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STATE OF NEW MEXICO
ENERGY, MINERALS, AND NATURAL RESOURCES
OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:
Case No. 24683

HEARING - DAY 9

DATE: Thursday, October 30, 2025
TIME: 9:00 a.m.
BEFORE: Hearing Examiner Felicia Orth
LOCATION: Wendell Chino Building
Pecos Hall
1220 St. Francis Drive
Santa Fe, NM 87505
REPORTED BY: Gerald Aragon
JOB NO.: 7626649

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Also Present:

Sheila Apodaca, Commission Administrator

William Ampomah, Commissioner

Greg Bloom, Commissioner (by videoconference)

Albert Chang, Chair

Stephanie Garcia Richard, New Mexico Land Office

Commissioner

Rosa Romero, EMNRD Bureau Chief

Gilbert Corder, EMNRD Staff Manager

Amy Vermersch, EMNRD Programmatic and System

Support

Dan Arthur, Petroleum Association of New Mexico

President, Chief Engineer

Jonathan Olivas, Public Commenter (by

Videoconference)

Nicholas Maxwell, Independent Participant

Tim Davis, Public Commenter

Kenneth Ahler, Public Commenter

Lauren Pagel, Public Commenter (by

videoconference)

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I N D E X

WITNESS(ES):	DX	CX	RDX	RCX
HAROLD MCGOWEN				
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E X H I B I T S

NO.	DESCRIPTION	ID/EVD
NMOGA:		
Exhibit D	McGowen Testimony and Appendices A and B	56/56
Exhibit E	Sporich Testimony, Appendices A and B, and Demonstrative Slides	268/268

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P R O C E E D I N G S

THE EXAMINER: Good morning. My name is Felicia Orth, hearing officer in the matter, OCC 24683 relating to well plugging and financial assurance. We are on day nine of the hearing and we've reached another public comment session. I have two names on the list of folks who wanted a spot this morning, and I think we also have some folks in the room.

If you are on the platform, please raise your virtual hand, or if you have called in using your phone, please press star, five.

So the first person I have who may be on the platform is Lauren Pagel. Lauren Pagel. I think it was EP, Sheila. Up there. Yeah. Great.

Ms. Pagel, can you unmute yourself?
There you are.

MS. PAGEL: Yes. Thank you so much.

THE EXAMINER: Hi. Would you spell your first and last name, please?

MS. PAGEL: Yes. It's L-A-U-R-E-N, and P as in Peter, A-G-E-L.

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1 WHEREUPON,

2 LAUREN PAGEL,

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 EXAMINER: I'll start your three
7 minutes.

8 MS. PAGEL: Great. Good morning,
9 Commissioners. My name's Lauren Pagel. I'm the
10 policy director at Earthworks, where I focus primarily
11 on federal oil and gas policy. For nearly two
12 decades, I've worked -- I've watched the federal
13 government struggle and too often fail to make the oil
14 and gas industry take full responsibility for its
15 pollution and cleanup.

16 At the federal level, bonding rules
17 were frozen in time for more than 60 years. Until
18 2024, companies operating on public lands could post
19 as little as 10,000 per lease and 25,000 statewide to
20 cover cleanup. While the BLM finally updated those
21 minimums last year, 150,000 per lease and 500,000
22 statewide, even those levels fall far short of the
23 real costs to plug wells and restore the land.

24 And now, with the Trump administration
25 moving quickly to roll back key environmental

1 protections, potentially revisiting the new bonding
2 rule, expanding drilling on public land and waters,
3 and the federal system right now is heading in the
4 wrong direction.

5 The push for energy dominance has come
6 at the expense of accountability and community health
7 before, and the -- states like New Mexico will once
8 again be left to clean up the mess.

9 It's also worth noting that we're
10 unlikely to see another major federal investment in
11 well plugging like the one made under the
12 Infrastructure Investment and Jobs Act, which provided
13 \$4.7 billion nationwide to clean up orphaned wells.

14 That funding was an extraordinary one-
15 time effort, not a sustainable solution. Going
16 forward, states are going to have to solve the problem
17 themselves, and strong bonding rules are the clearest
18 way and clearest path to do that.

19 Right now, companies can still drill
20 hundreds of wells under a single outdated blanket
21 bond. When these wells stop producing, taxpayers are
22 left to foot the bill for cleanup. That's not fair
23 and it's not sustainable. Strong bonding rules ensure
24 that companies internalize the true cost of doing
25 business, the true cost of drilling, and that cleanup

1 is part of the business plan at the start, not an
2 afterthought.

3 At the end of the day, it's an -- up to
4 states to protect their people, their communities,
5 public health, and taxpayer dollars. New Mexico has a
6 real opportunity here to ensure that those who profit
7 from extraction are the ones who pay to clean it up.
8 Thank you so much.

9 THE EXAMINER: Thank you, Ms. Pagel.
10 Jonathan Olivas is the next one.

11 Hello, Mr. Olivas.

12 MR. OLIVAS: Good morning.

13 THE EXAMINER: Good morning. Would you
14 spell your first and last name for the transcript,
15 please?

16 MR. OLIVAS: Yes. It's Jonathan,
17 J-O-N-A-T-H-A-N, Olivas, O-L-I-V-A-S.
18 WHEREUPON,

19 JONATHAN OLIVAS,
20 called as a witness and having been first duly sworn
21 to tell the truth, the whole truth, and nothing but
22 the truth, was examined and testified as follows:

23 THE EXAMINER: Thank you. I'll start
24 your time.

25 MR. OLIVAS: Thank you. Like I said,

1 my name is Jonathan Olivas, and I first want to thank
2 you for allowing me to speak today to the commission.
3 I am a lifetime New Mexican. My family comes from
4 Cuba, New Mexico, and my grandfather, a POW from World
5 War II, is one of a handful of Purple Heart recipients
6 from Cuba, New Mexico. So I am very invested and love
7 this beautiful state.

8 As an entrepreneur, I have participated
9 in several different industries in the state, mostly
10 construction, but in all of these industries, I
11 understand that oil and gas affects all lives here in
12 New Mexico.

