioners. My name is Giovanna Rossi, and I'm
21 speaking on behalf of Moms Clean Air Force and
22 thousands of New Mexico parents who want clean air,
23 safe water and a healthy future for our children.
24 Moms Clean Air Force has over 20,000 members right
25 here in New Mexico and over 1.6 million members

1 nationwide.

2 New Mexico has a pollution problem. We
3 have more than 62,000 oil and gas operations
4 releasing hundreds of millions of pounds of methane
5 and other harmful air pollutants each year. This
6 isn't abstract, it's personal. I'm a mom of two
7 teenagers who love the outdoors. On hot summer days
8 when ozone pollution from nearby oil and gas
9 operations mixes with the heat, my daughter comes
10 home coughing, with burning eyes and headaches. Our
11 doctor told us to keep her indoors on bad air days.

12 But childhood shouldn't mean checking
13 the air quality before going outside. No parent
14 should have to choose between fresh air and their
15 child's health. That's why this rule matters. These
16 outdated bonding rules have allowed oil and gas
17 corporations to drill wells across our state while
18 posting only a fraction of the true cleanup cost.

19 The legislative finance committee found
20 it costs an average of \$163,000 to plug a well, and
21 some cost over \$700,000. Yet because of low bond
22 amounts, taxpayers have already spent over \$100
23 million cleaning up abandoned wells with as much as
24 \$1.6 billion more still unfunded.

25 Beyond the dollars, these abandoned

1 wells leak methane and toxic chemicals into our air
2 and water, putting communities, especially rural and
3 tribal families, at risk.

4 The good news is New Mexicans
5 overwhelmingly support fixing this. Nearly nine in
6 ten voters, say oil and gas corporations should pay
7 the full cost of cleanup. Even our own State Land
8 Office and Oil Conservation Division support the
9 proposed rule changes.

10 Here's the bottom line: If you drill
11 it, you should clean it up a hundred percent of the
12 time. This is our opportunity to align policy with
13 common sense and protect both our children's health
14 and our state's future. Please vote to adopt
15 stronger bonding and cleanup rules because no
16 corporation's profit should come before a child's
17 right to breathe clean air and grow up healthy.

18 Thank you very much.

19 HEARING OFFICER ORTH: Thank you, Ms. Rossi.

20 Sheila, can we move to Patricia Sheely?

21 Ms. Sheely, can you unmute yourself?

22 Can you hear me? You should have the necessary
23 permission.

24 Okay. She may have stepped away or be
25 challenged by the unmute feature.

1 Let's see who's next. Mitchell
2 Krakauskas.

3 MR. KRASKAUSKAS: Good afternoon, Madam
4 Examiner.

5 HEARING OFFICER ORTH: Hello, would you
6 spell your first and last name, please?

7 MR. KRAKAUSKAS: My name is Mitch
8 Krakauskas, M-I-T-C-H. Last name is
9 K-R-A-K-A-U-S-K-A-S.

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

12 MR. KRAKAUSKAS: I do.

13 HEARING OFFICER ORTH: Thank you. Go ahead.

14 MR. KRAKAUSKAS: I work for a small
15 family-owned operating company in southeast
16 New Mexico, and I have serious concerns that this
17 rule will run every small independent operator out of
18 our state.

19 The extreme bonding requirements will
20 force companies to waste capital by putting up cash
21 bonds rather than using that capital to continue to
22 grow and develop minerals to the benefit of the state
23 and the mineral resource. The proposed overreach of
24 this rule, allowing for the state to single-handedly
25 approve or deny the transfer of wells,

1 disproportionately affects the small producers, many
2 of which are based in New Mexico. These are the
3 companies that spend money in our communities,
4 support local charities and events, and support
5 thousands of families that call this state home.

6 The adoption of this rule, on top of all
7 the other overregulation of our industry in recent
8 years, will force many of these families to move out
9 of the state or find new forms of employment,
10 including me and my family.

