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STATE OF NEW MEXICO  
ENERGY, MINERALS, AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION  
  
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IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
DIVISION FOR THE PURPOSE OF  
CONSIDERING:  
Proposed Amendments to 19.15.2,  
19.15.5, 19.15.8, 19.15.9,  
19.15.25 NMAC.

-----  
HEARING - DAY 8  
DATE: Wednesday, October 29, 2025  
TIME: 9:01 a.m.  
BEFORE: Hearing Examiner Felicia Orth  
LOCATION: Wendell Chino Building, Pecos Hall  
1220 South Saint Francis Drive  
Santa Fe, NM 87505  
REPORTED BY: Gerald Aragon  
JOB NO.: 7626644

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ALSO PRESENT:

Albert Chang, Chair, New Mexico Oil Conservation  
Commission

William Ampomah, Commissioner, New Mexico Oil  
Conservation Commission

Greg Bloom, Commissioner, New Mexico Oil  
Conservation Commission (by videoconference)

Rosa Romero, Bureau Chief Environmental, Energy,  
Mineral, and Natural Resources Department

Gilbert Cordero, Staff Manager South, Energy,  
Mineral, and Natural Resources Department

Sheila Apodaca, Commission Administrator, New  
Mexico Oil Conservation Commission

Amy Vermersch, Programmatic and System Support,  
Energy, Mineral, and Natural Resources Department

Nicholas Maxwell, Independent Participant,  
Sunshine Audit

Nicole Waltermire, Public Commenter (by  
videoconference)

Kim Rogers, Public Commenter

Dana Loy, Public Commenter

Ruth Striegel, Public Commenter

Meredith McGehee, Public Commenter

Connie Joanne Baca, Public Commenter

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A P P E A R A N C E S (Cont'd)

ALSO PRESENT:

Nikki Santino, Public Commenter (by  
videoconference)  
Don Schreiber, Public Commenter (by  
videoconference)  
Ian Schultz, Public Commenter (by  
videoconference)

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E X H I B I T S

NO.	DESCRIPTION	ID/EVD
NMOGA:		
Exhibit F	Emerick Direct, Rebuttal, and Surrebuttal Testimony Summary, Appendices, and Slides	/167



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P R O C E E D I N G S

THE HEARING EXAMINER: Let's prepare to begin this morning, please. Good morning. My name is Felicia Orth, hearing officer for the Oil Conservation Commission in OCC 24683 relating to well plugging and financial assurance. We are on Day 8 of the hearing, and we've reached another public comment session.

The name I have on the signup list is Nicole Waltermire. Do we have Ms. Waltermire?

All right. Just a few things about public comment. I will ask you to spell your first and last name, I will ask you to swear or affirm to tell the truth, and I will ask you to keep your oral comment to three minutes. If there's more to say, please submit it in writing to the commission administrator, Sheila Apodaca.

Ms. Waltermire, I see you on the screen. Would you spell your first and last name, please?

MS. WALTERMIRE: Yes, certainly. It's Nicole Waltermire, N-I-C-O-L-E W-A-L-T-E-R-M-I-R-E.

THE HEARING EXAMINER: Thank you.

//  
//  
//

1 WHEREUPON,

2 NICOLE WALTERMIRE,

3 called as a witness and having been first duly sworn  
4 to tell the truth, the whole truth, and nothing but  
5 the truth, was examined and testified as follows:

6 THE HEARING EXAMINER: Thank you. I'll  
7 start your time.

8 MS. WALTERMIRE: Thank you. Good  
9 morning, chair and commissioners. Thank you for the  
10 opportunity to speak this morning. My name is Nicole  
11 Waltermire, and I'm speaking as a private citizen from  
12 Las Cruces in strong support of the proposed bonding  
13 rule changes.

14 I'm an educator and a mother of two.  
15 My sons use a breathing specialist, and I'm concerned  
16 for the health of all New Mexican children and  
17 families. That's why we need to protect the air we  
18 breathe and the water we drink.

19 But today the rules allow wealthy oil  
20 and gas corporations to sometimes abandon the wells  
21 they drill to save money rather than pay what they  
22 agreed to safely clean them up. Abandoned wells can  
23 lead to leaked toxins into our air, into our water;  
24 kill wildlife; and lead to fires, explosions, or other  
25 accidents.

1                   We need to make these wealthy  
2 corporations clean up the wells they drill to protect  
3 our public health and safety.

4                   The solution you have in front of you  
5 is just common sense. It's fair, it's based on data  
6 and evidence, and it's supported by nearly 90 percent  
7 of ordinary New Mexicans like me. Taxpayers and  
8 public funds should not be responsible for cleaning up  
9 pollution from oil and gas.

10                  We know that nearly 700 wells are  
11 already abandoned by oil and gas corporations. We  
12 know the real cost of cleanup, and we know how little  
13 current bonds cover. If you drill it, you should  
14 clean it up a hundred percent of the time. It's just  
15 common sense.

16                  Please vote to adopt stronger bonding  
17 rules. Let's protect our air and water for all New  
18 Mexicans and make sure no one gets to profit while  
19 leaving the mess for the rest of us. Thank you so  
20 much.

21                  THE HEARING EXAMINER: Thank you very  
22 much, Mrs. Waltermire.

23                  Is there anyone else on the platform  
24 who would like to offer public comment this morning?  
25 If you are on your computer, you can raise your

1 virtual hand. If you have called in on the telephone,  
2 you can press star 5 to raise your hand.

3 Anyone else on the platform? Our next  
4 public comment session will be at 4 p.m. today. No?  
5 All right. Is there anyone in the room who would like  
6 to offer public comment this morning? No? All right.  
7 We will return to the technical case, then. Thank you  
8 all very much.

9 When we broke last night, Mr. Tisdell  
10 had completed his questions of Mr. Arthur. So we  
11 move, then, to Mr. Tremaine.

12 Mr. Tremaine, do you have questions of  
13 Mr. Arthur?

14 MR. TREMAINE: I do. I'm going to try  
15 in my earnest to avoid any duplication here, but I do  
16 have a few questions.

17 CROSS-EXAMINATION

18 BY MR. TREMAINE:

19 MR. TREMAINE: Good morning, Mr.  
20 Arthur.

21 MR. ARTHUR: Good morning.

22 MR. TREMAINE: Thank you for being here  
23 and for the time and attention you've put into this  
24 hearing. My name is Jesse Tremaine. I represent the  
25 Oil Conservation Division. I'm the legal director for

1     that entity.

2                   And I want to start out by asking you a  
3     few questions, kind of, like, about the process of how  
4     you arrived at your opinions in your direct testimony;  
5     is that okay?

6                   MR. ARTHUR:    Okay.

7                   MR. TREMAINE:  When did you first learn  
8     of the petition?

9                   MR. ARTHUR:    I -- I don't recall  
10    exactly.  I mean, it's been months.

11                  MR. TREMAINE:  I don't expect you to  
12    have, like, a date and a timestamp, but did you  
13    start -- learn about it and did you start talk -- or  
14    did you learn about the petition, like, last April?  
15    Did you learn about it this April?

16                  MR. ARTHUR:    I want to say six months  
17    ago.  Something like that.

18                  MR. TREMAINE:  About six months ago?  
19    Okay.  When did NMOGA first contact you about  
20    representing them in response to the petition?

21                  MR. ARTHUR:    Similar question.  I don't  
22    remember the exact date.  I'd have to get my computer  
23    out and -- and check that for sure, but I don't --  
24    like, I -- I would be a -- a similar answer.  I found  
25    out about it from NMOGA.

1 MR. TREMAINE: That's maybe the  
2 question I should have asked. So you learned of the  
3 petition because NMOGA contacted you for potential  
4 representation in this case?

5 MR. ARTHUR: Correct.

6 MR. TREMAINE: Okay. And that was  
7 roughly six months ago. Okay. And I just want to  
8 clarify, and to be clear, I'm not asking you about the  
9 terms of your agreement, but I just want to make sure  
10 we're clear on the record. So you are contracted to  
11 represent NMOGA in opposition to the petition?

12 MR. ARTHUR: I'm -- I'm contracted to  
13 NMOGA to help them with their response regarding --  
14 regarding the proposed rule revisions.

15 MR. TREMAINE: Okay. That's fair. And  
16 NMOGA opposes the petition; correct?

17 MR. ARTHUR: I would say that NMOGA --  
18 I -- I -- I'm -- I'm -- I can only speak for me,  
19 but -- but I would say that they oppose particular  
20 details of -- of the -- the revisions as written  
21 currently and proposed by WELC and OCD.

22 MR. TREMAINE: Okay. In reviewing your  
23 direct testimony, I mean, I would suggest and ask you  
24 to agree that your testimony and NMOGA's position  
25 opposes the core elements of every aspect of the

1 petition. Wouldn't you agree?

2 MR. ARTHUR: I would say that -- that  
3 my analysis based on 45-plus years of -- of experience  
4 being a former regulator, working as a -- an EHS  
5 director on a contract basis for multiple companies,  
6 and helping with acquisitions and compliance and  
7 plugging and all that is that as -- as written, I -- I  
8 do oppose the way it's written right now.

9 Like, being able to say "at the core"?  
10 That's, like, a hard thing for me to be able to -- to  
11 say, but I think that there is opportunity here to  
12 come up with, you know, modifications that I think  
13 NMOGA would probably be acceptable or accepting of,  
14 and -- and that -- that I wouldn't necessarily oppose.

15 And I did put things in, like, my  
16 testimony yesterday as far as suggestions and so forth  
17 that might be considered.

18 MR. TREMAINE: Is that inclusive of  
19 things like changing the definition of beneficial use  
20 for inactive wells to three or five years? You're  
21 talking about those kind of recommendations?

22 MR. ARTHUR: There -- there's some of  
23 those, yes.

24 MR. TREMAINE: Okay. I'm going to get  
25 back to that. When, approximately, did you begin the

1 actual preparation of your direct testimony?

2 MR. ARTHUR: Again, it's the -- like,  
3 you're asking hard questions because I don't have that  
4 stuff right in front of me, but it was about at that  
5 same time. So we -- we talked to NMOGA. You know,  
6 the -- they -- they hired us, and we got started  
7 reviewing everything and -- and proceeding from there.

8 MR. TREMAINE: Okay. Did you read the  
9 complete revised petition before you began preparing  
10 your direct testimony?

11 MR. ARTHUR: Yes.

12 MR. TREMAINE: Okay. I want to ask you  
13 a couple questions now, transitioning to your actual  
14 testimony.

15 So, one of the reasons I'm asking you  
16 questions is because in reviewing your testimony, you  
17 talk about stripper wells and marginal wells  
18 extensively, and I would submit that those were  
19 discussions in the original petition and not reflected  
20 in the revised petition.

21 So I want to ask you about -- you know,  
22 in your lengthy direct, you spent a lot of time on  
23 this. It's about 50 pages if my lawyer math is right,  
24 and you spent numerous pages talking about stripper  
25 wells.



1                   So, one, what definition in preparing  
2     your direct -- because it's in multiple places, so I'm  
3     just trying to clarify -- what definition of stripper  
4     wells did you apply?

5                   MR. ARTHUR: I'm -- I'm confused at the  
6     question.

7                   MR. TREMAINE: Sorry. I gave you a  
8     long preface. You spent multiple pages in your  
9     testimony talking about, alternatively, stripper wells  
10    and marginal wells. I want to ask you about each  
11    category. How do you define stripper well?

12                  MR. ARTHUR: How -- how do I or how did  
13    I or --

14                  MR. TREMAINE: What definition of  
15    stripper well did you use when you wrote your direct  
16    testimony? Was it ten BOE or some other --

17                  MR. ARTHUR: Essentially, ten barrels  
18    of oil a day.

19                  MR. TREMAINE: Okay. And what  
20    definition did you use -- when you refer to "marginal  
21    well" in your direct testimony, what definition did  
22    you use for marginal well?

23                  MR. SUAZO: Madam Hearing Officer, I'm  
24    going to object. I think that mischaracterizes his  
25    testimony. I don't think he defined marginal wells so

1 much as he assessed the proposed definition, which --  
2 I think that would be a fair question.

3 MR. TREMAINE: Madam Hearing Officer, I  
4 think that's the crux of my question is he didn't  
5 define "marginal well," and the testimony conflates  
6 marginal and stripper wells on numerous pages of  
7 testimony.

8 THE HEARING EXAMINER: Right. I think  
9 it's a good question. What definition did he have in  
10 mind, when he was writing his own testimony, for  
11 marginal?

12 MR. ARTHUR: So I -- I'm not sure  
13 that -- that -- I -- I would say in the energy  
14 industry and even with, you know, the -- how marginal  
15 wells and stripper wells are done -- are treated,  
16 there isn't a consistent definition through there.  
17 But it's -- but you would typically look at that as  
18 being 10 to 15 barrels of oil a day.

19 BY MR. TREMAINE:

20 MR. TREMAINE: Okay. Thank you, Mr.  
21 Arthur. So that's what I got from my read of your  
22 testimony is that when you're referring to "marginal  
23 wells," you're referring to a significant category of  
24 wells, which, in some cases, may actually expand the  
25 production volumes as defined in New Mexico for

1 stripper wells. Do you agree with that?

2 If we assume that the New Mexico tax  
3 code definition of stripper wells is 10 BOE per day,  
4 and you're saying that marginal wells can be up to 15  
5 barrel -- BOE a day, then we're looking at a category  
6 of wells that is greater than the total number of  
7 defined stripper wells in New Mexico; agree?

8 MR. ARTHUR: I would say that's  
9 probably correct.

10 MR. TREMAINE: Okay. Thank you. So  
11 you did not pull any numbers or use the proposed  
12 definition of marginal wells using thresholds of 1,000  
13 BOE per 12 months and 180 days of production in  
14 preparing your statements on marginal wells; correct?

15 MR. ARTHUR: Could -- could you say  
16 that again?

17 MR. TREMAINE: So I'm just confirming,  
18 based on your prior response, that when you're  
19 referring to "marginal wells" in your testimony, you  
20 are not referring to the category of marginal wells  
21 which are defined in the petition as "producing less  
22 than 1,000 barrels of oil equivalent in the previous  
23 year and having produced for less than 180 days during  
24 that period of time."

25 MR. ARTHUR: I think that depends on --

1 on the -- you know, what -- what my testimony is. So  
2 did I -- did I try to just evaluate marginal wells  
3 in -- in a particular analysis, and then -- and then  
4 suggest this was -- you know, like, discuss them in --  
5 in two different manners?

6 I -- so it -- it -- you know, I didn't  
7 use a single definition and avoid the -- the proposal,  
8 and I talked about the proposed changes in there. So  
9 there's parts of my testimony that refers to that.

10 MR. TREMAINE: Let me ask the question  
11 a different way. Is there any part of your direct  
12 testimony in which you specifically used the proposed  
13 definition of marginal wells?

14 MR. ARTHUR: It -- it's -- yes.

15 MR. TREMAINE: I'll move on. Mr.  
16 Arthur, yesterday, you used a rancher -- example of a  
17 rancher or a farmer that walks out and turns on his  
18 well every day for an hour.

19 And, you know, in that fact pattern  
20 that you described, you're talking about a well that  
21 is producing -- these ranchers going out and turning  
22 it on every day or most days; that well is producing  
23 more than 180 days per year; correct?

24 MR. ARTHUR: It is.

25 MR. TREMAINE: Okay. Thank you.

1                   MR. ARTHUR: In some cases. In that  
2 particular case, yes. Not in all cases.

3                   MR. TREMAINE: So in that case, that  
4 rancher's well would not fall within the proposed  
5 definition of a marginal well and would not require  
6 additional FA; correct?

7                   MR. ARTHUR: If it's -- if it's "and."  
8 With the production and 180 days; correct.

9                   MR. TREMAINE: And we're stipulating  
10 that it's an "and."

11                  MR. ARTHUR: Yes.

12                  MR. TREMAINE: Thank you. I'm going to  
13 move on and ask you a little bit about -- well, strike  
14 that.

15                  Mr. Arthur, you said you've been  
16 working on your response to the revised petition for  
17 approximately six months. Did you at any time consult  
18 with either the petitioner or the Oil Conservation  
19 Division to discuss how either of those entities felt  
20 that the rule would or should be implemented?

21                  MR. ARTHUR: No.

22                  MR. TREMAINE: Is there a single  
23 section of the revised petition which you did not  
24 characterize as unworkable?

25                  MR. ARTHUR: I'm not sure, but I don't

1 think so.

2 MR. TREMAINE: Okay. Thank you. I  
3 want to refer you to a couple items in your direct  
4 testimony.

5 So, Madam Hearing Officer, I would like  
6 to share screen. I'll try to move to this really  
7 quickly.

8 THE HEARING EXAMINER: Thank you,  
9 Sheila.

10 BY MR. TREMAINE:

11 MR. TREMAINE: All right. Mr. Arthur,  
12 I'm referring you to what is page 5 of the direct  
13 testimony PDF starting on line 70.

14 The section starts on line 68, but I  
15 want to highlight for you that, particularly on line  
16 72 here, "the proposals do not account for the fact  
17 that only the vertical section of horizontal wells  
18 typically requires abandonment and that many low-  
19 producing wells can be responsibly decommissioned for  
20 far less than the proposed financial assurance."

21 Would you agree that this section of  
22 your direct testimony stands for the proposition that  
23 first, there's a -- according to your testimony,  
24 there's a wide range of potential plugging costs for  
25 wells?

1 MR. ARTHUR: Yes.

2 MR. TREMAINE: And this seems to  
3 indicate that horizontal wells could be more expensive  
4 to plug than vertical wells; is that your testimony?

5 MR. ARTHUR: It -- it could be. And --  
6 and, you know, it depends on the well and condition of  
7 the well and the condition of the casing and things in  
8 the well and -- and a variety of different things.

9 MR. TREMAINE: All right. So are you  
10 aware of OCD having plugged any horizontal wells?

11 MR. ARTHUR: I'm not sure that they  
12 have. I don't know that.

13 MR. TREMAINE: Okay. Would you have --  
14 would you believe me if I said that OCD has plugged  
15 two horizontal wells at the request of the Bureau of  
16 Land Management or in coordination with?

17 MR. ARTHUR: Would -- would not  
18 surprise me.

19 MR. TREMAINE: Are you suggesting in  
20 this testimony that the Division would require plugs  
21 or additional downhole work below the heel of a  
22 horizontal well?

23 MR. ARTHUR: I'm trying to suggest that  
24 it's not necessary.

25 MR. TREMAINE: Okay. Would you be

1 relieved to hear that OCD agrees and that plugs are  
2 not required below the heel?

3 MR. ARTHUR: Would not be surprised.

4 MR. TREMAINE: Okay. So would you  
5 agree, then, that the suggestion in your testimony  
6 that the -- your testimony seems to imply that OCD or  
7 someone is incorporating increased costs for  
8 horizontal wells in the suggested average plugging  
9 cost.

10 And so I'm just trying to get at that;  
11 that that's not what's happening, and you didn't have  
12 any information that you relied upon in presenting  
13 this argument to the Commission. So would you agree  
14 that to the best of your knowledge, the Division is  
15 not requiring plugs below the heel on horizontal  
16 wells?

17 MR. ARTHUR: I'm simply suggesting in  
18 this portion of my testimony that -- to -- to be clear  
19 in that. I'm not suggesting that the -- that the --  
20 you know, that the Division, you know, does require  
21 that but pointing out that it doesn't.

22 And those are just factors that if  
23 you're looking at plugging costs and if you think a  
24 horizontal well, and it's got a -- a super-long  
25 lateral, those -- that that could add cost to -- to



1     this. And that's not -- I'm pointing out that that's  
2     not necessary.

3                     MR. TREMAINE: Well, Mr. Arthur, I'm  
4     trying to, really, respond to the criticism in your  
5     direct here because you say that, in line 68, "The  
6     proposed framework fails to reflect the operational  
7     and cost variability of well plugging and  
8     abandonment."

9                     And you go on to say that those -- or  
10    say or, really, imply that those costs could be  
11    inflated because of additional cost for horizontal  
12    well plugging. But I think you've answered my  
13    question. I'll move on.

14                    You talked yesterday with Mr. Tisdell  
15    about, kind of, some of the average well-plugging  
16    costs referenced in the LFC report.

17                    Do you agree or do you understand that  
18    all -- the average of those 2024 plugging costs, those  
19    were all wells that were plugged by -- that's  
20    representative of all wells plugged during that time  
21    period by the Oil Conservation Division?

22                    MR. ARTHUR: Yes.

23                    MR. TREMAINE: Okay. And so that  
24    average is the average cost of all wells plugged by  
25    the Division, not the average cost of problem wells

1 plugged by the Division; agree?

2 MR. ARTHUR: So, I -- I don't -- I  
3 don't have the details of -- of wells of -- of -- to  
4 be able to say problem wells or not, but if -- if the  
5 wells are being plugged, they are probably being  
6 viewed as a problem.

7 But does that mean that every one of  
8 those wells is complicated from a -- from a plugging  
9 perspective? Could that mean that one well took \$1  
10 million to plug and -- and something else?

11 But I also know, based on what the --  
12 you know, what the Division is doing and has done for,  
13 like, its -- its federal monies and -- and submitted  
14 in IOGCC reports, that you prioritize the plugging  
15 based on risk and problems and -- and those sorts of  
16 things.

17 MR. TREMAINE: Did you hear the  
18 testimony during this hearing that the Division also  
19 makes every effort to plug wells in the vicinity of  
20 target wells to reduce mobilization, demobilization,  
21 and other costs?

22 MR. ARTHUR: I did not hear that, but  
23 that's one of the suggestions that I've made to  
24 industry and states and so forth.

25 MR. TREMAINE: So you would agree that

1     that's a good practice?

2                     MR. ARTHUR:   It is.

3                     MR. TREMAINE:   And that would mean that  
4     OCD is not only plugging technically problematic  
5     wells?

6                     MR. ARTHUR:   I'm not saying that  
7     they're only plugging technically problematic wells.

8                     And I think that in -- in your initial  
9     expert's testimony, he showed one well that was a real  
10    problem and another well that was not as big of a  
11    problem that were aligned with what you just said  
12    about plugging wells near each other so you could  
13    reduce mobilization charges and so forth.

14                    MR. TREMAINE:   And just to be clear,  
15    are you speaking of Mr. Powell or Mr. Dede [ph]?  It  
16    was the last witness?  Mr. Powell?

17                    MR. ARTHUR:   No, the first -- the first  
18    witness.

19                    MR. TREMAINE:   Okay.  Mr. Dede [ph].

20                    MR. ARTHUR:   Yeah.

21                    MR. TREMAINE:   Thank you.  Okay.  All  
22    right.  I want to refer you to line 100 on page 6.  
23    You go on to talk about the speculative purposes.  I  
24    just want to ask you if you heard Mr. Powell's  
25    distinction in his testimony between speculative

1 results and speculative planning?

2 MR. ARTHUR: I -- I was -- I was not  
3 able to listen to Mr. Powell's testimony.

4 MR. TREMAINE: Okay. I want to move on  
5 to page 7 and beneficial purpose or beneficial  
6 purposes and the definition of that, starting on line  
7 111. Do you agree that "beneficial purposes" or  
8 "beneficial use" is already referred to in New Mexico  
9 Rule 19.15.25.8?

10 MR. ARTHUR: The -- the term  
11 "beneficial" is already included in the regulations,  
12 yes.

13 MR. TREMAINE: Okay. And would you  
14 also agree that -- so, basically, in 25.8 it says that  
15 a well has to be plugged within 90 days if there's a  
16 determination that it is not being beneficially used.  
17 Would you agree with that paraphrase?

18 MR. ARTHUR: Yes, generally.

19 MR. TREMAINE: Okay. But would you  
20 also agree that there is not a prescribed process for  
21 how OCD is to make such a determination?

22 MR. ARTHUR: I agree.

23 MR. TREMAINE: Okay. And would you  
24 agree that it would be beneficial to both the  
25 regulator and industry to have some regulatory

1     certainty as to both factors to be involved in such a  
2     determination and the process that's allowed for  
3     operators?

4                   MR. ARTHUR:  I think that it could be  
5     beneficial for that.  I would say that in -- in doing  
6     so, I would -- I would strive to -- to provide the --  
7     the Division flexibility in what that is because we  
8     don't necessarily always know what -- what the  
9     opportunities are.

10                  MR. TREMAINE:  On line 121, you talk  
11     about "adding a definition of beneficial use now risks  
12     creating internal inconsistencies."  If the term  
13     "beneficial use" and "beneficial purpose" -- those  
14     respective terms are not defined in the rule  
15     currently, how does providing a new definition create  
16     internal inconsistencies?

17                  MR. ARTHUR:  Well, I think I -- I go on  
18     to, in the -- in the follow-up portion of that, to  
19     essentially -- to describe that.

20                  MR. TREMAINE:  So your assertion is --  
21     so it's not -- you're calling it an internal  
22     inconsistency on line 121, but it sounds like what  
23     you're actually saying is that you're concerned that  
24     the Division's definition of beneficial use could  
25     conflict with a generally understood, industry-

1     accepted definition of beneficial use?

2                     But I'm not trying to quibble about the  
3     word "internal" here, but that sounds like an external  
4     inconsistency to me.

5                     MR. ARTHUR:   I -- I would say industry  
6     and regulatory.

7                     MR. TREMAINE:   Well, if it's  
8     inconsistent, wouldn't it benefit from a definition?

9                     MR. ARTHUR:   [No audible response.]

10                    MR. TREMAINE:   I'll move on.   Mr.  
11     Arthur, would you concede that it is possible in a  
12     rule to define a specific term for the limited  
13     purposes of the application of that rule?

14                    MR. ARTHUR:   I would say that that --  
15     just in -- in experience in doing rulemaking, it --  
16     there's a lot of things to consider.   So you put  
17     something in one rule and you say it's limited to  
18     that, but it can have -- you know, there's potential  
19     for there to be impacts and influences with other  
20     rules.

21                    MR. TREMAINE:   Okay.   So, is it your  
22     testimony that if we stated, for instance, this  
23     definition of beneficial use applies only to the  
24     implementation of 19.15.5 and 19.15.25, that despite  
25     such a clarification, we could have impacts on

1 something else like productive lease analysis or  
2 anything like that?

3 MR. ARTHUR: I -- I can give you an  
4 example of -- of -- where that -- where that has  
5 happened in the -- in the -- the federal UIC program.

6 The EPA, when I was there, defined what  
7 an underground source of drinking water is, and it was  
8 specific just to the UIC program. But today, the --  
9 the term USDWs are -- are utilized in oil and gas and  
10 other types of projects that are not necessarily  
11 injection wells.

12 MR. TREMAINE: And your assertion is  
13 that that incorporation or reference is problematic?

14 MR. ARTHUR: I'm not saying that it is  
15 problematic, but I'm saying it's -- you had -- you --  
16 you had something that was limited to one program, one  
17 regulation, and it ultimately influenced another.  
18 That can -- that can happen.

19 MR. TREMAINE: Okay. Mr. Arthur, I'm  
20 going to move on to page 9, starting on line 157.  
21 Here you talk about 90-day criteria, and I've  
22 highlighted some issues here, some language I'm going  
23 to ask you about.

24 So, when we talk about the 90-day  
25 production criteria as proposed in the presumption of

1 no beneficial use, do you agree that we are mostly  
2 talking about wells that have active and producing for  
3 an extended period of time?

4 MR. ARTHUR: Could -- could you repeat  
5 the question?

6 MR. TREMAINE: Well, you're talking  
7 about issues with the 90-day criteria. So what I'm  
8 suggesting to you is that when you look at the  
9 presumption of no beneficial use, the way it's  
10 defined, that is intended to and structured to capture  
11 or address wells that are already well into their  
12 productive lifespan.

13 We're talking about wells that have  
14 already been online for quite a while. Do you agree  
15 with that general presumption?

16 MR. ARTHUR: Can you show me in the  
17 proposed rule where it -- it states that?

18 MR. TREMAINE: You're talking in your  
19 testimony about -- I don't have the redline up right  
20 now, but I think it's fair to say that you are  
21 referring to the 90-day criteria.

22 MR. ARTHUR: Yes.

23 MR. TREMAINE: So I'm asking you about  
24 the implication of that structure, which you are  
25 testifying about. So I think it's fair to ask, just



1 to clarify --

2 MR. ARTHUR: And you're asking if I'm  
3 saying that this is limited to long-life wells, and I  
4 don't see in the regulations where it says that, so --  
5 but I -- I think that's -- you know, that's probably  
6 what we're -- what we're thinking here.

7 But maybe, you know, it -- it  
8 doesn't -- I don't see in in the proposed rules where  
9 it limits to -- to that.

10 MR. TREMAINE: Thank you. Thank you.  
11 That's where we wanted to get to. That's where I  
12 wanted to get to. That's the distinction I'm trying  
13 to make. You would -- would you agree if we said the  
14 intent is not to capture wells that just came on ten  
15 days ago and are being productive? That should not be  
16 the intent of this provision?

17 MR. ARTHUR: It -- it shouldn't be, but  
18 it could be.

19 MR. TREMAINE: Well, we'll move on and  
20 handle that later. But -- so for this, for mostly  
21 we're talking about wells that have already been  
22 producing for quite a while. Thank you for that.

23 The reason I'm asking you that is  
24 because you talk about lack of takeaway capacity, and  
25 so as this provision applies mostly to wells that have

1     been production for extended periods of time, I want  
2     to ask you if you're aware that natural gas takeaway  
3     is required in part by 19.15.27, the natural gas waste  
4     rule for active wells?

5                     Do you agree that there's a gas capture  
6     requirement and that wells have to have natural gas  
7     takeaway already?

8                     MR. ARTHUR:   Are you suggesting for --  
9     so that -- so if you have a -- an oil well, so you're  
10    not flaring or venting?   So, correct.

11                    MR. TREMAINE:   Very generally, correct.  
12    Yes.   There's, obviously, more nuance in that.   I'm  
13    just asking you if you're aware that there's a  
14    requirement to capture gas and to have takeaway  
15    capacity for producing oil and gas wells?

16                    MR. ARTHUR:   Yes.   But if that --  
17    something happens with that, that could impact the  
18    wells' operational capability.   Other wells.

19                    MR. TREMAINE:   Okay.   And you're -- the  
20    concern that you're highlighting here is that you're  
21    suggesting that, you know, takeaway issues could  
22    result in a well being shut down three-quarters of the  
23    time?

24                    MR. ARTHUR:   It's possible.

25                    MR. TREMAINE:   Okay.   In that --

1 MR. ARTHUR: Could be any number of  
2 things. Takeaway or whatever.

3 MR. TREMAINE: Right. Well, I'm just  
4 asking you about takeaway right now.

5 But in that situation -- and you  
6 reviewed the petition; you said you reviewed the  
7 petition -- revised petition in detail -- do you agree  
8 that that's a situation in which the operator could  
9 come in and explain to the Division that the  
10 presumption of no beneficial use should not apply  
11 because they've been shut in by some takeaway-capacity  
12 issue or other force majeure?

13 Would you agree with that?

14 MR. ARTHUR: I think they could do  
15 that.

16 MR. TREMAINE: Okay. Thank you. So I  
17 want to ask you; you also talk about strategic  
18 deferrals, and when you -- in 161 here, line 161.

19 When you talk about strategic  
20 deferrals, are you talking about placing wells in --  
21 you know, in some form of shut-in status while  
22 there's -- you talk about infrastructure upgrades,  
23 recompletions. Could that be applicable to things  
24 like an EOR or other types of projects?

25 MR. ARTHUR: Could be.

1                   MR. TREMAINE: Okay. Do you agree that  
2     there is already a mechanism in OCD rule allowing for  
3     approved temporary abandonment of wells for all of  
4     those types of situations that you're outlining in  
5     this section?

6                   MR. ARTHUR: The existing -- the  
7     existing rules for temporary abandonment, yes.

8                   MR. TREMAINE: Okay. And would you  
9     agree that or would you be surprised to hear that  
10    there's over 550 wells currently in approved temporary  
11    abandonment status in New Mexico?

12                  MR. ARTHUR: No.

13                  MR. TREMAINE: And would you be  
14    surprised to hear that there are currently about 265  
15    wells in expired temporary abandonment in New Mexico?

16                  MR. ARTHUR: I don't -- I don't know.  
17    It doesn't necessarily surprise me. It -- if -- if  
18    they're under expired temporary abandonment, is the --  
19    is the -- the -- is the Division taking action to  
20    address those?

21                  MR. TREMAINE: Well, I'm not asking you  
22    about the implication of the expired. I'm asking  
23    you -- my questions are whether you're aware of the  
24    over 800 wells that have gone through -- that are  
25    currently in some part of the process of having gone

1 through a temporary abandonment approval.

2 So it sounds like you're not surprised  
3 by that, and it's consistent with your understanding  
4 of the rule?

5 MR. ARTHUR: Yes.

6 MR. TREMAINE: Thank you. Under the  
7 current petition, temporary abandonment will remain a  
8 viable option for operators in these situations that  
9 you're outlining here; correct?

10 MR. ARTHUR: There's -- there's still a  
11 temporary abandonment option.

12 MR. TREMAINE: Okay. Thank you. Are  
13 you familiar with the presentation by OCD that  
14 responding to well inactivity only after 12 months of  
15 inactivity has an effective result of adding wells to  
16 OCD's Orphan Plugging Program?

17 MR. ARTHUR: I have -- have seen a  
18 lot -- seen a lot of the testimony here, and -- and it  
19 seems like that I -- I could recall that vaguely. But  
20 if you wanted to pull the -- the slide up for that,  
21 that would be helpful.

22 MR. TREMAINE: I'm just going to move  
23 on to another question and not belabor that. I'm just  
24 asking about your familiarity with the -- and again,  
25 it's a presentation.

1                   Would you dispute that over time, the  
2     Oil Conservation Division has obtained plugging  
3     authority for wells that were not plugged by the  
4     registered operator?

5                   MR. ARTHUR:   Yes.

6                   MR. TREMAINE:  You would dispute that?

7                   MR. ARTHUR:  Oh, no.  I would agree --  
8     agree that -- yes.

9                   MR. TREMAINE:  I may have mumbled.  
10    Sorry.  I'm not trying to trick you.  So, okay.  So  
11    OCD -- we agree that OCD has obtained plugging  
12    authority.  And have you heard reference to OCD  
13    Exhibit 17, the master reference spreadsheet?

14                  MR. ARTHUR:  Yes.

15                  MR. TREMAINE:  Okay.  And do you  
16    dispute that OCD has verified the existence of OCD  
17    plugging authority for over 1,800 wells?

18                  MR. ARTHUR:  That number sounds what --  
19    what I recall.

20                  MR. TREMAINE:  Okay.  Would it be  
21    consistent with your understanding that many of the  
22    referenced plugging orders came about under the  
23    existing requirement, the existing rules, that  
24    operators must plug wells within 90 days after 12  
25    months of inactivity?

1 MR. ARTHUR: Could you repeat the  
2 question again?

3 MR. TREMAINE: Yeah. Would you -- is  
4 it consistent with your understanding of the record  
5 and the review of the materials in this case that the  
6 plugging orders associated with those 1,800 wells that  
7 I mentioned, many of those came about under the  
8 existing rules?

9 MR. ARTHUR: Yes.

10 MR. TREMAINE: Okay. And those rules  
11 are that an operator has to -- it's the combination of  
12 19.15.5 and 19.15.25. The combination of those rules  
13 stands for the proposition that an operator must plug  
14 their wells within 90 days after 12 months of  
15 inactivity?

16 MR. ARTHUR: I believe that's correct.

17 MR. TREMAINE: Okay. So under the  
18 existing rule, OCD has determined it's necessary to  
19 obtain numerous plugging orders for hundreds of wells.

20 Despite those concerns that the  
21 Division and the petitioners have put forward in this  
22 hearing and that I've asked you about, and the related  
23 enforcement on over 1,800 wells, you propose to extend  
24 the inactivity criteria from one year to three years;  
25 do you agree?

1 MR. ARTHUR: Can I -- could you refer  
2 me to the --

3 MR. TREMAINE: Let me ask it another  
4 way. I'll drop the preface. You propose to extend  
5 the defined inactivity period requiring plugging of a  
6 well from 12 months to 36 months, or I believe in your  
7 testimony, you say three years. Do you agree?

8 MR. ARTHUR: Can you show me that?

9 MR. TREMAINE: I'm asking you about  
10 your testimony. Is that your proposal?

11 MR. ARTHUR: I would like to see my  
12 testimony, so where you're referring to that.  
13 That's -- it sounds correct, but I want to see it.  
14 Sorry. I'm -- I don't have every single thing  
15 memorized.