13 I love the fact that New Mexico is a
14 place of great beauty and abundant natural resources.
15 I also treasure the fact that most in our state
16 appreciate that and want to protect both our beautiful
17 lands, but also appreciate the blessing of the
18 abundance of natural resources that we have here.

19 Also, happy belated birthday to
20 President Teddy Roosevelt, an awesome president and a
21 great champion of conservation in this country.

22 From my perspective as a business owner
23 here in the state, I understand the importance of a
24 good oversight in any industry. And also as an
25 advocate for positive change in our education

1 system -- our struggling education system, I know how
2 important the oil and gas industry and the revenue
3 generated is to our education system.

4 Especially considering the fact that
5 just recently, we've added universal child --
6 childcare here in the state and expect to be hiring
7 about 3500 childcare workers, which will be directly
8 affected, you know, by the revenue that is generated
9 here.

10 As a contractor, I can understand how
11 overregulation can hamper business and, in turn,
12 affect profitability, productivity, and of course jobs
13 and families overall. I do appreciate you
14 commissioners looking out for the best interest of all
15 New -- New Mexicans.

16 Ultimately, the Oil Conservation
17 Commission has a final say about regulations for this
18 industry, and I would just like you to consider the
19 unintended consequences of these regulations. Among
20 these, I believe would be loss of revenue, loss of
21 jobs, and actually more abandoned wells, and would
22 affect our struggling education system.

23 I would just like to entreat the
24 commission to take these thoughts into consideration
25 as they make their decision. And ultimately, I

1 believe you guys will make the best decision for your
2 constituents and for this great state. Thank you.

3 THE EXAMINER: Thank you, Mr. Olivas.

4 Is there anyone else on the platform
5 who'd like to offer comment during this session? Our
6 next session will be at four o'clock this afternoon.

7 No. All right. I think we have some
8 folks in the room.

9 Mr. Davis. If you would spell your
10 first and last name, please.

11 MR. DAVIS: Tim Davis, T-I-M D-A-V-I-S.
12 WHEREUPON,

13 TIM DAVIS,
14 called as a witness and having been first duly sworn
15 to tell the truth, the whole truth, and nothing but
16 the truth, was examined and testified as follows:

17 THE EXAMINER: Thank you. I'll start
18 your time.

19 MR. DAVIS: Good morning, Madam Hearing
20 Officer, Commissioner Ampomah. I'm Tim Davis. I'm a
21 staff attorney with WildEarth Guardians, and WildEarth
22 Guardians, excuse me, supports the proposed rule. If
23 you drill a well or you acquire a well, plugging,
24 cleanup, and remediation should be your responsibility
25 and you cannot offload this responsibility on New

1 Mexicans.

2 I'd like to make a few points about the
3 proposed rule. First, it makes clear that drilling or
4 well acquisition cannot occur until financial
5 assurance is provided.

6 It increases the cost of financial
7 assurance for single wells to more accurately reflect
8 the actual cost of cleanup, while ensuring that
9 blanket bonds for active wells are posted at the
10 statutory maximum, which falls well short of providing
11 for actual cleanup costs. But it is the maximum that
12 this commission can do at this time under the Oil and
13 Gas Act.

14 Additionally, the proposed rule defines
15 marginal wells and sets financial assurance for
16 marginal and inactive wells that will guard against
17 New Mexicans getting stuck with the bill for wells
18 that are at high risk of being orphaned.

19 Second, the proposed rule tightens
20 transfer rules to protect against risk. Before
21 operators are allowed to acquire wells, they should be
22 required to show that they're compliant with OCD rules
23 like those are plugging and abandonment and also for
24 methane venting and flaring.

25 They should also be required to show

1 compliance with rules from other jurisdictions. The
2 proposed rule requires this and will protect against
3 poorly funded or non-compliant operators taking on
4 wells, which is a common path to wells becoming
5 abandoned and orphaned.

6 And third, the proposed rule requires
7 timely cleanup. Current rules allow operators to
8 indefinitely defer plugging inactive wells. The
9 proposed rule requires operators to demonstrate that
10 the well will be returned to beneficial use within a
11 reasonable period of time in order to be granted
12 initial or renewed temporary and abandonment status.

13 This helps prevent abandoned wells from
14 continuing to leak pollutants like methane into our
15 environment when they should have been plugged long
16 ago.

17 The bottom line is that New Mexicans
18 should not get stuck with the bill for cleaning up the
19 industry's mess. That's not just a financial bill,
20 but also the public health bill and the environmental
21 bill. If a company drills a well or acquires one, it
22 owns not just what it pulls out of the Earth, it also
23 owns the cost of cleanup.

24 If you drill it, you must clean it up
25 without exception. This should not be controversial,

1 and the proposed rule is a reasonable effort to keep
2 New Mexicans from getting stuck with the industry's
3 liabilities. Thank you.

4 THE EXAMINER: Thank you, Mr. Davis.
5 Should have also mentioned that I believe we have
6 Commissioner Bloom on the platform.

7 Is there anyone else in the room or on
8 the platform who would like to offer public comment at
9 this time? Again, our next session is at 4 p.m.

10 All right. We will move back to the
11 technical case then. Thank you for putting up the
12 slide there. And I believe -- oh. Mr. --

13 MR. CLOUTIER: Madam Hearing Officer,
14 just a couple of housekeeping matters. First of all,
15 I'm the one saying it, but all counsel here deserve
16 credit. We reasonably forecast that we will be done
17 next week. There will -- no overlap and probably
18 we're going to be done before Friday. Things depend.

19 If NMOGA -- I -- like I said, I'm
20 pleased to be able to take the credit, but it goes --
21 the credit is deserved to Commissioner Ampomah all
22 throughout -- all counsel. If NMOGA ends tomorrow, I
23 am prepared to open. I also have my first two
24 witnesses lined up to prepare -- to testify if we have
25 that much time.