11 I strongly encourage the Commission to
12 consider dismissing this rule change. Thank you.

13 HEARING OFFICER ORTH: Thank you,
14 Mr. Krakauskas.

15 Let's see. Move to Arthur Harrington.
16 Can you unmute yourself, Mr. Harrington? Would you
17 spell your first and last name for the transcript,
18 please.

19 MR. HARRINGTON: My first name is Arthur,
20 A-R-T-H-U-R. My last name is Harrington,
21 H-A-R-R-I-E-G-T-O-N.

22 HEARING OFFICER ORTH: Do swear or affirm to
23 tell the truth?

24 MR. HARRINGTON: Yes, ma'am, I do.

25 HEARING OFFICER ORTH: Thank you. Go ahead.

1 MR. HARRINGTON: Okay. So my name is Arthur
2 Harrington. I lived in Fremont, California from 1976
3 to 2018. I was a union carpenter in California in
4 the Fremont Bay area, and I made a living, a good
5 living, and I retired in 2018. I moved to the Mid
6 Valley Airpark in Los Lunas, New Mexico, and I like
7 it here. I really like it here.

8 Okay. It's my opinion that gas and oil
9 is very important. Without it, this place will have
10 a hard time. And I've seen firsthand what
11 overregulation does. It's just a thing -- as a
12 business partner, I saw it just gets passed on to the
13 consumer. That would be the residents and the people
14 that live here with me.

15 And I think that it's very important to
16 be careful, because I've seen what happened where I
17 used to live. And it's sad.

18 And I thank you very much for
19 considering this, my interpretation of what I've
20 seen. And I hope that it helps the gas and oil
21 industry here.

22 HEARING OFFICER ORTH: Thank you,
23 Mr. Harrington.

24 We'll go back to Ms. Sheely.
25 Ms. Sheely, can you unmute yourself?

1 All right. Do we have anyone else on
2 the platform? Let's see.

3 HJ, Haley Jones. Hello, would you spell
4 your first and last name for the transcript, please.

5 MS. JONES: Yes. Haley, H-A-L-E-Y, Jones,
6 J-O-N-E-S.

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

9 MS. JONES: I do.

10 HEARING OFFICER ORTH: Thank you. Go ahead.

11 MS. JONES: Good afternoon. My name is
12 Haley Jones and I'm speaking on behalf of Citizens
13 Caring for the Future in strong support of the
14 proposed bonding rule changes.

15 I have lived in Carlsbad, New Mexico,
16 for nearly 30 years of my life. As you may know, 17
17 years ago a sinkhole was discovered under the
18 intersection of two major highways in south Carlsbad,
19 caused by a brine well operation.

20 The operation was shut down, but because
21 there wasn't sufficient financial assurance in place,
22 we had to wait 14 years for the problem to be fixed.
23 The company went bankrupt two years after the
24 discovery of the sinkhole, leaving New Mexico
25 temporarily --

1 MS. SHEELY: I think now I've got it.

2 HEARING OFFICER ORTH: Just a moment, I'll
3 take your comment in a moment.

4 MS. SHEELY: Can you hear me?

5 HEARING OFFICER ORTH: Yes. I'll take your
6 comment momentarily.

7 Go ahead, Ms. Jones.

8 MS. JONES: -- after the discovery of the
9 sinkhole, leaving New Mexico taxpayers on the phone.

10 MS. SHEELY: Can you hear me now?

11 HEARING OFFICER ORTH: Sheila, would you
12 mute that person, please, whoever it is?

13 MS. SHEELY: Can you hear me now?

14 HEARING OFFICER ORTH: Yes. I'll take your
15 comment in a moment.

16 Ms. Jones, go ahead.

17 MS. JONES: -- to cover the cost of fixing
18 the problem.

19 Carlsbad had to fight every legislative
20 session for years to get the funding to fix the
21 problem a private company had caused, and taxpayers
22 all across the state had to help pay to fix an issue
23 they did not create.