16 MR. TREMAINE: Thank you. I actually  
17 happen to have that one up. I was not anticipating  
18 that this would be a source of concern.

19 So I'm going to refer you to line 164  
20 of your testimony: "The 12-month timeframe to  
21 determine cumulative production days and production  
22 volume should be extended to multiple years, at least  
23 three years."

24 MR. ARTHUR: Yes.

25 MR. TREMAINE: Okay. So, your proposal



1 is to go from one year of inactivity to three years of  
2 inactivity?

3 MR. ARTHUR: [No audible response.]

4 MR. TREMAINE: I'm going to move on.  
5 You then go on to state that -- starting on line 166,  
6 that "If the 90-day criteria are retained, I  
7 recommending using consecutive five-year periods to  
8 determine cumulative production days and production  
9 volume."

10 MR. ARTHUR: Correct.

11 MR. TREMAINE: Okay. So if we include  
12 the day component, your suggestion is that --  
13 ultimately, that OCD would not be able to enforce the  
14 timely plugging of a well until after five years had  
15 elapsed; is that correct?

16 MR. ARTHUR: Well, that aligns with  
17 the -- the five-year TA status. So as opposed to, you  
18 know, going back in time five years as opposed to --  
19 to one year or 90 days or whatever.

20 MR. TREMAINE: Well, I get -- maybe  
21 that's the source of the confusion here because  
22 you're -- the section starting on line 156 is saying  
23 you have a recommendation to reject or revise the 90-  
24 day criteria.

25 The 90-day criteria is proposed as one

1 of the two criteria which would establish a  
2 presumption of no beneficial use for very low-  
3 producing wells, so what does that have to do with TA?

4 MR. ARTHUR: [No audible response.]

5 MR. TREMAINE: I am concerned with  
6 using up my time. I thought I was going to be moving  
7 a little more quickly, so I'll move on, Ms. --

8 THE HEARING EXAMINER: You have five  
9 minutes.

10 MR. TREMAINE: I have five minutes.

11 All right.

12 BY MR. TREMAINE:

13 MR. TREMAINE: I'm going to move on to  
14 another topic, Mr. Arthur. So we've talked about --  
15 or you in your direct testimony at numerous places  
16 talk about a concern with the 90-day criteria, which  
17 is, as I said, one of the two components of the  
18 presumption of no beneficial use. There's 90 days and  
19 there's 90 BOE.

20 You don't seem to discuss any concerns  
21 with the production threshold of 90 BOE. So I would  
22 submit could we simply address your concerns by  
23 striking the 90-day criteria and just relying for the  
24 presumption of beneficial use on a production  
25 threshold of 90 BOE in the prior 12 months?

1 MR. ARTHUR: That if it was less than  
2 90 barrels -- BOE over a 12-month period, that that  
3 would be considered no beneficial use?

4 MR. TREMAINE: That that would  
5 establish a presumption of no beneficial use; correct.  
6 Yeah.

7 MR. ARTHUR: I'm -- I'm not sure I -- I  
8 could say that, either.

9 MR. TREMAINE: Did you at any point  
10 during your direct testimony analyze or reference the  
11 90 BOE criteria?

12 MR. ARTHUR: [No audible response.]

13 MR. TREMAINE: I'm going to move on.  
14 Point you to page 18, line 350. This section talks  
15 about a new isolation device requirement, and you  
16 outline some concerns about impacts to the wellbore  
17 related to that device.

18 When you wrote this, did you understand  
19 that that isolation device was already required,  
20 generally, by the Bureau of Land Management?

21 MR. ARTHUR: I -- I do understand that  
22 BLM will do that on private wells and federal.

23 MR. TREMAINE: Okay. And let's see;  
24 370. You talk about safety concerns associated with  
25 leaving bridge plugs or packers in place for multi-

1 year periods. Would you concede that in the absence  
2 of the placement of that device, the wellbore would  
3 already be exposed to the same environment?

4 MR. ARTHUR: Would you say that again?

5 MR. TREMAINE: Whether or not -- you're  
6 talking about mechanical isolation devices that are  
7 subject to degradation due to corrosion, temperature  
8 cycling, et cetera, et cetera. If that device is not  
9 in place, the unplugged wellbore would nevertheless be  
10 subject to those same forces; correct?

11 MR. ARTHUR: The -- the wellbore -- the  
12 wellbore certainly could be, but, you know, if -- if  
13 you've ever had to fish a cast-iron bridge plug out of  
14 a well that's been in there for a long time, it can be  
15 a challenge.

16 And so having -- having those in there  
17 for extended periods can sometimes be an issue, but it  
18 depends on the well and the corrosivity and other  
19 things.

20 MR. TREMAINE: All right. I want to  
21 move along to page 27, line 527, the highlighted  
22 section here. You state "WELC's proposal abandons the  
23 existing risk-based financial assurance requirements  
24 for individual bondings for such active wells."

25 You are suggesting here -- you wrote

1 here that the existing rule is risk based. Is it your  
2 assertion that the petition with the additional  
3 category and the information presented at this hearing  
4 is less risk based than the existing rule?

5 MR. ARTHUR: I would say, I mean,  
6 it's -- it's just a -- a flat for everything. A flat  
7 criteria: \$150,000 per -- per well.

8 MR. TREMAINE: But -- and by that  
9 you're referring to the proposed definition of  
10 marginal wells, which you did not use in preparation  
11 of your direct testimony.

12 So the \$150,000 single-well FA applies  
13 to wells that fall under 1,000 BOE or less or 180 days  
14 or less, which we've heard testimony amounts to about  
15 2.7 BOE per day, or BOE -- yeah, BOE average per day.

16 Do you agree that that is a fraction of  
17 the threshold used to define stripper wells or  
18 marginal wells as you used in preparation of your  
19 testimony?

20 MR. ARTHUR: Sorry. The way you're  
21 asking your questions can be very confusing, so I'm --  
22 I'm going to ask you to --

23 MR. TREMAINE: I'm not trying to trick  
24 you, Mr. Arthur. I admit I'm a little confused by the  
25 testimony, so the -- you're saying that -- okay.

1                   You use the definition -- the generally  
2                   accepted definition of marginal well, so you're  
3                   saying -- what you just testified to is that the  
4                   \$150,000 is broadly applicable -- is applicable across  
5                   the board, and that was your criticism of it; is that  
6                   fair?

7                   MR. ARTHUR:   That it's broadly  
8                   applicable?

9                   MR. TREMAINE:   I'm trying to repeat  
10                  that -- yeah.

11                  One moment, Madam Hearing Officer.

12                  Mr. Arthur, you are a certified  
13                  petroleum geologist; correct?

14                  MR. ARTHUR:   Correct.

15                  MR. TREMAINE:   And you act as a  
16                  contractor for various different entities; is that  
17                  correct? Are you required to or do you as a matter of  
18                  practice carry any practice insurance?

19                  MR. ARTHUR:   Yes.

20                  MR. TREMAINE:   Okay. Do you have any  
21                  experience procuring either plugging or remediation --  
22                  environmental remediation contract services?

23                  MR. ARTHUR:   Have -- have I been  
24                  retained to -- to do plugging or --

25                  MR. TREMAINE:   No, procuring. Yeah, so

1 have you ever worked to procure either plugging or  
2 remediation services from another entity?

3 MR. ARTHUR: We've hired contractors  
4 to -- to help with that, yes.

5 MR. TREMAINE: Okay.

6 MR. ARTHUR: If that's what you're  
7 talking about.

8 MR. TREMAINE: When you did that, how  
9 much insurance did you make your contractors carry?

10 MR. ARTHUR: So there's -- there's a  
11 variety of different types of insurance from -- you  
12 know, I -- I don't remember the -- the specific levels  
13 that are in our -- our contracts or that we have. I  
14 mean, there's, like I said, general liability, this,  
15 that, and the other. I mean --

16 THE HEARING EXAMINER: Please wrap up,  
17 Mr. Tremaine.

18 BY MR. TREMAINE:

19 MR. TREMAINE: Mr. Arthur, did you know  
20 that you were to oppose the petition before you  
21 drafted your direct testimony?

22 MR. ARTHUR: I -- I wasn't -- I wasn't  
23 asked or contracted to or -- or hired, nor would I, to  
24 "we want to hire you to come up with this opinion." I  
25 don't do that.

1 MR. TREMAINE: And you've been engaged  
2 in prior rulemakings in the past; correct? I believe  
3 you testified to that?

4 MR. ARTHUR: Yes.

5 MR. TREMAINE: Is it normal practice  
6 for you to engage in a rulemaking without ever having  
7 talked to the regulator?

8 MR. ARTHUR: So, once, and -- and I'm,  
9 again, not an attorney, and I don't know all of the  
10 stuff.

11 But as just in -- like, I -- I would  
12 look at that -- if I'm retained as an expert, I don't,  
13 generally, go talk to the other side, you know? And  
14 that -- that would, you know, just -- you know, when I  
15 do expert witness testimony or whatever, which is what  
16 I'm doing now.

17 So -- so, would -- would I if I was  
18 retained by NMOGA or someone to say, "Could you help  
19 us work with an agency on new rules?" I've done that,  
20 too. That's different than -- than this.

21 MR. TREMAINE: Thank you. Thank you,  
22 Mr. Arthur. I'll pass the witness, and apologies to  
23 the Commission. I thought I was going to be 20  
24 minutes.

25 THE HEARING EXAMINER: All right.



1 Thank you so much.

2 Mr. Moore, do you have any questions of  
3 Mr. Arthur?

4 MR. MOORE: I do have some questions.  
5 Thank you, Madam Hearing Officer.

6 CROSS-EXAMINATION

7 BY MR. MOORE:

8 MR. MOORE: Good morning, Mr. Arthur.  
9 My name is Richard Moore. I represent the  
10 Commissioner of Public Lands and the New Mexico State  
11 Land Office in these proceedings. Thank you for your  
12 testimony yesterday and today.

13 It's my understanding that you oppose  
14 the applicants' proposed inclusion of a definition for  
15 expired temporary abandonment or expired temporary  
16 abandonment status; is that correct?

17 MR. ARTHUR: The -- the way that  
18 it's -- the way that it's prepared right now, yes.

19 MR. MOORE: And are you familiar with  
20 the OCD's permitting web portal?

21 MR. ARTHUR: I -- I -- I'm familiar  
22 with it. I don't -- I don't use it. I usually will  
23 have other people on my team utilize it.

24 MR. MOORE: Are you aware that on the  
25 OCD's web portal, "expired temporary abandonment" is a

1 status that is applied to wells permitted by the OCD?

2 MR. ARTHUR: I have not looked at that  
3 on the -- on the web portal.

4 MR. MOORE: I'll just share my screen  
5 quickly. So I'm just going to -- if you can see my  
6 screen, would you agree that "expired temporary  
7 abandonment," if you can see it, is one of the  
8 statuses available in the drop-down menu on the web  
9 portal?

10 MR. ARTHUR: Yes.

11 MR. MOORE: Would you agree that it  
12 would promote transparency and clarity for the public  
13 on this public-facing web portal for there to be a  
14 definition?

15 MR. ARTHUR: It could be.

16 MR. MOORE: But you don't support the  
17 inclusion or you don't, at least, support the proposed  
18 definition for expired temporary abandonment; is that  
19 correct?

20 MR. ARTHUR: I have concerns with it.

21 MR. MOORE: Is there a -- oh, sorry.  
22 Is there a definition that you would support for  
23 expired temporary abandonment?

24 MR. ARTHUR: I -- I think that I -- I  
25 would say that there -- there could be. I don't -- I

1 don't have a proposed one. I think that that's  
2 something, also, that NMOGA would be more than open to  
3 working with the -- the OCC and -- and SLO, et cetera  
4 on -- on working through.

5 MR. MOORE: But you haven't proposed a  
6 definition for expired temporary abandonment?

7 MR. ARTHUR: I have not.

8 MR. MOORE: You expressed some concerns  
9 with the language of "complies" or "no longer  
10 complies" and "expired temporary abandonment."

11 Would a definition that states that  
12 expired temporary abandonment means a well that has  
13 been approved for temporary abandonment status but no  
14 longer -- under the applicable regulation -- but no  
15 longer meets the definition of approved temporary  
16 abandonment?

17 MR. ARTHUR: I'm -- I'm sorry.  
18 You're -- I mean, for -- on -- at a high level, that  
19 sounds reasonable, but I would -- I -- I hate to --  
20 to -- I don't want to come up with answers just off  
21 the cuff here, so --

22 MR. MOORE: I'll share my screen one  
23 more time. This is Applicants' Exhibit 72 with the  
24 proposed changes.

25 Do you agree that the proposed language

1 includes -- defines an expired temporary abandonment  
2 as meaning the status of a well that is inactive and  
3 that has been approved for TA status but no longer  
4 complies with those regulations?

5 MR. ARTHUR: Yes.

6 MR. MOORE: And are you aware of the  
7 definition of an inactive well under the current  
8 regulations?

9 MR. ARTHUR: Could you -- could you  
10 show me that? I don't have that.

11 MR. MOORE: It's here on I, subpart 4.  
12 I can make that a little larger as well if you --

13 MR. ARTHUR: It's -- that -- that's  
14 okay. Yeah, that sounds applicable.

15 MR. MOORE: And would you agree that  
16 under OCD regulations as currently written under  
17 19.15.25.8, which I will go to, an operator must  
18 either plug and abandon a well or place the well in  
19 approved temporary abandonment within 90 days of a 60-  
20 day period following suspension of drilling  
21 operations, a determination that the well is no longer  
22 usable for beneficial purposes, or a period of one  
23 year in which the well has been continuously inactive?

24 MR. ARTHUR: Yes.

25 MR. MOORE: Did you hear -- I know you

1 said that you've heard some of the other testimony in  
2 this case. Did you hear Ms. Marks' testimony that on  
3 the OCD permitting web portal, there's not a status of  
4 "inactive" that is applied to wells?

5 MR. ARTHUR: I did not hear that  
6 testimony.

7 MR. MOORE: I know you mentioned that  
8 you aren't particularly familiar, but would you -- do  
9 you see in this drop-down list on the web portal; is  
10 there a status of inactive that applies to wells  
11 permitted by the OCD?

12 MR. ARTHUR: There's not one on that  
13 drop-down list.

14 MR. MOORE: Would you agree that it  
15 would promote clarity -- I'll go back to the proposed  
16 definition. Sorry; I went a little too far -- to  
17 remove the reference of "inactive" from the proposed  
18 definition of expired temporary abandonment to simply  
19 include the definition as "a well that has been  
20 approved for temporary abandonment status in  
21 accordance with the regulation but no longer complies  
22 with those regulations"?

23 MR. ARTHUR: I -- I feel like we're  
24 proposing, like, different options of -- of modified  
25 rulemaking, and I'm not -- I -- I just -- I -- I hate

1     answering questions in that fashion. I don't want to  
2     be speculating in -- in the answers that I provide.

3                 MR. MOORE: Understood. I believe  
4     that's all the questions I have. Thank you for your  
5     time.

6                 MR. ARTHUR: Thank you.

7                 THE HEARING EXAMINER: Thank you, Mr.  
8     Moore.

9                 Is Ms. Nanasi on the platform? No.  
10                Mr. Maxwell?

11                MR. MAXWELL: Yes, Your Honor. No  
12     questions. Thank you very much.

13                THE HEARING EXAMINER: Thank you, Mr.  
14     Maxwell.

15                Mr. Rankin?

16                MR. RANKIN: No questions. Thank you,  
17     Madam Hearing Officer.

18                THE HEARING EXAMINER: All right. Mr.  
19     Sayer? No?

20                MR. SAYER: No questions, Madam Hearing  
21     Officer.

22                THE HEARING EXAMINER: Thank you.  
23     And Mr. Cloutier?

24                MR. CLOUTIER: Thank you, Madam Hearing  
25     Officer.

1 CROSS-EXAMINATION

2 BY MR. CLOUTIER:

3 MR. CLOUTIER: Good morning, Mr.  
4 Arthur. I've got questions about a couple aspects of  
5 the rulemaking that really haven't been focused on  
6 much in the live hearings here.

7 But before that, could you explain to  
8 me whether you believe that a bonding system which  
9 would require a well that produced 999 barrels of oil  
10 equivalent over 179 days over a 12-month period should  
11 be bonded for \$150,000, but if the next month, the  
12 trailing month average became -- or figures became 180  
13 days and 1,000 BOE, it would not need to be bonded?

14 Is that a risk-based bonding system in  
15 your mind?

16 MR. ARTHUR: Those kinds of things  
17 happen with oil and gas wells because they're not --  
18 you know, it's -- they're producing from nature, but  
19 it -- it doesn't appear to be a -- a risk-based  
20 approach.

21 MR. CLOUTIER: Thank you. If I could,  
22 I think Mr. Everhart has -- Ms. Tripp has got some  
23 family matters.

24 If -- Mr. Everhart, I'm going to look  
25 at slide 37, which was page 38 of your PDF, please,

1 Mr. Everhart.

2 BY MR. CLOUTIER:

3 MR. CLOUTIER: And this is Applicants'  
4 proposed changes to 19.15.8.9. And I'd like to focus  
5 on the redline change there at the end of paragraph A.  
6 Are you with me?

7 MR. ARTHUR: Yes.

8 MR. CLOUTIER: First of all, in working  
9 with regulators and having been regulated, what do you  
10 read the word "proposed" to modify in this sentence?

11 MR. ARTHUR: Drilling and possibly  
12 acquisition. It's unclear.

13 MR. CLOUTIER: Okay. And what is an  
14 operator not permitted to proceed with until it "has  
15 furnished the required financial assurance"?

16 MR. ARTHUR: Proposed drilling and/or  
17 acquisition.

18 MR. CLOUTIER: All right. If -- what  
19 comment would you have about the regulation and its  
20 workability if "proposed" is intended to modify the  
21 word "acquisition"?

22 MR. ARTHUR: That -- that's really  
23 tough because, you know, that means you're going to  
24 have to have bonding to -- to pursue acquiring assets.  
25 So if you're a new operator to the state or an



1 existing operator that may be acquiring assets from  
2 another operator, you'd have to have bonding in place  
3 even for a proposed acquisition.

4 MR. CLOUTIER: Are there situations  
5 where assets may be for sale or, frankly, a company  
6 may be for sale where there -- in the industry where  
7 there's more than one potential acquiring entity?

8 MR. ARTHUR: Yes.

9 MR. CLOUTIER: And, I think, on the  
10 next page you express some concern about -- sorry; I  
11 flipped past it. You say "unnecessarily exponentially  
12 increase the bonding required."

13 Does that concern have anything to do  
14 with the word "acquisition" in the proposed  
15 rulemaking?

16 MR. ARTHUR: Certainly, and -- and it  
17 can get -- it can get complicated in the -- the -- in  
18 what you referenced there because, like, we're helping  
19 an operator right now sell some assets, and so they  
20 have a data room up and multiple people looking at it.

21 But with these, even for a proposed  
22 acquisition, you'd have to have bonding, which means  
23 you'd have to have multiple people with bonding  
24 without even proceeding with completing the  
25 acquisition and -- and coming to the state to get

1 authorization.

2 MR. CLOUTIER: When would it be  
3 appropriate for the State of New Mexico to want to  
4 require bonding from a new operator or potential new  
5 operator?

6 MR. ARTHUR: When they have those  
7 assets and they approve them for -- to be an operator.

8 MR. CLOUTIER: Thank you, Mr. Arthur.  
9 Appreciate that.

10 If we could move to what was slide 55,  
11 page 56, of that PDF, please? That's the wrong page.  
12 I'm sorry. I'm looking for the changes to 19.15.9,  
13 the waste prevention. I'm sorry. Yeah, it's page 55  
14 of the PDF.

15 BY MR. CLOUTIER:

16 MR. CLOUTIER: You with me, Mr. Arthur?

17 MR. ARTHUR: Yep, I see it.

18 MR. CLOUTIER: Okay. And subsection A  
19 as I appreciate it defines what it is to be an  
20 operator in good standing in the State of New Mexico;  
21 correct?

22 MR. ARTHUR: Yes.

23 MR. CLOUTIER: Could you explain to the  
24 Commission your concern with the change to subsection  
25 A(4) of that rule?

1 MR. ARTHUR: Well, this is,  
2 essentially, what -- what I discussed yesterday, but  
3 it -- it, one, removes, you know, the -- the buffer  
4 that was there. But, you know, so, you could have an  
5 operator with, you know, one violation, and they're no  
6 longer, you know, in regulatory compliance.

7 MR. CLOUTIER: And that regulation  
8 refers to the financial assurances rulemaking in sub  
9 (4)?

10 MR. ARTHUR: Correct.

11 MR. CLOUTIER: And currently, the  
12 regulation requires more than one violation; correct?

13 MR. ARTHUR: Correct.

14 MR. CLOUTIER: With a fluctuating  
15 bond -- well, let me strike that.

16 With a proposal that bonding on a well  
17 be contingent on production days and production  
18 volumes that can vary over time, would it be a good  
19 idea, for instance, for the State of New Mexico to  
20 have a policy where an operator of 250 wells fails to  
21 realize that one of his wells has slipped into  
22 marginal status, fails to bond it timely, and then has  
23 its authority to operate all of its wells pulled?

24 MR. ARTHUR: That is a -- is a -- I --  
25 I'd say that example aligns with what's here because

1       they would no longer be an operator in good standing.

2                   MR. CLOUTIER:   And what happens to the  
3       wells in that scenario?

4                   MR. ARTHUR:   They can't -- they can't  
5       be produced.

6                   MR. CLOUTIER:   Is anyone allowed to go  
7       put hands on that well for any reason?

8                   MR. ARTHUR:   No.

9                   MR. CLOUTIER:   What happens if there's  
10      an emergency?

11                  MR. ARTHUR:   Bad things can happen.

12                  MR. CLOUTIER:   Same question on the new  
13      proposed sub A(5).   What regulation is that referring  
14      to that currently meets the requirements of?

15                  MR. ARTHUR:   The flaring and venting.

16                  MR. CLOUTIER:   All right.   And I think  
17      here, and I don't know if it's in the proposed  
18      rulemaking, but it should read 19.15.27.8.A rather  
19      than A8.   Ms. Fox is even nodding at me.   So we agree  
20      on one thing.

21                  MR. ARTHUR:   Yeah, it's right over to  
22      the -- it's correct over to the left, but not in  
23      the --

24                  MR. CLOUTIER:   Right.   Okay.   And do  
25      you have an understanding of what 8.A of subpart 27

1 does?

2 MR. ARTHUR: I -- I think so. We  
3 talked about it here just a little bit ago.

4 MR. CLOUTIER: It prohibits venting and  
5 flaring; correct? And then you referenced in your  
6 testimony with Mr. Tremaine subparts B, C, and D,  
7 which permit venting and flaring in certain narrow  
8 circumstances during drilling, during completion, and  
9 during operations; correct?

10 MR. ARTHUR: Correct.

11 MR. CLOUTIER: Do you have any concern  
12 about isolating the amendment here to only subpart  
13 A -- I mean subparagraph A of 27.8?

14 MR. ARTHUR: It could make this very  
15 challenging because, again, an operator with 250 wells  
16 has one well that gets caught up in this, and it's the  
17 same situation we talked about before.

18 MR. CLOUTIER: And in the circumstance  
19 I mentioned, just in A, any venting and flaring is  
20 prohibited --

21 MR. ARTHUR: Correct.

22 MR. CLOUTIER: -- under A; correct?

23 MR. ARTHUR: Correct.

24 MR. CLOUTIER: B through D permit some  
25 venting and flaring under particular circumstances;

1 correct?

2 MR. ARTHUR: That's right.

3 MR. CLOUTIER: Is it a good idea for  
4 the State of New Mexico in our hypothetical 250  
5 operator status to revoke operator status based on a  
6 single violation of a venting and flaring rule?

7 MR. ARTHUR: It doesn't sound like a  
8 very good plan to me. And that could result in a lot  
9 of negatives, and without any -- you know, without it  
10 being some significant positive.

11 MR. CLOUTIER: Sounds like we're  
12 imposing the death penalty for a single venting and  
13 flaring violation is the proposal; correct?

14 MR. ARTHUR: That's about right.

15 MR. CLOUTIER: All right. You were  
16 asked some questions about the LFC report, Mr. Arthur.  
17 Do you know what information the LFC sought from  
18 industry prior to preparing that report?

19 MR. ARTHUR: I don't know that.

20 MR. CLOUTIER: Okay. Do you know if  
21 the LFC sought any information from any industry  
22 participant or trade association prior to preparing  
23 that report?

24 MR. ARTHUR: I'm not aware that that  
25 happened.

1 MR. CLOUTIER: Do you know if industry,  
2 when it found out about the LFC process, was refused  
3 to provide information to the LFC prior to that  
4 report?

5 MR. ARTHUR: I am not or was not aware  
6 of that.

7 MR. CLOUTIER: Okay. Thank you, Mr.  
8 Arthur. I appreciate your testimony and thank you for  
9 your time today.

10 THE HEARING EXAMINER: Thank you, Mr.  
11 Cloutier.

12 Mr. Suazo, do you have redirect?

13 MR. SUAZO: I do, Madam Hearing  
14 Officer. Can we take a five-minute break?

15 THE HEARING EXAMINER: We can. Let's  
16 come back at 10:25. It's a nine-minute break.

17 (Off the record.)

18 THE HEARING EXAMINER: Let's come back  
19 from the break, please.

20 All right. We will turn now to  
21 commission questioning of -- I'm sorry? Oh, Mr.  
22 Suazo. Redirect. Very sorry.

23 MR. SUAZO: Thank you, Madam Hearing  
24 Officer.

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REDIRECT EXAMINATION

BY MR. SUAZO:

MR. SUAZO: Mr. Arthur, I just have a few questions in light of some of the questions that you were asked on cross-examination.

Let's start with some of the questions that counsel for Applicants asked you. And, you know, I think there's some things I want to clarify just because, you know, in this type of forum, unlike a courtroom, there's kind of a lot of preface to the question.

So I want to make sure that we, kind of, focus in on what the subject was so that you can more clearly answer, you know, some of the things that the other parties were getting at.

Now, let's start with WELC's questioning of you by Mr. Tisdell. Applicants took issue with the absence of a list of materials in your direct testimony. Do you remember that?

MR. ARTHUR: Yes.

MR. SUAZO: Okay. And instead of a list, you actually included the list of all the sources that you used in your testimony as footnotes; correct?

MR. ARTHUR: Yes.



1 MR. SUAZO: Okay. And you used  
2 those -- I counted 36 citations throughout your direct  
3 testimony; correct?

4 MR. ARTHUR: Sounds about right.

5 MR. SUAZO: Okay. Let's talk about  
6 your experience with EPA's data projects on high-risk  
7 wells to -- you know, as they relate to WELC's  
8 proposals. Can you tell the Commission a bit more  
9 about how you helped the EPA to develop a program to  
10 assess risk-based data?

11 MR. ARTHUR: So, for -- and -- and  
12 we're talking about the -- what I mentioned with DOE,  
13 DOI, EPA?

14 MR. SUAZO: Yes, sir.

15 MR. ARTHUR: So, we looked at the age  
16 of the well, the depth of the well, water quality  
17 characteristics, production history of the well,  
18 casing details, a -- a variety of different things  
19 that were considered.

20 I would -- I would say we -- I don't  
21 know the exact number, but over 100 details that we  
22 talked about in -- in looking at trying to  
23 characterize those things. And we had USGS input as  
24 well in that -- in that process.

25 MR. SUAZO: And did I understand

1       correctly that you referenced that EPA methodology as  
2       a means that could improve Applicants' proposals?

3               MR. ARTHUR:   I think so.

4               MR. SUAZO:   And is that because that  
5       would make them more of a risk-based approach?

6               MR. ARTHUR:   That was what DOE, DOI,  
7       and EPA were -- were trying to do is to, like, address  
8       those high-risk wells.

9               MR. SUAZO:   Okay.   And let's move on to  
10       some of the questions from OCD's counsel.   You  
11       discussed various definitions in your testimony with  
12       respect to marginal and stripper wells in other states  
13       for comparative purposes; correct?

14              MR. ARTHUR:   Yes.

15              MR. SUAZO:   Okay.   And you compare  
16       those varying definitions to the proposed definition  
17       of marginal well that's a issue in this proceeding;  
18       correct?

19              MR. ARTHUR:   Correct.

20              MR. CLOUTIER:  Objection.   Leading  
21       questions.

22              THE HEARING EXAMINER:  All right, Mr.  
23       Suazo, just rephrase it.

24       BY MR. SUAZO:

25              MR. SUAZO:   Why did you use those other

1 definitions from other jurisdictions? Was it for  
2 comparison?

3 MR. ARTHUR: To try to compare what  
4 other states are doing or have done to what is being  
5 proposed.

6 MR. SUAZO: And why do you believe that  
7 comparison is important for the Commission to  
8 consider?

9 MR. ARTHUR: So, looking at what other  
10 states are doing is -- I -- I think is -- is important  
11 to understand.

12 MR. SUAZO: Why?

13 MR. ARTHUR: It gives some basis of  
14 what other states have already done. What -- what --  
15 because if you think of this, as well, as many of the  
16 operators out there don't operate in only one state.  
17 They're operating in multiple states.

18 MR. SUAZO: And --

19 MR. ARTHUR: So having that  
20 understanding, the comparison can be quite helpful in  
21 my opinion.

22 MR. SUAZO: And is it accurate that  
23 many other jurisdictions do not define marginal or  
24 stripper wells?

25 MR. ARTHUR: That's correct.

1 MR. SUAZO: Okay. And so, when OCD  
2 asked you whether or not you use the proposed  
3 definition of marginal wells that is at issue in this  
4 proceeding, that's incorrect; is that right? And  
5 that's incorrect because you were comparing it to  
6 other jurisdictions?

7 MR. ARTHUR: Correct. That's what I  
8 was trying to do, and the questioning there was very  
9 confusing.

10 MR. SUAZO: Okay. And so you did not  
11 provide your own definition of marginal or stripper;  
12 you just compared what applicants were proposing to  
13 other jurisdictions; is that right?

14 MR. ARTHUR: Yes.

15 MR. SUAZO: Okay. You were asked about  
16 lease management on cross, and you discussed how a  
17 well producing 0.25 BOE a day can help maintain a  
18 lease while the operator does things such as raising  
19 capital for other investment projects; correct?

20 MR. ARTHUR: Yes.

21 MR. SUAZO: Okay. Do you have any more  
22 examples for how producing wells, even if in small  
23 quantities, can allow more time for an operator to  
24 develop other zones or opportunities?

25 MR. ARTHUR: So having that --

1     certainly, you know, in -- in what you just said, you  
2     know, geology is complex; reservoirs are complex,  
3     and -- and trying to assess that takes time.

4                     And being able to have even those low  
5     production periods and wells just like OXY showed  
6     yesterday can be critical to -- you don't want to lose  
7     leasehold. You don't want to -- you know, you want to  
8     do that. So it can be -- it can be imperative to  
9     build -- to allow future, bigger projects to -- to go  
10    on.

11                    MR. SUAZO: And so -- just so I  
12    understand as a non-oil and gas operator, essentially,  
13    these small-production-volume wells can allow  
14    operators to buy time so they can continue to expand  
15    their operations?

16                    MR. ARTHUR: Well, buy time and also  
17    generate income.

18                    MR. SUAZO: Okay.

19                    MR. ARTHUR: Even if it's small and --  
20    and, you know, less desirable.

21                    MR. SUAZO: And by that, do you mean  
22    that they generate income that can show that they can  
23    develop other projects? Or how does -- how do they  
24    think about it?

25                    MR. ARTHUR: Well, I -- I would say

1 in -- in multiple instances. But if you can  
2 produce -- you know, if you've got wells that are  
3 producing a couple of barrels a day, I know many that  
4 do that. And that's -- a lot of their production is  
5 only, you know, one or two or five barrels a day.

6 And they -- they produce that oil and  
7 sell it and generate income to offset operational  
8 costs and so forth while they're looking at other  
9 options maybe.

10 MR. SUAZO: Now, OCD's counsel asked  
11 you about the presumption of no beneficial use. Is  
12 that accurate?

13 MR. ARTHUR: Yes.

14 MR. SUAZO: Okay. And let's talk about  
15 that 90-day criteria. That is the defined term that  
16 you used to define both the 90 BOE and at least the 90  
17 days of production over a one-year period; correct?

18 MR. ARTHUR: Correct.

19 MR. SUAZO: Okay. And it was the  
20 shorthand that you used so you didn't have to keep  
21 reiterating those two elements; correct?

22 MR. CLOUTIER: Objection. Leading.

23 THE HEARING EXAMINER: Mr. Suazo, you  
24 really are doing most of testifying here.

25 //

1 BY MR. SUAZO:

2 MR. SUAZO: Did you use shorthand to  
3 refer to those two elements?

4 MR. ARTHUR: I was -- I was trying to  
5 look at the -- the 90-day criteria as opposed to going  
6 in, you know, 90 days, 90 barrels. I -- I probably  
7 could have done that, but I was -- I was assuming that  
8 was really meaning both.

9 MR. SUAZO: And was that an expressly  
10 defined term in your testimony?

11 MR. ARTHUR: It -- my testimony does  
12 talk about the 90-day and 90-barrel.

13 MR. SUAZO: Okay. So would you then  
14 say the OCD's claim that you eliminated the volumetric  
15 threshold is inaccurate?

16 MR. ARTHUR: Yes.

17 MR. SUAZO: Let's talk about OCD's  
18 questions related to your recommendation about five  
19 years being a good timeframe for assessing beneficial  
20 use. Can you explain to the Commission how things  
21 like capital allocation cycles might impact timeframes  
22 with respect to wells?

23 MR. ARTHUR: Operating oil and gas  
24 assets, just like anything, can be -- can be very  
25 complicated by getting -- you know, you may have to go

1 raise money to do projects, and in -- in doing that,  
2 you may -- may be getting investors. It -- it could  
3 take a -- a significant amount of time.

4 Even -- even with some of the bigger  
5 companies, they don't -- they may not -- they may have  
6 a process.

7 Like, if you're -- in my experience, if  
8 you're doing some stuff with some of the -- even the  
9 majors, it -- it takes forever to get through that,  
10 you know, scenario of working through all their  
11 management teams to get them to agree to, you know,  
12 to -- to spend that capital.

13 So it could be a -- a variety of  
14 different ways, but I think what we see a lot and what  
15 I'm probably most experienced with is -- is people  
16 trying to raise money to do those upgrades or -- or  
17 projects or acquisitions or whatever.

18 MR. SUAZO: Okay. Do you recall Mr.  
19 Tremaine asking you about the presumption of no  
20 beneficial use and when it's triggered?

21 MR. ARTHUR: Yes.

22 MR. SUAZO: Do you remember his  
23 question about operators having the opportunity to  
24 refute that presumption?

25 MR. ARTHUR: Yes.



1 MR. SUAZO: Is temporary abandonment  
2 implicated by that presumption?

3 MR. ARTHUR: Yes.

4 MR. SUAZO: And is it your  
5 understanding that if the presumption is not refuted  
6 that then the well is required to be permanently  
7 plugged?

8 MR. ARTHUR: Correct.

9 MR. SUAZO: Do you recall being asked  
10 about the difference in cost between horizontal wells  
11 and vertical wells?

12 MR. ARTHUR: I -- I remember the  
13 discussion that he had there, yes.

14 MR. SUAZO: Okay. And what is -- what  
15 was the purpose of you -- well, let me rephrase that.

16 Was it your testimony that the  
17 proposals are less risk based -- the proposals by the  
18 applicant -- because they did not -- they removed the  
19 inquiry into things like the depth of the well?

20 MR. ARTHUR: Yes.

21 MR. SUAZO: Let's move on to temporary  
22 abandonment. If a well is classified as being in  
23 expired temporary abandonment, do any of those wells  
24 stay classified as expired and temporarily abandoned  
25 even if paperwork is submitted to OCD, to your

1 knowledge?

2 MR. ARTHUR: I would say until OCD  
3 approves that, it would -- it would remain that -- in  
4 that even if -- even if you have submitted.

5 MR. SUAZO: Okay. So it can -- what  
6 you're saying is it can retain that status while the  
7 Division is potentially reviewing paperwork?