1 If for some reason we're not at five
2 o'clock after my second witness tomorrow, I don't have
3 my third witness or another witness lined up, we will
4 be finishing early. And I just want to advise the
5 commission and you, Madam Hearing Officer, that I'll
6 be requesting early adjournment if that comes to pass,
7 so --

8 THE EXAMINER: Thank you for that.

9 MR. CLOUTIER: And I've talked with all
10 counsel and I think everybody agrees, so --

11 THE EXAMINER: All right. Thank you,
12 Mr. Cloutier, for that.

13 All right. Let's see. Mr. Suazo, you
14 are 44 minutes into Mr. McGowen's direct by my record
15 keeping.

16 MR. SUAZO: That is consistent with our
17 timer as well.

18 THE EXAMINER: Okay. Thank you.

19 MR. SUAZO: Thank you, Madam Hearing
20 Officer. Mr. McGowen is back on the stand.

21 WHEREUPON,

22 HAROLD MCGOWEN,
23 called as a witness and having been previously sworn
24 to tell the truth, the whole truth, and nothing but
25 the truth, was examined and testified as follows:

1 DIRECT EXAMINATION

2 BY MR. SUAZO:

3 MR. SUAZO: Mr. McGowen, good morning.

4 MR. MCGOWEN: Good morning.

5 MR. SUAZO: So we left off yesterday
6 after you'd finished -- well, we're going to start
7 with the proposed new classification of marginal wells
8 and financial assurance obligation. So starting with
9 your slide 23, can you please explain -- sorry. Can
10 you please explain the importance of marginal wells?

11 MR. MCGOWEN: Well, many marginal wells
12 are maintained for reasons that go beyond short-term
13 volume. And one of the big ones is strategic lease
14 retention. And -- and that's important from the point
15 of view of operators that are trying to bring capital
16 to develop new reserves. So running room is critical.

17 Once you test an idea, you really need
18 a -- a place to go continue to use that idea. So you
19 don't want to take the risk to prove up a new concept
20 in an area and then not have anywhere to go with it,
21 'cause that's how you spread out the risk. 'Cause
22 you -- this is a risk-based business. 'Cause anytime
23 you try something new, it's -- there's risk involved.
24 So the -- the lease retention is a part of that. I
25 can go into that more later, but --

1 Pressure support and is, you know,
2 future candidates for EOR projects, of course. In EOR
3 context, these wells may become ejection wells, pilot
4 wells for reservoir evaluation. There's also types of
5 huff and puff, what they call it, EOR. And I can talk
6 about that later. I've done some of that in my
7 career.

8 Additionally, maintaining marginal
9 production can preserve access to the subsurface
10 estate, keep -- keep the lease -- keep the leases
11 active. Something that's really important when you go
12 into a play if you're bringing capital is are -- do I
13 have the leases? Do I have the right to drill here?

14 And once you go into a play and -- and
15 things start to heat up a little bit, it's really hard
16 to put those units back together if they fall apart.
17 So that would be important to folks trying to bring
18 capital.

19 For many operators, particularly small
20 and midsize independents, marginal wells are -- are
21 the backbone of sustained cash flow. So marginal
22 wells and stripper wells account for a significant
23 share of U.S. oil and gas production. My focus I'm
24 trying to bring from my point of view in my career is
25 really the opportunity loss that might go with that

1 and -- and the importance of just considering that
2 in -- in making these patients.

3 MR. SUAZO: Very good. And moving on
4 to your slide 74. What is the new definition of
5 marginal well that is under consideration?

6 MR. MCGOWEN: Oil or gas well that
7 produced less than 180 days and less than 1,000 BOE
8 within a consecutive 12-month period.

9 MR. SUAZO: Okay. And what risks does
10 this threshold for what are deemed or to be
11 considered -- proposed to be considered marginal that
12 are present?

13 MR. MCGOWEN: Well, the -- the
14 situation that I'm trying to -- to visualize is I'm --
15 I'm thinking of myself coming into this situation as
16 an operator. And I can think of examples in my career
17 where this would have actually eliminated a lot of my
18 candidate wells before I even got started with my
19 project. So that's one of my big concerns here.

20 And it's not necessarily this in
21 isolation. It's more about how this interacts with
22 all the other -- all the other changes to the rules,
23 'cause it -- I'm -- I'm trying to understand how all
24 these interact, and coming at it as an operator, not
25 as an attorney, and realizing that it's like a

1 computer program. If I change one thing here, it's
2 got an impact somewhere else.

3 So, you know, the -- the exact numbers
4 are not that important to me. It's more about how
5 that works with all the other changes to the rules.

6 MR. SUAZO: Okay. So based on that
7 insight, what is your bottom line recommendation to
8 the commission with respect to this proposed marginal
9 well definition?

10 MR. MCGOWEN: Well, New Mexico has all
11 kinds of different wells and it's got many marginal
12 wells that could serve long-term strategic functions,
13 and -- and maybe already do. Also noted in Dan
14 Arthur's testimony, the proposed definition, when
15 you're trying to flag uneconomic wells risks sweeping
16 in a number of wells that would be productive or -- or
17 could be productive and are strategically maintained.

18 So again, I -- I think I've said this
19 multiple times, but, you know, I'm not -- I'm not at
20 all against what everybody's trying to do here.
21 That's not what I'm trying to say. What I'm trying to
22 say is that let's just think about what might be
23 unintended consequences from this -- these many
24 changes this fast.

25 MR. SUAZO: All right. So let's move

1 on to the restrictions on operator registrations and
2 changes of operator. We're going to skip some slides
3 and just go on to your analysis slide. What are the
4 problems and potential impacts of the proposed changes
5 to operator registration and transfers?

6 MR. MCGOWEN: Well, I've -- I've never
7 seen anything like this before. So as an operator,
8 I'm trying to understand how -- again, I'm not an
9 attorney so I don't understand how New Mexico can then
10 reach into regulations from other states.

11 And then you could have something going
12 on in another state that's not particularly egregious
13 that ends up holding up your deal, you lose your
14 capital backing, you lose the deal, so you're not able
15 to get -- you know -- deploy capital.

16 So I'm -- I'm just concerned about
17 that. I've never seen that before. I understand
18 trying to make sure that you're not working with bad
19 actors, that you don't want bad actors coming to the
20 state. So I'm -- I'm not saying you shouldn't figure
21 out a solution, but that -- that delays operator
22 transfers.