24 If the proposed rules had been in place
25 back when the brine well sinkhole was first

1 discovered, we might not have spent more than a
2 decade wondering if the highway might collapse
3 beneath us.

4 This should be a lesson we heed, not
5 ignore. The sinkhole shows us the high price that
6 can be paid by the state and taxpayers when private
7 companies do not clean up after themselves.

8 Unplugged abandoned wells can leak
9 toxins into our air and water, threaten public
10 health, and mar our beautiful landscape with old,
11 decrepit equipment. The cost to plug and remediate
12 these sites should be paid by the companies who
13 profit off them, not by taxpayers.

14 Here's the bottom line. If you drill
15 it, you should clean it up 100 percent of the time.
16 If a company can't afford to put up the money for
17 these proposed bonding rules, they should not be
18 drilling in the first place. Please vote to adopt
19 stronger bonding rules. Let's protect our air, water
20 and wallets. Thank you.

21 HEARING OFFICER ORTH: Thank you, Ms. Jones.
22 And thank you for pressing on with the interruptions.

23 All right. Who do we have next? We're
24 going to go back to Ms. Sheely.

25 Ms. Sheely, can you unmute yourself?

1 MS. SHEELY: Can you hear me okay?

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

4 MS. SHEELY: Patricia, P-A-T-R-I-C-I-A,
5 Sheely, S-H-E-E-L-Y.

6 HEARING OFFICER ORTH: Do you swear or
7 affirm to tell the truth?

8 MS. SHEELY: Yes, I do.

9 HEARING OFFICER ORTH: Thank you, God.

10 MS. SHEELY: I have lived in Gallup,
11 New Mexico, for 33 years. I am commenting in support
12 of the rulemaking to modernize New Mexico's bonding
13 and cleanup rules. I believe that it is critical
14 that oil and gas wells be properly plugged and that
15 any contamination be cleaned up. It is unacceptable
16 to contaminate our land, water, and air. This
17 endangers the health of our children, makes our water
18 unsafe to drink, and degrades the soil for
19 agriculture. It further spoils the beauty of the
20 land, which is important for tourism and recreation.

21 It is just common sense that the private
22 companies that have profited from our public
23 resources should be responsible for cleaning up the
24 inevitable spills and plugging wells that are no
25 longer producing.

1 I applaud the companies that have
2 properly plugged 95 percent of the wells, but the
3 remaining 5 percent are still capable of a lot of
4 pollution. New Mexico has a huge number of orphaned,
5 abandoned, and low-producing wells that no one is
6 taking responsibility for cleaning up. Corporations
7 are gaming the system and using loopholes to get rid
8 of high risk, marginally producing wells by selling
9 them to poorly funded companies.

10 The present deposit system does not
11 provide enough money to clean up and plug these
12 wells. This leaves the state on the hook for a huge
13 cleanup bill. If there are 5,000 wells at risk and
14 the average cost of cleanup is \$163,000 per well, the
15 total cost would be \$815 million.

16 I expect this estimate is too low, but
17 we don't need to guess. The Legislative Finance
18 Council estimates that the state's liability for
19 abandoned wells to be \$700 million to \$1.6 billion.

20 Both people and corporations like to
21 believe that they are performing in an ethical
22 manner, but the truth is most of us are motivated by
23 cost and the desire to make a profit. This is why
24 rules and regulations are necessary, to ensure that
25 everyone pays the actual cost of doing business and

1 cleans up any mess that may occur.

2 New Mexico is not a rich state, and it
3 has many social programs that it needs to be spending
4 its money on. I want the corporations to leave the
5 land like they found it.