8 MR. ARTHUR: Correct.

9 MR. SUAZO: Okay. Are you aware of any  
10 numbers with respect to how many applications for  
11 temporary abandonment OCD has received?

12 MR. ARTHUR: I'm not sure.

13 MR. SUAZO: Are you aware whether OCD's  
14 online lists for tracking active and inactive wells  
15 are up to date and current?

16 MR. ARTHUR: I don't know that.

17 MR. SUAZO: I believe that Mr. Tremaine  
18 asked you whether you were aware that when OCD plugs  
19 wells, they also plug other wells in the vicinity; is  
20 that correct?

21 MR. ARTHUR: He said that, and I  
22 believe they try to do that.

23 MR. SUAZO: And you agreed with that  
24 approach; correct?

25 MR. ARTHUR: Yes.

1 MR. SUAZO: Do you know whether the  
2 average costs that OCD claims it incurs for plugging  
3 wells includes the costs for the wells in the  
4 vicinity?

5 MR. ARTHUR: I have not tried to  
6 specifically analyze all those details.

7 MR. SUAZO: Do you know whether that  
8 information was in the LFC report?

9 MR. ARTHUR: It was not.

10 MR. SUAZO: Have you seen OCD provide  
11 that information in this proceeding?

12 MR. ARTHUR: No.

13 MR. SUAZO: No further questions, Madam  
14 Hearing Officer.

15 Thank you, Mr. Arthur.

16 THE HEARING EXAMINER: Thank you, Mr.  
17 Suazo.

18 Commissioner Ampomah, do you have  
19 questions of Mr. Arthur?

20 COMMISSIONER AMPOMAH: Yes, I do. Mr.  
21 Arthur, thanks so much for your testimony today. I  
22 just want to be sure that you are the chief witness  
23 for NMOGA; is that correct?

24 MR. ARTHUR: That's correct.

25 COMMISSIONER AMPOMAH: Okay. Yeah.

1 Mr. Suazo, if possible, you can bring up the slides so  
2 I will just walk through that to ask him a few  
3 questions?

4 MR. SUAZO: Sure. Give us just a  
5 second.

6 COMMISSIONER AMPOMAH: Thank you.  
7 Yeah, let's start from slide number 8, and that is out  
8 of scope of direct testimony. Yeah, I'll start with  
9 D.

10 So you're saying that the new  
11 definition of marginal wells as proposed by the  
12 applicants -- you know, you went on to say is more  
13 stringent than federal and other states. Do you still  
14 stand by this assessment?

15 MR. ARTHUR: Yes, and it's included  
16 in -- in some of the examples that I showed.

17 COMMISSIONER AMPOMAH: Exactly. Yeah,  
18 we'll get to that, but I just wanted to dive in a  
19 little bit more deeper into that. Can you confirm to  
20 the Commission the definition of marginal wells as  
21 proposed by U.S. EPA?

22 MR. ARTHUR: I believe it's 15 barrels  
23 a day, BOE.

24 COMMISSIONER AMPOMAH: So if you  
25 compare that to what -- so, in a year, how many -- how

1 much barrels are we talking about here?

2 MR. ARTHUR: I -- I don't have a  
3 calculator in front of me. I didn't look at the  
4 annual aspect of that.

5 COMMISSIONER AMPOMAH: So let's say if  
6 we multiply 15 by 365, we are looking at over 5,000  
7 barrels a day; is that correct?

8 MR. ARTHUR: Sounds about right.

9 COMMISSIONER AMPOMAH: So how does that  
10 compare to 1,000 or even the 750 BOE that we are still  
11 discussing here at the hearing?

12 MR. ARTHUR: I don't understand your  
13 question.

14 COMMISSIONER AMPOMAH: So you're saying  
15 that the applicant -- their definition of marginal  
16 wells is more stringent than federal and other states.  
17 So I'm just focusing on the federal, and we're just  
18 doing the math.

19 The federal is proposing that before a  
20 well can be classified as a marginal well, it has to  
21 produce about 5,000 barrels of oil in a year. But the  
22 applicant is looking at 1,000, and even they are  
23 willing to go down to about 750. So how stringent is  
24 this proposal to that proposed by U.S. EPA?

25 MR. ARTHUR: Commissioner, if we could

1 go to the definition, what we have for -- for marginal  
2 wells here, that would be helpful.

3 COMMISSIONER AMPOMAH: Yeah, your  
4 lawyer can do that. I do not --

5 MR. SUAZO: Just to clarify,  
6 Commissioner Ampomah, you were talking about EPA's  
7 definition for marginal?

8 COMMISSIONER AMPOMAH: No, you -- maybe  
9 you can ask your witness. He's asking -- he wants to  
10 see marginal. I don't know which type of -- which  
11 definition he wants to see, so maybe you can ask him  
12 for that.

13 MR. SUAZO: Mr. Arthur, which  
14 definition are you looking for? I can pull it up in  
15 your testimony.

16 MR. ARTHUR: I was -- I was trying to  
17 look at the -- what the -- what the proposed  
18 definition of marginal wells in the -- in the new  
19 regulations is.

20 UNIDENTIFIED SPEAKER: Search for --  
21 slides since that's accessible.

22 COMMISSIONER AMPOMAH: I don't think I  
23 saw the exact definition in Mr. Arthur's slides, but I  
24 can read to you what OCD presented to us. You know,  
25 so they're saying that marginal well means "an oil or

1 gas well that produced less than 180 days and less  
2 than 1,000 barrels of oil equivalent within a  
3 conservative 12-months period."

4 MR. ARTHUR: Correct.

5 COMMISSIONER AMPOMAH: So do you want  
6 me to repeat my question again or --

7 MR. ARTHUR: So the -- the EPA  
8 definition, the other state definitions don't include  
9 a specific threshold of number of days produced is --  
10 is one. So there's -- there -- there are differences.

11 The -- the total barrel -- BOE is  
12 what's being proposed here of 1,000 or 750 is less for  
13 that definition of a -- of a marginal well. So being  
14 able to specifically say it's more stringent? It's --  
15 it's a combination of those two factors is what I  
16 would say.

17 But I think that having something that  
18 is more in the 750 BOE and being more flexible on that  
19 180 days, just as the -- the IPANM asked about, and  
20 that -- how those things can -- can change, I think,  
21 would be -- would be reasonable.

22 COMMISSIONER AMPOMAH: So is this  
23 something that NMOGA is going to provide the  
24 definition to the Commission for consideration?

25 MR. ARTHUR: I don't know that, but I

1 think that NMOGA is very open to working with the  
2 Commission on that.

3 COMMISSIONER AMPOMAH: Yeah. And you  
4 are the chief witness, so I'm asking you. Probably  
5 you are going to tell the Commission, or is it the  
6 lawyers going to tell the Commission?

7 MR. ARTHUR: It would be them to tell  
8 the Commission on -- on that.

9 COMMISSIONER AMPOMAH: Okay. Thank  
10 you. Let's go to slide number 14.

11 So you recommended to the Commission  
12 that we should reject, then, the new definition. And  
13 then you say that in the event that the Commission  
14 decides to proceed with that, my question is, are you  
15 okay or is NMOGA okay if the Commission strikes  
16 speculative purposes?

17 MR. ARTHUR: If they strike what, now?

18 COMMISSIONER AMPOMAH: Speculative  
19 purposes. That was added to the original beneficial  
20 use purpose.

21 MR. ARTHUR: I think that would -- I  
22 would have a lot less problems if -- if the  
23 speculative purposes text in there was -- was  
24 stricken.

25 COMMISSIONER AMPOMAH: Let's go to



1 slide number 17.

2 So you are recommending to the  
3 Commission that we should reject the 90-day criteria.  
4 Now, I want to ask you; have you listened to the  
5 testimony that the applicant and even OCD is open to  
6 have some exceptions? Have you had a chance to listen  
7 to that testimony, and do you have any comment on  
8 that?

9 MR. ARTHUR: I was not able to hear  
10 that testimony, but that's --

11 COMMISSIONER AMPOMAH: Okay. Then,  
12 I'll read --

13 MR. ARTHUR: I think -- I think NMOGA  
14 is certainly open to discussing these things with the  
15 Commission.

16 COMMISSIONER AMPOMAH: Okay. So would  
17 the lawyers be the ones that will review and then  
18 provide some feedback to the Commission?

19 MR. ARTHUR: I believe so.

20 COMMISSIONER AMPOMAH: Okay. Thank  
21 you. But let me ask you; do you have any exceptions  
22 that you want to propose to the Commission?

23 MR. ARTHUR: I have not tried to  
24 develop that -- that, specifically, yet, other than  
25 things to consider. So I haven't -- I haven't tried

1 to make specific recommendations of -- of this, but --  
2 other than some of the things that I included in here,  
3 like reducing speculative, et cetera.

4 COMMISSIONER AMPOMAH: Okay. Let's go  
5 to slide number 31.

6 So here you are saying that the  
7 marginal wells should not be defined, but if it is,  
8 must be grounded in operational and economic context,  
9 considering leasehold strategy, reservoir management  
10 needs, and cashflow projections or abstract  
11 thresholds.

12 And then you go to the second one,  
13 saying "If it must be defined, then the definition  
14 should incorporate flexibility and allow for a case-  
15 by-case economic assessment like the EPA production-  
16 based criteria," and on and on.

17 On this one, you know, can you explain  
18 a little bit on the case by case? Because I'm a  
19 little bit confused about -- I feel like a rule has to  
20 be clear and direct to avoid any confusion. So I'm a  
21 little bit confused by, you know, the recommendation  
22 that we should do case-by-case economic assessment.  
23 If you can speak a little bit to that?

24 MR. ARTHUR: I -- I think that -- that  
25 I -- I can -- I can certainly understand, you know,

1 having a -- a -- the -- the desire of a rule to be  
2 clear. But I would say that in -- in my experience  
3 working with multiple state oil and gas agencies, BLM,  
4 DOE, et cetera, it's tough because we're dealing with  
5 very complex projects and -- and so forth.

6 So it's -- it's not always clear. This  
7 isn't like, you know, having a -- a rule to --  
8 that -- that there's one way to do it, and it's -- and  
9 it's very clear, and it's the same every time. And --  
10 and in this case, it can be very complicated for  
11 leasehold and a lot of the different things that --  
12 that we talk about here.

13 So my encouragement is to have  
14 flexibility and consider these things on -- on an  
15 overall case. And that's -- that's why you have, you  
16 know, technical people with those backgrounds that  
17 work for the OCD so that they can do those evaluations  
18 and understand it.

19 COMMISSIONER AMPOMAH: Don't you  
20 believe that that has contributed to the loopholes and  
21 even the numerous orphan wells that we have in the  
22 state of New Mexico and in the country?

23 MR. ARTHUR: So -- so keep in mind  
24 if -- if we look at orphan wells in the country, a lot  
25 of the wells were orphaned before there was even

1 regulations for -- for wells and, you know, companies  
2 that -- that went out of business in the, you know,  
3 pre-1900s, the 1920s, and -- and so forth.

4 So if you look at even the rules and  
5 regulations of various oil and gas agencies, the  
6 existence of API, which -- they didn't even -- they  
7 weren't there until, I think, 1918. But so -- so I'm  
8 not sure that -- that loopholes is -- is the sole  
9 reason for that.

10 I mean, a lot of it is just that's  
11 what -- what happened and how oil and gas used to be  
12 developed. It was just people going out and drilling  
13 the wells and producing them and -- and moving on.  
14 But there's also been major crashes like I mentioned  
15 yesterday, like Penn Square Bank or, you know, during  
16 COVID with oil going to -\$47 a barrel.

17 But what I will also say, and -- and I  
18 agree a hundred percent with, that there certainly are  
19 bad actors. There can be bad actors. There can be  
20 people that are non-compliant.

21 I worked in enforcement when I was at  
22 the EPA in the -- in the '80s and helped with the  
23 first criminal indictment under the Safe Drinking  
24 Water Act. So there certainly are, and there's  
25 certainly people that -- that do try to cheat, that do

1 try to find the loopholes. That -- that exists.

2 That doesn't mean that you can broadly  
3 characterize that or -- or that, you know, it's just  
4 small -- all small operators are -- are bad or all  
5 operators producing low -- low-production wells are  
6 bad or whatever it is.

7 But I think that having that  
8 flexibility and having the staff that -- that the  
9 state has can help assess those loopholes so that that  
10 doesn't occur.

11 COMMISSIONER AMPOMAH: Thank you, sir.  
12 Please, let's go to slide number 33. So, in your  
13 first sentence, you're saying that marginally  
14 producing wells in New Mexico collectively contribute  
15 a meaningful share of the national production. Do you  
16 have the numbers to back this up?

17 MR. ARTHUR: I -- I believe that later  
18 in this that I -- I included data for the state of New  
19 Mexico for marginal wells. It was published from, I  
20 think, a 2004 report.

21 COMMISSIONER AMPOMAH: And then you say  
22 that -- on your point 3, "huge financial losses and  
23 repercussions including lost tax revenue." Did you do  
24 the analysis for this, too?

25 MR. ARTHUR: Well, later, in one of

1 the -- in one of the slides, I -- I noted that, you  
2 know, that in New Mexico, the industry provides -- I  
3 think it's \$7.8 billion to the state. And if you look  
4 at the percentages of -- of marginal wells from that,  
5 it would -- that contribution would be over \$1  
6 billion.

7 MR. SUAZO: Commissioner or Madam  
8 Hearing Officer, just to clarify, that's on page 38 of  
9 his testimony. And you can see at the top of the  
10 slide where there's greater detail in the direct  
11 testimony with respect to what's on the slide.

12 COMMISSIONER AMPOMAH: Thank you. I  
13 appreciate that. I wanted to see that reference, so  
14 thank you. Thank you.

15 Let's go to slide number 38. Yeah,  
16 number 38. Yeah. So IPANM counsel touched on this a  
17 little bit, and he stressed that there has not been a  
18 lot of discussion on this provision. And did a good  
19 job, you know, going back and forth with you on this.  
20 But I want to pick it up on that a little bit.

21 So, the redline here on the first -- on  
22 the top, we're saying that "The Division shall not  
23 approve and the operator shall not proceed with any  
24 proposed drilling or acquisition until the operator  
25 has finished the required financial assurance."

1                   So you had a lot of issues with that,  
2                   but my question is, is this provision not to reduce  
3                   the state's risk of wells passed on to operators if  
4                   not averted will not be able to plug low-producing  
5                   wells, which -- and then becomes an orphan and then  
6                   becomes a responsibility of OCD?

7                   MR. ARTHUR: I -- I think that is --  
8                   I'm -- I'm speculating that that is likely what the --  
9                   the goal of this is. But I think that there's  
10                  unintended consequences, and just from this language,  
11                  confusion.

12                 And even looking at that -- that orphan  
13                 wells, what I haven't seen is -- is just the ongoing  
14                 statistics of -- of those wells being orphaned; how  
15                 OCD is, for instance, managing enforcement and  
16                 compliance from operators to use the regulations and  
17                 rules already in place to -- to help try to avoid  
18                 that.

19                 COMMISSIONER AMPOMAH: You know, I  
20                 tried to do -- when the discussion was going on, I  
21                 tried to check and see what OXY's response to that  
22                 provision was. So, you know, I couldn't get that.  
23                 But do you know if OXY also provided some feedback on  
24                 this language?

25                 MR. ARTHUR: I -- I don't remember.

1 COMMISSIONER AMPOMAH: Okay. I will  
2 check that. I'll check into that. But is NMOGA going  
3 to propose any potential changes to this provision?

4 MR. ARTHUR: I -- I don't know what  
5 they're -- what they're planning to propose, sir.  
6 I -- I do believe that they are open to working with  
7 the Commission on -- you know, on modified language.  
8 And -- and this one, as -- as was noted during that  
9 clarification, even, would help this a lot.

10 MR. SUAZO: Madam Hearing Officer, just  
11 to clarify, the proposals that NMOGA has provided to  
12 date are typically contained in Mr. Sporich's  
13 testimony. He's just providing the technical  
14 assessment, and then the legal witness will actually  
15 provide the language on certain proposals.

16 You know, given what we learned over  
17 the hearing, there might be -- NMOGA may be willing to  
18 provide more at a later time, but, you know, given  
19 where we were at the inception of the hearing, we  
20 could provide limited recommendations and proposals,  
21 but we were not planning on doing that through this  
22 witness.

23 COMMISSIONER AMPOMAH: Thank you, Mr.  
24 Suazo. I appreciate that. So when I ask the  
25 question, yeah, you can just pass it on. I appreciate



1     that.

2                     Please, let's go to slide number 39.  
3     You know, I'm a little bit curious. So, here we're  
4     talking about the blanket bond of 250,000; is that  
5     correct for the active wells? Is that correct?

6                     MR. ARTHUR: Well, the -- starting with  
7     the -- 25,000-plus amount determined by depth and  
8     tiered with the blanket bond, yes.

9                     COMMISSIONER AMPOMAH: Yeah, that one.  
10    You attribute that to the risk base for individual  
11    wells. But you know, so, your bold letters here; I'm  
12    a little bit -- maybe I do not understand.

13                    Because you're saying that it is  
14    unworkable or unnecessarily, exponentially increase  
15    the bonding requirement for wells which post the least  
16    type of risk and are the most prevalent type in New  
17    Mexico. Are you referring to the proposed 250,000  
18    blanket bond?

19                    MR. ARTHUR: No, this is --this would  
20    be the -- the \$150,000 individual bonds proposed  
21    increases for active well financial assurance and --  
22    and so forth.

23                    COMMISSIONER AMPOMAH: Okay. So,  
24    again, let's talk about the bond and the requirements  
25    that the applicant is willing to go down from 15

1 percent to 30 percent. Have you listened to that  
2 testimony?

3 MR. ARTHUR: I -- I have not.

4 COMMISSIONER AMPOMAH: Okay. And do  
5 you believe that if -- let's say the 30 percent  
6 threshold is implemented instead of the 15 percent,  
7 would that help alleviate some of the concerns that  
8 you have here?

9 MR. ARTHUR: That would certainly be  
10 better.

11 COMMISSIONER AMPOMAH: Thank you.  
12 Let's go to slide number 40. So you've talked a lot  
13 about the amount that the plugging costs. You know,  
14 that is being proposed as 150,000 per well.

15 My question to you is do you know the  
16 most expensive plugging performed by the industry in  
17 the recent years that you are aware of that you can  
18 share with the Commission? The most expensive  
19 plugging?

20 MR. ARTHUR: That was done by industry?

21 COMMISSIONER AMPOMAH: Yes.

22 MR. ARTHUR: I -- I have -- I'm just  
23 trying to think of -- of one that we, you know,  
24 plugged in the middle of the river, and that was over  
25 \$1 million.

1                   COMMISSIONER AMPOMAH: So the industry  
2 has plugged a well that is even up to, like, \$1  
3 milliion?

4                   MR. ARTHUR: It was a -- I mean, that  
5 was an -- an exception, but yes.

6                   COMMISSIONER AMPOMAH: Okay.

7                   MR. ARTHUR: I mean, it was in the  
8 middle of a river. You had to, like --

9                   COMMISSIONER AMPOMAH: But it's still  
10 classified as onshore?

11                  MR. ARTHUR: Yes.

12                  COMMISSIONER AMPOMAH: Okay. Okay. So  
13 you discussed about the risk-based analysis. Now, OCD  
14 and the applicant -- you know, I was with you on that.  
15 I mean, I thought that there has to be a risk base  
16 where the amount proposed for a bonding is tied to the  
17 debt, the age, and all of that.

18                  Now, OCD and the applicant proved that  
19 it's not really a major factor, especially for the  
20 wells that OCD plugs. What is your response to that?

21                  MR. ARTHUR: So what I -- what I  
22 haven't seen from that is a -- a provision to look  
23 at -- at all the -- all those details and, you know,  
24 statistical analysis of the wells that they plugged  
25 from -- from those particular -- you know, considering

1 those particular details.

2 So what -- what we did see, you know,  
3 in the -- from the first OCD witness is, you know,  
4 where he showed those two wells that were near each  
5 other, and -- and, you know, the -- they -- they had  
6 to delay based on an owl being in the -- in the  
7 wellhead, and -- and one taking -- I don't remember  
8 the specific days, but much longer than the other  
9 well.

10 So, obviously, the -- I don't -- I  
11 don't remember that he discussed costs for each of the  
12 two, but -- but one appeared to -- that it was -- cost  
13 significantly more than the other one. But I -- I  
14 don't know. I haven't seen the details of what you're  
15 asking presented by OCD.

16 COMMISSIONER AMPOMAH: But you will  
17 agree that industry do have more numbers, more data  
18 points, on well plugging, probably, than OCD? Would  
19 that be a fair assessment?

20 MR. ARTHUR: I -- I would -- I would  
21 say that's -- that's correct. But, like, when --  
22 where industry is -- is plugging, oftentimes, say,  
23 newer wells or wells that are not in such bad  
24 condition as the -- some of the examples that OCD  
25 showed.

1           So, sometimes you get -- you guys get  
2     the worst of the worst, but sometimes not. So it --  
3     it just depends on -- on that. But -- but industry  
4     definitely has a lot of data on that, on what they've  
5     spent to -- to plug wells. We've -- we've got --  
6     we've worked with companies that have plugged -- like  
7     one, Diversified; they're plugging thousands of wells.

8           COMMISSIONER AMPOMAH: So one thing  
9     that I have not heard so far is the -- let's say the  
10    150,000, if industry is proposing a different number.  
11    So don't you believe that it would have been more  
12    prudent for NMOGA to engage with the applicant, with  
13    OCD, to really come up with what you believe could be  
14    the best number?

15          MR. ARTHUR: I think -- I think I'm  
16    very supportive, always, of collaboration.

17          So I don't know that there -- what  
18    opportunity was there for that or whatever, but I  
19    think that that would be a good path forward for  
20    all -- all interested parties to -- to work together  
21    on looking at that risk-based analysis to look at how  
22    costs vary, you know, by the type of well, the age of  
23    well -- all those different things.

24          COMMISSIONER AMPOMAH: So let's go to  
25    slide number 44, and I'm just going to ask it, but if

1 you do not have the answer, maybe Mr. Suazo might have  
2 a different witness to respond to that. Has NMOGA  
3 quantified the impact of this proposal on its members?

4 MR. ARTHUR: I -- I don't know that.

5 COMMISSIONER AMPOMAH: Yes, so let's  
6 get to slide number 47, and this one is very  
7 important.

8 Now, there is no blanket bonding for  
9 the marginal wells other than, more than likely, you  
10 have to provide 150,000 for all the wells in one  
11 single instrument.

12 Does NMOGA has any thoughts on --  
13 because you touched on the proposal would require  
14 operators with incomplete blanket financial assurance  
15 requirements to provide an additional 150K for all of  
16 it. So I'm -- I'm asking if there has been any  
17 discussion about a blanket bond for marginal wells?

18 MR. ARTHUR: I think -- I believe Mr.  
19 Emerick is going to -- is going to talk about that.

20 COMMISSIONER AMPOMAH: Okay. Thank  
21 you.

22 MR. SUAZO: And, Madam Hearing Officer  
23 and Commissioner Ampomah, I believe that IPANM's  
24 witness discusses some data on the overall impact to  
25 the industry based upon the proposal. So it's kind of

1 all over the place given the number of witnesses.

2 And, you know, again, this witness was  
3 intended to kind of provide a criticism and  
4 recommendation on how it might be improved, but he is  
5 not in the position to speak for, you know, NMOGA's  
6 recommendations on, you know, some of these other  
7 issues that have evolved over the course of the  
8 proceeding.

9 THE HEARING EXAMINER: Thank you.

10 COMMISSIONER AMPOMAH: Thank you. On  
11 slide 48, so I just want to ask if, specifically, you  
12 have done any analysis to disprove what OCD and the  
13 applicant is saying; that the depth is not really the  
14 driving factor of the wells that OCD plugs?

15 MR. ARTHUR: Depth can be a factor, but  
16 it can be -- it's -- it's one factor. So it's, you  
17 know, like, the -- the -- some of the wells that OCD  
18 presented as examples have been there for a long time,  
19 had -- had equipment or junk or whatever in the hole  
20 that they had to fish out, highly corroded.

21 So it's -- you know, depth is certainly  
22 a factor, but it's -- but it varies in different  
23 things. So, for instance, in the San Juan Basin, a  
24 coal bed methane well that's 1,000 feet deep or 1,500  
25 feet deep and it's fresh water that's maybe not real

1 corrosive, I mean, it -- there's a number of things  
2 that go into that, sir.

3 COMMISSIONER AMPOMAH: Yeah. And as a  
4 petroleum engineer, you know, I side with you until  
5 you prove me wrong. Yeah. Okay. Let me try to wrap  
6 up here.

7 Yeah. So let's go to slide number 63.  
8 And this is also to the prohibition of transfer of  
9 noncompliant wells. I think I might have probably  
10 asked you about this one, so let me move on.

11 I think I'm going to end here. So  
12 thank you so much, Mr. Arthur, for your testimony.  
13 Thank you.

14 MR. ARTHUR: Thank you.

15 THE HEARING EXAMINER: Thank you.  
16 Commissioner Bloom, on the platform, do you have  
17 questions of Mr. Arthur?

18 COMMISSIONER BLOOM: Yes, Madam Hearing  
19 Officer. Thank you.

20 Mr. Arthur, good morning.

21 MR. ARTHUR: Good morning.

22 COMMISSIONER BLOOM: And I'm trying to  
23 remember if we might have crossed paths here at the  
24 OCC before. Did you work on the 2012 pit rule?

25 MR. ARTHUR: Yes.



1                   COMMISSIONER BLOOM: That's what I  
2     thought; okay. I remembered you once you got on the  
3     stand.

4                   All right, Mr. Arthur, I don't know  
5     if -- I can't recall if you specifically got into this  
6     or not, but one question I did want to ask of NMOGA,  
7     and maybe someone else will address it later, but if  
8     the 180-day activity provision for marginal wells  
9     ultimately survives this process, should there be  
10    exceptions or carve-outs for things like a pipeline  
11    going down, you know; i.e., there's a midstream or  
12    takeaway shutdown?

13                  MR. ARTHUR: I -- I think that that  
14    would be very prudent because I -- just speaking from  
15    current -- historic knowledge and current knowledge,  
16    I'm working on -- on a project that's -- that --  
17    exactly that is the -- the case right now, where a  
18    pipeline that, in this case, went under a river,  
19    ruptured.

20                  And it's been down for a while, which  
21    shut down all the production that was going to it.

22                  COMMISSIONER BLOOM: Okay. Perhaps  
23    this could be a scenario where the operator would  
24    share the midstream provider's notification of  
25    shutdown with the OCD in these cases?

1                   MR. ARTHUR: I think that would be a  
2 great idea.

3                   COMMISSIONER BLOOM: Okay. Thank you.  
4 Mr. Arthur, did you recommend that the OCC consider a  
5 tiered approach to bonding?

6                   MR. ARTHUR: Yes.

7                   COMMISSIONER BLOOM: Did you provide  
8 testimony to us of -- of what this would look like?

9                   MR. ARTHUR: I have not. That I -- I  
10 have not done any of the proposal stuff. I think some  
11 of the other witnesses will get into that.

12                  COMMISSIONER BLOOM: Okay. You know,  
13 again -- and I've talked about this before with other  
14 witnesses, but, you know, I think we're getting some  
15 recommendations, but they aren't fleshed out.

16                  So in these, you know, scenarios where  
17 they're making recommendations but not saying why they  
18 would be superior to what's already been presented or  
19 what the specifics would look like and how the  
20 Commission would justify taking these sorts of  
21 actions, you know, what's the path forward? Do you  
22 know?

23                  MR. ARTHUR: You know, I don't -- I  
24 don't specifically know, but I would just say,  
25 based -- based on experience in -- in this, you know,

1 when -- when I've done -- I've -- I've worked on a  
2 contract basis to other state oil and gas agencies in  
3 rural development. And what I -- I found that worked  
4 real well was not getting in a -- in a giant hurry and  
5 doing working sessions with interested parties.

6 And I -- I think that the applicants  
7 have done some of that, but I think that it would be  
8 helpful to engage NMOGA and NMOGA's members as well as  
9 IPANM and -- and perhaps others.

10 COMMISSIONER BLOOM: Okay. Yeah. So  
11 perhaps NMOGA and other parties could present how they  
12 would see this working out between now and when we  
13 meet to deliberate at some future point?

14 MR. ARTHUR: I -- I think I -- my -- my  
15 impression is that I think NMOGA would -- and I can't  
16 speak for NMOGA. I'm giving you my impression.

17 I'm giving you my impression is that --  
18 but my impression is that I -- I believe that NMOGA  
19 would be open to -- to collaborating and -- and trying  
20 to work through some of the details that -- and -- and  
21 issues that -- that they have that I've raised. And  
22 then that'll be discussed with some of the other  
23 experts.

24 MR. SUAZO: Madam Hearing Officer and  
25 Mr. Bloom, I can proffer that, you know, I think we

1 can probably make some more refined recommendations by  
2 the time we get to Ms. Felix's testimony, who does  
3 speak for NMOGA, and probably potentially, you know,  
4 after the -- the record closes or between the time  
5 when we have to submit findings of fact and things  
6 like that after the hearing.

7 THE HEARING EXAMINER: Thank you, Mr.  
8 Suazo.

9 COMMISSIONER BLOOM: Yeah. Thank you  
10 Mr. Suazo. I appreciate that. I think you all see  
11 where I'm going, so I will end my questions here.

12 Mr. Arthur, thank you for your time.

13 MR. ARTHUR: Thank you. And I do  
14 remember you from the pit rule, so --

15 COMMISSIONER BLOOM: All right.  
16 Thanks. Take care.

17 THE HEARING EXAMINER: Chair Chang, do  
18 you have questions of Mr. Arthur?

19 COMMISSIONER CHANG: Could we go to  
20 slide 49? I have one quick question about Texas. Do  
21 you know how many orphaned wells there are in Texas at  
22 the moment?

23 MR. ARTHUR: I -- I don't have that  
24 number memorized, but there's a lot.

25 COMMISSIONER CHANG: More than New

1 Mexico?

2 MR. ARTHUR: Yes.

3 COMMISSIONER CHANG: And also, I want  
4 to clarify. I believe one of the attorneys, and  
5 I -- unfortunately, I don't have to transcript in  
6 front of me. Somebody asked something along the lines  
7 of whether you agreed that financial assurance is like  
8 insurance for the State, and I believe your answer was  
9 yes; is that correct?

10 MR. ARTHUR: So I -- I'm -- I'm trying  
11 to think of this as a -- as a regulatory agency  
12 because the questioning that came up there was when  
13 he -- he was asking me how much insurance I have  
14 and -- and so forth.

15 And so it was a little confusing,  
16 but -- but I -- I would say, essentially, it -- it --  
17 financial assurance works that way within reason so  
18 that you're not -- the State isn't stuck with some,  
19 you know, problems that you have to use state money  
20 for.

21 COMMISSIONER CHANG: Or functions to  
22 insure for a liability; right?

23 MR. ARTHUR: Yeah.

24 COMMISSIONER CHANG: Okay. There's  
25 been some discussion around -- I believe you've used

1 the term "bad actors" when talking about -- in your  
2 testimony. So I wanted to, sort of, explore that a  
3 little bit with you.

4 It seems -- I guess I'm trying to  
5 connect the dots between whether somebody is a good  
6 actor versus a bad actor, and how that ties into the  
7 need for insurance and how those two concepts relate  
8 to each other if they do because you bring up bad  
9 actors.

10 It seems to me that good homeowners,  
11 bad homeowners would want homeowner insurance  
12 regardless; right? I'm sure your counsel is a good  
13 attorney and not a bad actor, and yet I'm going to go  
14 out and limb and presume that they carry malpractice  
15 insurance.

16 And we require bonding for a range of  
17 professions in New Mexico if I recall correctly,  
18 everything from contractors to title service companies  
19 to notary publics. I presume that -- I haven't seen  
20 anything that says, you know, only bad actors in the  
21 notary public space are required to bond or that only  
22 bad title service companies are required to bond.

23 So I guess I'm trying to figure out,  
24 wouldn't the good or bad -- first of all, I'm not sure  
25 that people would agree on whether or not they are, in

1 fact, good or bad actors, but just assume.

2 In that scenario, wouldn't that factor  
3 into the premium that is charged for the amount of  
4 liability that one is required to carry as opposed to  
5 whether or not liability in and of itself is required?

6 MR. ARTHUR: I think that's part of  
7 what I was -- was looking at is, you know, is -- is a  
8 risk-based approach. So that's, essentially, like  
9 blanket bonds or, you know, do you -- you know,  
10 that -- that gets part of it.

11 But if you have an operator, let's say,  
12 that has a -- has a very good compliance record, is  
13 doing all the things that -- that -- you know, that  
14 they should be, that, you know, so forth, should that  
15 go into the consideration of what their bonding or  
16 insurance and -- and those terms should be?

17 So if you want to go get car insurance  
18 and you have three DUIs and four wrecks, you're going  
19 to pay a whole lot more than, you know, somebody who's  
20 a perfect driver and never even had a speeding ticket.

21 COMMISSIONER CHANG: Right. And that  
22 would be factored into how the insurer calculates your  
23 premium; isn't that correct?

24 MR. ARTHUR: I'm not -- I'm not the  
25 insurance person within that, but -- so I don't -- you

1 know, we've -- NMOGA has a -- an -- a surety expert  
2 that's going to talk about that.

3 But I would -- I would also say that  
4 regardless of that, in -- in my experience, oil and  
5 gas agencies across the country have looked at, you  
6 know, what they believe their risk is, too. It --  
7 just as New Mexico has done here with -- with having  
8 blanket bonds.

9 COMMISSIONER CHANG: Sure. Understood.  
10 You brought up car insurance, and New Mexico as a  
11 state has a minimum liability requirement for -- for  
12 all drivers. Doesn't distinguish between good or bad  
13 drivers. There's a mandatory minimum that we must  
14 carry; right?

15 And the -- so the question of whether  
16 or not somebody is a risky driver, at least for the  
17 purposes of the state mandatory minimum, that doesn't  
18 seem to change. But what changes is how much a  
19 insurance carrier is -- or will require you to pay in  
20 your premiums. Isn't that the way insurance works?

21 MR. ARTHUR: Again, I'm -- I'm not --  
22 I'm not an insurance expert on -- on that, but I --  
23 what I will say is that, since we're talking about car  
24 insurance, I'm going to bring up something that's not  
25 very pleasant, but New Mexico also has uninsured



1 drivers that are non-U.S. citizens that drive on New  
2 Mexico's highway.

3 And I know that from personal  
4 experience because two non-U.S. citizens, 2 1/2 years  
5 ago, that were driving a -- a semi-truck after being  
6 up for over 20 hours crossed the median and ran into  
7 my father-in-law and his wife's car and killed them  
8 both instantly.

9 So -- so those -- so -- so New Mexico  
10 is allowing uninsured drivers to come through the  
11 state.

12 COMMISSIONER CHANG: Well, I don't --  
13 I'm not -- well, that might -- I won't claim to be an  
14 expert in the statute on car insurances, but it seems  
15 like there is -- as far as I understand the statute,  
16 people are required to have a mandatory minimum, and  
17 certainly there are people who break the law; right?  
18 So --

19 MR. ARTHUR: My -- my only point --  
20 point is -- what's -- what -- what I was really only  
21 trying to get to is that -- is that, typically, in --  
22 in my experience, and I'm not an insurance expert, so  
23 maybe that should go -- those specific things should  
24 go to that one.

25 But what I have seen is -- is state oil

1 and gas regulatory agencies that look at the operators  
2 that they're -- that they're managing and -- and the  
3 risk, and typically, you have financial assurance  
4 that's risk-based. You know, that -- that -- blanket  
5 bonds and -- and so forth.

6 COMMISSIONER CHANG: That's all I have.  
7 Thank you.

8 THE HEARING EXAMINER: Thank you, Mr.  
9 Chang.

10 There's no reason not to excuse Mr.  
11 Arthur. Thank you very much, Mr. Arthur, for your  
12 testimony.

13 MR. ARTHUR: Thank you.

14 THE HEARING EXAMINER: Mr. Chair and  
15 Commissioners, it's approximately 11:30. We can take  
16 an early hour for lunch, come back at 12:30, or we can  
17 press on with NMOGA's next witness.