23 And, you know, I -- I have sold assets
24 in the oil and gas industry and transferred them to
25 the next operator. On Navidad Resources, LLC,

1 basically we peeled wells out that needed to be
2 plugged and -- and we transferred the other assets to
3 the new operator. And then I actually went out
4 personally and plugged the wells.

5 So, you know, I'm all for taking care
6 of your stuff and cleaning up your -- your mess. I'm
7 just not sure how this -- whether this would've a
8 chilling effect on capital formation for folks that
9 are trying to come in and do future development.

10 MR. SUAZO: All right. Very good. And
11 in the interest of time, we're going to jump to slide
12 82. Slide 81 has a comparison of -- with some other
13 jurisdictions. But on slide 82, can you kind of go
14 into greater detail on why these proposed changes are
15 further problematic?

16 MR. MCGOWEN: Well, I was thinking
17 about a scenario where you had -- let's just say
18 there's an operator that -- that has an idea of what
19 they think they can do with a particular property.
20 And I'm visualizing a property that's probably
21 vertical wells with a number of inactive wells and
22 some marginal wells. Maybe it's a couple of hundred
23 wells.

24 So they -- as they come into the --
25 into the project, they would need to gather and

1 certify P&A plans for every inactive well across all
2 their states, I guess, is the way I'm reading it. I
3 mean, you know, I'm not an attorney again, but I'm
4 just trying to understand what it says. And then they
5 would have to -- to get their status approved in New
6 Mexico.

7 So -- so, you know, the way that Texas
8 treats the marginal wells is -- is very different.
9 And inactive wells, they've actually have some
10 incentives. I want to talk about -- a little bit
11 about that later. But they have incentives to try to
12 preserve those wells, so they have a different -- a
13 totally different philosophy.

14 So I just -- I just -- having raised
15 capital, and that's not easy to do, you need to -- you
16 know -- I've gone -- worked with private individuals
17 who put in capital, but I also worked with industry
18 partners and I also worked with private equity.

19 So you've got to be able to walk in
20 there with a -- with a plan that you could execute
21 that says there's a high probability that you could
22 execute that plan. So anything that we would refer to
23 in the industry as hair on the deal, like dropping
24 your lollipop in a -- a barbershop, that would -- that
25 would be a big problem.

1 And so you -- you might not ever -- not
2 ever get your -- your project off the ground to bring
3 capital to increase production, which has all the
4 benefits that -- you know -- that New Mexico.

5 MR. SUAZO: So moving on to, I guess,
6 your assessment of the practicality of the proposals.
7 On your slide 83, in your opinion, is it even feasible
8 for a seller to certify the buyer's compliance across
9 various jurisdictions?

10 MR. MCGOWEN: I would think it's -- I
11 mean, it's not in all cases, but it could be some
12 minor thing that you've got going on that you're
13 trying to deal with. And it's -- it would hold up
14 your -- your whole project and hold up your -- your
15 capital formation.

16 So again, I'm not saying that you
17 shouldn't try to root out the bad actors. I'm not
18 saying that. I'm just a little concerned that this is
19 a -- a big -- a big overreach and it might have
20 unforeseen consequences.

21 MR. SUAZO: All right. Let's move on
22 to your overarching recommendations that are part of
23 your direct testimony. Can you walk us through these
24 recommendations please?

25 MR. MCGOWEN: Well, the -- the use of a

1 rigid production number to -- to figure out whether
2 the well has any future value is, as far as I can
3 tell, completely arbitrary. It's not science based.
4 It's not economic based necessarily other than you
5 think maybe the wells might not be producing in paying
6 quantities.

7 But it's -- it's a completely arbitrary
8 number, but it's not based on any science or any
9 future potential or any opportunity loss that's
10 included in that. I -- I would recommend preserving
11 and strengthening the existing temporary abandonment
12 program.

13 Now, again, I've learned a lot from
14 being in these hearings and listening to everybody,
15 and I've tried to internalize all that as we've gone
16 through this. So I -- I'm not saying you don't have a
17 problem that needs to be solved. And I don't -- and
18 I'm not saying the industry shouldn't clean up its
19 mess. And I can talk a little bit more about that
20 later.

21 But I'm very passionate about the
22 industry cleaning up their mess actually. 'Cause the
23 bad actors make the rest of us look -- look bad. I
24 think you should use the pressure testing to serve as
25 the primary means of demonstrating mechanical

1 integrity. That's a reliable way to do it.

2 That -- you -- you don't have any
3 mechanical risk by going back into the well and -- and
4 trying to do things that -- that -- where you might
5 end up with a phishing job. So -- and then use your
6 logging when you need to use it, when you see an
7 indication of a problem or -- or age or there's some
8 other indicator that's, you know, first principles
9 engineering based to -- to get that additional cost.

10 I -- I was thinking about it this way.
11 It's sort of like -- what they figured out about
12 getting colonoscopies is they figured out, well, maybe
13 we shouldn't do these so often 'cause every once in a
14 while we kill somebody when we do this. So maybe
15 there's a -- a -- you know -- a practical limit here.

16 I would adopt a risk-based bonding
17 framework. And again, I've talked about this a little
18 earlier. You know, corrosion is dependent upon the
19 age of the well and the fluid system in the well. And
20 whether you -- whether you've used corrosion inhibitor
21 throughout the life of the well, whether you -- you've
22 done a good job of your corrosion inhibition. These
23 are things that are -- these are all known technology
24 and science. Okay. And then the well type,
25 basically.

1 Now, the depth, yeah, you can figure
2 that in, but that's -- the reason you've got this
3 skewed data. And I do think maybe that's why we're
4 seeing all these different estimates of what it cost
5 P&A a well is 'cause we're dealing with different
6 populations that have different -- and, you know, in
7 statistics we might call that a bimodal population;
8 right?

9 So -- so I think there's some more
10 statistical work that needs to be done to figure out
11 exactly what's driving the -- those -- those big
12 outliers. I would do some root cause analysis on
13 those outliers and try to figure out, well -- well why
14 did this happen? Why didn't I spend 5 million bucks
15 to plug this little bitty well? I've got a feeling it
16 was probably from a phishing job and maybe some --
17 some contamination of the groundwater or something
18 like that, but -- so risk-based bonding.