6 Thank you for listening to me, and I
7 apologize for my speaker problems.

8 HEARING OFFICER ORTH: Thank you very much,
9 Ms. Sheely.

10 Who do we have next? Heidi Brooks, can
11 you unmute yourself?

12 MS. BROOKS: Hi. Yes, I'm here.

13 HEARING OFFICER ORTH: Would you please
14 spell your first and last name.

15 MS. BROOKS: Heidi, H-E-I-D-I, Brooks,
16 B-R-O-O-K-S.

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

19 MS. BROOKS: I do.

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

22 MS. BROOKS: Okay. Yes, I'm here to submit
23 a comment in favor of the proposed rule amendments
24 concerning the financial assurance requirements for
25 plugging disused gas wells.

1 I'm prompted to speak out here today by
2 an article recently sent to me by my daughter, who
3 lives in Sweden. From abroad, she read an AP article
4 entitled, "Blood Tests Show Highest Levels of Forever
5 Chemicals of Those Living Near New Mexico Plume."

6 The study reported on was about the
7 extraordinarily high levels of PFAS from firefighting
8 foam used at Cannon Air Force Base. This problem
9 caused not only health issues for people drinking
10 contaminated water, but property value losses and
11 livelihoods threatened.

12 After reading the article, it struck me
13 that New Mexico is often in the news for pollution
14 that we're exposed to from PFAS, to radiation
15 exposure by Downwinders from the bomb tests in
16 southern New Mexico, to the record-setting uranium
17 tailings bond spill at Church Rock into the
18 Rio Puerco, to the plutonium that remains in Acid
19 Canyon near Los Alamos, to the jet fuel plume
20 underneath the southern part of Albuquerque, to the
21 Chevron Quest Mine waste, to the toxic wastewater
22 spilled that turned the Animas River orange and
23 yellow, and the list goes on. And that list includes
24 idle oil and gas wells.

25 We seem to be going from the land of

1 enchantment to the land of collateral damage. But
2 compared to many of these other pollution stories in
3 our state, the geographic area of the problem of
4 disused oil and gas wells is enormous. The toxins
5 being emitted into the air and water from the
6 hundreds of thousands of non-producing oil and gas
7 wells affects broad swaths of southern and
8 southeastern and northwestern New Mexico. These
9 toxins, like the PFAS referenced earlier, also pose
10 serious risks to the lives and livelihoods of the
11 people near these ways, as well as to the
12 environment.

13 New Mexicans should be entitled to a
14 safe place to live, with clean water, land and air.
15 The fact that the oil and gas industry has been
16 permitted to tap into the state's vast stores of oil
17 and gas shouldn't condemn us to unnecessary toxic
18 exposures long after the wells cease to be
19 productive.

20 The Oil Conservation Commission should
21 enact rules designed to protect the people of the
22 state from the unfair costs and dangers of defunct
23 oil and gas wells in their neighborhoods. New Mexico
24 should not be a state filled with sacrifice zones.

25 The commission's position, based on

1 fairness and justice, should be that if you drill it,
2 you clean it up promptly. Thank you.

3 HEARING OFFICER ORTH: Thank you,
4 Ms. Brooks.

5 We'll go now to Willis Duff. Mr. Duff,
6 can you unmute yourself? Willis Duff, you should be
7 able to unmute yourself. No?

8 Let's see. I see, Ellen Dueweke? Can
9 you help me.

10 MR. DUFF: I'm unmuted, if I'm still in
11 line.

12 HEARING OFFICER ORTH: Oh, is this Mr. Duff?

13 MR. DUFF: Yes, it is. I'm so sorry.

14 HEARING OFFICER ORTH: We'll go back to you.
15 Just a moment. All right, would you spell your first
16 and last name for the transcript, please.

17 MR. DUFF: Willis is W-I-L-L-I-S. Duff is
18 D-U-F-F.

19 HEARING OFFICER ORTH: And do swear or
20 affirm to tell the truth?

21 MR. DUFF: I do.

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

24 MR. DUFF: I'm a retired entrepreneur.
25 After 30 years of doing that, I live in the East

1 Mountains outside of Albuquerque. And I have a
2 slightly different slant on this.

3 I thank all of us, and certainly all of
4 you. I want to thank you for your service and
5 commend you for your stick-with-it-iveness and
6 patience.