18 But it's likely that your next witness  
19 is going to take more than an hour; is that correct,  
20 Mr. Suazo?

21 MR. SUAZO: Most certainly.

22 THE HEARING EXAMINER: Great.

23 MR. EVERHART: Is Felix next or --

24 MR. SUAZO: No, it's actually our  
25 surety expert, Mr. Emerick.

1 THE HEARING EXAMINER: What say early  
2 lunch maybe?

3 MR. SUAZO: Yes. Always down.

4 THE HEARING EXAMINER: Or for some of  
5 you, second breakfast. Okay. 12:30 please.

6 (Off the record.)

7 THE HEARING EXAMINER: Let's come back  
8 from the lunch break, please.

9 UNIDENTIFIED SPEAKER: Still missing a  
10 bunch of parties.

11 THE HEARING EXAMINER: Is your next  
12 witness on the platform?

13 MR. SUAZO: Yes, Madam Hearing Officer.  
14 Our next witness is Doug Emerick. He's our surety  
15 expert in financial assurance.

16 THE HEARING EXAMINER: All righty. Mr.  
17 Emerick, can you unmute yourself?

18 Sheila, have you given him permission  
19 to unmute?

20 MS. APODACA: Yes, I have.

21 THE HEARING EXAMINER: Okay.

22 Mr. Emerick, I understand pressing  
23 Control, Shift, M might be the secret.

24 MR. EMERICK: Can you hear me?

25 THE HEARING EXAMINER: Yes, now I can.

1 Thank you. Would you spell your first and last name,  
2 please?

3 MR. EMERICK: My name is Douglas R.  
4 Emerick. First name, Douglas, D-O-U-G-L-A-S. Last  
5 name, Emerick, E-M-E-R-I-C-K.

6 WHEREUPON,

7 DOUGLAS R. EMERICK,  
8 called as a witness and having been first duly sworn  
9 to tell the truth, the whole truth, and nothing but  
10 the truth, was examined and testified as follows:

11 THE HEARING EXAMINER: Thank you very  
12 much.

13 Go ahead, Mr. Suazo.

14 DIRECT EXAMINATION

15 BY MR. SUAZO:

16 MR. SUAZO: Mr. Emerick, good  
17 afternoon. How are you today?

18 MR. EMERICK: I'm doing well.

19 MR. SUAZO: Excellent. Will you please  
20 state your name and occupation for the record?

21 MR. EMERICK: For the record, my name  
22 again is Douglas R. Emerick, and I am the director of  
23 operations of the Insurance Expert Network.

24 MR. SUAZO: Can you tell us about your  
25 educational background?

1                   MR. EMERICK: Yes. I earned my  
2 bachelor's degree from Gannon University in business  
3 administration, and then I attended a training school  
4 for the insurance company I worked for and got my  
5 certificate for insurance and fidelity and surety  
6 bonding shortly thereafter.

7                   MR. SUAZO: And how long have you  
8 worked in the surety and bonding industry?

9                   MR. EMERICK: I worked for the  
10 insurance company and companies that sold things to  
11 the insurance industry, and finally, with the  
12 Insurance Expert Network. All told, over 40 years of  
13 experience in the surety and insurance industries.

14                  MR. SUAZO: Do you also operate your  
15 own consulting firm?

16                  MR. EMERICK: Well, I wouldn't call it  
17 an active operation, but I do locally offer computer  
18 help for people who need it.

19                  MR. SUAZO: Okay. And can you describe  
20 your experience underwriting oil and gas plugging  
21 bonds?

22                  MR. EMERICK: When I was with the  
23 insurance company, I was at one point in the Dallas  
24 office of that company, and I was an underwriter of  
25 oil and gas plugging bonds at that point. And I wrote

1 Texas, Louisiana, and Oklahoma plugging bonds.

2 Unfortunately, even though New Mexico  
3 was a neighboring state, I never looked at New Mexico  
4 at the time I was there.

5 MR. SUAZO: Okay. Are you familiar  
6 with the surety markets across multiple states, then?  
7 Specifically, as these sureties apply to energy  
8 companies?

9 MR. EMERICK: As far as surety  
10 underwriting and approach to surety matters, yes, I  
11 am.

12 MR. SUAZO: And have you previously  
13 been qualified as an expert witness in other  
14 proceedings on financial assurance?

15 MR. EMERICK: In several court cases  
16 around this country, including Massachusetts, Florida,  
17 California, I think, but all this information is in my  
18 CV. And Louisiana.

19 And every time I have been involved in  
20 such a matter, the court has confirmed that I am able  
21 to be considered an expert in surety and insurance  
22 matters.

23 MR. SUAZO: Very good. Turning to your  
24 role in this proceeding; for whom are you testifying  
25 today?

1 MR. EMERICK: I am testifying for  
2 NMOGA, and I will say even if I were hired by the  
3 applicants, I would be saying the very same thing  
4 about the process for securing surety bond, the  
5 associated costs for bonding, and explaining the  
6 challenges that companies will experience in securing  
7 sureties at a reasonable cost.

8 And, of course, that "reasonable cost"  
9 phrase is a very subjective term.

10 MR. SUAZO: And NMOGA appreciates you  
11 being here on their behalf today. Before we turn to  
12 the substance of -- let's start with your slide 3.  
13 Could you please summarize the purpose of your  
14 testimony and the main concerns that guide your  
15 analysis?

16 MR. EMERICK: The applicants' proposed  
17 changes are not as straightforward as indicated and  
18 can -- and may contain several unintended consequences  
19 because the surety industry is a very different animal  
20 if you will.

21 Applicants' proposals also display a  
22 clear lack of understanding of surety market functions  
23 and dynamics. And, of course, surety operations are  
24 primarily within insurance companies. Further,  
25 Applicants' proposals are not based on robust industry

1 input from the sureties and fail to consider more  
2 viable alternatives.

3 MR. SUAZO: Did you listen to the  
4 testimony of Dan Arthur earlier today?

5 MR. EMERICK: Yes, I did.

6 MR. SUAZO: Did you hear him discuss, I  
7 guess, kind of a rough comparison between an insurance  
8 policy and a surety?

9 MR. EMERICK: Yes I did.

10 MR. SUAZO: Okay. Do you have any  
11 thoughts about that for clarification purposes?

12 MR. EMERICK: Yes. The -- I think that  
13 the hearing officers may get the wrong idea.  
14 Insurance and surety, even though they are divisions,  
15 most of the time, of the same company, are very, very  
16 different.

17 Insurance, as was discussed, may  
18 contain liability or property coverages and a myriad  
19 of other matters. And it is written to people who  
20 want that insurance, and a premium is charged. And  
21 those insurance companies expect to lose on some of  
22 those policies.

23 Frequent loss -- losses overall on the  
24 whole portfolio of insurance for companies could be  
25 anywhere between 30, 60, and even 90 percent sometimes



1 for insurance policies. Whereas surety is always  
2 written to a zero-loss ratio, which means at no time  
3 do sureties expect to have a loss, and they change  
4 underwriting to maintain that zero-loss ratio.

5 Now, in reality, losses do occur. I'm  
6 not saying we're perfect as underwriters because we're  
7 not. But if losses go over 30 percent for the year,  
8 wholesale changes to that company's surety processes  
9 will begin.

10 Further, they constantly look at  
11 current events; changes of attitudes; and even  
12 legislation, court cases, et cetera, to inform surety  
13 underwriting practices. It depends on the type of  
14 surety that is being written and what the exposures  
15 are as far as the surety sees them.

16 MR. SUAZO: All right. And we'll get  
17 into greater detail later on in your testimony, but  
18 let's move on to slide 4 of your demonstrative  
19 exhibits. Can you please state your general  
20 understanding of the proposed amendments?

21 MR. EMERICK: Yes. I -- I'm not here  
22 to explain particular rules. I'm here, basically, to  
23 explain the reaction that sureties will have to what  
24 the rules are. And I particularly focused on the  
25 single-well financial assurance of 150K for many well

1 types. And it seems to me that they will generate a  
2 dramatic increase in surety requirements.

3 Further, the increase will make  
4 sureties unavailable to many operators simply because  
5 they have previously underwritten that operator for --  
6 under the current regime. And this change, which, for  
7 some operators, not all, will increase the number of  
8 bonds necessary and the total liability at risk.

9 And that change in bond amounts are  
10 paramount to consider because that change will cause  
11 sureties to take many actions, and we can talk about  
12 that later.

13 MR. SUAZO: Sure. And based upon your  
14 review of the proposals from the applicants, is it  
15 clear to you how many operators and wells that these  
16 changes would apply to?

17 MR. EMERICK: Well, I didn't focus on  
18 that particular thing, but any well that is defined as  
19 marginal will require that.

20 And those operators that have multiple  
21 wells and particularly those operations that have more  
22 than 50 percent of the wells that they own classified  
23 as marginal; every single well of that operator will  
24 need that \$150,000 single-well bond.

25 And for some operators with many wells,

1 that will astronomically increase the amount of  
2 liability that the surety has to consider for writing  
3 those bonds.

4 MR. SUAZO: Very good. And I'd like  
5 for you to help the Commission understand how the  
6 surety markets actually function. Can you explain to  
7 the Commission what a surety bond is and how it  
8 defer -- wells? Or -- sorry. Can you assess how the  
9 surety industry differs in its approach to risk when  
10 issuing bonds?

11 MR. EMERICK: Well, given that there is  
12 an attempt by sureties to maintain a zero-loss ratio,  
13 you can imagine, for these types of financial  
14 assurances, the surety will look at the financial.  
15 But not only the financial aspects of that operator,  
16 but also the past history of that operator.

17 So they will have information coming in  
18 to them of operators that have no violations. They  
19 will have information coming in to them of operators  
20 that have some violations. It -- it just depends on  
21 who they're looking at at the time.

22 And the important thing is that the  
23 surety wants to ensure that that bond that they're  
24 taking on will not cause them a loss. And remember,  
25 very different from an insurance policy, a surety bond

1 is tantamount to a loan that a bank would make.

2 It's not exactly that, and I don't  
3 intend to anybody to pin me with a suggestion that  
4 they -- they are the same. They're not the same, but  
5 they're closer to being a loan than they are an  
6 insurance policy.

7 An insurance policy is a promise to pay  
8 for the terms of the policy that the insured bought.  
9 Remember an insurance policy is a contract of  
10 adhesion, and that means the -- the insurance company  
11 wrote the policy. If you agree to -- to buy it, then  
12 you have to agree with the language that is in that  
13 policy. The --

14 MR. SUAZO: Okay. And you touched  
15 on -- sorry. I didn't mean --

16 MR. EMERICK: Go ahead.

17 MR. SUAZO: -- to cut you off. So, you  
18 touched on the zero-loss principle earlier in your  
19 testimony, so we're going to move on to slide 6. But  
20 before we do that, does this practice by the surety  
21 industry tie up additional operator capital and reduce  
22 liquidity?

23 MR. EMERICK: If it's -- if it's just a  
24 single -- if it's just a bond, the bond in and of  
25 itself doesn't tie up capital.

1                   But some bonds that are particularly  
2                   hazardous sureties will require capital -- I'm  
3                   sorry -- collateral, and that collateral is what will  
4                   tie up the working capital of the operator. So that  
5                   can happen.

6                   MR. SUAZO: Okay. Now, moving on to  
7                   your slide 6. How do surety companies generally  
8                   approach risk in underwriting commercial plugging  
9                   bonds?

10                  MR. EMERICK: Again, the more hazardous  
11                  the bond is, the more information the attorney gathers  
12                  to evaluate. And the surety will evaluate, again, the  
13                  financial qualifications of the operator and will also  
14                  look at the people running the operation.

15                  They will pull in resumes. They will  
16                  look for additional information from generally  
17                  publicly available places. They will even pay for  
18                  additional information at times in their analysis of  
19                  the credit and the business qualifications and  
20                  performance of operators before they make a -- a yes  
21                  decision on the bonds.

22                  And for the financial information, they  
23                  will want each operator to have a certain amount of  
24                  working capital on a continuous basis. And that is  
25                  very important for a surety to know, understand, and

1 keep on top of over time for as long as they write  
2 that bond.

3 MR. SUAZO: And how does the amount of  
4 collateral as a percentage pertain to the bond amount  
5 that's issued?

6 MR. EMERICK: That is dependent on each  
7 surety company, but generally speaking, surety asks  
8 for collateral somewhere around 50 to 100 percent of  
9 the bond amount.

10 MR. SUAZO: Okay. And moving on to  
11 your slide 7. When financial assurance requirements  
12 are increased as they're proposed to in this  
13 proceeding, how does that affect a surety's behavior?

14 MR. EMERICK: Again, sureties will want  
15 to make sure that they will not have a loss on that  
16 bond. And the only way they have to do that is  
17 research -- as I have indicated -- the operator, and  
18 then also charge collateral to back up the bond.

19 And there is an indemnity agreement  
20 with each bond issued that guarantees to the surety as  
21 much as can be said to pay the surety back if the --  
22 if the bond is forfeited.

23 MR. SUAZO: Okay. And moving to slide  
24 8. Can you explain to the Commission how Applicants'  
25 proposals would affect operators with varying numbers

1 of wells?

2 MR. EMERICK: That is one of the most  
3 disturbing parts of this.

4 The -- there -- there are provisions  
5 that -- or a provision that says if you have more than  
6 15 percent of your wells that are designated marginal,  
7 then not only are those marginal wells required, but  
8 every well of that operator is required to provide a  
9 single-well financial assurance of 150,000.

10 Now, it -- it doesn't make a whole lot  
11 of sense to me to require the other wells that that  
12 operator has that aren't marginal to provide that 150  
13 single-well bond. It's -- they're not marginal and  
14 they don't show any sign of becoming marginal. Some  
15 of them, anyways.

16 And it doesn't make a whole lot of  
17 sense to do that unless you're characterizing that  
18 particular operator as someone that will send all  
19 their wells to marginal status. And that just doesn't  
20 make a whole lot of sense to me.

21 And, quite frankly, when you're  
22 increasing bond amounts from 250 to possibly someone  
23 with 10 wells to 1 1/2 million, or with 50 wells to a  
24 total bond amount of 7 1/2 million, many operators  
25 simply will not get a surety interested in writing

1     those bonds.

2                     If they have been approved by a surety  
3     to provide a blanket bond, they have been approved  
4     for -- by the surety to 250,000, most likely.

5                     MR. SUAZO:   Okay.   And --

6                     MR. EMERICK:   It -- it could be -- it  
7     could be one of the former blanket bonds of 50,000.  
8     Whatever that amount is, what I'm trying to say is  
9     that the surety approved that operator for whatever  
10    that bond amount is.

11                    When you dramatically increase the bond  
12    amounts that that operator has to provide in total,  
13    that's when a surety will start refusing to write  
14    additional bonds for that operator or they'll approve  
15    so many to get up to what they think the operator can  
16    qualify for.

17                    MR. SUAZO:   Very good.   And so, tying  
18    that information back to the zero-loss model that you  
19    discussed earlier, under -- in this situation or in  
20    under these proposals, why does the zero-loss model  
21    matter, as you kind of lay out on slide 9?

22                    MR. EMERICK:   And that is the real  
23    conundrum of surety underwriting because the sureties  
24    are always trying to avoid that payout.   In other  
25    words, to avoid having any losses.   That's what fires



1 the surety's decision for collateral and limiting the  
2 total amount of bonds for that particular operator.

3 Now, sureties also look at the  
4 regulatory risk for providing a bond to an operator.  
5 If they think badly -- for whatever reason, that the  
6 regulator is a little onerous to its operators, that  
7 means the surety will require higher collateral.

8 They might go from 50 to 100 percent,  
9 or they go from not asking for collateral at all to  
10 asking for collateral. And non-cancelable New Mexico  
11 bonds magnify that exposure because they're not  
12 cancelable.

13 One option that -- except for very few  
14 bonds, the surety is able to get off of them by  
15 canceling them or non-renewing them. One story I can  
16 tell you --

17 MR. SUAZO: But it's -- in New Mexico,  
18 that's not an option; correct?

19 MR. EMERICK: It isn't -- it -- for New  
20 Mexico, Colorado, and I'm not sure where else, those  
21 are non-cancelable bonds. Surety has no option.

22 And I can tell you that when I was  
23 underwriting them in -- in Texas, there was an oil and  
24 gas economy collapse at the time. And what we did in  
25 Texas and for all the states we were writing for at

1     that point, is when the bonds came up for renewal, we  
2     non-renewed.

3                     It's not exactly a cancellation, but a  
4     non-renewal is a tough thing for these operators to  
5     handle.

6                     MR. SUAZO:   Okay.   And moving on to  
7     slide 10, what other forms of financial assurance are  
8     available besides surety bonds?

9                     MR. EMERICK:   Right now, it appears  
10    that New Mexico allows letters of credit, which are  
11    usually 100-percent collateralized.   And those are  
12    documents that are given to the State by financial  
13    institutions other than insurance companies.   And  
14    there are also cash bonds.

15                    Other types do exist, but most of them  
16    tie up and make operational capital less available to  
17    the operator.

18                    Now, when there's lines of credit, an  
19    operator ties up part or all of the line of credit  
20    available to them from their bank.   When they post a  
21    cash certificate, those funds are removed from the  
22    account of the operator and moved to that cash bond  
23    location.

24                    MR. SUAZO:   Okay.   Now, moving on to  
25    slide 11.   How would Applicants' proposed rules tie up

1 operator capital?

2 MR. EMERICK: When -- and I've had one  
3 surety tell me currently that -- and I expected this.  
4 I had one surety tell me that they hadn't before, but  
5 they're going to start asking for collateral.

6 When a surety asks for collateral, they  
7 are doing the same thing as a bank would do. They  
8 remove those funds from the operator, and when they do  
9 that, they could hamstring the operator.

10 They won't do that knowing the operator  
11 can -- is going to be hamstrung. But as always when  
12 you do these things, there are unintended  
13 consequences, and sometimes that will happen.

14 MR. SUAZO: Okay. And moving on to  
15 slide 12. How does the non-cancelable nature of New  
16 Mexico's bonds amplify underwriting risk?

17 MR. EMERICK: It -- it is known non-  
18 cancelable bonds -- I'm talking about in a -- in a  
19 general sense -- are generally considered very  
20 hazardous. And when there is an additive framework of  
21 blanket and single well, as the exposure increases,  
22 the more onerous that bond is or those bonds are to  
23 the surety.

24 And if it increases enough as these  
25 rules would indicate that they would, it will trigger

1 in the surety re-underwriting of that account -- the  
2 operator -- and collateral increases or creation of  
3 collateral requests.

4 MR. SUAZO: Okay. So you've already  
5 touched on New Mexico's non-cancelable bonds. Moving  
6 on to slide 13, how does this -- does this translate  
7 to higher premiums and collateral demands?

8 MR. EMERICK: The -- the only thing  
9 that increases the premium is the increase in bond  
10 amount for surety bonds.

11 Of course, if there's changes in the  
12 operator if the surety has written it for a long time,  
13 there are other conditions that can increase the  
14 premium when the credits they had been given before  
15 are removed and you get close to more of a manual  
16 premium for that particular bond for that particular  
17 operator.

18 MR. SUAZO: Do some surety companies  
19 offer certain companies preferred rates?

20 MR. EMERICK: When I was writing these,  
21 only the best-qualified people got the highest credits  
22 available. There were categories of credits available  
23 for me to use, and very few got the -- all of the  
24 credits available.

25 You could discount a premium as much as

1 50 percent, and I personally never had that premium  
2 credit credited to any account that I handled.

3 MR. SUAZO: Okay. And is the surety  
4 market a competitive one?

5 MR. EMERICK: It can be.

6 MR. SUAZO: Would the proposals from  
7 applicants impact the competitiveness of the market in  
8 New Mexico?

9 MR. EMERICK: It -- it can. It's the  
10 linkage between the non-cancelable form and the  
11 increased limits of liability that will reduce the  
12 number of sureties willing to write those bonds.

13 I don't know how many there were --  
14 there will be, but some that New Mexico has approved  
15 that -- from the treasury list don't write bonds, and  
16 others who had been writing bonds will choose not to  
17 in New Mexico.

18 MR. SUAZO: Thank you, Mr. Emerick.  
19 Now let's move on to a deeper discussion on  
20 collateral, capital, and premiums starting with your  
21 slide 14. Explain in greater detail the role that  
22 collateral plays in actually securing a surety bond.

23 MR. EMERICK: Okay. When you write a  
24 bond, the principal on the bond, which would in this  
25 case be an operator, will sign an indemnity agreement.

1 And again, the indemnity agreement makes it clear to  
2 the -- to the operator that the surety will expect to  
3 be paid back if there's any loss.

4 Two, at all times during the  
5 underwriting process, the surety will look at the  
6 financials of the operator and determine if their  
7 working capital is sufficient to provide enough  
8 working capital to do the number of wells they're  
9 suggesting to do.

10 And the typical underwriting benchmark  
11 is around 25 percent or greater of the bond amount, at  
12 least, in working capital. And they like it higher.

13 MR. SUAZO: Okay. And, Emerick, in the  
14 interest of time, let's skip ahead to slide 18. Can  
15 you tell the Commission a little bit more about the  
16 types of collateral that sureties typically require?

17 MR. EMERICK: Sureties will generally  
18 require cash deposits. If the full amounts are not  
19 available, they will ask the -- just like New Mexico  
20 does -- irrevocable letters of credits, which will tie  
21 up, as we said before, the credit lines for that  
22 operator. That is -- those two categories are the two  
23 primary ones that sureties will consider.

24 MR. SUAZO: Okay. And the  
25 collateral --

1 MR. EMERICK: And there will be pledged  
2 assets that -- on a case-by-case basis that might be  
3 accepted, but that's a rare thing. If -- if --  
4 because a -- a bond might be forfeited, they want  
5 assets to be easily turned over, and not all assets  
6 are.

7 MR. SUAZO: Do collateral requirements  
8 affect smaller operators differently than larger  
9 operators?

10 MR. EMERICK: There are some sureties  
11 that will write an operator that no one else will, and  
12 those are for hard-to-place bonds and if you have  
13 several operators needing extra bonds.

14 And small- and medium-sized operators  
15 are most likely, if no one else is, to be hit with  
16 collateral requirements because those balance sheets  
17 aren't as bulletproof as the larger operators' are.

18 MR. SUAZO: Okay. And on slide 19, you  
19 discussed premium ranges. What are the premium ranges  
20 that you're seeing in today's surety market?

21 MR. EMERICK: Today's -- and I didn't  
22 include, originally, the -- the surety writers that  
23 cater to poor businesses, but generally speaking,  
24 the -- the market range is 1 percent to 10 percent.  
25 And small- and medium-size operators can be in that

1 1-percent area but more typically in the 2 1/2-to-5-  
2 percent range.

3 Large operators get the lowest rates  
4 due to strong balance sheets. And as I said before,  
5 premiums increase when collateral or regulatory risk  
6 increases, and sureties pass the cost of risk through  
7 operators via higher rates.

8 MR. SUAZO: Very good. Let's move on  
9 to the feasibility of the applicants' proposals and  
10 how the market might react. Starting with your slide  
11 21, based on your experience, is the current surety  
12 market capable of absorbing the sweeping new bonding  
13 requirements that are being proposed?

14 MR. EMERICK: Capable? Probably, yes.  
15 Not willing to do it is more likely. The thought that  
16 an operator, before he is approved for drilling, must  
17 provide that \$150,000 bond on the one well he wants to  
18 transfer to someone else; once sureties find out that  
19 that is happening, they are less likely to write bonds  
20 in that particular situation.

21 Because if everything goes according to  
22 Hoyle, that \$150,000 bond, once that well is  
23 transferred and that new owner provides the bond  
24 necessary, New Mexico is likely to release that bond.

25 But then the surety will be responsible



1 for -- for returning the premium for the amount of  
2 time that that bond was not in effect because these  
3 premiums are annual, and they'll be less likely to do  
4 that because that's a lot of work for a little bit of  
5 money.

6 MR. SUAZO: Okay. And moving on to  
7 slide 22; can you explain to the Commission your view  
8 on whether what Applicants propose is problematic?

9 MR. EMERICK: The -- and I mentioned it  
10 before -- and for -- requiring \$150,000 for each  
11 active well in addition to the marginal wells; that  
12 I -- I don't see an easy road for operators and  
13 therefore New Mexico to get that done easily because  
14 each operator has to qualify for those higher amounts,  
15 which includes the re-underwriting process.

16 So there's time involved and the  
17 possible likelihood that the surety will just turn it  
18 down, and there isn't enough collateral available to  
19 guarantee those bonds for the surety, so they'll  
20 decline it.

21 MR. SUAZO: Okay. And does the non-  
22 cancelable nature of New Mexico's bonds have an impact  
23 on this situation?

24 MR. EMERICK: Absolutely. First of  
25 all, you have to understand that the surety approaches

1 this bond as very hazardous, and that is because the  
2 surety cannot cancel it. No matter what happens to  
3 the operator, not -- no matter what happens to the  
4 economy, they cannot cancel that bond.

5 And that's the -- the biggest thing  
6 that influences sureties' behavior on these particular  
7 types of bonds. If the surety had its heart's desire  
8 on writing bonds, they would never write a non-  
9 cancelable bond. That's how hazardous it can be.

10 MR. SUAZO: When you say "hazardous,"  
11 what do you mean by that?

12 MR. EMERICK: Simply, they can't get  
13 off of it. No matter what happens in the world, no  
14 matter what happens to the operator, if anything  
15 happens that affects that particular operator's  
16 abilities to continue, the surety cannot get off the  
17 bond. And that's not the game that most sureties want  
18 to play.

19 MR. SUAZO: Okay. Now, let's move on  
20 to your next slide, which reviews inactive and  
21 temporarily abandoned wells. How would Applicants'  
22 proposals affect those types of wells?

23 MR. EMERICK: It's the same thing as  
24 we've been discussing. It -- the potential for  
25 misclassifying wells as marginal is very likely.

1           And I can't tell you how many wells are  
2 going to be misclassified, but I guarantee you because  
3 nobody's perfect if anything -- if nothing else, and  
4 wells that aren't marginal will be classified as  
5 marginal. And I think that is something the operators  
6 have to be prepared for.

7           MR. SUAZO: Okay.

8           MR. EMERICK: It reduces the risk-based  
9 tiers that previously existed with a 150-per-well  
10 arrangement, and that's, again, going to be a very,  
11 very tough ask of sureties to do.

12           MR. SUAZO: So you mentioned this flat  
13 \$150,000 rate. And on slide 25, can you explain  
14 whether this would be manageable for the surety market  
15 if the Commission adopts this proposal?

16           MR. EMERICK: When -- when you say  
17 manageable, I -- I'd rather characterize it as the --  
18 the sureties can manage it, but I don't think New  
19 Mexico is going to like how they choose to manage it.

20           Imagine a multi-well operation asking  
21 for 10 or 15 marginal-well \$150,000 bonds as opposed  
22 to the single blanket bond or lower amounts. The  
23 surety will have to re-underwrite, and it's just, as  
24 far as New Mexico is looking at it, a luck of the draw  
25 on which ones they will approve and which ones they

1 will decline.

2 MR. SUAZO: All right. Thank you.

3 Let's move on to a case study that you provided in  
4 your testimony. I believe it's called the W&T  
5 Offshore case. Can you explain the significance of  
6 this case and what happens in practice when regulators  
7 impose across-the-board increases?

8 MR. EMERICK: Well, that -- that was an  
9 interesting matter that I became aware of, and it's a  
10 federal bond, which is also non-cancelable. So the  
11 sureties are going to look at that as just like the  
12 New Mexico bond. It's non-cancelable.

13 And the sureties, because of alleged  
14 changes in W&T's financials as well as the regulatory  
15 environment, court decisions, and legislative changes,  
16 they asked for additional collateral. As we had  
17 indicated before, these increases of collateral may go  
18 from 50 to 100 percent or 25 to 75 percent. It just  
19 depends on the particular situation.

20 And the same things can happen in New  
21 Mexico. Collateral requests will happen; increases in  
22 collateral will be requested. All of this, and it's a  
23 very good case study of what happens when the  
24 landscape changes for the surety.

25 The surety needs to underwrite to a

1 zero-loss ratio, and they increase the collateral to  
2 ensure that the lead surety and the co-sureties will  
3 have a zero-loss ratio, and -- well, but, basically,  
4 that's what the case is.

5 MR. SUAZO: Okay. Did you hear  
6 Commissioner Bloom's question about the impact of, I  
7 guess, what happened in the W&T case on the overall  
8 market earlier in this proceeding?

9 MR. EMERICK: I'm not sure I did.

10 MR. SUAZO: Okay. Let me ask you this  
11 way. Is the significance of the W&T case to this  
12 proceeding the fact that both dealt with non-  
13 cancelable bonds?

14 MR. EMERICK: That is the big  
15 similarity.

16 MR. SUAZO: Okay.

17 MR. EMERICK: That is the prime -- that  
18 is the prime similarity. And again, collateralization  
19 of the bond is what is at the root of this case, and  
20 the non-cancelable provision of the bond is the thing  
21 that helped make the sureties decide that collateral  
22 was necessary.

23 MR. SUAZO: Okay. Did you hear the  
24 testimony of WELC's witness, Peter Morgan?

25 MR. EMERICK: Yes.

1 MR. SUAZO: He said that this was an  
2 antitrust case. Is that accurate? And if so, what is  
3 the significance?

4 MR. EMERICK: I'm sorry. I kind of  
5 laughed when -- when I heard him say that because it  
6 is far from an antitrust case. These bonds were big.  
7 And the big -- the size of the bonds themselves don't  
8 make the -- the situation any differently than what  
9 New Mexico is going to face on the bond amounts that  
10 they have.

11 It's -- it's the same situation because  
12 of the non-cancelable bond and the zero-loss ratio  
13 approach of sureties. It is not an antitrust case  
14 because there were co-sureties on these bonds. I  
15 don't know whether there were one or two, possibly  
16 three sureties on these large bonds.

17 And when sureties are sharing the  
18 liability of that bond, each surety is -- has the  
19 responsibility to get the information that the lead  
20 surety has. So that happens with every single co-  
21 surety ever written. Each surety knows just as much  
22 as the other surety, and to call that antitrust just  
23 doesn't make any sense.

24 MR. SUAZO: Okay. Let's move on to  
25 your slide 30. You're aware the applicants are

1 proposing to change certain definitions through this  
2 rulemaking; correct?

3 MR. EMERICK: Correct.

4 MR. SUAZO: Now, on slide 30, you  
5 discussed some of those changes. Can you please  
6 explain the significance in your concerns?

7 MR. EMERICK: Well, some of the  
8 marginal well and beneficial use definitions can be  
9 vague and subjective, which will lead to inconsistent  
10 application. And again, when marginal is defined,  
11 there will be misclassification of some marginal  
12 wells. Don't know how many, but there will be.

13 And it creates unpredictable bonding  
14 obligations and unpredictable underwriting risk. And  
15 when sureties face that, they will decline to write  
16 because if they can't predict it, they will not write  
17 it.

18 MR. SUAZO: Okay. Let's move on to  
19 your next slide. Let's start with marginal well.  
20 What are your concerns with that definition?

21 MR. EMERICK: The definition itself; I  
22 wasn't worried that much, and I can't talk about BOEs  
23 and that kind of thing, but the provision that puts  
24 \$150,000 bond onto productive wells; it's what bothers  
25 me the most.

1           It -- good wells shouldn't be penalized  
2   for what the state is calling bad wells. And forgive  
3   my terming it of that, but it's almost like punishing  
4   an operator for having too many marginal wells, and I  
5   don't know that that is the right way to approach  
6   this.

7           It inflates the liability that sureties  
8   have to underwrite, and it eliminates the link between  
9   economic performance and risk. But beside that, it  
10   distorts liability and bonding metric -- metrics that  
11   the sureties had expected up until this point.

12           MR. SUAZO: Mr. Emerick, let's move on  
13   to your slide 33, which is another definitional change  
14   that's proposed dealing with presumption of no  
15   beneficial use. Can you explain how that would work  
16   and why it matters from a surety standpoint?

17           MR. EMERICK: From a surety standpoint,  
18   the sureties need to know that the operators they are  
19   writing have a clear window on what they're supposed  
20   to do, and I see possible difficulties for operators.

21           And when the status of a well can  
22   change and that causes volatile bonding demands,  
23   that's going to upset a lot of sureties, again because  
24   if they write a bond, they want to continue on that  
25   bond at least for a year. And if they can't, if it's



1 released early because of a new bonding request, they  
2 will lose premiums that they were expecting.

3 And also, even if they get more premium  
4 for the additional bond, the -- the potential is that  
5 sureties will actually decline to write the -- the  
6 larger bonds. And this 30-day rebuttal window; it's a  
7 challenging operational thing to consider, and I would  
8 expect a little bit of chaos for the reporting and the  
9 decision-making process.

10 MR. SUAZO: Now, does this presumption  
11 of no beneficial use utilize or rely on any sort of  
12 economic principles, to your knowledge?

13 MR. EMERICK: Not that I saw.

14 MR. SUAZO: Okay. Now let's move on to  
15 what some other states are doing, starting with slide  
16 35. Do other jurisdictions use a marginal-well  
17 definition for purposes of bonding?

18 MR. EMERICK: I don't think they do,  
19 but the types -- the sizes of bonds are very different  
20 than what's seen here.

21 MR. SUAZO: Can you tell us how other  
22 major oil-producing states handle financial assurances  
23 for oil and gas wells?

24 MR. EMERICK: Well, Texas, for  
25 instance, puts a \$25,000 bond for operations that have

1 1 to 10 wells and a \$250,000 bond on an operation that  
2 has 100 wells. There are no production-level or  
3 marginal-well definitions attached to those as far as  
4 I know.

5 MR. SUAZO: Do you know if Texas's  
6 bonds are cancelable or non-cancelable?

7 MR. EMERICK: Yes, they're cancelable.  
8 They -- they actually terminate.

9 MR. SUAZO: Okay. And moving to slide  
10 36. In your view, would adopting Applicants'  
11 proposals have any sort of impact on New Mexico's  
12 competitiveness with other states?

13 MR. EMERICK: I think it would.

14 When Texas is increasing bond  
15 amounts -- that is the potential here on a lot of  
16 wells -- that is a very different approach than the  
17 surrounding states take. And it -- I -- I expect some  
18 operators to flee the state and go to neighboring  
19 states, and -- because the states I mentioned have  
20 cancelable bonds.

21 Colorado is a continuous bond just like  
22 New Mexico, so I don't know, though, that they'll go  
23 to -- to Colorado, but Texas, Oklahoma, and Louisiana  
24 are potentials.

25 MR. SUAZO: Okay. Skipping forward to

1 slide 38. Let's move on to your testimony regarding  
2 administrative and enforcement types of issues. Have  
3 you identified any administrative problems that might  
4 be foreseeable if the Commission adopts Applicants'  
5 proposed framework?

6 MR. EMERICK: The biggest change that I  
7 saw is when operations are selling wells.

8 And for the requirement of the 150,000  
9 bond -- single-well bond on the well they want to sell  
10 before they transfer it to the new owner, I think will  
11 become unworkable because sureties, once they find out  
12 that they will have the bond for two to three  
13 months -- three months, four months, five months --  
14 however long the transfer takes, and the new owner may  
15 get the surety bond from another surety, I don't see  
16 that as being a very smooth transfer.

17 MR. SUAZO: Okay. Now, let's move on  
18 to your slide 40, which discusses blanket bonds. How  
19 do existing blanket bonds work in comparison to these  
20 single- well financial assurances that are proposed?

21 MR. EMERICK: Yeah, that's pretty  
22 simple. Blanket bonds cover the specified wells that  
23 the operator owns. Single-well bonds cover only one  
24 well, however many the operator has. And when blanket  
25 bonds are issued, the surety has one amount to

1 consider, one underwriting process.

2 When the single-well bonds are  
3 introduced into that environment, that causes the  
4 surety re-underwriting on every operator that is being  
5 asked for the single-well bonds.

6 MR. SUAZO: So just to conclude this  
7 section in your testimony, can you please summarize  
8 the practical impact of these definitional and  
9 administrative proposals on the market?

10 MR. EMERICK: Well, I see disruption in  
11 the surety market in the short term.

12 Operationally, it will become less  
13 predictable, and over the long term, I see the OCD  
14 overburdened by continuous recalculations of these  
15 amounts. And I think that will take -- that alone  
16 will take away from the OCD's necessity on oversight  
17 and the non-reporting of wells that Mr. Powell talked  
18 about.

19 That -- I don't think that is what is  
20 the proper purpose of the OCD, is to recalculate bond  
21 amounts. There'll be change premiums from sureties to  
22 the operators, and it's going to be a very difficult  
23 process to manage.