19 Collaborate with the industry to define
20 realistic cost benchmarks. And somehow everybody
21 needs to come to a conclusion about what it really
22 costs to plug these wells. And really, going forward,
23 what's it going to cost in the future. So if
24 you're -- if you're looking at ancient wells with a
25 lot of corrosion problems and bad cement and bad

1 practices from the '20s, the '30s, the '40s, the '50s,
2 that's a whole different world than modern completion
3 systems and the way people complete wells.

4 Particularly the way people are
5 drilling horizontal wells. We just are better at
6 these things. We've got better quality materials,
7 better equipment, and people know what they're doing
8 better than they used to, so -- and figure out some
9 way to do a responsible operator transition. Just
10 encouraging; okay?

11 I mean, obviously everybody -- you
12 know -- the state has its goals and I appreciate what
13 everybody's trying to do. Nobody dislikes bad
14 operators more than I do; okay? So here's what I
15 would say about that is -- is if you could figure out
16 a way to -- to make sure you don't have bad actors
17 coming in, but not chill capital formation and -- and
18 don't chill acquisitions.

19 Or you're bringing people in to fix all
20 your problems that have the money to do it. So you
21 don't want to run them off into a different state.
22 You want them to come to New Mexico.

23 MR. SUAZO: Thank you, Mr. Morgan
24 [sic]. And on your final slide, you know, I think in
25 your direct, you've raised some important, you know,

1 context and, you know, recognize the difficult
2 position that the commission and -- and industry is
3 in. Can you touch on, you know, the big picture of
4 your expert opinions for your last slide, please?

5 MR. MCGOWEN: Well, I -- I -- first
6 off, I want to say I applaud what -- what the OCD is
7 trying to do. I -- I think they're working hard to
8 solve this problem, and that's a great thing. But we
9 need to figure out a way to not throw out the baby
10 with the bath water.

11 So something else to think about is
12 that the oil and gas companies are also taxpayers and
13 then their employees are taxpayers and the service
14 companies that -- that work with them are all folks
15 that are making money by having jobs in New Mexico.
16 So all of that we need to keep up; right? Job
17 creation and economic growth.

18 And then we need to figure out a
19 constructive way to work together. And throughout my
20 career, I've always tried to strive for a win-win
21 proposition. And if there's any way that -- that we
22 can all get there, that would be fabulous. I think we
23 could -- it's possible.

24 So if you could come up, you know, with
25 rules that are intended to support the New Mexico's

1 mission while safeguarding long-term viability of
2 responsible oil and gas development, that would be
3 my -- my recommendation. And I -- we'd be happy to
4 entertain -- I've got all kinds of ideas about things
5 that could be done, but that wasn't really part of my
6 scope of work.

7 MR. SUAZO: Understood. Well, thank
8 you for your direct testimony. We're going to move on
9 to your rebuttal testimony starting with slide 88.
10 What are some of your overarching concerns with the
11 applicants' case as articulated by their various
12 witnesses and other experts in their direct testimony?

13 MR. MCGOWEN: I think what -- listening
14 to everybody and listening how this has all gone so
15 far, it's -- it seems like we need to do a better job
16 of scrubbing this data and really get down to brass
17 tacks about, well, how many orphan wells do we really
18 have? How many inactive wells do we really have?

19 I mean, I'm hearing different estimates
20 from different folks. Everybody's working hard, these
21 are all smart people, but I know from my -- my own
22 experience, I've done a lot of projects where I -- I
23 looked at huge databases, like, an entire field,
24 thousands of wells, and I know how hard it is to scrub
25 the data.

1 Sometimes the quality of the data's not
2 that good. So it takes time and effort to go in and
3 scrub the data and get a good answer. So I would say
4 that that's what I'm speaking to on number one,
5 really.

6 And then the next thing would be, I --
7 I was really baffled by this idea that speculative is
8 now a dirty word because, as I think I said before,
9 I -- I've been doing speculative things in the oil
10 patch for 40 years. Every advance that we've ever
11 made in the oil and gas industry to find new ways to
12 extract oil and gas and create energy independence for
13 this country so we aren't dependent on, you know,
14 foreign powers has been speculative.

15 Every -- you know -- I can -- I can
16 give you multiple examples where somebody had a
17 hypothesis and they needed to test that hypothesis and
18 you need a bit of running room. So -- so the -- the
19 applicants' experts, I realize what they're trying to
20 do. They're trying to get this thing into a box and
21 make it really easy to figure out.

22 The -- the problem is, is this is a
23 messy industry in more ways than one. One of the ways
24 it's messy is that it's dark down there. We don't
25 exactly know what we're dealing with downhole. And

1 with all the tools we have, we still are -- those are
2 all indirect measurements. Those are not direct
3 measurements. So we're having to take this data and
4 try to figure out what we think that means.

5 And we also don't necessarily know how
6 a technology used one area will work in another area
7 because mother nature gets a vote and hers is the only
8 one that counts; right? So you have to figure this
9 out by trial and error. So that's a speculative
10 process necessarily.

11 So I -- I think we need -- if some --
12 if there's any way that -- that the parties can figure
13 out how to deal with that issue, not to squelch
14 innovation and capital formation and value creation,
15 and at the same time protect the environment, that's
16 critical.

17 So now, driving the small operators out
18 of business inadvertently maybe or even inadvertently
19 is a slippery slope. 'Cause you might end up with a
20 bunch of folks just handing you the keys and walking
21 away and leaving you with more problems than you
22 anticipated you were going to have.

23 So it's going to be a shock to the
24 system if you do -- for what I'm seeing, it feels like
25 it's going to be a shock to the whole system. And you

1 may have folks that just end up pulling up their tent
2 and leaving you with a problem. So that's certainly
3 not something that anybody wants.

4 MR. SUAZO: Thank you. And moving on
5 to slide 89. Did you identify any errors or
6 inconsistencies and issues with Applicants' P&A cost
7 data that they've based their estimated average well
8 P&A costs and financial assurance changes on?

9 MR. MCGOWEN: Well, I looked at the
10 Moss database and I did my best to -- my best to
11 double and triple check it, my analysis, and I just am
12 coming up with a bit different set of numbers. You
13 know, I came up with about 128,000 versus the -- I
14 think it was 160-something.