7 I know we all know, you guys and gals
8 particularly, but most people know the downside of
9 free methane in the air and its effect on health and
10 particularly on climate change. So I'm not going to
11 elaborate on that. Probably wouldn't bring anything
12 new to the conversation.

13 But what I do witness, in my view of the
14 public conversations and in my contact with ordinary
15 people here in the East Mountains, is that there is
16 loss of faith in the institutions that are supposed
17 to enforce the rules and enforce the laws. And
18 there's a great impatience with not only corporate,
19 but government and personal impunity. Impunity is
20 sort of a natural catalyst to saying, "Dadgumnit,
21 that's not right."

22 And impunity is shown when unattended
23 wells uproot our atmosphere. And I think it's not
24 only good for the cause that this specific
25 undertaking is set about to fix, but it's good for

1 the general business of people having faith in the
2 institutions that are supposed to take care of us.

3 I think it's clear that for fairness,
4 justice and common sense, it makes total sense: If
5 you drill it, you fix it. And drilling it and
6 leaving it is dead wrong. And it goes beyond all the
7 machinations of government and business. It's a
8 human and moral issue, that if you make a mess in the
9 public realm, you are really obligated to fix it up.

10 So I really hope you guys are going to
11 vote for the stronger bonding.

12 Beyond that, as a personal position, I'm
13 offended and upset and all those things when I see
14 this impunity that's all around us, and particularly
15 now with the people who drill wells all the way from
16 the small independent driller, and I have some of
17 those in my family, all the way up to the mega
18 corporations, that it is your duty and your
19 responsibility to clean up your mess.

20 And I strongly hope you will all vote
21 for the increased bonding requirements. Thank you
22 very much.

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

24 We'll go back to Ellen Dueweke. Can you
25 unmute yourself? It appears you have the permission

1 to unmute yourself. Can you hear me?

2 Okay. We'll go to Nell Burrus instead.

3 Ms. Burrus, can you unmute yourself?

4 MS. BURRUS: Yes, I'm here.

5 HEARING OFFICER ORTH: Hello. If you would,
6 spell your first and last name for the transcript.

7 MS. BURRUS: My first name is Nell, N-E-L-L.
8 My last name is Burrus, B-U-R-R-U-S.

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

11 MS. BURRUS: I do.

12 HEARING OFFICER ORTH: Thank you. I'll
13 start your time.

14 MS. BURRUS: Dear Chair and Commissioners,
15 my name is Nell Burrus. I'm a K-12 educator in
16 New Mexico since 1999. My college education was paid
17 for by proceeds from a natural gas well located in
18 Oklahoma on family-owned land.

19 I'm here today in reference to Case
20 24683. I stand in favor of updating New Mexico's
21 bonding and cleanup rules. I urge you to defend the
22 health of New Mexico communities and the pocketbooks
23 of New Mexico taxpayers by updating the bonding rules
24 to fairly and accurately reflect the true cost of
25 cleanup and remediation of the oil and gas wells no

1 longer in service.

2 A few years ago, I was shocked to learn
3 about the huge clouds of methane that sit over both
4 northwest New Mexico and southeast in the Permian
5 Basin. While odorless and invisible to the naked
6 eye, methane clouds in the atmosphere are detected by
7 satellites using infrared technology. In my mind,
8 these clouds are a symbol of the damage that's being
9 done to our communities, environment, and climate in
10 New Mexico.

11 I recently accompanied the New Mexico
12 Interfaith Power and Light to Carlsbad, New Mexico,
13 to learn about the impact of oil and gas operations
14 on communities and environment in the vicinity. In
15 Carlsbad, via thermographic tools, we could see
16 methane and volatile organic compounds emanating from
17 a storage facility, while we heard the laughter and
18 sounds of children playing on a playground a few
19 hundred feet away at Ocotillo Elementary School.