24 MR. SUAZO: All right. Well, we told  
25 the commissioners --

1                   MR. EMERICK:   And when -- I'm sorry.  
2   The commissioners?

3                   MR. SUAZO:   Yeah, let's move on to your  
4   next slide in the interest of time.  I think you  
5   covered that, and so we really appreciate your  
6   testimony.  But we told the commissioners that we'd  
7   provide some examples of alternatives or better  
8   approaches, so --

9                   MR. EMERICK:   Certainly.

10                  MR. SUAZO:   -- starting with slide 42,  
11   what are some workable alternatives that might better  
12   achieve the State's goals?

13                  MR. EMERICK:   I think that they should  
14   retain a risk-based, tiered, blanket-bond framework.  
15   That matches up the risk and security in handling  
16   these operators, and it -- it makes more sense.  And I  
17   think most important is phasing in any -- any new  
18   bonding levels.

19                  And I'm not denying that new bonding  
20   levels may be necessary; it's just how it's done.  
21   Is -- phase in any new bonding levels gradually.  That  
22   will soften the blow to the surety industry and  
23   increase the likelihood that sureties will react  
24   favorably to these new rules.

25                  Expand the approved assurance forms,

1 including decommissioning or plugging abandon trusts.  
2 And third-party guarantees, also. They -- these  
3 third-party guarantees and protections can be put in  
4 to protect New Mexico, but both are good options for  
5 the OCD to consider.

6 And always, this is with an eye to  
7 avoid market shock while maintaining environmental  
8 protection, and it aligns more closely to successful  
9 state models like Texas, Oklahoma, and Louisiana,  
10 including Colorado.

11 MR. SUAZO: So there's a lot in that  
12 slide. Let's unpack some of that a little bit. How  
13 do the trust accounts that you just mentioned compare  
14 in terms of security and flexibility to surety bonds?

15 MR. EMERICK: Well, surety bonds are --  
16 have a particular amount associated with each one, and  
17 that is what is required by statute, and that's what  
18 the bond is for, and that's what the surety considers.

19 Trust accounts hold funds at all times  
20 available for that decommissioning, and these can be  
21 funded incrementally over time. They are transparent  
22 and regulator accessible. It also reduces the risk of  
23 the rare surety or insurer default, and it also is a  
24 benefit to the operator because it avoids large, up-  
25 front capital freezing.

1                   MR. SUAZO: Very good. Let's move on  
2 to third-party guarantees, which you mentioned. Can  
3 you explain how third-party guarantees work, please?

4                   MR. EMERICK: Certainly. Just like a  
5 indemnity agreements work, third-party guarantees are  
6 promises of -- well-endowed relatives and others can  
7 guarantee to provide funds if they are told what the  
8 exposures are.

9                   It can be a parent or an affiliate  
10 operation, and many small operators have those kind of  
11 people that can offer their guarantee for their  
12 operations. It increases market participation and  
13 surety diversity.

14                  Right now, New Mexico, from one report  
15 I saw, has about 70 percent of the financial assurance  
16 provided by surety companies. This will increase that  
17 market participation and reduces orphan-well risk  
18 without harming independents. It broadens financial  
19 assurance options for New Mexico.

20                  MR. SUAZO: And moving on to your next  
21 slide. In your opinion, should New Mexico retain its  
22 risk-based model and tiered blanket bonding system  
23 instead of adopting a one-size-fits-all sort of model?

24                  MR. EMERICK: The one-size-fits-all  
25 model that the 150,000 single-well bond represents is

1 problematic. And maintaining a risk-based tiers;  
2 you're actually aligning coverage with actual  
3 exposure.

4 And it may preserve liquidity for  
5 responsible operators and encourages investment and  
6 avoids over-bonding -- that's an important point --  
7 protects small- and medium-size operators from  
8 exclusion, and replaces it -- replacing it would  
9 reduce competition and revenues possibly.

10 MR. SUAZO: All right. And moving on  
11 to your next slide. Can bond instruments be rewritten  
12 to make them more workable and maybe even be able to  
13 convert them to a periodically renewed sort of form?

14 MR. EMERICK: Certainly. It's not  
15 uncommon to have a renewable form in this type of  
16 bond, and a lot of bonds -- a lot of licensed bonds  
17 have cancellation provisions.

18 You can make it continuous for a two-  
19 year renewable period, but it does end after two  
20 years, and the surety can renew it or a new surety can  
21 write it, and it will expand surety underwriting  
22 eligibility.

23 When the exposures are understandable  
24 and sureties can put their arms around a particular  
25 risk and understand it properly, they are much more



1 willing to write it; and it simplifies the approval  
2 for non-cancelable bond exceptions, aligns New Mexico  
3 with bond-industry norms, and reduces market barriers  
4 while keeping accountability.

5 MR. SUAZO: Okay. And the last slide  
6 in this section of your testimony; in your view, would  
7 these reforms still protect the state if an operator  
8 defaults?

9 MR. EMERICK: There would be no change  
10 in protection for New Mexico. It retains full state  
11 protection. The New Mexico bond actually goes to  
12 the -- the obligee is the State of New Mexico for use  
13 by the Oil Conservation Division.

14 That remains -- that would remain the  
15 same, ensures bonding availability and prevents  
16 stranded assets that are -- are possible, and reduce  
17 orphan-well risk through market stability. And it  
18 will support a strong operator and surety base in New  
19 Mexico.

20 MR. SUAZO: All right. Now, Mr.  
21 Emerick, I'm going to move on to your slide 53 so you  
22 can go over your closing observations and -- and  
23 recommendations. If the Commission decides to move  
24 forward with the proposals at issue in this  
25 proceeding, what recommendations do you make to them?

1                   MR. EMERICK: Well, I -- and we've  
2 touched on some of these before. Retain risk-based,  
3 tiered, blanket bonds -- I think that is a very  
4 effective way to do this -- and phase in increases to  
5 prevent collateral shocks.

6                   And thirdly, adopt a BOEM-style safety  
7 valve, and that means that -- allow the Division to  
8 deviate from prescribed amounts where the operator  
9 demonstrates that the amount on file at least equals  
10 the estimated decommissioning cost. Get into talks  
11 with the operators, and this will go very, very  
12 easily.

13                  And use creditworthiness and reserve  
14 exemptions like CFR section 556.901. Allow  
15 consideration of the value of the reserves for the  
16 well that the well is producing and the  
17 creditworthiness of the operator or its other co-  
18 interest holders in the well. Also, authorize  
19 additional proven assurance forms, which we just  
20 talked about.

21                  Plugging in abandonment trust accounts  
22 and third-party guarantees with appropriate case  
23 safeguards to New Mexico diversify capacity while  
24 protecting the state.

25                  And clarify the scope and effect of the

1 new definitions. If any definitional amendments  
2 are -- are adopted, specify their limited application  
3 to avoid open-end financial assurance triggers.

4 I don't know whether anybody realizes  
5 this, but beneficial use is used in the New Mexico  
6 Bond Form. And that carryover to the bond itself; I  
7 haven't really examined it, but it will be interesting  
8 to see how that affects the bond.

9 MR. SUAZO: Very good. And why would  
10 these specific reforms, in your opinion, work better  
11 than what Applicants have proposed?

12 MR. EMERICK: It -- what I propose  
13 builds on what -- New Mexico's existing functional  
14 framework.

15 It keeps market participation strong  
16 and surety capacity more available, provides clear  
17 standards and risk-based coverage, and avoids as much  
18 as possible collateral calls and unintended orphan-  
19 well growth. Protects both the environment and state  
20 revenues.

21 MR. SUAZO: All right. And moving on  
22 to your next slide. What lessons should the  
23 Commission draw from other regulatory models such as  
24 BOEM or other peer states?

25 MR. EMERICK: In the peer states, it's

1 most important to understand how many states offer a  
2 cancelable bond form. It's an effective way to handle  
3 the plugging and abandonment bond, and I think it  
4 needs to be maintained on a risk-based, flexible  
5 bonding framework as it is now.

6 It doesn't have to be exactly the same  
7 amounts, but it -- the -- the tier-based approach  
8 still works. Allow operator-specific deviations when  
9 coverage is sufficient, permit multiple assurance  
10 forms, and provide stability and participation without  
11 weakening oversight. Oversight is very important.

12 New Mexico can adopt best practices  
13 while retaining strengths, and they can learn from  
14 Texas and Oklahoma and other templates.

15 MR. SUAZO: Okay. And your next slide,  
16 56. What are your closing observations to the  
17 Commission on New Mexico's current framework?

18 MR. EMERICK: I would prefer that they  
19 strengthen what is already working. Current system  
20 balances protection and practicality. Reform should  
21 improve, not overhaul, effective tools. And lead by  
22 example; strong environment, strong economy.

23 Keep New Mexico competitive and  
24 responsible, and align with real-world cost capacity  
25 and experience and knowledge that you're dealing with

1 a surety operation that is not at all like insurance.

2 MR. SUAZO: And your final slide. What  
3 are your recommendations to the Commission with  
4 respect to Applicants' proposals?

5 MR. EMERICK: I would suggest strike or  
6 revise WELC's proposed marginal-well FA requirements;  
7 preserve existing blanket bond concepts; implement a  
8 risk-based bonding system for single-well FA if you  
9 deem it necessary, and if necessary, the financial  
10 assurance to New Mexico's specific index rather than  
11 the consumer price index; modify bond instruments to  
12 be a periodically renewable form.

13 MR. SUAZO: Thank you, Mr. Emerick.

14 Madam Hearing Officer, that completes  
15 our direct and rebuttal. We do have a fair amount of  
16 surrebuttal slides. I don't know if you feel like  
17 since it's just after lunch if we should take a short  
18 break here or if you want us to continue.

19 THE HEARING EXAMINER: I would continue  
20 a bit, yeah.

21 COMMISSIONER CHANG: I would actually  
22 benefit from five minutes, so a short one would be  
23 great if I could --

24 THE HEARING EXAMINER: All right.  
25 Well, let's just come back at two, then.

1 (Off the record.)

2 THE HEARING EXAMINER: Let's come back  
3 from the break, please. There is Mr. Emerick.

4 All right, Mr. Suazo.

5 MR. SUAZO: Thank you, Madam Hearing  
6 Officer.

7 BY MR. SUAZO:

8 MR. SUAZO: Mr. Emerick, we're going to  
9 start with your surrebuttal testimony. Have you been  
10 observing this rulemaking proceeding thus far?

11 MR. EMERICK: For the most part, yes.

12 MR. SUAZO: Okay. And in response to  
13 Applicants' expert testimony, are there any additional  
14 remarks to the Commission made by those experts that  
15 you would like to address in your surrebuttal?

16 MR. EMERICK: I think there is.

17 MR. SUAZO: All right. Let's move on  
18 to your third slide, which deals with WELC's technical  
19 expert, Thomas Alexander.

20 MR. EMERICK: Yes. I thought it  
21 interesting that Mr. Alexander admitted the financial  
22 insurance rules that are -- that are put forth will  
23 affect every operator.

24 And if the new rules -- he also noted  
25 that if the new rules are put in place, there will be

1 small and medium operators that will forfeit any  
2 existing bonds and not be able to provide larger ones,  
3 which is, basically, what I've been saying here. OCD  
4 may grow their orphan-well problem as a result. We  
5 will see.

6 Mr. Alexander admitted speculation in  
7 one of the definitions was confusing and the new rules  
8 need to be interpreted, and with every interpretation,  
9 there comes confusion and uneven handling. It  
10 amplifies confusion and perceived risk in the surety  
11 under process -- surety underwriting process as well.

12 MR. SUAZO: All right. And moving on  
13 to slide 4; what about Applicants' other technical  
14 witness, Mr. Dwayne Purvis?

15 MR. EMERICK: Well, I noted that when  
16 the Commission was questioning Mr. Purvis, there was  
17 some answers he gave that were flat wrong, and it was  
18 clear to me he had no surety underwriting experience.

19 He said that collateral with the  
20 principal was being done because the principal was a  
21 poor risk. That is wrong. Collateral is taken by  
22 surety even if the principal is good.

23 Remember surety is written to a zero  
24 underwriting process. The zero underwriting process  
25 has no friends. It is -- that is what surety should

1 do, and I don't think Mr. Purvis understood that.

2 Mr. Purvis also told the Commission  
3 that bonds were written for one year. Now, I'm really  
4 surprised there weren't any comments heard after that  
5 because in New Mexico, that is just flat wrong.  
6 Premiums are paid once a year to the surety, but the  
7 bond is continuous in nature and is non-cancelable.

8 Purvis may have been thinking of annual  
9 premiums, but it had no -- premiums have nothing to do  
10 with the term of the bond. Annual premiums are  
11 charged even on non-cancelable bonds.

12 MR. SUAZO: All right. And let's move  
13 on to slide 5, Applicants' legal expert and self-  
14 proclaimed financial assurance expert, Peter Morgan.  
15 What is your response to his testimony?

16 MR. EMERICK: Well, I noted that he was  
17 forced to reveal that he was never worked for surety  
18 or has no surety experience and never has issued a  
19 bond. That is part of being a financial assurance  
20 expert, and he didn't have that experience.

21 Mr. Morgan compared New Mexico to -- to  
22 how the increase in financial assurance affected  
23 Texas, but he never looked at the bond form. How it  
24 affects New Mexico is going to be different than it  
25 affects Texas because Texas is written on a



1 cancelable, terminable bond. Texas, by the nature of  
2 the bond, is a less hazardous bond to write.

3 Mr. Morgan's statement during the  
4 Commission questioning said "Prudent operators will be  
5 rewarded by sureties with good terms." That's wrong.  
6 It does not matter. Prudent operators have to be  
7 financially stable and have to be a lot of other  
8 things, including a good operator and someone who  
9 follows the rules.

10 Mr. Morgan said that the State of New  
11 Mexico spent \$15 million plugging 193 wells. That's  
12 over a five-year period, and that works out to an  
13 average P&A cost of \$77,720 per well.

14 Now, I can't understand why there is  
15 such a difference in what the OCD is saying now, that  
16 the average cost is 163, because they themselves spent  
17 just 77,720 per well, and that needs to be explained.

18 MR. SUAZO: All right. Moving on to  
19 your next slide, Applicant subject matter expert Adam  
20 Peltz. What is your reaction to his testimony?

21 MR. EMERICK: Well, Peltz even admitted  
22 that financial assurance should be risk-based, and if  
23 the high-risk-operator portfolio category and the  
24 thresholds are adopted, OCD should have discretion to  
25 waive the single-well financial assurance for all

1 wells regardless of status of type. And I don't see  
2 that in the rules.

3 Mr. Peltz admitted under the rules as  
4 currently proposed, 19.15.8.9D(3) NMAC, there is no  
5 ability for OCD to waive the agreement requirement  
6 that all wells be secured by \$150,000 worth of  
7 assurance when an operator has 15 percent or more  
8 marginal or inactive wells, and that is designated as  
9 a high-risk portfolio.

10 At a minimum, I think the 15 percent  
11 threshold should be increased as Mr. Powell has  
12 indicated would be reasonable if clear limitations are  
13 established.

14 MR. SUAZO: All right. Thank you, Mr.  
15 Emerick. Do you have any other overarching concerns  
16 with Applicants' remarks to the Commission?

17 MR. EMERICK: My overarching concern:  
18 It -- that the WELC and OCD mindsets appear to desire  
19 to eliminate the small operator, who they view as the  
20 perpetrator of New Mexico's orphan-well problem. I  
21 don't know whether that's true, but without proof of  
22 the same, they -- that's what their actions appear to  
23 say.

24 The unasked questions about these rules  
25 is if the current OCD couldn't keep orphan wells from

1 occurring, what makes them think the new rules will?

2 And I don't think in today's  
3 environment that they will be able to staff up  
4 properly -- their personnel -- very easily. There  
5 will be phone calls, emails, and possibly letters  
6 about these new rules when they are implemented that  
7 will drive OCD crazy.

8 MR. SUAZO: Let's move on to another  
9 witness in this proceeding, the bureau chief, Ms. Rosa  
10 Romero. Are there any remarks made to the Commission  
11 by Ms. Romero that you want to address?

12 MR. EMERICK: Yeah. I -- I just want  
13 to call their attention to Ms. Romero's confirmation  
14 that the remediation and reclamation costs are not  
15 included under the financial assurance authorized  
16 other than the New Mexico Oil and Gas Act at issue  
17 here.

18 The remediation examples provided by  
19 Ms. Romero were also not instructive here because it  
20 is unknown what financial assurance was in place on  
21 the wells she discussed.

22 She also admitted that the remediation  
23 and reclamation costs she reported represent such a  
24 small sample size that they cannot be used to  
25 determine what the average cost would be to perform

1 any statistical analysis. And similarly, the program  
2 she was talking about just started in 2023.

3 MR. SUAZO: All right. Let's move on  
4 to your next slide, which addresses some of the  
5 remarks made by Deputy Director Powell, who oversees  
6 OCD's engineering and environmental divisions. What  
7 are your concerns regarding forfeiture?

8 MR. EMERICK: Well, it was stated at  
9 some point in this hearing that bonds hadn't been  
10 forfeited by the OCD since 2018, and that is an issue  
11 because some of the data I've seen since somebody made  
12 that statement indicates that that simply is not true.

13 But in any case, this may endanger some  
14 operators with multiple bond requests, possibly, and  
15 possibly force them out of the business because of the  
16 amount of bonds requested.

17 And some people may consider this a  
18 governmental attack on its constituency, particularly  
19 that marginal-well rule that requires bonding of all  
20 wells of that operator.

21 These rules shouldn't be changed until  
22 the State of New Mexico knows what forfeiture the  
23 bonds would generate in total. And if the 2,000 --  
24 \$250,000 blanket bonds are not worth forfeiting, how  
25 are 150,000 single-well bonds going to change that?

1 MR. SUAZO: All right. Next slide.  
2 You had an interesting note about the operator  
3 analyses that OCD would have to undertake and how that  
4 may incorrectly place the agency in place of the  
5 private surety provider. Is that accurate?

6 MR. EMERICK: Yes, I think it is. I  
7 think some of the things I've said today will make it  
8 clear to the OCC and the OCD that the surety does a  
9 deep dive on their principals that they underwrite.

10 And the financial assurance rules cover  
11 the State, and the surety underwriters will have to  
12 perform their same analysis for -- before providing  
13 the bond to the under -- to the operator.

14 And therefore, for all surety bond  
15 providers for the state, I don't think it is a good  
16 use of OCD's time to do a deep dive on those  
17 operators. They have a lot of other things to concern  
18 themselves with, and they don't need to be doing that  
19 because the sureties are already doing it.

20 MR. SUAZO: Okay. Let's move on to  
21 your next slide. Do you have any comments in regard  
22 to SLO witness Allison Marks?

23 MR. EMERICK: Yes. The State Land  
24 Office discussed the use of OCD bond proceeds. As far  
25 as surety-provided funds through forfeiture, this

1 could only happen when OCD received funds -- funds  
2 from the surety. No surety with this bond form will  
3 pay the State Land Office on an OCD bond. They will  
4 not do it.

5 The surety will only pay either the  
6 State of New Mexico or the OCD, and the OCD is the  
7 obligee along with the State of New Mexico on the bond  
8 as the only entity the surety will pay.

9 MR. SUAZO: All right. Thank you.  
10 Next slide, please? Next slide. I think you wanted  
11 to add a little more color on the non-cancelable bond  
12 in New Mexico. Can you please elaborate?

13 MR. EMERICK: Well, keep in mind that  
14 non-cancelable means that no cancellation -- that  
15 there is no cancellation provision in the bond. Its  
16 absence is what makes -- the cancellation provision is  
17 what makes the bond cancelable, and it -- it is  
18 missing. I shouldn't say that. It's not present in  
19 the New Mexico bond.

20 The surety cannot cancel the bond once  
21 it's issued, and if the regulatory environment and  
22 risk change, the surety still cannot cancel that bond  
23 using a replacement non-cancelable bond -- unless --  
24 I'm sorry -- unless a replacement non-cancelable bond  
25 is on file.

1                   And non-cancelable bonds are inherently  
2     a riskier bond to write. It is written in surety  
3     training documents that non-cancelable bonds are  
4     highly hazardous. And finally, sureties perform  
5     deeper financial analysis than for -- than for a  
6     cancelable bond.

7                   MR. SUAZO: All right. And I think you  
8     had some additional examples. Starting with the next  
9     slide, you provided some examples for the Commission  
10    to review. What are you showing on this slide?

11                  MR. EMERICK: This is a very  
12    interesting bond form.

13                  On the left-hand side, you see a gray  
14    box on the right that says "This bond is continuous,"  
15    and that's simply not true because when you read the  
16    bond terms, and I've highlighted the part, it allows  
17    this bond to be canceled plain and simply. Those are  
18    the terms of the bond.

19                  MR. SUAZO: All right. Next slide.  
20    What does this show?

21                  MR. EMERICK: For Louisiana, the same  
22    thing. The provision highlighted is the provision  
23    that allows a surety to cancel the bond.

24                  MR. SUAZO: Okay. And another example,  
25    I think in Texas, on the next slide?

1                   MR. EMERICK: Yes. This particular  
2 provision is the one that terminates the bond on the  
3 date filled in in the blank in the highlighted area.  
4 And I didn't highlight it, but there is also a  
5 cancellation provision in this bond.

6                   MR. SUAZO: Okay. Next slide, please.  
7 What does this slide show with respect to New Mexico's  
8 bond forms?

9                   MR. EMERICK: Well, it's only the first  
10 page, but when you get to the bond terms on the second  
11 page of this bond form, it's a simple fact that there  
12 is no cancellation provision in this bond form, and  
13 that's what -- what's -- what makes it non-cancelable.

14                  MR. SUAZO: Does this more clearly show  
15 what you're --

16                  MR. EMERICK: That's it, that's it. So  
17 if you would scroll through the entire bond form, at  
18 nowhere -- in fact, the last paragraph:

19                         "Then and in that event, this  
20 obligation shall be null and void. Otherwise, and in  
21 default of complete compliance with all of the  
22 obligations, this shall remain in full force and  
23 effect."

24                         The last paragraph makes it very clear  
25 that this is non-cancelable, plus it's missing the



1       cancellation provision.

2                   MR. SUAZO: All right. Anything else  
3       you want to add or can we move to the next slide?

4                   MR. EMERICK: We can move to the next  
5       slide.

6                   MR. SUAZO: What would you like the  
7       Commission to see about this slide on federal offshore  
8       bond forms?

9                   MR. EMERICK: Federal offshore bond  
10      forms are very different, but again, the cancellation  
11      provision that would allow this bond to be canceled by  
12      the surety is not anywhere in this bond form. And  
13      that, again, is what makes the bond non-cancelable.

14                  MR. SUAZO: All right. Next slide.  
15      Now, I would like to take us back to the W&T case  
16      because I think it's going to be brought up later, and  
17      I want to be clear about what your assessment of that  
18      case is and the applicability to the current  
19      proceeding.

20                  MR. EMERICK: Okay.

21                  MR. SUAZO: Can you please walk us  
22      through this case based on your slide 23?

23                  MR. EMERICK: Well, it's -- I think  
24      it's a case study for non-cancelable financial  
25      assurance.

1           This case is used to substantiate the  
2       efforts I anticipate will happen here in New Mexico  
3       because of the non-cancelable bond form of New Mexico,  
4       and it proves collateral and premiums could be  
5       increased by sureties as a result of a financial  
6       assurance overhaul and increasing in bond amounts.

7           Proves existing bonds will be affected  
8       in addition to the new bonds. If the exposure of the  
9       operator becomes affected by these additional single-  
10      well bonds, that's when the surety may change its  
11      approach to the account and take action of collateral  
12      or having another surety take over it -- its  
13      responsibility.

14           It proves that for existing non-  
15      cancelable bonds, sureties can strategically demand  
16      amount increases of collateral to escape hostile  
17      and/or risky regulatory markets.

18           MR. SUAZO: All right. And on the next  
19      slide, you discuss in greater detail how New Mexico  
20      and the federal offshore bonding requirements are, you  
21      know, run in parallel in terms of form and in terms of  
22      the regulatory regime that supports them. Can you  
23      explain that for the Commission, please?

24           MR. EMERICK: Certainly.

25           As said, the New Mexico bond form and

1 the federal offshore bonds are both non-cancelable  
2 because they not -- they cannot be released by  
3 cancellation by the surety until the full terms of the  
4 lease, grant, or permit obligations are met or  
5 replacement non-cancelable assurance provided,  
6 including all plugging and abandonment requirements.

7 Regulations reflect the non-cancelable  
8 bond form, too. New Mexico regulators seeing both  
9 financial assurance and plugging and abandonment is  
10 the OCD. Federal offshore regulators seeing  
11 financial -- overseeing financial assurance is the  
12 Bureau of Ocean Energy Management, and federal  
13 offshore overseeing plugging and abandonment is the  
14 Bureau of Safety and Environmental Enforcement.

15 MR. SUAZO: Okay. Next slide. So this  
16 is the rule 19.15.8.12. Can you explain why you want  
17 the Commission to focus on this particular rule in  
18 this context?

19 MR. EMERICK: This -- this provision  
20 provides OCD with the capability to release a  
21 financial assurance upon the operator's or the  
22 surety's written request if all wells drilled or  
23 required under the financial assurance have been  
24 plugged and abandoned.

25 And that is what is -- is the reason

1 the non-cancelable provision is not in that bond  
2 form -- or that's why it was put in. It's not  
3 necessary that it's put in -- that it's not put in,  
4 but it's why it was -- that cancellation provision is  
5 not in the bond form.

6 MR. SUAZO: Okay. Next slide. And I  
7 guess this is for -- this is by way of comparison.  
8 Can you please walk us through --

9 MR. EMERICK: Right.

10 MR. SUAZO: -- this slide?

11 MR. EMERICK: Yeah. Both the BSEE and  
12 the BOEM -- the BSEE states "Lessees must permanently  
13 plug all wells on a lease within one year after the  
14 lease terminates," and the BOEM states that the  
15 provisions that allow release for the sureties --  
16 different types of sureties -- on the BOEM side.

17 MR. SUAZO: Okay. Just a few more  
18 slides left. Let's move to slide 27. Now, I think  
19 you identified some language from Mr. Morgan that  
20 indicated that a mechanism allowing replacement of  
21 bonds might change this. What is your response?

22 MR. EMERICK: That's hard for me to  
23 read. I'm sorry. Oh, this is on the W&T case. He  
24 indicated that it was misidentified financial  
25 concerns, and that's not the only thing that the

1        sureties were considering.

2                        There were other aspects of the  
3        underwriting environment that bothered them as much as  
4        whatever W&T's financials caused, and he was wrong to  
5        cite that.

6                        MR. SUAZO:    Sorry.    I think we're on  
7        the wrong slide.    Apologies.    To your knowledge, was  
8        this complaint amended?

9                        MR. EMERICK:    Yes.

10                      MR. SUAZO:    And that amended complaint  
11        is attached to your rebuttal as Appendix A and B;  
12        correct?

13                      MR. EMERICK:    Correct.

14                      MR. SUAZO:    Okay.    And to your  
15        knowledge, W&T's claims against Lexon and Endurance  
16        are still pending; is that right?

17                      MR. EMERICK:    Correct.

18                      MR. SUAZO:    Now, also on slide 29, Mr.  
19        Morgan focuses on Lexon's partial motion to dismiss,  
20        which is document 57 in the Pacer docket in this case  
21        that is pending.    What is your response to Lexon's  
22        remarks here?

23                      MR. EMERICK:    Well, Lexon actually says  
24        that financial status was one consideration, but also  
25        industrywide situations such as court rulings,

1 industry losses, and reinsurance considerations were  
2 also involved in their decision to increase the  
3 collateral.

4 MR. SUAZO: Okay. And on your next  
5 slide -- sorry -- slide 31. Just to clarify for the  
6 record, Lexon was not one of the sureties that settled  
7 with W&T; is that accurate?

8 MR. EMERICK: I think that's right.

9 MR. SUAZO: Okay. And that's evidenced  
10 by the court documents that we're looking at on these  
11 next two slides?

12 MR. EMERICK: Right. The jury trial is  
13 scheduled for February 2027.

14 MR. SUAZO: Okay. And I think that  
15 brings us to the end of your surrebuttal testimony,  
16 Mr. Emerick. Is there anything else you'd like to add  
17 that I might have omitted?

18 MR. EMERICK: No, I don't think so.

19 MR. SUAZO: All right. Well, we  
20 certainly appreciate your time and your testimony in  
21 this proceeding.

22 Madam Hearing Officer, at this time,  
23 NMOGA moves to admit the testimony, rebuttal  
24 testimony, the appendices, the demonstrative exhibits,  
25 and the summary of his direct and surrebuttal

1 testimony into the record.

2 THE HEARING EXAMINER: Pause for a  
3 moment in the event there are any objections.

4 They are admitted. Thank you.

5 (NMOGA Exhibit F was received into  
6 evidence.)

7 THE HEARING EXAMINER: Ms. Fox or Ms.  
8 O'Grady, do you have any questions of Mr. Emerick?

9 MS. O'GRADY: We do. Thank you.

10 CROSS-EXAMINATION

11 BY MS. O'GRADY:

12 MS. O'GRADY: Mr. Emerick, good  
13 afternoon. How are you?

14 MR. EMERICK: I'm doing fine. Thank  
15 you.

16 MS. O'GRADY: Great. Glad to hear it.  
17 My name is Morgan O'Grady. I'm an attorney with the  
18 Western Environmental Law Center for Applicants.

19 I'd like to start with the W&T  
20 litigation. Mr. Emerick, you testified this afternoon  
21 that you were surprised to hear Mr. Morgan refer to  
22 the W&T case as an antitrust case; correct?

23 MR. EMERICK: Yes.

24 MS. O'GRADY: And you testified that  
25 the W&T case is not an antitrust case?

1 MR. EMERICK: No. I characterized it  
2 as it can't be antitrust because of the arrangement of  
3 the sureties, and that there cannot be antitrust on a  
4 co-surety arrangement.

5 MS. O'GRADY: But you would agree that  
6 the case -- it does include a listed count of a  
7 violation of the Sherman Antitrust Act?

8 MR. EMERICK: It may. Yeah.

9 MS. O'GRADY: And that on page 3 of the  
10 complaint, which is Appendix C to your rebuttal, the  
11 complaint alleges that the surety scheme violates  
12 federal and state antitrust law?

13 MR. EMERICK: Yes.

14 MS. O'GRADY: Great. Thank you. I'll  
15 move on.

16 Mr. Everhart, would you please pull up  
17 Mr. Emerick's slide number 42? Thank you so much;  
18 really appreciate it. Oh, on the direct and rebuttal,  
19 I believe, was one PDF. The version that was pre-  
20 filed did not have page numbers, so -- but I think it  
21 was 42 of the direct and rebuttal.

22 Perfect. Thank you.

23 BY MS. O'GRADY:

24 MS. O'GRADY: Mr. Emerick, you haven't  
25 proposed specific language for your proposals, have



1     you?

2                     MR. EMERICK:    No.

3                     MS. O'GRADY:    You haven't proposed  
4     specific bonding levels?

5                     MR. EMERICK:    No.   I wasn't asked to do  
6     that.

7                     MS. O'GRADY:    And you haven't proposed  
8     graduated bonding levels?

9                     MR. EMERICK:    No.

10                    MS. O'GRADY:    Are you aware that if  
11     parties are to propose amendments to the proposed  
12     rules they were required to submit those proposed  
13     amendments with their direct and rebuttal testimony?

14                    MR. EMERICK:    I am not aware of the  
15     rules of these proceedings or the rulemaking in New  
16     Mexico.   If you say so, I trust it.

17                    MS. O'GRADY:    Okay.   Thank you.

18                    Mr. Everhart, would you mind turning to  
19     slide 45, please?   Thank you.

20     BY MS. O'GRADY:

21                    MS. O'GRADY:    Mr. Emerick, on this  
22     slide, you testified that you endorse various  
23     alternative forms of financial assurance such as  
24     decommissioning, trust accounts, and third-party  
25     guarantees; correct?

1 MR. EMERICK: Correct.

2 MS. O'GRADY: Oh. Actually, can we  
3 jump back to 42, please? No, I think 45 was correct.  
4 Thank you so much. Apologies.

5 BY MS. O'GRADY:

6 MS. O'GRADY: Are you familiar, Mr.  
7 Emerick, with the New Mexico Oil and Gas Act's  
8 provision on financial assurance at NMSA 70-2-14?

9 MR. EMERICK: No, I don't believe I  
10 have read that.

11 MS. O'GRADY: Okay. I am going to take  
12 over sharing the screen. Here is the New Mexico  
13 statute on financial assurance. Are you familiar with  
14 the provision? Or how about I read the provision as  
15 you indicated you're not familiar with the statute?

16 The statute specifies that "Each  
17 person, firm, corporation or association who operates  
18 any oil, gas, or service well within the state shall,  
19 as a conditioned precedent to drilling or producing  
20 the well, furnish financial assurance in the form of  
21 an irrevocable letter of credit or a cash or surety  
22 bond or a well-specific plugging insurance policy."

23 And then it goes on. Did I read that  
24 correctly?

25 MR. EMERICK: You did, indeed.

1 MS. O'GRADY: Do you agree that the  
2 statute limits what forms of financial assurance the  
3 Commission may allow by rule?

4 MR. EMERICK: It does.

5 MS. O'GRADY: Do you agree that the  
6 statute does not list third-party guarantees?

7 MR. EMERICK: Correct.

8 MS. O'GRADY: And third-party  
9 guarantees would therefore require a statutory change;  
10 correct?

11 MR. EMERICK: Correct.

12 MS. O'GRADY: Okay.

13 Mr. Everhart, can I trouble you to turn  
14 back to slide 53, please?

15 MR. EVERHART: We can bill this time to  
16 you for this; right?

17 MS. O'GRADY: Yeah, absolutely. Thank  
18 you so much.

19 BY MS. O'GRADY:

20 MS. O'GRADY: Would adopting a BOEM-  
21 style safety valve require a statutory change, Mr.  
22 Emerick?

23 MR. EMERICK: I do not know.

24 MS. O'GRADY: Would the use of  
25 creditworthiness or reserve exemptions require a

1 statutory change?

2 MR. EMERICK: I do not know.

3 MS. O'GRADY: Would the authorization  
4 of trust accounts and, as just discussed, third-party  
5 guarantees require a statutory change?

6 MR. EMERICK: I do not know.

7 MS. O'GRADY: And you haven't proposed  
8 any specific language for any of the proposals listed  
9 on this slide; correct?

10 MR. EMERICK: I think I've already  
11 answered that.

12 MS. O'GRADY: Okay. Not for this  
13 slide; I don't believe.

14 MR. EMERICK: But not for this slide;  
15 correct.

16 MS. O'GRADY: Okay.

17 MR. EMERICK: No, I have not provided  
18 any language for any slide subject.

19 MS. O'GRADY: Okay.

20 Last request, Mr. Everhart; would you  
21 please pull up slide 47 of the direct rebuttal?  
22 Perfect.

23 BY MS. O'GRADY:

24 MS. O'GRADY: Mr. Emerick, you  
25 testified about the importance to the surety industry

1 of non-cancelable bonds; correct?

2 MR. EMERICK: Correct.

3 MS. O'GRADY: Okay, I'm going to take  
4 over sharing my screen, and this is my last line of  
5 questioning.

6 So I'm jumping back to the statute  
7 here, and as we just discussed, the statute specifies  
8 various things for the financial assurance that must  
9 be provided, including that it must be irrevocable.  
10 Do you see that?

11 MR. EMERICK: Yes.

12 MS. O'GRADY: Would you agree, then,  
13 that any change to the revocability of the financial  
14 assurance that may be required would require a change  
15 to the statute?

16 MR. EMERICK: Well, the rules for the  
17 letter of credit in NMAC indicates that it can be  
18 canceled.

19 MS. O'GRADY: In -- can you clarify?  
20 In what?

21 MR. EMERICK: In the definition of  
22 irrevocable letter of credit.

23 MS. O'GRADY: Sorry. Can you repeat  
24 your original answer?

25 MR. EMERICK: My original answer?

1 MS. O'GRADY: NMAC. Oh, okay. So are  
2 you testifying that you believe that various existing  
3 rules allow for revocable financial assurance forms?

4 MR. EMERICK: I don't know.

5 MS. O'GRADY: Are you -- can you point  
6 us towards any provisions in the current existing  
7 rules that allow for revocable financial assurance  
8 forms?