15 And then there's -- again, this is a
16 data scrubbing issue; right? You -- you really need
17 to go in there and make sure that -- and that may take
18 a little time and some effort, and maybe more than one
19 party can work on it together to try to make sure the
20 scrubbing is done correctly. But you don't want to
21 double count, and --

22 I mean, it's a complicated problem and
23 it's a lot of data. So, you know, I appreciate that
24 it's not easy to get the right answer off -- right off
25 the bat.

1 So now, it -- I -- what I'm seeing is,
2 and what I understand, is that those orphaned wells,
3 well, those are going to be some of the worst
4 operators. I've looked at orphaned wells. I --
5 recently, I went out and I was looking at orphaned
6 wells to see if maybe I could take them over.

7 And I went and on -- went on site,
8 looked at all those wells and examined them and -- and
9 looked at, you know, how they ended up being in the --
10 in the process. Well, I could see that that operator
11 was not a very good operator. And that's not the
12 first ones I've looked at.

13 So, you know, that -- it -- it ends up
14 making a -- a biased data set is my point. So again,
15 if you could figure out, well, how do I -- how do I
16 sort out the really bad ones, figure out what that's
17 going to cost? And then figure out, well, what's the
18 rest of this data set -- what are these going to cost?
19 So that would be my -- that's just my recommendation
20 from an engineering analysis point of view.

21 I understand what -- what Mr. Purvis is
22 trying to do with the holdback concept. I'm not
23 totally sure how it informs the process. I mean
24 it's -- I think it's a little bit obvious that, yeah,
25 eventually there's not enough juice left for the

1 squeeze.

2 But the thing that I don't see in there
3 as part of that is the -- the -- what about the
4 opportunity loss? Let's not forget that. 'Cause
5 that's been my job for 40 years, is to try to look for
6 opportunities and then execute on those opportunities,
7 so --

8 And again, you know, there's -- there's
9 this issue of, well, what -- who are the contractors
10 that you're working with in New Mexico? What are the
11 problems you're dealing with in New Mexico? Probably
12 a data set from New Mexico would be -- would be very
13 helpful.

14 I was thinking too, I would -- if I was
15 going to do this on my own, I would probably want
16 to -- I would start with a -- a procedure under the
17 new rules, whatever that is for -- for, you know,
18 whatever you're doing, plugging your temporary
19 abandonment. I'd figure the cost on that. I'd build
20 up an AFE, an authorization for expenditure, like --

21 And then what we normally do in the
22 industry is we figure out there is a trouble free
23 number and then there is a contingency you apply to
24 that. There's a percentage that you apply. That's
25 based on a statistical analysis. So I -- I think I

1 would borrow from that -- that practice in the
2 industry and try to figure out a way to come up with
3 what the cost ought to be.

4 MR. SUAZO: To your knowledge, is
5 Mr. Purvis's holdback theory any sort of industry
6 standard?

7 MR. MCGOWEN: I'd never heard of it
8 before, and I -- and I don't see it built into the
9 various economic models, but -- I mean, I understand
10 what he's trying to get at. So I'm -- I'm not
11 throwing rocks at him on that. I'm just saying that
12 it's not really something that's widely used in the
13 industry.

14 MR. SUAZO: Now, let's stay on the
15 financial assurance and P&A costs on your slide 90.
16 What are your closing thoughts on whether the \$150,000
17 flat fee for bonding represents the reasonable cost to
18 P&A a well?

19 MR. MCGOWEN: I'm sorry, could you say
20 the question --

21 MR. SUAZO: Yeah. What are your
22 thoughts on whether the \$150,000 flat bonding fee
23 represents a reasonable cost to P&A a well?

24 MR. MCGOWEN: I understood that was
25 the -- the 150 is the per well bonding; right?

1 MR. SUAZO: Yes.

2 MR. MCGOWEN: Not a flat. Yeah. So
3 well, this is where I'm -- this is where some of my
4 confusion has come in in looking at all this
5 information; right? Is you -- you've got this factoid
6 here that -- that The New Mexico Oil and Gas Justice
7 and Reform Act, they showed that they thought that the
8 P&A cost was \$70,000 a well.

9 And then when we look at the dataset
10 from the orphaned wells, we see a much higher number.
11 Well, that really doesn't surprise me; right? Because
12 if you've got a total average across all plugging
13 across the larger population, and then you've got a
14 biased sample of the worst wells, well, I would expect
15 the worst wells to have a higher number. So again, we
16 all -- everybody needs to figure out what is the real
17 number we ought to be dealing with and what's it based
18 on.

19 Now, there's also this issue of this
20 hard cap of a \$250,000 blanket financial assurance.
21 Something that I've been really struggling with is
22 this 15 percent cliff where -- I'm just visualizing
23 I'm the operator, and I'm thinking I've got my
24 financial assurance all figured out. And then I have
25 something happen where I lose some of my -- my wells

1 go offline. And it triggers.

2 It -- it feels like what you end up
3 with is a -- a de facto -- like, a -- you know --
4 could be a \$15 million blanket 'cause you had to do it
5 on every well. So essentially it becomes a blanket on
6 all your wells. That -- that -- this seems a little
7 terrifying when I start thinking about doing -- if I
8 was doing planning as an operator. So if -- if
9 there's some way to soften that or do something
10 different with that, I -- I would recommend taking a
11 look at that.

12 Now, Arthur and Emerick, they talked --
13 they -- they had some persuasive discussion. I
14 learned a lot by listening to those folks. And I've
15 learned a lot from listening to both sides, by the
16 way. I -- I would say that, again, this is more of
17 a -- a let's try to base this bonding on -- on some
18 sort of realistic number.

19 If there's a -- you know -- if I know
20 what the actual cost is going to be, let's -- let's
21 use that number. That's what I would say.

22 MR. SUAZO: Very good. Let's move on
23 to your Appendix A. And I think you have some
24 interesting observations you'd like to share starting
25 on slide 91. And I'm going to let you walk through

1 this slide and also let us know when you want to
2 transition to the next sets of slides, just because
3 they're more or less related.