20 At the Loco Hills location, we could
21 smell the stench of hundreds of oil wells that
22 appeared to be abandoned. We could see petroleum
23 leaking from tubes onto the ground, great piles of
24 industrial waste, chemicals and unlabeled vats. And,
25 again, our thermographic equipment clearly showed

1 that VOCs and methane were escaping from these sites.

2 Those companies who financially benefit
3 should be the ones who pay the full cost. That is
4 only fair. They should not be allowed to transfer
5 their ownership prior to cleaning up the site.

6 Also the state of New Mexico needs to do
7 due diligence by hiring and authorizing many more
8 inspectors to make sure that all oil operations are
9 being carried out in accordance with current and
10 future laws. This is not only to protect those
11 living in close proximity to oil and gas operation
12 today, but to protect future generations from their
13 climate and health impacts and their heavy associated
14 costs of cleanup, which New Mexican taxpayers will
15 have to pay if we allow the situation to continue to
16 worsen.

17 Thank you very much.

18 HEARING OFFICER ORTH: Thank you,
19 Ms. Burrus.

20 Let's go back to Ms. Dueweke.

21 MS. DUEWEKE: Yes. Can you hear me?

22 HEARING OFFICER ORTH: Yes, I can, very
23 clearly.

24 MS. DUEWEKE: I had the wrong microphone
25 enabled on my computer, so I apologize.

1 THE HEARING OFFICER: That's all right.
2 Would you spell your first and last name for the
3 record, please.

4 MS. DUEWEKE: First name is Ellen,
5 E-L-L-E-N. Last name, Dueweke, D-U-E-W-E-K-E.

6 THE HEARING OFFICER: Do swear or affirm to
7 tell the truth?

8 MS. DUEWEKE: I do.

9 HEARING OFFICER ORTH: Thank you. I'll
10 start your time.

11 MS. DUEWEKE: Okay. My name is Ellen
12 Dueweke, and I have been an Albuquerque resident for
13 49 years. When I moved to New Mexico as a young
14 woman, I was immediately enchanted by the natural
15 beauty of the state. Over the years, while enjoying
16 hiking, camping, cross-country skiing, or just the
17 zen I get from our incredibly beautiful and peaceful
18 vistas, I became a proud environmentalist and an
19 active Sierra Club member.

20 That's why I'm here in support of the
21 proposed amendment to the OCD rules regarding
22 financial assurance. The amendment fairly addresses
23 the problem of bad actors without causing harm to the
24 responsible companies who are cleaning up after
25 themselves. It prevents weak companies that don't

1 have the financial capacity to complete the full job
2 from extraction to cleanup from purchasing wells.
3 After all, if they can't afford the bonding price,
4 they can't afford to do it themselves. The original
5 well owner, unable to find a buyer, will then shut
6 their underproducing wells down and clean them up
7 themselves. Since unspent bonding money is refunded,
8 only irresponsible polluters will be harmed.

9 To attain my business degree from UNM, I
10 was required to take a business ethics course.
11 Surely these oil producers understand that because
12 theirs is a highly polluting industry, they have an
13 ethical responsibility to do what they can to clean
14 up the mess it creates. That is just part of their
15 business costs.

16 So why are they spending what would be a
17 small fortune to me on a team of lawyers to oppose
18 the change? The only reason I can think of is that
19 they know the amendment will reduce their bottom line
20 significantly. They want the cleanup cost to
21 continue to come from New Mexico taxpayers' pockets
22 so the money will continue to end up in theirs.

23 Last week, I heard commenters opposed to
24 the amendment. One complaint was that it will dry
25 the oil industry out of New Mexico, but the oil is in

1 New Mexico and the oil producers want it. This just
2 ensures that they clean it up.

3 Another complaint was that this
4 amendment will reduce the revenues the state receives
5 from the oil industry supporting our economy and our
6 school. But when we spend millions of tax dollars to
7 finish their job for them, we're actually subsidizing
8 the industry. This is an unnecessary loss to our
9 state.