9 MR. EMERICK: Not off the top of my  
10 head.

11 MS. O'GRADY: Okay. I have no further  
12 questions. Thank you so much for your time, Mr.  
13 Emerick.

14 MR. EMERICK: Certainly.

15 THE HEARING EXAMINER: Thank you.  
16 Mr. Tremaine or Mr. Hall?

17 MR. HALL: Thank you, Madam Hearing  
18 Officer. I have a few questions.

19 CROSS-EXAMINATION

20 BY MR. HALL:

21 MR. HALL: Mr. Emerick, my name is  
22 Michael Hall. I'm an attorney at the Oil Conservation  
23 Division. How are you?

24 MR. EMERICK: I'm doing well. Thank  
25 you for asking.

1                   MR. HALL: Certainly. I was a little  
2                   unsure about a couple of just, kind of, predicate  
3                   matters. Did I understand that the extent of your oil  
4                   and gas insurance and/or underwriting experience was  
5                   when you worked in Dallas?

6                   MR. EMERICK: No, it wasn't just while  
7                   I was underwriting in Dallas. After I left Dallas, in  
8                   a later stage, I audited offices and I audited surety  
9                   underwriting for these types of bonds through the  
10                  1990s.

11                  MR. HALL: That was in the 1990s? When  
12                  did you stop doing that?

13                  MR. EMERICK: 1996.

14                  MR. HALL: Okay. And so, since that  
15                  time, you have not been involved other than as an  
16                  expert witness with oil and gas underwriting?

17                  MR. EMERICK: That's correct.

18                  MR. HALL: Okay. Did you also -- were  
19                  you involved with plugging insurance contracts in your  
20                  time working in oil and gas underwriting?

21                  MR. EMERICK: No.

22                  MR. HALL: Do you have any familiarity  
23                  with that concept?

24                  MR. EMERICK: Well, as an insurance  
25                  policy, I'm familiar -- familiar with insurance

1 policies, but not, specifically, that policy.

2 MR. HALL: Okay. And is that why you  
3 haven't discussed that as a form of -- applicable form  
4 of financial assurance in New Mexico?

5 MR. EMERICK: That's correct.

6 MR. HALL: Okay. Do you agree that it  
7 is available as a form of financial assurance in New  
8 Mexico?

9 MR. EMERICK: I don't like it. The  
10 claims process on insurance policies is very different  
11 than it is for surety, and I'm not as comfortable with  
12 providing an insurance policy for these types of  
13 bonds.

14 MR. HALL: Nevertheless, your comfort  
15 level notwithstanding, it is an available form of  
16 financial assurance in New Mexico?

17 MR. EMERICK: Yes, I do know that it  
18 is.

19 MR. HALL: However, those sorts of  
20 insurance policies don't have a zero-loss policy  
21 attached to them or zero-loss goal?

22 MR. EMERICK: I wouldn't know.

23 MR. HALL: Okay. Now, with regard to  
24 your testimony on oil and gas surety arrangements,  
25 would you agree that there are, generally, three



1 parties to those?

2 MR. EMERICK: For surety bonds, there  
3 always are. Yes.

4 MR. HALL: Okay. And in this case, it  
5 would be the operator, the State of New Mexico, and  
6 the surety; correct?

7 MR. EMERICK: And the operator is  
8 what's known as the principal as the -- one of the  
9 parties, yes.

10 MR. HALL: That would be the entity  
11 providing collateral and creditworthiness to the  
12 surety?

13 MR. EMERICK: That is correct.

14 MR. HALL: Okay. Now, I -- and I don't  
15 want to quibble over semantics, but I believe you  
16 distinguished between insurance and surety  
17 arrangements in your testimony; correct?

18 MR. EMERICK: Correct.

19 MR. HALL: However, both of those shift  
20 risk, don't they?

21 MR. EMERICK: Again, I can't speak to  
22 what the plugging insurance policy does because I  
23 don't know it. Surety, on the other hand; it does not  
24 shift necessarily. The surety will act in place of  
25 the principal if the principal does not fulfill its

1 responsibilities. Only at that point.

2 MR. HALL: How does risk -- excuse me.  
3 That was a bad start of a question.

4 The risk absolutely shifts away from  
5 the State of New Mexico in that arrangement; correct?

6 MR. EMERICK: Correct.

7 MR. HALL: Okay. Did you rely  
8 extensively on Mr. Arthur's testimony to form your  
9 analysis and conclusions in this matter?

10 MR. EMERICK: Not extensively. I  
11 did --

12 MR. HALL: Did you cite to him --

13 MR. EMERICK: I did cite to him.

14 MR. HALL: -- more than 30 times in  
15 your direct and rebuttal testimony?

16 MR. EMERICK: Yes.

17 MR. HALL: Okay. Would you -- you  
18 would not consider that extensive?

19 MR. EMERICK: No.

20 MR. HALL: Okay. What data did you  
21 rely on to form the basis of your testimony?

22 MR. EMERICK: I wouldn't consider  
23 underwriting experience as data, but that's what I  
24 based a lot of my testimony on.

25 MR. HALL: So this -- any data at all?

1 I just -- I didn't quite understand. Or only your  
2 underwriting experience?

3 MR. EMERICK: There may have been some  
4 data that I looked at, but I depended on my  
5 underwriting to reach my conclusions.

6 MR. HALL: And again, that ended in  
7 1996; is that correct?

8 MR. EMERICK: Surety is a type of  
9 underwriting that has existed in the corporate  
10 environment since 1880, and those principles that  
11 guide underwriting have not changed significantly in  
12 that time. And that's why it's a reliable experience  
13 to base decisions on.

14 MR. HALL: But, sure. Okay. I just  
15 wanted to be clear. You might not have understood my  
16 question. Your experience ended in 1996 on that; is  
17 that correct?

18 MR. EMERICK: If that was the question,  
19 that is correct.

20 MR. HALL: Okay. Do you know how many  
21 contractors and subcontractors operate in the oil and  
22 gas industry in New Mexico?

23 MR. EMERICK: No.

24 MR. HALL: Are you familiar with  
25 insurance or financial assurance with regard to

1 operators and their subcontractors?

2 MR. EMERICK: I understand underwriting  
3 of the principal of the bond.

4 MR. HALL: Do other entities do work  
5 for operators?

6 MR. EMERICK: They might.

7 MR. HALL: Are there usually indemnity  
8 or insurance contracts, even bonding, with those sorts  
9 of arrangements?

10 MR. EMERICK: There's an indemnity  
11 agreement for every principal.

12 MR. SUAZO: Objection. This goes  
13 beyond the scope of witness's testimony, I believe.

14 THE HEARING EXAMINER: Mr. Hall?

15 MR. HALL: I believe he went in depth  
16 about the basic functions of indemnity financial  
17 assurance, and I'm probing that knowledge.

18 THE HEARING EXAMINER: Overruled.

19 BY MR. HALL:

20 MR. HALL: Would you like me to repeat  
21 my question, sir?

22 MR. EMERICK: Yes, please.

23 MR. HALL: Okay. I believe you said  
24 indemnity applies to all those agreements; is that  
25 right?

1 MR. EMERICK: I said with every bond,  
2 the principal signs an indemnity agreement.

3 MR. HALL: And what's the purpose of  
4 that?

5 MR. EMERICK: And I believe I stated  
6 this during my testimony; when a surety asks for and  
7 receives an indemnity agreement, it is a promise for  
8 the principal to pay back to the surety any funds that  
9 the surety is made to pay because of, in this state,  
10 forfeiture of the bond.

11 MR. HALL: And even with a two-party  
12 contract, say, between an operator and a subcontractor  
13 doing work on a well, there would be indemnity or  
14 agreements to pay in the event of some default on that  
15 agreement; correct?

16 MR. EMERICK: I would assume so, but  
17 I'm not talking about -- as an operator. I don't --  
18 I -- I don't know, specifically, what they use.

19 MR. HALL: A general principle of risk  
20 shifting is those sorts of agreements so that, in this  
21 case, New Mexico is not left -- the citizens of New  
22 Mexico are not left paying for operators who don't  
23 plug and abandon their wells; correct?

24 MR. EMERICK: That's what the bond is  
25 for, to do exactly that.

1 MR. HALL: Now, speaking of that, I  
2 believe you were saying you were confused about the  
3 77,000 or approximately 77,000 amount that you thought  
4 it cost OCD to plug and abandon wells?

5 MR. EMERICK: Those -- that was from a  
6 spreadsheet that I saw that had five years of spending  
7 from the reclamation fund to plug wells from 2019 to  
8 2024, I do believe.

9 MR. HALL: And I believe you said OCD  
10 needs to explain that; is that right?

11 MR. EMERICK: No. I said with that  
12 number and the 163,000 average that they have since  
13 stated is the average for plugging and abandonment, I  
14 don't know whether that's one year or five years of  
15 experience or ten years of experience or just one  
16 single -- last year. So --

17 MR. HALL: I'll represent --

18 MR. EMERICK: -- the -- the difference  
19 between the two has to be explained.

20 MR. HALL: Sure. And did you -- I  
21 believe you said you'd listened to Mr. Powell; is that  
22 right?

23 MR. EMERICK: Yes.

24 MR. HALL: Do you recall him saying the  
25 163,000 is the fiscal year '24 OCD plugging cost

1 average?

2 MR. EMERICK: And if that's the --  
3 that's the case, then how do we get from 77,720 to  
4 163,000?

5 MR. HALL: I believe he explained that,  
6 and I'm sorry if you didn't hear it, but I guess I'm  
7 not here to explain that since he's already testified  
8 to that.

9 MR. EMERICK: No.

10 MR. HALL: Now, non-cancelable form. I  
11 wanted to explore that a little bit with you. These  
12 other states that do allow sureties to cancel their  
13 agreements; that subjects those states to risk,  
14 doesn't it?

15 MR. EMERICK: Not necessarily.

16 MR. HALL: Well, let's go through a  
17 hypothetical here. A surety cancels the bond. An  
18 operator goes bankrupt. What happens?

19 MR. EMERICK: I don't know. There's  
20 lots of possibilities. That property could be taken  
21 over by another operator and bond supplied. I just  
22 don't know.

23 MR. HALL: All right. One --

24 MR. EMERICK: It's hard to deal with  
25 hypothetical situations.

1 MR. HALL: You've never seen that in  
2 your experience as a surety --

3 MR. EMERICK: No.

4 MR. HALL: -- expert?

5 MR. EMERICK: No.

6 MR. HALL: One result of that would be  
7 a state that allowed sureties to cancel bonds would be  
8 required to pay the plugging costs; correct?

9 MR. EMERICK: Not necessarily.

10 MR. HALL: Can you tell me -- well,  
11 okay.

12 MR. EMERICK: I -- I presented -- I  
13 presented to you one possibility from that situation.  
14 if indeed that operator went bankrupt, that well and  
15 property could be sold to another who then provides  
16 the bond to the State. In a cancelable situation,  
17 that is one possibility.

18 If that doesn't happen, there's a ton  
19 of other possibilities, and I can't predict what would  
20 happen.

21 MR. HALL: When a bond is canceled,  
22 there's no bond; is that correct?

23 MR. EMERICK: From that surety,  
24 correct.

25 MR. HALL: Are you suggesting that if



1 bonds can be canceled, which is a recommendation of  
2 yours, that they can't be -- they be non-cancelable  
3 unless there's another surety to take over that bond?

4 MR. EMERICK: No, I'm not.

5 MR. HALL: Okay. You have described  
6 these non-cancelable bonds as very hazardous. Who are  
7 they very hazardous to?

8 MR. EMERICK: The surety.

9 MR. HALL: They are the opposite of  
10 hazardous to the State of New Mexico, though; correct?

11 MR. EMERICK: Correct.

12 MR. HALL: Excuse me. I think I'm  
13 about done. I'm just double-checking my list.

14 You would agree the purpose of these  
15 rules is to protect the citizens of New Mexico from  
16 orphaned-well costs; correct?

17 MR. EMERICK: It is to protect the  
18 citizens, period.

19 MR. HALL: And not the sureties?

20 MR. EMERICK: No, the sureties are  
21 there to protect the citizens.

22 MR. HALL: Oh, I had another question  
23 from your direct testimony. Actually, this is from  
24 your rebuttal testimony. What did you mean when you  
25 suggested that OCD might undertake a -- a subjective

1 and/or disparate enforcement of these rules?

2 MR. EMERICK: With district offices,  
3 It's possible that some of the rules can be  
4 misinterpreted by certain people, and that is a  
5 possibility with multiple offices.

6 MR. HALL: Are you aware that OCD has  
7 eliminated district offices?

8 MR. EMERICK: No, I was not.

9 MR. HALL: Does that completely change  
10 your analysis on that matter?

11 MR. EMERICK: No. There are also  
12 individuals within OCD in one office that can cause  
13 the same problem.

14 MR. HALL: How would these new rules  
15 change the current framework of OCD with regards to  
16 enforcement?

17 MR. EMERICK: Enforcement? That's a  
18 broad term. I -- I couldn't explain that. I  
19 couldn't -- I -- I didn't look at that.

20 MR. HALL: What did you mean by the  
21 word "enforcement" in your testimony?

22 MR. EMERICK: Enforcement of the rules.  
23 "Enforcement" as a general term, I didn't look at.

24 MR. HALL: I'll move on with this  
25 caveat. Are you saying that these rules will make OCD

1 subjective and/or disparate with their enforcement,  
2 whereas it's not now? Or you think OCD is now?

3 MR. EMERICK: With the definitions of  
4 marginal well and the bonding requirements associated  
5 with them, it is possible that marginal wells can be  
6 misclassified and bonds requested that may not be  
7 necessary. Or too many bonds are requested from one  
8 operator, and that will affect how disparate or those  
9 rules can be applied.

10 MR. HALL: Okay. I think I'm pretty  
11 close, Mr. Emerick. But I wanted to quote you again  
12 from line 415 of your rebuttal testimony, and you  
13 stated, "If it's not broke, don't fix it." What did  
14 you mean by that?

15 MR. EMERICK: If present bonding rules  
16 are applied consistently and effectively, they can be  
17 effective in doing what is needed.

18 MR. HALL: I believe you testified  
19 about the LFC report; is that right?

20 MR. EMERICK: I'm not sure what you're  
21 referring to.

22 MR. HALL: Okay. The Legislative  
23 Finance report from the State of New Mexico.

24 MR. EMERICK: I'm aware of it, yes.

25 MR. HALL: Okay. I'm going to share

1 part of that. Can you see that headline there?

2 MR. EMERICK: Yes.

3 MR. HALL: And what does that say?

4 MR. EMERICK: "Current orphan wells  
5 will cost the state more than 200 million. Future  
6 liability very likely exceeding -- exceeds 700  
7 million."

8 MR. HALL: You still maintain it's not  
9 broke and it needs no fix?

10 MR. EMERICK: What I'm saying is that  
11 the basic framework can be effective if assigned, but  
12 I see a lot of small bonds that have been issued to  
13 the State in the past.

14 And the current blanket bond and  
15 single-well bonds that have been issued under the  
16 present rules are very effective, but there are no  
17 3,000 or 2,000 or 7,000 amounts anymore. What has  
18 gone on past, which is, I think, what has been causing  
19 the problem.

20 MR. HALL: I'll pass the witness.  
21 Thank you. Mr. Emerick.

22 MR. EMERICK: Thank you.

23 THE HEARING EXAMINER: Thank you, Mr.  
24 Hall.

25 Mr. Moore, do you have questions of Mr.

1 Emerick?

2 MR. EMERICK: Excuse me. Can I have a  
3 break?

4 THE HEARING EXAMINER: Yes, yes,  
5 certainly. It's -- let's come back at 3:05.

6 (Off the record.)

7 THE HEARING EXAMINER: All righty. It  
8 is -- let's see -- Mr. Moore's turn to ask questions  
9 of Mr. Emerick.

10 Mr. Moore, do you have questions?

11 MR. MOORE: I do, Madam Hearing  
12 Examiner. Thank you.

13 CROSS-EXAMINATION

14 BY MR. MOORE:

15 MR. MOORE: Good afternoon, Mr.  
16 Emerick. My name is Richard Moore. I represent the  
17 Commissioner of Public Lands and the State Land Office  
18 in this proceeding. How are you this afternoon?

19 MR. EMERICK: I'm doing well. Thank  
20 you.

21 MR. MOORE: Thank you. You testified  
22 in your surrebuttal that the State Land Office -- that  
23 no surety would pay the State Land Office on a bond to  
24 which the OCD is the obligee; is that correct?

25 MR. EMERICK: Correct.

1 MR. MOORE: So the State Land Office  
2 would not be able to collect on such a bond for damage  
3 to state minerals managed by the State Land Office?

4 MR. EMERICK: If the bond was written  
5 to New Mexico for the use and benefit of the OCD, no.

6 MR. MOORE: And if the bond was written  
7 that way, would the State Land Office be able to  
8 collect on the funds secured by that bond to conduct  
9 reclamation on state trust land?

10 MR. EMERICK: That I wouldn't know.

11 MR. MOORE: But your testimony is that  
12 no surety would pay the State Land Office for -- on a  
13 bond to which OCD is the obligee?

14 MR. SUAZO: Objection. Asked and  
15 answered.

16 MR. EMERICK: Correct.

17 THE HEARING EXAMINER: Okay. Go ahead,  
18 Mr. Moore.

19 BY MR. MOORE:

20 MR. MOORE: But is your answer  
21 different based on your prior answer that if the State  
22 Land Office was seeking those funds to conduct  
23 reclamation on state trust land?

24 MR. EMERICK: No. The bond is the  
25 commanding document and what the sureties have to

1 follow. They could not pay SLO directly, no. Unless,  
2 unless the OCD, who made the claim, would have an  
3 agreement to pay you. That is the only way that is  
4 possible.

5 MR. MOORE: Okay. And the State Land  
6 Office would not be able to directly draw on a bond to  
7 which the OCD is an obligee to conduct remediation of  
8 contamination on state trust land?

9 MR. EMERICK: Well, you're confusing  
10 the issue. Let me put it this way. SLO could not  
11 make claim on the bond.

12 MR. MOORE: Yes. Sorry if that -- if  
13 my question wasn't clear. So you agree that the State  
14 Land Office could not make a claim on a bond to which  
15 the OCD is the obligee in order to remediate -- to pay  
16 for remediation of contamination on state trust land?

17 MR. EMERICK: For whatever purpose.  
18 Yes, that's correct.

19 MR. MOORE: If a surety issued bonds to  
20 which the State Land Office was the obligee, would the  
21 State Land Office be able to claim those bonds to pay  
22 for damage to state minerals, remediation of  
23 contamination, or reclamation on state trust land?

24 MR. EMERICK: If the SLO was the  
25 obligee, yes.

1                   MR. MOORE: And so, would you agree  
2 that in order to be in the position to be able to  
3 claim -- to draw on financial assurance in order to  
4 protect state trust land, the State Land Office would  
5 need to require bonds for which the State Land Office  
6 is the obligee?

7                   MR. EMERICK: Well, if SLO wanted to  
8 receive -- make claim and receive the funds directly,  
9 yes, but isn't there also a possibility to come to  
10 agreement with the OCD to give you the funds once they  
11 receive it?

12                  MR. MOORE: That's a separate issue.  
13 And I think as others have said, we're simply asking  
14 you the -- these questions, but --

15                  MR. EMERICK: my apologies.

16                  MR. MOORE: No. No worries. But I  
17 just wanted to -- yeah, I believe that you've answered  
18 my questions, and so I will pass the witness. Thank  
19 you.

20                  THE HEARING EXAMINER: Thank you.

21                  MR. EMERICK: Thank you.

22                  THE HEARING EXAMINER: I don't know if  
23 Ms. Nanasi is with us. No. Mr. Maxwell?

24                  MR. MAXWELL: No questions. Thank you.

25                  THE HEARING EXAMINER: Thank you.



1                   Mr. Rankin, do you have questions of  
2                   Mr. Emerick?

3                   MR. RANKIN: I do not. Thank you,  
4                   Madam Hearing Officer.

5                   THE HEARING EXAMINER: Mr. Sayer?

6                   MR. SAYER: No questions.

7                   THE HEARING EXAMINER: No questions?  
8                   Mr. Cloutier?

9                   MR. CLOUTIER: Just a couple of  
10                  questions, Madam Hearing Officer.

11                  CROSS-EXAMINATION

12                  BY MR. CLOUTIER:

13                  MR. CLOUTIER: Good afternoon, Mr.  
14                  Emerick. Thank you for your time and testimony. My  
15                  name is Drew Cloutier, and I represent the Independent  
16                  Petroleum Association of New Mexico.

17                  Were you present when Applicants were  
18                  presenting their case when, I believe, it was Mr.  
19                  Morgan testified that ability to obtain a surety bond  
20                  was a -- that ability for an operator was a proxy for  
21                  the risk that the State of New Mexico takes that the  
22                  operator will plug and abandon a well?

23                  MR. EMERICK: I don't remember that  
24                  specifically, but if he said that, fine.

25                  MR. CLOUTIER: Okay. Would that be an

1 accurate statement if he said it?

2 MR. EMERICK: Well, I wouldn't say it  
3 exactly that way. I see things a lot simpler. The  
4 operator requires a bond; the surety provides it and  
5 provides it to the State. That's as simple as I can  
6 put it.

7 MR. CLOUTIER: And what about a  
8 operator's inability to obtain a surety for, say,  
9 2 1/2 percent? Would that be a proxy for risk?

10 MR. EMERICK: Well, the surety market  
11 is one -- if he -- if the -- the surety market as a  
12 whole made that same decision, then he could explore  
13 either a letter of credit or a cash bond.

14 MR. CLOUTIER: Thank you, Mr. Emerick.  
15 Mr. Hall was asking you some questions about the  
16 cancelability of bonds and this OCD bond form. Do you  
17 recall those questions?

18 MR. EMERICK: Yes.

19 MR. CLOUTIER: Were you present for  
20 testimony that the OCD will release marginal-well  
21 bonds if the operator is able to restore production in  
22 such a way that a well will no longer be deemed  
23 marginal under the rules proposed?

24 MR. EMERICK: Yes.

25 MR. CLOUTIER: Would the surety price

1 the bond that it was -- in a form that it was  
2 releasable in your experience? Under the current bond  
3 form?

4 MR. EMERICK: Please ask that question  
5 again. I'm not sure I understand it.

6 MR. CLOUTIER: Sure, sure. We're  
7 talking about the bond form that you've testified to  
8 for the OCD; correct?

9 MR. EMERICK: Yeah. Correct.

10 MR. CLOUTIER: And did I understand  
11 your testimony correctly that the language in the bond  
12 form is read by the surety industry as it being a non-  
13 cancelable bond?

14 MR. EMERICK: Yes.

15 MR. CLOUTIER: With me so far?

16 MR. EMERICK: Yes.

17 MR. CLOUTIER: If there was a  
18 possibility that the OCD would release the bond  
19 because the well became non-marginal, would the surety  
20 industry price the bond as a cancelable bond?

21 MR. EMERICK: No.

22 MR. CLOUTIER: And why is that?

23 MR. EMERICK: Because it's a non-  
24 cancelable bond.

25 MR. CLOUTIER: All right. No further

1 questions, Madam Hearing Officer.

2 THE HEARING EXAMINER: Thank you.

3 Mr. Suazo, do you have redirect?

4 MR. SUAZO: Yes, I do, Madam Hearing  
5 Officer.

6 REDIRECT EXAMINATION

7 BY MR. SUAZO:

8 MR. SUAZO: Mr. Emerick, I'm going to  
9 ask you a few questions based on the questions that  
10 you were asked on cross. Let's talk about the  
11 cancelable nature of financial assurance. Is  
12 financial assurance a contract?

13 MR. EMERICK: It's a contract of a  
14 type, I suppose. Yes.

15 MR. SUAZO: Does that mean that the  
16 terms of the contract control?

17 MR. EMERICK: Yes.

18 MR. SUAZO: I'm going to show you a  
19 letter of credit.

20 Jacob, if you can pull that on the  
21 screen? It's in --

22 BY MR. SUAZO:

23 MR. SUAZO: Can you see that, Mr.  
24 Emerick?

25 MR. EMERICK: Yes.

1 MR. SUAZO: Does the New Mexico OCD  
2 Letter of Credit form have an expiration? Sorry.  
3 It's on page 2.

4 MR. EMERICK: It's an automatically  
5 renewable form. "Unless notice of non-renewal is  
6 provided to the OCD." Yes, it is cancelable.

7 MR. SUAZO: All right. Do you recall  
8 being asked -- sorry; just a second. Do you recall  
9 being asked about whether you reviewed the New Mexico  
10 Administrative Code, or NMAC as you call it?

11 MR. EMERICK: Yes.

12 MR. SUAZO: I'm going to pull up a  
13 section of NMAC for you to look at. It's 8.11. All  
14 right, Mr. Emerick, can you see rule 19.15.8.11?

15 MR. EMERICK: Yes. And this is what I  
16 think I saw before.

17 MR. SUAZO: So you have reviewed this  
18 section of the New Mexico Administrative Code before?

19 MR. EMERICK: Yes.

20 MR. SUAZO: Okay. And do you see  
21 subsection C?

22 MR. EMERICK: Yes, I do.

23 MR. SUAZO: Can you tell us what that  
24 says?

25 MR. EMERICK: That says "Letters of

1 credit shall provide for automatic renewal for  
2 successive like terms upon expiration unless the  
3 issuer has notified the Division in writing of non-  
4 renewal at least 30 days prior to expiration."

5 MR. SUAZO: Does that mean it's  
6 cancelable?

7 MR. EMERICK: You know, yes. It -- in  
8 other words, the surety has to provide New Mexico  
9 notice.

10 MR. SUAZO: So that means -- sorry.

11 MR. EMERICK: That way, it's  
12 cancelable.

13 MR. SUAZO: So that means it's like the  
14 form; correct? The form?

15 MR. EMERICK: Oh, yes. Absolutely.

16 MR. SUAZO: Okay. So, then, is it  
17 accurate -- oh, and does it have a five-year maximum  
18 that you can tell?

19 MR. EMERICK: Yes. It's --

20 MR. SUAZO: So is it your understanding  
21 that they can call the letter of credit irrevocable,  
22 but that's not what the form and the regulations say;  
23 correct?

24 MR. EMERICK: Well, that's the way I'd  
25 view it. I don't know why they call it irrevocable if

1 it is non-renewable or cancelable. I -- I -- that  
2 doesn't -- that's not what I understand irrevocable to  
3 be -- irrevocable to mean.

4 If you look at 19.15.8.12, "The  
5 Division shall -- the Division shall release a  
6 financial assurance document upon the operator's or  
7 surety's written request if all wells drilled or  
8 acquired under that financial assurance has been  
9 plugged and abandoned and the location restored and  
10 remediated."

11 Now, that is exactly or more or less  
12 what the bond does, but the earlier provision makes it  
13 non-renewable or cancelable.

14 MR. CLOUTIER: Objection on optional  
15 completeness. I would ask the witness to read the  
16 rest of that section A there.

17 THE HEARING EXAMINER: Mr. Suazo, would  
18 you ask him to do that?

19 MR. SUAZO: Yes.

20 BY MR. SUAZO:

21 MR. SUAZO: Mr. Emerick, can you please  
22 read the rest of that rule?

23 MR. EMERICK: Let me start over.

24 "The Division shall release a financial  
25 assurance document on the operator's or surety's

1 written request if all wells drilled or acquired under  
2 the financial assurance have been plugged and  
3 abandoned and the location restored and remediated and  
4 released pursuant to 19.15.25.9 NMAC through  
5 19.15.25.11 NMAC or have been covered by another  
6 financial assurance the Division has approved."

7 MR. SUAZO: And if you scroll further  
8 down where it says "Forfeiture of Financial Assurance"  
9 under 19.15.8.13, can you read subsection D please?

10 MR. EMERICK: B says "If the financial  
11 assurance proceeds exceed the cost" --

12 MR. SUAZO: D as in "delta."

13 MR. EMERICK: D. I'm sorry. "The  
14 Division shall deposit forfeitures and funds collected  
15 pursuant to a judgment in a suit for indemnification  
16 in the oil and gas reclamation fund."

17 MR. SUAZO: Thank you, Mr. Emerick.

18 No further redirect questions, Madam  
19 Hearing Officer.

20 THE HEARING EXAMINER: Thank you, Mr.  
21 Suazo.

22 Commissioner Ampomah, do you have  
23 questions of Mr. Emerick?

24 COMMISSIONER AMPOMAH: Yeah, would  
25 Commissioner Bloom go first?



1 THE HEARING EXAMINER: Would  
2 Commissioner -- oh. Commissioner Bloom?

3 COMMISSIONER BLOOM: Sure. Absolutely.

4 THE HEARING EXAMINER: Yeah. Great.

5 COMMISSIONER BLOOM: Okay.

6 Good afternoon, Mr. Emerick.

7 MR. EMERICK: Good afternoon.

8 COMMISSIONER BLOOM: Mr. Emerick, Mr.  
9 Suazo asked about my previous question regarding your  
10 testimony regarding W&T.

11 And I believe my question was along the  
12 lines of aren't the proposed \$150,000 onshore bonds  
13 that we're discussing here today and W&T's, I think it  
14 was, \$55 million offshore bond -- aren't these,  
15 essentially, apples and oranges?

16 MR. EMERICK: No.

17 COMMISSIONER BLOOM: Why not?

18 MR. EMERICK: The -- each bond has an  
19 amount associated with it. The form is -- the two  
20 forms, both New Mexico and the federal form, are non-  
21 cancelable bonds. And in that way, they're exactly  
22 the same.

23 COMMISSIONER BLOOM: What about in  
24 terms of the risk that can come from offshore and the  
25 greater amounts of money that are at stake?

1 MR. EMERICK: Those are very different.

2 COMMISSIONER BLOOM: But that's what I  
3 was thinking. And I was working for the head of the  
4 U.S. Senate Energy Committee back in 2010 at the time  
5 of the Deepwater Horizon disaster, and it, you know,  
6 took a year of my life and dominated a summer of work.

7 And yeah, I know that the lawsuits  
8 there were -- and fines were into the billions of  
9 dollars. So that's why I considered that, sort of,  
10 apples and oranges, but I understand your answer.  
11 Thank you.

12 You know, again, as a commissioner here  
13 and a regulator, I'm struggling with NMOGA's  
14 recommendations. You know, you say, for example,  
15 "Adopt BOEM-style safety valve," and cite the CFR.  
16 And what we need is testimony as to why we should  
17 accept or adopt BOEM-style safety valves.

18 We need to justify, you know, OCC  
19 actions. Can -- do you understand that?

20 MR. EMERICK: Yes, I do. It -- I  
21 provided that as a consideration for OCC and OCD to  
22 consider to -- more or less another tool in your  
23 financial assurance chest to make sure that the  
24 citizens are protected and that whatever is available  
25 from the operator can be used for that protection.

1 COMMISSIONER BLOOM: Okay. Thank you.  
2 And I think my last question is, you know, the same  
3 thing goes for recommendations like "Clarify  
4 definitions for consistency and predictability."

5 Of course, that's something, you know,  
6 we would strive to do along with -- well, I would use  
7 that example. And in those cases, you know, things  
8 like a redline draft are helpful. And I just hope  
9 that, you know, your party understands that in terms  
10 of the things we need to do to craft this rule,  
11 particularly once we get to deliberation.

12 Does that make sense?

13 MR. EMERICK: I -- I got that message  
14 loud and clear.

15 COMMISSIONER BLOOM: Okay. Those are  
16 all the questions I have, Mr. Emerick. Thank you for  
17 your time today. I appreciate it.

18 THE HEARING EXAMINER: Thank you,  
19 Commissioner Bloom.

20 Commissioner Ampomah?

21 COMMISSIONER AMPOMAH: Thank you, sir,  
22 for your testimony today.

23 So the same as Commissioner Bloom said;  
24 I just want to make sure that you did not really  
25 present any redlines or recommendations for the

1 consideration of the Commission other than the overall  
2 big recommendations. Is that a true description of  
3 your testimony?

4 MR. EMERICK: As far as it goes, yes.

5 COMMISSIONER AMPOMAH: I do not have  
6 any further questions for you. Thank you.

7 THE HEARING EXAMINER: Chair Chang, do  
8 you have questions of Mr. Emerick?

9 COMMISSIONER CHANG: I think this has  
10 already been covered, but just to clarify, I'm looking  
11 at NMAC 19.15.8.9 here, and we've heard a lot in your  
12 testimony about the, at least in your opinion,  
13 challenges of surety bonds.

14 But you did agree on cross-ex that  
15 plug -- that insurance is also a form of financial  
16 assurance that is available under 19.15.8.9; is that  
17 correct?

18 MR. EMERICK: That is correct.

19 COMMISSIONER CHANG: Okay. And forgive  
20 me if I simply missed this, but did -- how much of the  
21 criticism that -- or the challenges that you point out  
22 with surety bonds all -- would they all apply to  
23 insurance policies? Or, I mean, you kind of  
24 distinguished them, so I would imagine that insurance  
25 policies may have a different set of challenges?

1 MR. EMERICK: Surety claims, especially  
2 on this type of bond, are very different than an  
3 insurance policy claim.

4 COMMISSIONER CHANG: Understood. So  
5 let me ask the question slightly differently.

6 Wouldn't the challenges that you point  
7 out with surety bonds, if an operator were to agree  
8 with you that surety bonding is indeed financially  
9 difficult for all -- or administratively or however  
10 else challenging for all of the reasons that you  
11 discussed -- couldn't they sidestep all of those  
12 issues by electing, under our rules, to carry  
13 insurance instead?

14 MR. EMERICK: Yes.

15 COMMISSIONER CHANG: Okay. Thank you.

16 THE HEARING EXAMINER: All right. Is  
17 there any reason not to excuse Mr. Emerick?

18 Thank you very much, Mr. Emerick, for  
19 your testimony.

20 MR. EMERICK: Thank you.

21 THE HEARING EXAMINER: So we've come to  
22 3:33. I'm wondering if it makes sense to make some  
23 use of the time we have before 4 p.m., and I think  
24 it's a little too early to begin the public comment.

25 MR. SUAZO: Yes. Let me -- we're going

1 to call our next witness to the stand, Mr. Harold  
2 McGowen. Let me -- give me a little time to get set  
3 up for that, please.

4 THE HEARING EXAMINER: All right. You  
5 need five minutes?

6 MR. SUAZO: Perfect.

7 THE HEARING EXAMINER: All right. Five  
8 minutes.

9 (Off the record.)

10 THE HEARING EXAMINER: Let's come back  
11 from the break, please. Okay. We are back after a  
12 very short break. We're going to turn to Mr. McGowen  
13 for just a little bit before we break for public  
14 comment at four.

15 Mr. McGowen, would you spell your first  
16 and last name, please?

17 MR. MCGOWEN: First name Harold --  
18 virtual connectivity interruption -- Does it stay on?  
19 I guess it does. Okay.

20 THE HEARING EXAMINER: There it is.

21 MR. MCGOWEN: Sorry.

22 //

23 //

24 //

25 //

1 WHEREUPON,

2 HAROLD MCGOWEN,

3 called as a witness and having been first duly sworn  
4 to tell the truth, the whole truth, and nothing but  
5 the truth, was examined and testified as follows:

6 THE HEARING EXAMINER: All right.

7 Thank you.

8 Mr. Suazo?

9 MR. SUAZO: Thank you, Madam Hearing  
10 Officer.

11 DIRECT EXAMINATION

12 BY MR. SUAZO:

13 MR. SUAZO: Mr. McGowen, good  
14 afternoon.

15 MR. MCGOWEN: Good afternoon.

16 MR. SUAZO: Appreciate you being here  
17 with us this afternoon. Can you please state your  
18 name, role, and purpose in this proceeding?

19 MR. MCGOWEN: My name is Harold E.  
20 McGowen, III. My role is really as a technical expert  
21 on plugging and abandonment but also repurposing of  
22 wells.

23 MR. SUAZO: Have you ever plugged  
24 wells?

25 MR. MCGOWEN: Yes, I've plugged quite a

1 few.

2 MR. SUAZO: Okay. Now, for the sake of  
3 time, we're not going to go into great detail on your  
4 credentials, but the first eight slides set out your  
5 experience, and so the Commission can look at that at  
6 their leisure.

7 But I'd like to skip forward due to  
8 time constraints to slide 11. Okay. Can you please  
9 tell us the scope of your direct testimony?