4 MR. MCGOWEN: Okay. Well, I just
5 looked at this one area. I didn't -- didn't look at
6 everything in the state. But what I was trying to get
7 across here is -- you'll notice that there's kind of
8 a -- this is land tract unit by trajectory. So
9 there's kind of this purple -- well, that's acreage
10 that eventually became horizontal acreage.

11 And then you see the little -- the
12 little yellow dots. Well, those are vertical wells.
13 So this was 1960 to 1990. Now, we knew how to do
14 hydraulic fracturing back then. What we didn't know
15 was all -- what we didn't have was all the enabling
16 technologies.

17 So somebody said something about we've
18 been doing hydraulic fracturing since 1950. Well,
19 sure, but we've done a lot of innovating and a lot of
20 thinking and a lot of figuring and a lot of patent
21 work in the intervening years. So for example, the
22 composite bridge plug, away from cast iron bridge
23 plugs. I was a expert for Halliburton defending
24 their -- their composite bridge plug patent when it
25 first came out.

1 Well, that was a huge deal. It doesn't
2 sound like much, but you can drill the thing up in a
3 few minutes and it turns to mush and you can wash it
4 out of the well versus something that you may not be
5 able to get out of the horizontal ever. So just one
6 example.

7 So what you're looking at here is this
8 is pre -- pre-enabling technologies for horizontal
9 multi-stage hydraulic fracturing. Okay. Go to
10 the -- go to the next one. And you see there's some
11 more vertical wells that pop up. Next slide.

12 And the -- you start seeing some purple
13 show up here. So this is where somebody looked at
14 what was going on in other parts of the -- of the
15 world; okay? For example, Texas. And they went,
16 "Gee, I wonder if this technology will work in New
17 Mexico?" That would've been speculation at that
18 point; right? Because -- though we'd done it before.
19 And mother nature gets the vote; right? So go to the
20 next slide.

21 Ah, but, aha, the first guys that went
22 in there, they got it to work. And somebody said,
23 "Well, could it work over here"; right? So they
24 started moving and testing and moving and testing,
25 pilot testing and moving. Go to the next slide. Is

1 there -- is there another slide? There you go.

2 So what I did is I zoomed in. And one
3 of the big things everybody didn't know that they've
4 been trying to figure out is what's the spacing going
5 to be between these horizontal wells; right? Because
6 nobody really knew that. And they still are trying to
7 figure that out today; okay? I've been to multiple
8 conferences on this recently.

9 And so that tells you how much resource
10 is available, so -- and you notice there's vertical
11 well sprinkled in here. They're doing things like
12 pressure monitoring. They're using them for -- you
13 know -- you can run micro seismic phones in those and
14 figure out where the rack's going. So they're -- you
15 know -- there's utilization there that's potential.

16 So I was just trying to point out, just
17 reminding everybody, how did -- how did New Mexico
18 become this powerhouse in production? Well, it was
19 through speculative use of vertical properties
20 that's -- that held the acreage, allowed capital
21 formation, and then allowed innovation to occur.

22 And allowed you to basically have a
23 pilot program. I can test my idea, walk my way
24 through it with iteratively gaining information.
25 That's the engineering design process.

1 MR. SUAZO: Now, let's move on to your
2 Appendix B where you provide some redevelopment
3 examples and some comparative analysis. What did your
4 analysis reveal?

5 MR. MCGOWEN: Well, basically in a
6 nutshell, I went through and -- and just looked at --
7 did some research and to think about, "Well, how did
8 all this stuff that I just showed you on that slide
9 happen?" Okay. Well, why don't you just go to the
10 next slide? I can talk about some of the -- the
11 particular deals.

12 You can see all these deals right here.
13 So some of these -- some of these might have been
14 publicly traded companies and some of these -- so
15 they're raising their money from the public. Some of
16 these are companies that are private equity backed.
17 But somebody needed to bring capital to make this
18 happen.

19 So they want to know that when they
20 into that area, they're going to be able to go develop
21 this stuff. And they're going to know that -- that
22 all of their opportunity set isn't going to evaporate
23 on them before they even get their idea tested. So
24 just think of the amount of capital that's brought in
25 here.

1 Now, am I saying that they shouldn't
2 clean stuff up? No. Just want to make that perfectly
3 clear. I'm saying every -- you know -- the industry's
4 got to clean up its mess. But let's not throw the
5 baby out with the bath water.

6 MR. SUAZO: Very good. Next slide,
7 please.

8 MR. MCGOWEN: And really, this is just
9 walking you through some -- some examples of -- of how
10 folks leveraged the existing infrastructure. And from
11 a long-term speculator, when I see an old well, I
12 immediately look at it and think, "What could I do
13 with this thing that I could get cheap and then turn
14 it into something great?" 'Cause that's been what
15 I've done my whole career.

16 MR. SUAZO: So I guess moving on to
17 slide 103. In summary, what is your Appendix B
18 intended to show the commission?

19 MR. MCGOWEN: I'm just trying to remind
20 everybody of how New Mexico got to be this powerhouse,
21 and, you know, they're -- what is it? -- number two in
22 the country now? That's a big deal. And it's -- it's
23 great for the country, it's great for New Mexico.
24 Obviously there's problems.

25 And a lot of those problems are -- are

1 from things that happened a long time ago and folks
2 didn't do things the way they should have before even
3 some of these regulations existed. So yes, got to
4 clean that up. But let's not throw the baby out with
5 the bath water. I'm sorry I keep saying that, but --

6 MR. SUAZO: Understood. Well, thank
7 you for that. I know if the commission has any
8 questions for you related to these case studies you've
9 provided, you'd be glad to answer them.

10 That concludes our rebuttal testimony.
11 We don't have surrebuttal slides, but we do have some
12 surrebuttal questions and comments, so we're going to
13 move on to that.

14 Mr. McGowen, did you have any comments
15 with respect to the questioning of Mr. Dan Arthur
16 regarding the treatment of marginal wells under
17 federal law?