10 There are so many legitimate needs of
11 public funds for New Mexicans. It doesn't make sense
12 to tax the poor to subsidize the rich. So please
13 approve the amendment. It is fair to the oil
14 producers and good for New Mexico. Thank you.

15 THE HEARING OFFICER: Thank you very much,
16 Ms. Dueweke.

17 Before I turn away from the platform,
18 let me ask if there's anyone else on the platform who
19 would like to offer public comment during this
20 session. The next session is 9:00 a.m. tomorrow
21 morning.

22 If you are on your phone on the
23 platform, you can press star 5 to raise your hand.
24 Otherwise, please raise your virtual hand.

25 All right. Let me see, is there anyone

1 in the room? That looks like Ms. Lucero.

2 Come on up, please. There's a witness
3 stand right there. Won't you please spell your first
4 and last name.

5 MS. LUCERO: My first name is Lora, L-O-R-A.
6 Last name is Lucero, L-U-C-E-R-O.

7 HEARING OFFICER ORTH: Do swear or approve
8 to tell the truth?

9 MS. LUCERO: Yes, I do.

10 HEARING OFFICER ORTH: Thank you very much.
11 I'll start your time.

12 MS. LUCERO: Thank you. I'm from
13 Albuquerque. Thank you for the opportunity to speak
14 today about the rulemaking in this case, Number
15 24683.

16 I'm speaking as a grandmother -- well,
17 first as a mother, then a grandmother, and now a
18 great grandmother. I've raised my family to take
19 responsibility for our actions, to care for our
20 neighbors, our community, to respect our home and our
21 planet. And last but not least, to clean up our
22 messes.

23 I expect no less from you, from my
24 elected officials, and from the oil and gas industry.

25 The proposed rule to increase the

1 bonding requirements for oil and gas drilling
2 operators makes perfect sense to me, and I hope it
3 does to you as well.

4 The industry must take responsibility
5 for its actions, the cost of doing business,
6 including cleaning up any messes, and the risk of
7 doing business must fall squarely on the industry,
8 not on New Mexicans.

9 The proposed rule recognizes that our
10 neighbors and our communities must be protected. And
11 if leaks or spillage occurs, the operators must foot
12 the bill for the cleanup.

13 Excuse my simplistic analogy to child
14 rearing, but the issue before you is just that
15 simple. Either the industry learns it must be
16 responsible and must clean up its messes, or the rest
17 of us will continue to shoulder that burden. Please
18 support the proposed rules to reform bonding and
19 cleanup. Thank you.

20 THE HEARING OFFICER: Thank you, Ms. Lucero.

21 Anyone else in the room? I see no other
22 unaffiliated folks in the room.

23 We'll turn back to the technical case
24 then. We had four folks sign up for this session,
25 including Ms. Lucero, and ten spoke. So we're now at

1 4:35.

2 We would need a break before your first
3 witness. Unless you would like them to offer their
4 first 15 minutes of testimony, perhaps we should
5 start tomorrow morning.

6 MR. RANKIN: My preference, Madam Hearing
7 Officer, at the discretion of the Commission, would
8 be to start fresh so we don't have to get interrupted
9 partway through it. If that's okay with the
10 Commission, that would be my preference.

11 HEARING OFFICER ORTH: Is that okay? Great.
12 We'll see tomorrow morning at 9:00.

13 (Proceedings adjourned at 4:36 p.m.)
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AFFIRMATION OF COMPLETION OF TRANSCRIPT

I, Kelli Gallegos, DO HEREBY AFFIRM on
October 27, 2025, a hearing of the New Mexico Oil
Conservation Commission was taken before me via video
conference.

I FURTHER AFFIRM that I did report in
stenographic shorthand the proceedings as set forth
herein, and the foregoing is a true and correct
transcript of the proceedings to the best of my
ability.

I FURTHER AFFIRM that I am neither employed
by nor related to any of the parties in this matter
and that I have no interest in the final disposition
of this matter.



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