10 MR. MCGOWEN: Well, I'm going to talk  
11 about these items here shown on this slide, so the  
12 opposition to defining the beneficial and presumptions  
13 of beneficial use; I've got some comments on that.

14 And the -- I think there may be some  
15 unnecessary amendments to temporary abandonment  
16 permitting and casing integrity requirements that I'd  
17 like to discuss. Also, detrimental plugging and  
18 abandonment, P&A, requirements and timelines.

19 And -- and then, I'm most concerned,  
20 probably, about the -- some of the triggers in the  
21 financial assurance structure, and then, of course,  
22 opposition to adding a new marginal-well definition  
23 and financial assurance requirements.

24 And then I'm a little concerned about  
25 the restrictions on asset transfers and -- and



1 operator registration.

2 MR. SUAZO: Very good. And so, let's  
3 cut to the chase, you know, before we get into the  
4 nitty gritty substance. On your slide 11, what  
5 conclusions did you reach in your direct testimony?

6 MR. MCGOWEN: Just overall, I would  
7 urge the Commission to consider a more balanced and  
8 risk-based approach, maybe drawing more on first  
9 principles of engineering, that honors the  
10 legislature's intent while ensuring new Mexico's  
11 energy resources are managed wisely and responsibly.

12 I think some of the proposed amendments  
13 are a bit overbroad, and I guess my biggest concern is  
14 I'm approaching this as an oil and gas operator that  
15 has built three oil and gas companies. I've had to  
16 raise capital, put together projects, and then then go  
17 drill those projects or reenter wells.

18 And I spent 40 years, basically, trying  
19 to figure out how to reuse old wells at lean legacy  
20 fields. And I've -- marginal wells have been some of  
21 my best -- some of my best projects, actually, have  
22 turned out from marginal wells.

23 So I'm a little concerned that some of  
24 these rules would inadvertently have unintended  
25 consequences of wiping out a lot of potential value in

1     those -- in those wells. Not just their current  
2     reserves, but what they could be used for in the  
3     future.

4                     And I -- I'm a little bit concerned  
5     about that and -- and also just the way all these  
6     rules seem to interact. It -- I've struggled as much  
7     as I can to try to understand what the ramifications  
8     might be for an operator that was trying to -- to  
9     build a new company.

10                    MR. SUAZO: Understood. And we'll get  
11     into all those details later in your testimony, but  
12     let's move on to slide 12, dealing with waste. What  
13     is your overarching concern with the waste proposed --  
14     that the proposed amendments may cause?

15                    MR. MCGOWEN: Well, this is, basically,  
16     the same standards that we see in Texas, which is  
17     protect correlative rights, prevent the waste of  
18     hydrocarbons, and, of course, safeguard public health  
19     and the environment.

20                    So the issue would be that there's --  
21     there's kind of two pieces to that puzzle. One of  
22     them would be that there are actual reserves in the  
23     ground that you might lose from these current wells  
24     that we're talking about.

25                    But then, also, the reserves that could

1 be -- could be found and developed through the use of  
2 those -- those resources where billions of dollars  
3 have been spent drilling these holes in the ground  
4 that you could reuse.

5 So it's my understanding that the New  
6 Mexico legislature intends to strike a balance between  
7 these things, between economic or value for New Mexico  
8 and, of course, protecting the -- the environment.

9 So I -- I'd like to demonstrate how  
10 some of the proposed changes could, you know, possibly  
11 force operators to prematurely or arbitrarily plug  
12 valuable wellbores.

13 MR. SUAZO: Thank you. Next slide.  
14 Now, let's go over your direct testimony on the  
15 specific proposals by applicants, starting with their  
16 proposal to define beneficial uses and purposes and  
17 add related presumptions of no beneficial use.

18 And on your slide 14, can you explain  
19 how Applicants define beneficial and whether OCD has  
20 ever defined beneficial before?

21 MR. MCGOWEN: Well, I believe they  
22 have. I believe there is some terminology about  
23 beneficial use. It's -- it's not a term that I have  
24 used in the industry. It's -- I've more -- I have  
25 more thought of these things as, like, it's either a

1 candidate for P&A or a candidate for restimulation,  
2 recompletion, and enhanced oil recovery.

3 But as I read this, it's an oil or gas  
4 well that is being used in a productive or beneficial  
5 manner -- manner such as production, injection, or  
6 monitoring. And it's a very limited universe and does  
7 not include use of the well for speculative --  
8 speculative purposes.

9 MR. SUAZO: Okay. And on your next  
10 slide, what are your concerns with the definition of  
11 beneficial as proposed and the prospect of defining  
12 beneficial now for the first time?

13 MR. MCGOWEN: Well, probably the  
14 biggest thing is, as I look back over my career of 40  
15 years, that's all -- that's all I've done for 40 years  
16 is do speculative work, which -- the scientific term  
17 might be a hypothesis that I was testing.

18 But that's what I was paid to do is to  
19 come up with a hypothesis, test that hypothesis,  
20 gather data, and it's an iterative process. So some  
21 of the things that some folks might consider to be  
22 speculative, I would consider to be strategic. And  
23 that's my concern is that there's a -- a lot of  
24 innovation could be squelched through this process.

25 And, of course, we are seeing energy

1 transition. You're seeing a lot of activity where  
2 folks are pushing us toward things like geothermal  
3 from oil and gas wells. I've actually spent a lot of  
4 time studying that. I haven't got to do it yet, but  
5 I -- I'm excited that that's a new technology.

6 Enhanced oil recovery projects; you can  
7 also sequester CO2 in the reservoir. We're only  
8 recovering between 5 and 15 percent of these  
9 unconventional plays, so I think as oil prices come up  
10 in the future, we're probably going to see more of  
11 that.

12 And, of course, monitoring injection  
13 and, you know, microseismic and that kind of thing  
14 that you can use in conjunction with horizontal  
15 development.

16 MR. SUAZO: Sure. And on your next  
17 slide, you discussed the presumption. What is the  
18 presumption that a well is not capable of beneficial  
19 use proposed by Applicants?

20 MR. MCGOWEN: Well, they're setting  
21 a -- a 90-day criteria for, A, production wells, so  
22 presumes that a production well is not capable of  
23 beneficial use. It's triggered if, during any  
24 consecutive 12-month period, there was less than 90  
25 days of production and less than 90 total BOE.

1                   So that's not really based on any  
2 geology or anything else. It's not based on any kind  
3 of trend analysis. It's strictly a -- a trigger.

4                   And then, of course, there's the  
5 saltwater disposal, and as we're finding, saltwater  
6 disposal wells are going to be a key part of being  
7 able to develop reserves in the future. So they've  
8 also got a limit there that's pretty low.

9                   MR. SUAZO: And on your next slide, can  
10 you please explain your concerns with the proposed  
11 presumption?

12                  MR. MCGOWEN: Well, just, again, I'm  
13 looking at this as an operator, and I'm imagining in  
14 my -- you know, the way I'm trying to think about  
15 this, and I've thought about this a lot, is -- is  
16 you -- if I were to have to try to raise capital,  
17 bring it to New Mexico, deploy that capital.

18                  And typically, what I've done is  
19 private equity. And so private equity wants you to  
20 have a complete plan, and they want you to be able to  
21 target a property, typically.

22                  So I would be really concerned that  
23 these guidelines could -- could cause you to lose some  
24 of the things -- some of the wells that you bought  
25 immediately after you purchased the property or to

1     lose them before you could close the deal because they  
2     get thrown into this other category.

3                 And you would be trying to convince  
4     people that your idea is -- is valid even though you  
5     may not have enough data yet; right? You've got a  
6     hypothesis you want to test with a pilot program.

7                 So that's sort of the -- the way I've  
8     been thinking about this is -- is, well, what effect  
9     would this have on capital formation and capital  
10    deployment for development of reserves in the future?

11                MR. SUAZO: Okay. And what issues do  
12    you anticipate with the procedure that allows an  
13    operator to rebut this proposed presumption?

14                MR. MCGOWEN: Well, having run oil and  
15    gas companies and been in the midst of operating  
16    programs -- at one point at -- at one of my companies,  
17    we had four drilling rigs running -- you've got --  
18    you'd have limited resources.

19                And even though I had geology  
20    engineering, you know, drilling engineering,  
21    completion engineers, all those kind of folks on  
22    staff, everybody was really busy. So the idea that  
23    I'm going to have to, basically, create this whole  
24    justification and I've only got 30 days to do that  
25    seems like a short window to me.

1           I -- I would -- I would much prefer to  
2   have more time than that to try to put together a  
3   plan. And then, of course, the other problem is -- is  
4   that what it seems to be missing in a lot of this  
5   discussion is the statistical nature of -- of  
6   development.

7           In other words, you start out with a  
8   pilot program; you gather data; you have to get enough  
9   production data to get a decline curve you can depend  
10   on; then you need to do a few more wells. You got to  
11   have a sample set with a long enough decline curve  
12   that you can rely on that ultimate recovery.

13           So I think you lose a lot of your  
14   candidate wells right up -- right up front is what it  
15   feels like as -- as an operator.

16           MR. SUAZO: Okay. And do you want  
17   to -- I feel like you covered maybe what is on the  
18   next slide with respect to the 90 days on your next  
19   slide. Is there anything else you want to add to that  
20   analysis?

21           MR. MCGOWEN: Not too much. It's  
22   just -- it's just the time is -- is critical, and the  
23   time to gather data and to analyze that data. And  
24   Mother Nature decides when you get this time.

25           And you also have to deal, of course,



1 with rig availability. I've had periods where I  
2 couldn't find a drilling rig.

3 There were periods when I couldn't get  
4 casing, you know, not too long ago. Turns out Ukraine  
5 makes a lot of casing, by the way, and we couldn't get  
6 casing because it was in the wrong country and -- and  
7 the Russians wouldn't let it out.

8 So, you know, that kind of thing can  
9 happen to you in the middle of a program, so that's  
10 why I think time is really critical. If there is a  
11 way to stretch the time out, I think it would be  
12 helpful.

13 MR. SUAZO: So you think that the 90  
14 days should be -- or the 30 days should be longer?  
15 The time period should be longer? I'm sorry.

16 MR. MCGOWEN: Yes.

17 MR. SUAZO: Okay. Let's move on to  
18 your slide 20 of your direct testimony and the  
19 specific proposals from Applicants to amend New  
20 Mexico's existing temporary abandonment program and  
21 mechanical integrity requirements.

22 And on slide 21, generally speaking,  
23 what are the requirements to obtain approved temporary  
24 abandonment status under 19.15.25 NMAC?

25 MR. MCGOWEN: As I understand the rules

1 right now, the Division currently allows wells to be  
2 placed in approved temporary abandonment status for up  
3 to five years, but you have to meet these mechanical  
4 integrity guidelines that are -- that are -- correlate  
5 with the EPA guidelines.

6 MR. SUAZO: Okay. And then you  
7 continue that on your next slide, I think?

8 MR. MCGOWEN: I'm sorry?

9 MR. SUAZO: You continue that on the  
10 next slide?

11 MR. MCGOWEN: Yes. So operators may  
12 apply to place a well in approved temporary  
13 abandonment status for up to -- for a period up to  
14 five years subject to renewal or reclassification.

15 Operators are limited to the number of  
16 temporary abandonment wells they may hold, so that  
17 does tend to limit the potential for a large number of  
18 idle wells under that program.

19 MR. SUAZO: Okay. And next slide, 23,  
20 please. What are the other requirements to obtain  
21 approved TA status under the existing rule 25.13?

22 MR. MCGOWEN: So you -- you submit a  
23 form -- no surprise there -- to propose your temporary  
24 abandonment procedures. You wait for Division  
25 approval before conducting any work. You need 24-hour

1 advance notice so that if -- if somebody wants to come  
2 out and observe, they can.

3 You need to demonstrate mechanical  
4 integrity of both internal and external components of  
5 the well. And, of course, you need to provide  
6 financial assurance and compliance with the inactive  
7 and certain TA well statuses and then comply with the  
8 technical standards that are listed there in  
9 19.15.25.14, including pressure testing and logging.

10 So once all that's approved, as I  
11 understand it, then the Division sets a specific  
12 expiration date.

13 MR. SUAZO: Okay. And on slide 24, you  
14 continue. Can you expound on that -- those  
15 requirements, please?

16 MR. MCGOWEN: Well, one of the --  
17 obviously, one way to do this is hydrotesting, so you  
18 want to hydrotest the casing.

19 You would set a -- a plug of some kind  
20 or some other way of plugging off the wellbore so that  
21 you could apply hydraulic pressure to the wellbore,  
22 and the standard is 500 pounds per inch. And you want  
23 to make sure it holds pressure for 30 minutes without  
24 a pressure drop of -- of, you know, maximum level  
25 pressure drop of 10 percent.

1                   Now, a retrievable bridge plug or a  
2     packer with the same pressure and time requirements  
3     can be used versus a cast-iron bridge plug. And by  
4     showing that the well has been completed for less than  
5     five years is another -- is another option.

6                   MR. SUAZO: Okay. And it's not  
7     connected --

8                   MR. MCGOWEN: Yes. And it remains  
9     unconnected to a pipeline.

10                  MR. SUAZO: All right. Now, next slide  
11     on 19.15.25.14B. What are those requirements? And  
12     explain why they're significant.

13                  MR. MCGOWEN: Well, basically, what  
14     you're doing is you're trying to make sure that the --  
15     that -- that the casing doesn't leak. So you have  
16     annulus or annuli that are between the -- the  
17     production casing and the surface casing or the  
18     production casing and the intermediate casing and the  
19     surface casing.

20                  So you would open your casing valves to  
21     give you a maximum Delta P across the casing and also  
22     the ability to observe fluids escaping. So you -- you  
23     could put a chart recorder on, and then you record the  
24     pressures and -- and do your hydrostatic test.

25                  MR. SUAZO: Okay. And last slide on

1 this, you know, more technical process. What about  
2 existing section 25.14C and D?

3 MR. MCGOWEN: Well, logs and chart must  
4 be signed by witnesses and submitted to the OCD on  
5 this form. And external mechanical integrity must be  
6 demonstrated using any of these EPA-approved methods.

7 So one of the notable ones there is  
8 cementing records. So if you can show that you had a  
9 good cement job and that you got, for example, cement  
10 to surface on your production casing and that you had  
11 cement sufficiently up the annulus inside of your --  
12 the annulus between your production casing and the  
13 hole, you can use that.

14 And if you don't have that, then you  
15 need to run some of these other logs, or if you have a  
16 leak. Now, I've used these tools that are discussed  
17 here -- temperature logs, noise logs. And way I've --  
18 the way I've used them has been if I found a leak, I  
19 had to go back and -- and repair that leak.

20 And that's really what those are for is  
21 detecting a leak. In fact, I had casing recently that  
22 had 42 leaks. It was brand new and I had to pull it,  
23 which -- I -- I discovered that with temperature logs  
24 and noise logs.

25 MR. SUAZO: Okay. And so there's a lot

1     there in that last set of slides, but let's focus on  
2     the EPA standards. Can you explain to the Commission  
3     what "other EPA-approved methods" means and how EPA  
4     standards are currently integrated into New Mexico's  
5     existing TA permitting requirements?

6                     MR. MCGOWEN: Well, as I understand it,  
7     it's giving the operator the flexibility to use those  
8     tools when they need to.

9                     So if I can demonstrate that I have,  
10    you know, a hydraulic seal, I've hydrotested -- and  
11    that's really the -- the most obvious way to figure  
12    out if your casing is leaking is -- is can you hold  
13    pressure? And then you can use these other tools if  
14    necessary.

15                    MR. SUAZO: Okay. And on your next  
16    slide, do you have any recommendations for the  
17    Commission as they consider existing EPA standards?

18                    MR. MCGOWEN: Well, if -- if you pass  
19    pressure testing, and you have adequate cementing  
20    records to demonstrate that you placed the cement  
21    where you were supposed to, and you don't show any  
22    lines of signs of leakage or communication, then you  
23    really have the majority of the evidence that you need  
24    to determine whether that wellbore has integrity.

25                    So I don't -- I haven't seen any

1 evidence to prove that -- that running additional logs  
2 is going to actually get you a great deal or -- of  
3 liability reduction because what you're really trying  
4 to do with those logs is to identify a problem once  
5 you have it.

6 MR. SUAZO: Okay. Now, let's move on  
7 to the changes that are proposed through this  
8 rulemaking.

9 UNIDENTIFIED SPEAKER: We might be at  
10 the stopping point for public comment.

11 MR. SUAZO: Oh.

12 THE HEARING EXAMINER: Is this a good  
13 stopping point? Okay.

14 MR. SUAZO: This is a fine time. Thank  
15 you.

16 THE HEARING EXAMINER: Thank you, Mr.  
17 Suazo.

18 Mr. McGowen, I'm sorry. We have to  
19 interrupt your testimony --

20 MR. MCGOWEN: Okay.

21 THE HEARING EXAMINER: -- to accept  
22 some public comment. If you would join your  
23 counsel --

24 MR. MCGOWEN: Oh, sure.

25 THE HEARING EXAMINER: -- we need that

1 seat.

2 So we have come to the four o'clock  
3 public comment session today, and I have the names of  
4 several folks who indicated they wish to offer public  
5 comment during this session.

6 Do we have Dana Loy in the room or on  
7 the platform?

8 Raise your virtual hand if you're  
9 interested in offering comment, and if you have called  
10 in on your telephone, you can press star 5 to raise  
11 your hand.

12 Do we have Dana Loy? No? Okay. Ruth  
13 Striegel? No? Kim Rogers?

14 MS. ROGERS: Right here.

15 THE HEARING EXAMINER: Oh, terrific.  
16 Ms. Rogers is in the room. If you would come up to  
17 the seat, please. Hello.

18 So three things about public comment.  
19 I have to ask you to spell your first and last name  
20 because we're making a transcript under the  
21 Commission's rules. I will also ask you to swear or  
22 affirm to tell the truth, and I will ask you to keep  
23 your comments to three minutes.

24 If you have more to say than can be  
25 said in that time, please submit your written public



1 comment to the commission administrator, Sheila  
2 Apodaca. So, Ms. Rogers, would you spell your first  
3 and last name?

4 MS. ROGERS: Yes. Just before I do  
5 that, I noticed my colleagues, Dana and Ruth, have  
6 just walked in.

7 THE HEARING EXAMINER: Okay.

8 MS. ROGERS: But my first name is Kim,  
9 K-I-M. Last name is Rogers, R-O-G-E-R-S.

10 THE HEARING EXAMINER: Thank you.

11 WHEREUPON,

12 KIM ROGERS,  
13 called as a witness and having been first duly sworn  
14 to tell the truth, the whole truth, and nothing but  
15 the truth, was examined and testified as follows:

16 THE HEARING EXAMINER: Thank you. I'll  
17 start your time.

18 MS. ROGERS: All right. Well, good  
19 afternoon, good people. My name is Kim Rogers with  
20 the New Mexico Franciscan Justice Circle. My group is  
21 inspired by Saint Francis of Assisi. Saint Francis  
22 was well known for his care of Mother Earth and all  
23 the creatures within it.

24 I am here today to advocate for Mother  
25 Earth in the spirit of Saint Francis. As a resident

1 of New Mexico, I enjoy this beautiful land and want to  
2 ensure that it continues to be enjoyed by our  
3 children, grandchildren, great-grandchildren, and  
4 future generations.

5 Now, I understand the need for economic  
6 development and financial prosperity within the state,  
7 but I would hope that it is not done at the expense of  
8 the health and safety of New Mexicans.

9 There are certain politicians who like  
10 to encourage corporations to "drill, baby, drill," but  
11 I would hope that you good people ensure the message  
12 is sent that you also clean up, baby, clean up. If  
13 corporations and entities are allowed to plunder the  
14 resources of New Mexico, they should do their due  
15 diligence in cleaning up after themselves.

16 This should be a no-brainer and a  
17 unanimous decision. I hope that you use your  
18 authority to ensure that the land is left better than  
19 we found it by updating the bonding rules that fairly  
20 put the burden of cleaning up on entities that profit  
21 from drilling. If they drill it, they must clean it.  
22 Thank you.

23 THE HEARING EXAMINER: Thank you, Ms.  
24 Rogers.

25 Let me go back to Dana Loy. Are you in

1 the room? If you would come up?

2 Hello. If you would please spell your  
3 first and last name.

4 MS. LOY: First name is Dana, D-A-N-A.  
5 Last name is Loy, L-O-Y.

6 WHEREUPON,

7 DANA LOY,

8 called as a witness and having been first duly sworn  
9 to tell the truth, the whole truth, and nothing but  
10 the truth, was examined and testified as follows:

11 THE HEARING EXAMINER: I'll start your  
12 time.

13 MS. LOY: Okay.

14 Good afternoon, chair and  
15 commissioners. I'm here today to speak on behalf of  
16 New Mexico -- sorry -- New Mexico Interfaith Power and  
17 Light and the Franciscan Justice Circle in strong  
18 support of modernizing bonding and cleanup rules.  
19 Thank you for listening to the public today.

20 I grew up in Central Oklahoma, and the  
21 areas around most oil wells always smelled bad, even  
22 from a distance. Everyone assumed it was okay since  
23 there were laws. A lot of oil and gas sites in New  
24 Mexico smell bad, too. We know it's not okay.

25 No child should grow up breathing in

1 petroleum chemicals, which should not be allowed to  
2 leak into our ground and water and air, but we've seen  
3 that petroleum companies do allow toxins to leak into  
4 the surroundings. We have to be clear with these  
5 companies; if you drill a well, you clean it up.

6 Most New Mexicans, 89 percent, think  
7 oil and gas companies should have to pay the full cost  
8 of cleaning and plugging wells. We must require oil  
9 and gas companies to pay up front for future  
10 contamination with bonding matched to the actual  
11 cleanup costs.

12 It's only common sense now that we know  
13 that methane and other toxins poison our air and  
14 groundwater and damage the Earth and all living  
15 things. We know that methane is a major cause of  
16 global warming and that global warming threatens the  
17 futures of our children and grandchildren and wildlife  
18 and plants and life as we know it.

19 Since we know these things, why would  
20 we not ask petroleum companies to pay the full costs  
21 of their wells from drilling to cleanup?

22 This morning, the following headline  
23 reminded me again of the contamination I saw in my  
24 childhood. The headline was: "Toxic Wastewater from  
25 Oil Fields Keeps Pouring Out of the Ground. Oklahoma

1 Regulators Failed to Stop It."

2 In New Mexico, we have to be smarter.  
3 The companies that drill should completely clean up  
4 their sites and pay all those costs up front. We need  
5 better laws and strict enforcement. Please adopt the  
6 proposed changes to the bonding and cleanup rules.  
7 Thank you.

8 THE HEARING EXAMINER: Thank you, Ms.  
9 Loy.

10 If you would spell your first and last  
11 name, please.

12 MS. STRIEGEL: My name is Ruth,  
13 R-U-T-H, Striegel, S-T-R-I-E-G-E-L.

14 WHEREUPON,

15 RUTH STRIEGEL,  
16 called as a witness and having been first duly sworn  
17 to tell the truth, the whole truth, and nothing but  
18 the truth, was examined and testified as follows:

19 THE HEARING EXAMINER: I'll start your  
20 time.

21 MS. STRIEGEL: Thank you.

22 Thank you for the opportunity to speak.  
23 My name is Ruth Striegel. I live in Albuquerque, and  
24 I chair the board of directors of New Mexico  
25 Interfaith Power and Light, where we acknowledge that

1 the active care of the natural world is central to  
2 spiritual life and social justice.

3 We are not separate from nature. Our  
4 wellbeing as a species is dependent on the health of  
5 the natural world.

6 Revenue from the oil and gas industry  
7 has allowed us to finance many essential parts of our  
8 state budget, but oil and gas wells and their  
9 infrastructure greatly alter the landscape, the air,  
10 and the water, wherever they are located.

11 Our state has been willing to live with  
12 that environmental degradation with the understanding  
13 that when a well is no longer productive, it will be  
14 capped and the land restored. The current rules for  
15 bonding are inadequate to that task, leaving the  
16 citizens of New Mexico with a huge cleanup problem.

17 I'm asking that you support the  
18 strengthened rules. We need to plan for the future,  
19 which will include thousands of spent and inactive  
20 wells that must be capped and many miles of land that  
21 will need restoration.

22 In the end, our society can only thrive  
23 when we all thrive. This is the basis of morality  
24 baked into the sacred texts of all religions. Oil and  
25 gas operators should be responsible partners and bear

1 the cost of cleaning up the lands from which they  
2 extract their products, bringing life and health back  
3 to those lands. Thank you.

4 THE HEARING EXAMINER: Thank you, Ms.  
5 Striegel.

6 Who else is in the room? Meredith  
7 McGehee, are you in the room? There you are. Hello.  
8 Would you spell your first and last name, please?

9 MS. MCGEHEE: Meredith, M-E-R-E-D-I-T-H  
10 McGehee, M-C-G-E-H-E-E.

11 WHEREUPON,

12 MEREDITH MCGEHEE,  
13 called as a witness and having been first duly sworn  
14 to tell the truth, the whole truth, and nothing but  
15 the truth, was examined and testified as follows:

16 THE HEARING EXAMINER: Please go ahead.

17 MS. MCGEHEE: Good afternoon. My name  
18 is Meredith McGehee, and I'm speaking on behalf of  
19 Taxpayers for Common Sense, where I am the chair of  
20 the board.

21 Taxpayers for Common Sense is a  
22 nonpartisan budget watchdog founded in 1995 to ensure  
23 taxpayer dollars are spent wisely and transparently.  
24 For three decades, TCS has supported policies that  
25 safeguard the public purse, prevent wasteful

1 subsidies, and promote fiscal accountability and  
2 natural resource management.

3 Quick aside, my ties to New Mexico run  
4 deep. I actually live in Washington, D.C., but I'm a  
5 graduate of El Dorado High School in Albuquerque. My  
6 dad is a graduate of the College of Santa Fe.

7 My mom is a graduate of New Mexico  
8 State, and my dad served -- worked with Exxon for more  
9 than 30 years here in the southwest and was the head  
10 of the New Mexico Petroleum Marketers Association for  
11 several years, so I'm well aware of the importance of  
12 the oil and gas industry to New Mexico.

13 So I -- I just want us to remember the  
14 scale of what we're talking here. We're talking about  
15 an oil and gas industry that has generated a record  
16 \$15.2 billion for New Mexico in 2023. TCS believes  
17 that -- the -- the information we have is that the  
18 general fund now relies on oil and gas for roughly 40  
19 percent of its revenue.

20 Against that backdrop, the bond amounts  
21 being discussed today are just a drop in the bucket,  
22 or in this case, the oil barrel, according -- compared  
23 to the size and profitability of this sector.

24 TCS strongly supports the proposed  
25 amendments before the Commission today. All wells



1 eventually stop producing and must be reclaimed.  
2 Bonds are a downpayment on that cleanup, an expected  
3 and required part of doing business.

4 This proposal is not punitive. It  
5 simply ensures bonding amounts reflect reality and  
6 that operators are prepared for the true costs of  
7 reclamation.

8 Current bonding levels, however, are  
9 nowhere near sufficient. The median bond in New  
10 Mexico is about \$7,000 per well, while, actually,  
11 plugging and reclamation costs are more than 20 times  
12 higher.

13 Low bond amounts make it cheaper for  
14 companies to delay cleanup, to transfer wells to  
15 smaller operators, or to walk away entirely. And when  
16 they do, it's not the oil and gas companies footing  
17 the bill. It's the taxpayers who pay for cleanup.  
18 Every well that isn't properly bonded today is a  
19 future liability for New Mexico taxpayers.

20 TCS estimates that 22,000 unclaimed  
21 wells on state and private lands represent roughly  
22 \$3.5 billion in potential cleanup liabilities that  
23 could fall to federal and state taxpayers.

24 Since 1922, New Mexico has received  
25 more than \$55 million in Federal orphan-well grants

1 under the Infrastructure Act with eligibility for up  
2 to \$100 million more. But that federal money was  
3 never meant to become a permanent subsidy for weak  
4 state bonding.

5 With stronger rules, oil and gas  
6 operators will continue to abandon their cleanup  
7 responsibilities and federal and state taxpayers will  
8 continue to fill the gap. That's why TCS strongly  
9 supports raising bond minimums and indexing them to  
10 inflation to preserve their real value.

11 The proposed \$150,000 single-well  
12 assurance is still conservative compared to the actual  
13 reclamation costs but would dramatically reduce  
14 taxpayer exposure. And while TCS generally opposes  
15 blanket bonding, the proposed \$250,000 operator bond,  
16 regardless of the number of wells, is a clear  
17 improvement over the current scaled system.

18 We also support requiring single-well  
19 assurance for marginal and inactive wells and  
20 preventing operators with too many of these wells from  
21 relying on blanket bonds. Marginal and inactive wells  
22 are unlikely to become economical again and likely to  
23 be orphaned. Individual bonding protects taxpayers  
24 from almost certain cleanup costs.

25 The proposed updates to well transfer

1 rules are equally important.

2 Lastly, the proposals for temporary  
3 abandonment are important safeguards for taxpayers.  
4 When companies postpone plugging, wells can sit for  
5 years without oversight, deteriorating, leaking, and  
6 ultimately leaving taxpayers to pay for cleanup.  
7 Tightening time limits will prevent companies from  
8 indefinitely delaying cleanup.

9 THE HEARING EXAMINER: Please wrap up.

10 MS. MCGEHEE: In conclusion -- there  
11 you go; good timing -- modernizing bonding is fiscally  
12 prudent and long overdue. We recognize the vital  
13 economic role of the oil and gas industry in New  
14 Mexico. These reforms do not threaten that role.  
15 They strengthen it by ensuring responsible stewardship  
16 and protecting taxpayers.

17 Thank you so much. We will continue to  
18 submit detailed written comments, and I really  
19 appreciate being in New Mexico to have a chance to  
20 offer these comments. Thank you.

21 THE HEARING EXAMINER: Thank you, Ms.  
22 McGehee.

23 The next person I have requesting a  
24 slot at this time was Nikki Santino. Appears to be on  
25 the platform.

1 Ms. Santino, can you unmute yourself?  
2 Ms. Santino, you've been given permission to unmute  
3 yourself. I see your microphone button going off and  
4 on. You might have to press control, shift, M. See  
5 if that helps. No?

6 All right. Let's move -- was there  
7 someone else in the room who did not offer comment?  
8 Yes, ma'am.

9 Ms. Santino, I'll come back to you in a  
10 little bit.

11 Hello. Would you state and spell your  
12 first and last name?

13 MS. BACA: Yes. My name is Connie  
14 Joanne Baca, B-A-C-A.  
15 WHEREUPON,

16 CONNIE JOANNE BACA,  
17 called as a witness and having been first duly sworn  
18 to tell the truth, the whole truth, and nothing but  
19 the truth, was examined and testified as follows:

20 THE HEARING EXAMINER: Go ahead.

21 MS. BACA: Okay. Good afternoon, chair  
22 and commissioners. Appreciate this time to be able to  
23 do this.

24 I'm coming at it from a little bit of a  
25 different angle here. I'm speaking -- again, my name

1 is Connie Jo Baca, and I'm speaking on behalf of  
2 Interfaith Power and Light and also the Franciscan  
3 Justice Circle on -- in strong support of the proposed  
4 bonding rule changes.

5 As a 16th-generation New Mexican and as  
6 a retired elementary school teacher, I've always  
7 combined my love of nature with my love of young  
8 children. I always tried to instill in my students a  
9 deep respect for the environment and also to take  
10 responsibility to clean up after themselves.

11 Native American codes of ethics as well  
12 as the teachings of Saint Francis aligns so well with  
13 many good early childhood practices, such as having  
14 respect for life and nature; to treat our Earth and  
15 all its inhabitants with the care and understanding  
16 that nature is a part of us all, not something  
17 separate.

18 We -- the more we realize our  
19 interdependence on all of nature, the more we see that  
20 what we do to the Earth, we also, ultimately, do to  
21 ourselves.

22 There are some pretty simple kid rules  
23 and adult rules to live by. For example, if you break  
24 it, you fix it. If you dirty it, you clean it. If  
25 you extract from it, you -- you clean it and you plug

1 it using sufficient funds set aside before you even  
2 begin to drill.

3 Children learn by our examples to do  
4 what is right and fair, and by changing these outdated  
5 bonding rules, we are not only setting a good example,  
6 but we're also taking a step in the right direction.

7 I'll leave you with a little ditty we  
8 used to sing in our classrooms. Clean, up, clean up,  
9 everybody everywhere. Clean up, clean up. Everybody,  
10 do your share. Thank you so much.

11 THE HEARING EXAMINER: Thank you, Ms.  
12 Baca.

13 Is this Ms. Santino?

14 MS. SANTINO: Yes, it is. Can you hear  
15 me?

16 THE HEARING EXAMINER: Yes, I can now.  
17 Thank you. Would you spell your first and last name  
18 please.

19 MS. SANTINO: Nikki, N-I-K-K-I,  
20 Santino, S-A-N-T-I-N-O.

21 THE HEARING EXAMINER: Do you have a  
22 way of addressing the echo? Do you have perhaps more  
23 than one unmute button on?

24 UNIDENTIFIED SPEAKER: I think this  
25 should --

1 MS. SANTINO: Let's see.

2 THE HEARING EXAMINER: I can see that

3 Mr. Schultz is off.

4 MS. SANTINO: Is this better?

5 THE HEARING EXAMINER: That is better,

6 I think.

7 MS. SANTINO: Okay.

8 THE HEARING EXAMINER: Now, good. All

9 right. Do you swear or affirm to tell the truth? Ms.

10 Santino? Ms. Santino? She got excited and left the

11 platform maybe. All right, let's --

12 Sheila, is she off the platform?

13 MS. APODACA: No, she's still on the

14 platform.

15 THE HEARING EXAMINER: Okay.

16 MS. APODACA: I see her here.

17 THE HEARING EXAMINER: Ms. Santino?

18 You have to unmute yourself again. Perhaps control,

19 shift, M would work.

20 MS. SANTINO: Okay. Let's see.

21 THE HEARING EXAMINER: Okay, I think I

22 can hear you.

23 MS. SANTINO: Okay. You can hear me?

24 THE HEARING EXAMINER: Yes.

25 //

1 WHEREUPON,

2 NIKKI SANTINO,

3 called as a witness and having been first duly sworn  
4 to tell the truth, the whole truth, and nothing but  
5 the truth, was examined and testified as follows:

6 THE HEARING EXAMINER: All right. Just  
7 speak slowly because there's an echo, but go ahead.

8 MS. SANTINO: Hello. My name is Nikki  
9 Santino. I am a New Mexico resident and have been  
10 since 2008. I moved here with my family from -- I'm  
11 still echoing. Should I continue with the echoing  
12 or --

13 THE HEARING EXAMINER: You're still  
14 echoing. We can make out your words. Just speak  
15 slowly if you would.

16 MS. SANTINO: Okay. Should I start  
17 over?

18 THE HEARING EXAMINER: No, we heard  
19 your first two lines.

20 MS. SANTINO: I moved here with my  
21 family from Chesapeake, Virginia, and have loved this  
22 beautiful state. We moved here because my husband  
23 retired from the Navy as a first master chief to take  
24 a job with Kirtland Air Force Base as a veteran with  
25 100-percent disability.



1 Both of my children graduated from Rio  
2 Rancho High School -- excuse me. Can you hear me  
3 still?

4 THE HEARING EXAMINER: Yes. Just speak  
5 slowly because we're making a transcript.

6 MS. SANTINO: Okay. Both of my  
7 children graduated from Rio Rancho High School and  
8 went on to be very successful in their college career  
9 choices.

10 Shortly after moving to Virginia, I  
11 found the need to get involved in my kids' educational  
12 experiences. I was approached by many teachers from  
13 elementary and through high school to please get  
14 involved with parent-teacher organizations.

15 I was asked to focus on fundraising for  
16 school supplies because the teachers were purchasing  
17 them out of their own pockets, helping improve school  
18 conditions because maintenance was very much lagging,  
19 and made -- and make our schools healthier.

20 I constantly fundraised to purchase  
21 gift cards for the teachers so they could buy supplies  
22 for students. Too often they would pay for these  
23 items out of their own pockets. It was also necessary  
24 to fight hard for money to upgrade roofing issues, new  
25 windows, and better breathable air.

1 Money was short then, and schools  
2 needed so many improvements. I can't imagine the  
3 conditions of the same schools today. There was much  
4 talk about building new and improved schools a while  
5 back, and I hope sometime soon that will happen. It  
6 won't happen for sure if this new bill is passed.

7 The passing of this bill would  
8 devastate New Mexico's future for our schools, and our  
9 educational institutes would sink to even lower levels  
10 of providing for our precious students and teachers.  
11 Educational funding would be hit the hardest, causing  
12 hardship throughout the state.

13 Donations from oil and gas industries  
14 have significantly impacted our communities of New  
15 Mexico in such a positive way. The funds have  
16 provided scholarships for our students, veterans'  
17 services, continuing education for our teachers, and  
18 much more.

19 It is very important to foster  
20 partnerships that make positive community outcomes and  
21 to remember that 90 percent of our budget comes from  
22 oil and gas. And if we cut production, half the  
23 state's budget would go away.

24 That would devastate local county  
25 school funding, state parks, road budgets,

1 conservation education, and it would hurt New Mexico  
2 on a global scale.

3 If oil and gas are forced out of state  
4 because of overregulation and lack of investments in  
5 opening wells, most jobs and small local operators  
6 would be forced out business because they couldn't  
7 afford the cost. The wells would have to be  
8 abandoned, and many New Mexicans would be out of a  
9 job.

10 And then I said I was voted parent --  
11 voted parent of the year because of the endless fights  
12 to help secure a healthy and thriving environment  
13 within the educational environment. I am asking that  
14 this bill does not pass because it would negatively  
15 impact New Mexico in a big way.

16 Thank you for your time and  
17 understanding the negative effect this bill would have  
18 on educational services and so much more. Thank you  
19 and have a great day.

20 THE HEARING EXAMINER: Thank you, Ms.  
21 Santino. Due to the echo -- it sounded as though you  
22 might have been reading from a written statement; I'm  
23 wondering if you'd be willing to email that statement  
24 to the commission administrator so that we can be sure  
25 we have what you said.

1                   Next we'll hear from Don Schreiber.

2       Mr. Schreiber, can you unmute yourself?

3                   MR. SCHREIBER:   Here we go.

4                   THE HEARING EXAMINER:   Great.   Would  
5       you spell your first and last name, please?

6                   MR. SCHREIBER:   Don Schreiber,  
7       S-C-H-R-E-I-B-E-R.

8                   THE HEARING EXAMINER:   Thank you.

9       WHEREUPON,

10                          DON SCHREIBER,  
11       called as a witness and having been first duly sworn  
12       to tell the truth, the whole truth, and nothing but  
13       the truth, was examined and testified as follows:

14                   THE HEARING EXAMINER:   I'll start your  
15       time.

16                   MR. SCHREIBER:   Chairman Chang,  
17       Commissioner Bloom, Commissioner Ampomah, thank you  
18       for this opportunity to speak.

19                   I'm a rancher with 122 gas wells on and  
20       immediately around our ranch, here today as a member  
21       of the Rocky Mountain Farmers Union with 20,000 family  
22       farm and ranch members in New Mexico, Colorado, and  
23       Wyoming.

24                   In your second week of listening to  
25       public comments, I have no doubt that you have a full

1 grasp of the financial reasons that our oil and gas  
2 plugging bonding process must be modernized.

3           You have the balance-sheet reasons, the  
4 economic arguments. Plugging bonds are, after all,  
5 financial instruments, and prior to starting our ranch  
6 here in Rio Arriba County 25 years ago, my father and  
7 I wrote lots and lots of \$25,000 plugging bonds at the  
8 Schreiber Insurance Agency in Farmington starting back  
9 in 1956.

10           But those financial reasons, those  
11 spreadsheets, only tell part of the reason to adopt  
12 stronger rules as are proposed. In our arid state,  
13 agua es vida; water is life. Not just for the  
14 livestock and crops that farmers and ranchers use, but  
15 the water is the sacred base upon which all of New  
16 Mexico depends.

17           And the old, outdated bonding limits we  
18 have now put that sacred base at risk of contamination  
19 from the thousands of wells yet to be drilled. And,  
20 sadly, in both the Permian Basin and here in the San  
21 Juan Basin, we have many examples of how the old,  
22 outdated bonding limits jeopardize our sacred base  
23 even when an abandoned or orphan well is plugged.

24           Take the old Horseshoe Gallup oil field  
25 west of Farmington, a field of about 1,000 shallow oil

1 wells drilled in the 1950s by major producers like the  
2 Standard Oil Company of Texas but sold time and time  
3 again to ever-smaller operators continually going  
4 broke and disappearing.

5 Even with the funds supplied by the  
6 bipartisan infrastructure law, there is not enough  
7 money to do the necessary plugging, contamination  
8 cleanup, and surface-damage repair to begin to restore  
9 the aquifer below what was once a place of cathedral-  
10 like beauty overlooking Shiprock and the beginnings of  
11 Monument Valley.

12 Much of that land is tribal, truly  
13 sacred, and now forever lost. We can't let that  
14 happen again, Mr. Chairman. We can't pass down poison  
15 land and polluted water and call it a legacy. We must  
16 protect our sacred base. Thank you.

17 THE HEARING EXAMINER: Thank you, Mr.  
18 Schreiber.

19 Let's see. Ian Schultz. Mr. Schultz?

20 MR. SCHULTZ: Yes.

21 THE HEARING EXAMINER: Oh, terrific.  
22 Would you spell your first and last name, please?

23 MR. SCHULTZ: Ian is spelled I-A-N.  
24 Schultz is S-C-H-U-L-T-Z.

25 //

1 WHEREUPON,

2 IAN SCHULTZ,

3 called as a witness and having been first duly sworn  
4 to tell the truth, the whole truth, and nothing but  
5 the truth, was examined and testified as follows:

6 THE HEARING EXAMINER: I'll start your  
7 time.

8 MR. SCHULTZ: I'm Ian Schultz, an  
9 architect with over 35 years of professional  
10 experience in the design of construction of small and  
11 large facilities for governments and private  
12 corporations. I have resided in Albuquerque  
13 throughout my career while completing projects across  
14 the United States and overseas.

15 I know that New Mexico, the United  
16 States, and world economies are highly dependent on  
17 the availability of abundant, affordable energy for  
18 domestic industrial use. Every individual industry  
19 requires some measure of energy for their survival and  
20 operation.

21 Without an adequate supply of  
22 affordable energy, the world population do not have  
23 life-sustaining supplies, including food, housing --  
24 medicine, and other essentials.

25 New Mexico is highly dependent on the

1 revenues provided by the oil and gas industry. In  
2 fact, revenues from oil and gas constitute 51 percent  
3 of the state's budget. One third of the state's  
4 budget is used for -- systems.

5 The proposed additional regulations  
6 will prove to be an unsustainable burden to New  
7 Mexico's small oil and gas producers, driving them out  
8 of New Mexico. The loss of small producers will cause  
9 significant decline of good, high-paying jobs and the  
10 corresponding decline of state revenues.

11 The decline of production of oil and  
12 gas in New Mexico will result in higher energy costs.  
13 Higher energy costs affect the cost of everything,  
14 particularly the cost of housing. Currently in New  
15 Mexico, affordable housing is at a critical point.

16 I request that the proposed additional  
17 regulations be --

18 Thank you for your consideration.

19 THE HEARING EXAMINER: Thank you, Mr.  
20 Schultz. It was a little muddy on this end in terms  
21 of the sound. And let me ask you as well as Ms.  
22 Santino, if you have your comment written, it would be  
23 wonderful if you would send it to Sheila Apodaca, the  
24 commission administrator, so that we can have it  
25 clearly in the record.



1                   And for everyone, let me offer you  
2     Sheila's email address. It's Sheila, S-H-E-I-L-A, dot  
3     Apodaca, A-P-O-D-A-C-A, at EMNRD dot NM dot GOV,  
4     G-O-V. Thank you.

5                   MR. SCHULTZ: -- the last part again?

6                   THE HEARING EXAMINER: I'm sorry. Say  
7     it again?

8                   MR. SCHULTZ: Could you read the last  
9     part of that email address again?

10                  THE HEARING EXAMINER: Yes. Yes. It's  
11     sheila.apodaca@enmrd.nm.gov.

12                  MR. SCHULTZ: Thank you.

13                  THE HEARING EXAMINER: Thank you.

14                  Sheila, is there anyone else on the  
15     platform who would like to offer public comment?

16                  MS. APODACA: I don't see anybody else.

17                  THE HEARING EXAMINER: Okay. And  
18     there's no one else in the room, I don't think.  
19     Great. Our next public comment session will be at  
20     nine o'clock tomorrow morning, so in the meantime,  
21     we're going to return to the technical case.

22                  And, Mr. McGowen, if you would rejoin  
23     us up here?

24                  And, Mr. Suazo, if you need to go a few  
25     minutes after five in order to get through all of his

1 direct, we can do that.

2 MR. SUAZO: Thank you. I appreciate  
3 that. I do not think we're going to get through all  
4 of his direct with the time we have today.

5 THE HEARING EXAMINER: Oh, okay.

6 MR. SUAZO: Can we check -- can I check  
7 how much time we've spent already?

8 THE HEARING EXAMINER: Eighteen  
9 minutes.

10 MR. SUAZO: Eighteen minutes?

11 THE HEARING EXAMINER: Yeah.

12 DIRECT EXAMINATION

13 BY MR. SUAZO:

14 MR. SUAZO: All right. So, Mr.  
15 McGowen, welcome back to the stand. Remember where we  
16 were?

17 We were discussing the EPA's  
18 requirements and advanced diagnostics under the  
19 current rules. and we had just switched over to slide  
20 29, which discusses -- or you discussed the proposed  
21 changes to the existing rules.

22 What changes do Applicants propose to  
23 these existing temporary abandonment permitting  
24 requirements under existing 12.19.15.25.12?

25 MR. MCGOWEN: Operators would have to

1     justify a well's future use to obtain approval from  
2     the OCD. And my biggest issue with that is that you  
3     really have a problem when you're trying to gather  
4     data on the front end of a project, and then you're  
5     trying to project forward.

6                 So if you don't have enough time to do  
7     your pilot testing and to try out your ideas and see  
8     if they'll work, then you won't be able to get this --  
9     this information.

10                So I think that would be a -- a -- some  
11     of this documentation they're asking for is burdensome  
12     and that you're going to have to stop and create all  
13     this information, but it may not actually be the  
14     information that that's required to make the decision  
15     as to whether you have a -- a potential future use.

16                You may actually have to wait and get  
17     results from the wells, and then you find out whether  
18     you've got sufficient data or not.

19                MR. SUAZO: Okay.

20                MR. MCGOWEN: So, and also you're  
21     limiting the TA status extensions beyond the initial  
22     approval period to two years.

23                MR. SUAZO: Very good. And let's move  
24     on to 25.13 on your next slide. What changes are  
25     Applicants proposing to this section?

1                   MR. MCGOWEN: What was a notice is now  
2 a request, and then it requires, by cross-reference, a  
3 demonstration from the operator that the well will be  
4 used for beneficial use within the approved period of  
5 temporary abandonment. And, of course, there's  
6 increased casing requirements.

7                   MR. SUAZO: All right. So with your  
8 next slide, can you please tell the Commission how  
9 these changes to sections 12 and 13 depart from the  
10 existing requirements that you summarized earlier?

11                  MR. MCGOWEN: The current rules allow  
12 indefinite rolling five-year renewals. The intent  
13 behind the applicants' proposal, apparently, is to  
14 force a decision point at five years to either return  
15 the well to beneficial use or plug it unless the  
16 regulator finds good cause to allow it to remain idle  
17 longer.

18                  So implicating the applicants' proposal  
19 to limit beneficial use to only production and  
20 excluding strategic uses like enhanced/tertiary  
21 recovery, maintenance -- you know, restimulation, et  
22 cetera, could be considered -- would be considered  
23 speculative.

24                  MR. SUAZO: Very good. And in the  
25 interest of time, we're going to skip to slide 33.

1 Let's talk about your major concerns with these  
2 temporary abandonment proposals by the applicants.  
3 Can you please discuss that slide for the Commission?

4 MR. MCGOWEN: Well, you've got a -- a  
5 mandatory reapplication for expired temporary  
6 abandonment wells, and that could be interpreted as  
7 requiring immediate P&A of hundreds of wells.

8 You're creating hard cutoffs for  
9 temporary abandonment eligibility that I think, based  
10 on my experience doing this kind of development work  
11 and -- and using marginal wells, is shortsighted.

12 I think it unnecessarily expands  
13 intervention rights a little bit. I think that could  
14 be -- it just could create a real difficult process  
15 for an operator, and they may just choose not to do  
16 it. So strict implementation schedule for -- for all  
17 well types is also an issue.

18 MR. SUAZO: Very good. Now, let's move  
19 on to your next slide. What are your concerns with  
20 requiring a beneficial use demonstration as a  
21 condition for approval of the extension of temporary  
22 abandonment?

23 MR. MCGOWEN: Well, as I've tried to  
24 explain a little bit, is that the -- the idea that --  
25 and I've heard some of the testimony that -- and I

1 think they use some of my words against me here, but  
2 I -- I said that well operators keep track of their  
3 production, and they monitor the production, and they  
4 have well logs.

5 But that's a long way from proving up a  
6 new development approach where you use some sort of an  
7 innovative technology or an innovative approach that  
8 hasn't been tried before, necessarily, in that area or  
9 in that particular rock.

10 So it's not -- we're not manufacturing  
11 widgets, and so it's not going to be that easy to just  
12 gather up your data and your well files and go, "I  
13 know exactly what I'm going to do for the next five or  
14 ten years with all these wells."

15 You -- you need to have data where you  
16 do the projects; you've got engineering, geology, and  
17 geophysics; you do the project. So you -- you have to  
18 have rig availability; you have to have equipment, et  
19 cetera. Then you end up having to execute.

20 You need more than one year. You may  
21 need three or four years to -- to get enough data to  
22 know whether you can actually pursue this over all  
23 your target wells.

24 MR. SUAZO: Very good. Thank you.  
25 Let's move on to your next slide and talk about the

1 applicants' proposed changes to demonstrating  
2 mechanical integrity.

3 What would the applicants add under the  
4 new subparagraphs 4 and 5 to the existing section  
5 25.14(A)? And I think that's listed on the right-hand  
6 side of the screen.

7 MR. MCGOWEN: Well, they want to leave  
8 any isolation device used to test mechanical integrity  
9 pursuant to subsection A of the section. They want it  
10 to remain in place for the duration of the temporary  
11 abandonment. And then they also want the operator to  
12 perform a caliper log and a casing integrity log.

13 MR. SUAZO: Okay. And moving on to  
14 your next slide, what are your concerns about these  
15 new requirements?

16 MR. MCGOWEN: Well, one of the biggest  
17 problems that I have faced over the course of my  
18 career is that any time you run anything in the hole,  
19 you're taking a risk of something getting stuck and  
20 having a fishing job.

21 So the more operations you have,  
22 including wire line -- and I recently had to fish  
23 10,000 feet of wire line out of a well; cost about \$1  
24 million. So every -- it -- it sounds simple; "I'm  
25 going to run a caliper log and a casing integrity

1 log." But you -- every time you go in the hole,  
2 you're taking a risk of something going wrong.

3 So other thing is -- is that what I  
4 haven't seen, which would be very confusing, is, well,  
5 what kind of caliper log and what kind of casing  
6 integrity log? And then what are the standards for  
7 pass or fail?

8 If you're going to do this, then you'd  
9 really need to understand; what does that mean? If  
10 you use it as a tool to find a problem after you've  
11 got a pressure leak, well, that's a lot easier because  
12 you know exactly where to go set the patches. So I've  
13 had a lot of experience with that lately,  
14 unfortunately.

15 So I -- I think it's -- it's -- it  
16 sounds good on paper that I'll just run a caliper and  
17 a casing integrity log and that sounds great. I'm not  
18 sure why you're running both. I'm not sure why you  
19 need to run that on every well.

20 If there was some -- more of a  
21 engineering first-principles approach where you would  
22 decide, okay; this particular well is older, has  
23 corrosive fluids.

24 I mean, we -- we know what kills these  
25 wells, and we know what causes our problems. It's



1 rust, basically, or your steel breaks down, and it's  
2 cement and -- and the -- and the -- you know, there's  
3 a pace at which corrosion happens; right?

4 So you should be able to figure out a  
5 way to do this with first principles and -- and maybe  
6 cut down some of the costs and -- and also take care  
7 of all your environmental risk.

8 MR. SUAZO: And with all that in mind,  
9 what is your recommendation on these mechanical  
10 integrity proposals from the applicants?

11 MR. MCGOWEN: I -- I think applying  
12 those across the board is -- is probably not very  
13 practical. It's going to be costly. You could put  
14 that money towards doing other things and -- such as  
15 maybe plugging wells that need to be plugged.

16 So I think the -- the current rules  
17 provide the authority to do what needs to be done. If  
18 you do the hydrostatic testing and you use that  
19 standard, you definitely know whether you have casing  
20 that's leaking or not.

21 If you did some sort of a risk-based  
22 approach to this that used first principles of  
23 engineering to figure out when you needed to go to  
24 that extra step, I think that's a -- a better idea,  
25 better way to go.

1 MR. SUAZO: Very good. Thank you, Mr.  
2 McGowen. And since we kind of covered some of the  
3 other slides earlier today, let's move on to slide 42  
4 discussing proposed changes to P&A requirements.

5 Applicants propose to change the  
6 timelines for when P&A obligations are triggered and  
7 how the changes would conflict with actual P&A  
8 timelines. Can you explain that timeline from P&A  
9 application to completion for the Commission?

10 MR. MCGOWEN: Well, the steps are  
11 application and approval -- you know, plugging,  
12 operations, and duration.

13 So something that I have encountered is  
14 you have to have the right rig for the job; you have  
15 to have the right crew for the job; you have to have  
16 the right materials. For deeper wells, you need  
17 bigger rigs. You can't always get those rigs; there's  
18 competition for the rigs. You have weather to deal  
19 with.

20 So you -- you've got the possible  
21 delays in that section right there. And then you  
22 have, of course, post-plugging cleanup and  
23 reclamation, which has to be done. And I fully  
24 support everybody cleaning up their mess all the time.  
25 And then, of course, you've got to do final reporting.

1                   MR. SUAZO: And Mr. Arthur touched on  
2 the difference in costs in his testimony between  
3 vertical and horizontal wells. What are the  
4 mechanical P&A procedures for vertical wells, and how  
5 do they differ from horizontal wells?

6                   MR. MCGOWEN: Well, obviously, you want  
7 to isolate your producing zones, and that really has  
8 more to do with protecting the reservoirs downhole for  
9 future development. You want your casing shoes to be  
10 sealed. And -- and the very most important thing is  
11 freshwater protection.

12                   Minimum plug length and cement quality;  
13 those are -- those are set. Plug verification by  
14 tagging or testing to make sure your cement plugs set  
15 up properly. And then, of course, top-of-cement  
16 behind pipe is a big deal. You -- you need to know  
17 where you -- where your cement is with the best  
18 information you can get.

19                   And, of course, surface plug set and  
20 wellhead removal.

21                   Now, horizontal wells; I've been  
22 thinking about this question. There -- there is a  
23 difference with horizontal wells, but it's not really  
24 where you're setting the plugs. It probably has more  
25 to do with the deliverability of a horizontal well.

1           If you think about a vertical well  
2 might slice 100 foot of pay, a horizontal well might  
3 slice 10,000 foot of pay. So the amount of reservoir  
4 that could sit over time and build up pressure is --  
5 is a bit more.

6           So if you set a bridge plug in there in  
7 your -- when you're doing your -- your abandonment  
8 procedure, you want to make sure that it can hold --  
9 hold whatever is below it.

10          And then you also need to make sure  
11 that when you're -- when you're cementing a horizontal  
12 well, you have to -- you get that cement to go all the  
13 way down that 5- or 10-thousand-foot lateral in that  
14 annulus in the lateral and then come up the -- the  
15 bill curve and up into the vertical.

16          So that would be the only difference, I  
17 think; would be -- is making sure that those things  
18 were done right.

19          MR. SUAZO: Okay. And on your next  
20 slide, under the current rule, there's three triggers  
21 that trigger the legal obligation to T&A or  
22 permanently P&A a well. How are those proposed to be  
23 changed under applicants' proposals?

24          MR. MCGOWEN: Well, under the existing  
25 version, there's a 90-day compliance window and you

1 have three triggering events.

2 So under the new rules, they've  
3 shortened the action deadline from 90 days to 30 days.  
4 And they've modified the requirement to place the well  
5 in approved temporary abandonment within the  
6 compliance window to instead require the operator to  
7 apply to do so within that 30-day timeframe.

8 So I'm a little baffled as to how 60  
9 days is really going to make a big difference over the  
10 life of this -- of this well. You're -- you're trying  
11 to plug it forever, ostensibly, and maybe it's been  
12 producing for 20 years, but you're having to rush a  
13 little bit here at the -- just to get this done and do  
14 all the work you need to do.

15 MR. SUAZO: Sure. And on to your next  
16 slide. With respect to the changes that you just  
17 summarized, they're mirrored in applicants' proposal  
18 to edit 19.15.5.9B(2) of NMAC, which cross-references  
19 that regulation on when wells are to be properly  
20 abandoned; is that correct?

21 MR. MCGOWEN: Yes.

22 MR. SUAZO: Okay.

23 MR. MCGOWEN: Well, this would mean  
24 that after 13 months with no production, that's 12  
25 months -- months idle plus a 30-day grace period, a

1 well must either be permanently abandoned or formally  
2 put in TA status to remain legally idled.

3 So that's -- that's mirrored in -- in  
4 the WELC's related amendment to 19.15.8.9D(3), which  
5 would create a rebuttable presumption that a well is  
6 out of compliance with 19.15.25.8 after 13 months of  
7 inactivity, which WELC would reduce from the 15-month  
8 period currently in place.

9 MR. SUAZO: Very good. And on your  
10 next slide, can you please explain what are the  
11 current versus the proposed inactivity timelines  
12 before an operator is legally obligated to T&A or  
13 permanently P&A a well?

14 MR. MCGOWEN: So under current law, a  
15 well that's been inactive for one year can avoid  
16 plugging by going into approved temporary abandonment  
17 status, which means that -- that the mechanical  
18 integrity has been verified. And then approved  
19 temporary abandonment status can be renewed repeatedly  
20 in five-year increments under the current rule.

21 So, as discussed, the -- the proposed  
22 amendments would shorten the two-year initial  
23 temporary abandonment versus five if they -- if they  
24 could prove future use at that time. And then  
25 extensions of one-year increments up to five years

1 total idle time.

2 And then, after that, it's -- it's a  
3 mandated decision point.

4 MR. SUAZO: All right. Now, moving on  
5 to your next slide. What are the practical effects of  
6 reducing the compliance window from 90 to 30 days in  
7 your view?

8 MR. MCGOWEN: Well, the thing I  
9 would -- the thing I would be concerned about as an  
10 operator is, as I talked out -- about a minute ago, is  
11 can I get the equipment? Can I get the personnel I  
12 need? I've got to do my engineering planning as part  
13 of that.

14 So, you know, the -- the extra 60 days  
15 would be very handy to have. Now, that would -- I'm  
16 not sure what that really gains you overall in the  
17 overall program other than making it -- you're going  
18 to -- you're going to push people.

19 A big thing I've always tried to do is  
20 to be extremely environmentally competent and to take  
21 care of cleaning up everything. And then I also try  
22 to make sure all my people are safe, so -- and that's  
23 challenging in the oil field.

24 So any time that you can go a little  
25 bit slower and take your time and do your planning a

1 little bit more thoroughly, you're going to have more  
2 safety and you're going to have less chance of some  
3 sort of a problem.

4 You can have -- in a plugging  
5 operation, people have lost control of wells. So, you  
6 know, it's -- it's not trivial just because the well  
7 is old. And -- and there could even be extenuating  
8 things like somebody's got a saltwater injection well  
9 near you, and you have to deal with that.

10 So you do need to do your planning.  
11 I've seen the results of people rushing and not doing  
12 their homework, and it's not good.

13 MR. SUAZO: All right. And on your  
14 next slide, can you please discuss what the practical  
15 effects of removing the continuous requirement from  
16 that inactivity trigger?

17 MR. MCGOWEN: It just makes it -- it  
18 makes it a bit harder. It's -- it's a -- a harder  
19 cutoff and -- and doesn't give as much flexibility to  
20 the operator.

21 MR. SUAZO: Okay. And also in the  
22 interest of time, we're going to skip to slide 52, but  
23 there are some comparisons to other jurisdictions that  
24 people can take a look at that's also in your  
25 testimony.



1                   Let's talk about the risks and  
2                   potential impacts, and let's finish up this temporary  
3                   abandonment proposal review with what you perceive as  
4                   the risks and impacts of these proposed changes and  
5                   what they'll require of an operator to either TA or  
6                   permanently P&A a well.

7                   MR. MCGOWEN: Well, one of the things  
8                   that I see is there's a -- this -- this program,  
9                   this -- this approach is in some ways the opposite of  
10                  what we see in Texas.

11                  There's -- there's five different ways  
12                  to get incentives to actually reuse old wells in  
13                  Texas, and over -- over here, you're basically trying  
14                  to figure out a way to get rid of all the old wells.

15                  And I understand the reasoning. I  
16                  understand wanting to take care of all the  
17                  environmental issues, so -- but it does assume bad  
18                  faith on the part of the operators, and it -- it  
19                  disregards legitimate reasons where you might be  
20                  trying to -- to execute a strategic plan that requires  
21                  data capture over a longer period.

22                  So it is creating -- if you're -- you  
23                  know, we had a lot of money to spend because we were  
24                  private-equity backed, but I only had 20 employees, so  
25                  I would have to pull my employees off and put them on

1 working on managing all of this stuff on a whole bunch  
2 of wells while the same time I'm trying to maybe run a  
3 drilling program.

4 So that's a big data burden for -- for  
5 an oil and gas company. They -- they usually aren't  
6 overstaffed.

7 Existing rules already ensure wells  
8 only remain idle if the operator proves the well is  
9 sound, bonded, and monitored. So real-world factors  
10 that conflict with or -- or complicate the proposed  
11 timeline or requirements; I've talked about some of  
12 those.

13 You know, surface access issues; I've  
14 had to deal with that. You know, bridges wash out.  
15 You have to rebuild the bridge; you can't get any  
16 equipment in there. Concurrent workload. So -- and  
17 there's not an infinite amount of equipment and people  
18 that want to work in the oil field, particularly in  
19 certain times of year.

20 MR. SUAZO: Very good. And did you  
21 hear Mr. Emerick's testimony earlier today on  
22 financial assurances?

23 MR. MCGOWEN: Yes.

24 MR. SUAZO: So I think we covered that  
25 sufficiently through his testimony, so let's skip to

1 your slide 59, and this is your analysis of the  
2 financial assurance proposals from an operational  
3 perspective.

4 Let's start with your assurance  
5 discussion, with how the \$150,000 across-the-board  
6 individual financial assurance requirements compare to  
7 actual P&A costs being secured. What is your opinion  
8 on that?

9 MR. MCGOWEN: Well, the -- the data  
10 that I've seen, and I did some of my own analysis --  
11 statistical analysis -- the 150 looks high to me. So  
12 I -- I think that's above -- above what the average  
13 has been.

14 I suspect that it's related to a -- a  
15 skewed data set because, frankly, the OCD did great --  
16 did a great job of going and taking care of all their  
17 worst -- a bunch of bad wells that had big problems  
18 that were old. And the -- the woolly booger monster,  
19 of course, is corrosion; the well falls apart on you,  
20 and then you have to go do a big fishing job.

21 So -- but going forward you might have  
22 a different population. You should as you start to  
23 eliminate those -- those really big problem wells if  
24 you tackle those first. So the wells in the future  
25 should have less time on the casing, less corrosion,

1 better cementing.

2 And really, the industry is doing a  
3 better job in the modern era than they were back in  
4 the day. So I think a small minority of extreme cases  
5 that were really deep or damaged.

6 And also I can see why there's a --  
7 there's an issue where they're saying, "Well, the  
8 depth of the well doesn't matter." Well, that's  
9 because the rust is happening shallow, so it's really  
10 about the age of the well. That's where the -- the  
11 casing's falling apart.

12 So once you get those wells out of the  
13 way, you're going to have a different population  
14 entirely. So I -- I really think that if you were to  
15 use the median of an appropriate population, you would  
16 get a better number to work with.

17 MR. SUAZO: Very good. And so on your  
18 next slide, what are the other key technical factors  
19 that could be driving above-normal P&A costs?

20 MR. MCGOWEN: Well, well depth is  
21 really just a matter of the number of plugs and -- and  
22 might -- maybe something -- if you have to deal with  
23 some pressure or something. And then amount of cement  
24 you pump and the number of trips; right?

25 Well age and condition relates to

1 the -- the facts about metallurgy; okay? So -- and  
2 the -- and the quality of the metallurgy. And then,  
3 of course, fluid type. If you've got corrosive  
4 fluids, if you might -- you might have CO2, hydrogen  
5 sulfide.

6 You know, these are all things that are  
7 all known. This is all known science. So you should  
8 be able to come up with a way of figuring out which  
9 wells are the highest-risk wells based on their age,  
10 the type of fluids they were producing, what's their  
11 water cut.

12 I mean, you know, as an engineer, I  
13 think I could come up with a way to do this, but  
14 nobody has asked me to do that.

15 So then, of course, you've got surface  
16 and environmental factors. Am I in a wetland? Am I  
17 near a wetland or am I -- am I near, you know,  
18 navigable waters? That would change what you're doing  
19 there also.

20 MR. SUAZO: Sure. Let's skip to your  
21 slide 62 because I think that gets to some of the  
22 issues that were discussed earlier today a little bit  
23 better. And that compares the typical New Mexico P&A  
24 and reclamation costs.

25 What are the average costs to P&A wells

1 in New Mexico, and what are the determinative factors,  
2 such as depth, for example?

3 MR. MCGOWEN: Well, this is based on  
4 the data that -- that I've seen, and there's -- there  
5 are -- there's more than one data set that's been  
6 presented, and there's been more than one -- one way  
7 to try to calculate this.

8 But this -- this actually is a little  
9 closer to what I would expect from my experience in  
10 Texas. I haven't plugged any wells in New Mexico, but  
11 these numbers look more reasonable to what I've  
12 experienced.

13 So, as you can see, shallow wells less  
14 than 5,000 feet, and there are some really shallow  
15 wells that you could plug with a -- a workover rig  
16 that looks like it -- you could drill water wells  
17 with.

18 And that's one thing to think about is  
19 if I've got a 10,000-foot well, well, then I've got a  
20 much bigger rig with a much bigger day rate than if  
21 I've got a 2,000-foot well that has a little, bitty  
22 rig and a really small day rate. So that's why you  
23 kind of see on this slide -- you see this difference  
24 in -- in cost by depth.

25 Now, as I said, if you don't -- it's a

1 multivariable equation. It's -- it's -- but it's not  
2 that complex to understand. You should be able to  
3 figure out a way to do a risk-based analysis based on  
4 first principles of science.

5 MR. SUAZO: So going on to your next  
6 slide. In your opinion, is a risk-based assessment  
7 like what is currently required under New Mexico's  
8 current financial assurance regulations preferable to  
9 a one-size-fits-all that is proposed by Applicants?

10 MR. MCGOWEN: I think a risk-based  
11 system would -- would more fairly allocate where the  
12 problems are and where the -- where the bonds have to  
13 be made and the size of the bonds that have to be  
14 made.

15 So I -- I think that's -- you know,  
16 personally, and that's -- I'm just giving my opinion  
17 here -- that would make more sense to me, and it would  
18 make more -- as an operator -- of -- of how to  
19 approach the problem.

20 And then, now, I -- I want to make sure  
21 for the record and everybody knows that I think  
22 everybody should clean up their mess. And -- and  
23 nobody hates a -- a poor operator more than I do.

24 I spent five years, actually; I had an  
25 environmental consulting firm. I did environmental

1 audits on 2,000 tank batteries, so I've kind of seen  
2 it all; okay? So -- and as -- and, really, because I  
3 did that before I started my oil companies, we were --  
4 tried to be squeaky clean; okay? Everything. Air,  
5 water, et cetera.

6 So I'm not saying that you don't need  
7 bonding, and I'm not saying that there's not room for  
8 improvement, but I do think you should take into  
9 account the risk and first principles of engineering  
10 when you're figuring out how to do this.

11 MR. SUAZO: Sure. All right. Well,  
12 let's move on to your slide 57 and get to your --  
13 sorry -- 67, and get to your recommendations for the  
14 Commission based upon this section of your testimony.

15 Can you please review your bottom-line  
16 recommendation regarding P&A and financial assurance  
17 requirements as proposed by the applicants?

18 MR. MCGOWEN: Well, if you're just  
19 going to use an average, across-the-board, flat for  
20 everything, the numbers that I ran based on the data  
21 that I have seen; the 150 was -- was very high.

22 Now, you know, what the program looks  
23 like at the end of the day is up to -- to a bunch of  
24 other folks who are the decision-makers in this  
25 matter. But I think that number's a bit high if



1     you're just trying to do an average.

2                     There are a few atypical higher-risk  
3     wells that are going to -- that are going to blow the  
4     budget. Those ought to be taken into -- into account,  
5     but you should be able to figure that out. You really  
6     should.

7                     I mean, if you got -- if you tell me  
8     that I've got a sour oil well with a 95-percent water  
9     cut that was drilled in 1940, I'm going to tell you  
10    that that's -- that well's probably going to have some  
11    problems. That's not the same as the well that Exxon  
12    drilled, you know, a few years ago.

13                    So that's -- that's my thought --  
14    thought; would be if -- if you could figure out a way  
15    to do that, I don't -- I don't think it would add that  
16    much complexity. I think there's a way that you could  
17    set criteria where it could be risk-based.

18                    So the one-size-fits-all is unfairly  
19    penalizing folks that have done a great job with  
20    their -- with their well construction and -- and  
21    design. So that's -- that's, sort of, my overall  
22    theme about that.

23                    MR. SUAZO: Very good. And let's move  
24    on to your next slide, slide 69, discussing the risks  
25    you see if the Commission does decide to adopt the

1 changes as proposed. How are the risks you perceive  
2 in the proposal, in your mind, going to vary between  
3 the smaller and larger operators?

4 MR. MCGOWEN: Well, as -- as I've tried  
5 to understand the language and how all these -- these  
6 different changes and nomenclature and the rules  
7 interact with each other, I see some possibilities  
8 that you could end up accidentally -- not at -- not --  
9 you know, not on purpose, but accidentally driving  
10 some guys into bankruptcy that have a whole bunch of  
11 wells, and then they're just going to walk away and  
12 the State would be stuck with those.

13 So that would be a really unfortunate  
14 outcome that's, obviously, not what everybody wants.

15 So I -- I think, thinking this through,  
16 trying to simulate what the -- the actual outcome  
17 could be, it's -- when I read these regulations, it's  
18 like a computer program. If I change one thing over  
19 here, it impacts something over there.

20 I -- I think it needs more study to  
21 figure out what the -- what the unintended  
22 consequences might be.

23 MR. SUAZO: Very good.

24 Madam Hearing Officer, that completes  
25 this section. I suggest that we maybe pick up the

1 next section of the direct tomorrow dealing with  
2 marginal wells if that's okay with you.

3 THE HEARING EXAMINER: That's terrific.  
4 Thanks so much for getting us to five.

5 MR. SUAZO: Thank you.

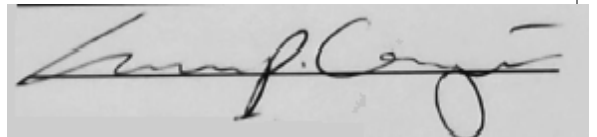
6 THE HEARING EXAMINER: Thank you, Mr.  
7 McGowen.

8 MR. MCGOWEN: Thank you.

9 THE HEARING EXAMINER: Nine o'clock.  
10 (Whereupon, at 4:59 p.m., the  
11 proceeding was concluded.)  
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CERTIFICATE

I, GERALD ARAGON, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



GERALD ARAGON

Notary Public in and for the  
State of New Mexico

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CERTIFICATE OF TRANSCRIBER

I, PAULA GEWERTZ, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



PAULA GEWERTZ

[& - 19.15.8.13]

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[emerick - ensure]

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**[planning - population]**

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[population - pressure]

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[pressures - procuring]

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**[produce - proposed]**

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**[proposed - pull]**

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[pull - ranch]

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[suazo - sufficient]

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