18 MR. MCGOWEN: Well, I got to thinking
19 about that 'cause I was a little confused.

20 MS. FOX: Objection. How is this
21 surrebuttal?

22 MR. SUAZO: Because -- well, it's in
23 response to your --

24 THE EXAMINER: He's responding to
25 Mr. Arthur's testimony. Is that what you said?

1 MR. SUAZO: The questions to
2 Mr. Arthur's testimony from cross.

3 MS. FOX: So he's surrebutting his own
4 witness testimony. That's not surrebuttal.

5 MR. SUAZO: No. He's surrebutting the
6 questions that were asked on cross.

7 MS. FOX: That still is not
8 surrebuttal. You need to -- surrebuttal is
9 rebutting -- and this is in the procedural order.
10 Surrebuttal is rebutting rebuttal testimony from
11 another witness.

12 THE EXAMINER: Right.

13 MS. FOX: You don't surrebut questions.

14 MR. SUAZO: I will ask him how that
15 pertains to WELC's witnesses on the marginal well
16 issue.

17 MS. FOX: The procedure order is very
18 clear with surrebuttal, and the hearing officer has
19 also been very clear on a number of occasions about
20 surrebuttal. And that is in order to introduce
21 surrebuttal, you need to identify the specific
22 rebuttal that is being surrebutted.

23 THE EXAMINER: So whose rebuttal
24 testimony would he be surrebutting on the marginal
25 well issue, Mr. Suazo?

1 MR. SUAZO: It would be
2 Mr. Alexander's.

3 THE EXAMINER: Mr. Alexander's. Okay.

4 MS. FOX: Then I would just ask that
5 you identify the rebuttal testimony from Mr. Alexander
6 by page number and what the substance of the testimony
7 is so that we know that it's proper serve.

8 MR. SUAZO: Sure.

9 THE EXAMINER: Okay.

10 MR. SUAZO: See if I can find that.
11 Give me just a sec. Let me come back to this question
12 and we'll move on to the other surrebuttal questions
13 we have.

14 BY MR. SUAZO:

15 MR. SUAZO: Mr. McGowen, what is your
16 response to Applicants' expert, Thomas Alexander's
17 indication that operators are constantly monitoring
18 wells somehow means the operators would not need a lot
19 of time to rebut the proposed presumption of no
20 beneficial use?

21 MR. MCGOWEN: Okay. So the -- the flaw
22 I see in that reasoning is -- you know -- yes, you're
23 monitoring production. So let -- let's just give
24 an -- I'll give you an example. If -- if I were to
25 start off with a project that I'm working on

1 currently, so what I'm looking at doing is going into
2 a field that -- that was -- has legacy wells and I
3 want to apply a stimulation technique that's never
4 been done before.

5 What I want to do is actually want to
6 stimulate two dual opposed, open hole, lateral,
7 horizontal wells that are parallel to each other. And
8 then I want to -- I'm going to do this basically with
9 just water. And then shut the wells in, allow the
10 water to imbibe into the matrix, push oil into the
11 fractures.

12 So now, nobody's ever done that in this
13 field. Now, I've done that similar things in other
14 places and I'm borrowing ideas from the Permian, from
15 my -- my -- I'm borrowing ideas from, like, the 1990s,
16 and I want to go try that.

17 So if I want to try that, I'm not going
18 to go -- there's -- I'm -- I'm making a deal right
19 now. It's taken about a year to negotiate, but I'm
20 about to get the deal done. Where I would work with a
21 bigger operator, and I'd bring the technology and the
22 ideas, and they -- they'd bring part of the capital.

23 So in that situation, they've got about
24 50 wells. So I think I've got 50 candidates for this.
25 It's a combination of restimulation and hand soil

1 recovery. So the issue is that, well, I'm not going
2 to go try -- I don't want to go try this on just two
3 wells and then have me -- you know -- I'm kicked out
4 of the program. Neither did they.

5 Also, we don't know if it's going to
6 work or not. Now, I've got good science to support
7 that, but there would be many people who disagree with
8 me and nobody else has tried it in this field, and the
9 field's been around since the '90s, so -- why did
10 nobody else try it? Well, nobody else has my
11 particular experience set. I'm not that smarter than
12 anybody else. I just have a different experience set.

13 So in that case, I can imagine where my
14 legacy wells -- what if I end up having to plug those
15 out before I can actually get around to proving it up?
16 So I've got to convince -- it's taken me about a year
17 to negotiate the deal, and then it's going to take me
18 time to go form capital. And then I've got to execute
19 the first wells.

20 And then that's going to take at least
21 six months, maybe a year before we actually have
22 enough production data to go, "Well, I've got a --
23 I've got a reliable ultimate recovery and I can
24 project economic analysis on just these two." Well,
25 now I need to do a couple more and a couple more. I

1 need a statistically significant set for anybody to
2 want to pour a lot of capital into it. And then we
3 might go into a mode where we -- we do a bunch of
4 these.

5 So in that particular case, what would
6 be a horrible thing for us to have happen would be
7 that we end up having to plug out our wells because we
8 had to go to a regulatory body that doesn't -- they
9 don't believe my story. Well, it's not unusual for me
10 to find that if I have three petroleum engineers, I
11 have five opinions; okay?

12 So that's -- that's -- we can't agree
13 on anything hardly. And I've had many things happen
14 in the past. I've had the top reservoir engineer in
15 Houston -- and I won't give you -- I won't name this
16 person, but he's much more respected as a reservoir
17 engineer than I am. He totally got a project -- he
18 totally got analysis wrong on -- on my -- my company
19 with Navidad Resources.

20 He thought my -- my prospect was 160
21 acres. It ended up being a 83,000 acres. So he's
22 just a little bit off. Why was that? Well, it's
23 'cause I had a different point of view, a different
24 idea of what might work. So I was speculating at that
25 point with a hypothesis.

1 So that's what I'm trying to get across
2 is it's not cut and dry. The -- the presentation that
3 this is sort of like an accounting function, and
4 innovation doesn't play a role, and risk doesn't play
5 a role, and trial and error doesn't play a role.
6 Well, that's -- that's just not how it works. That's
7 not how you find oil and gas.

8 MR. SUAZO: And do you have any other
9 examples where production has been increased from
10 what -- under what's proposed would be considered low
11 producing or marginal wells?

12 MS. FOX: Objection. It's not proper
13 surrebuttal.

14 THE EXAMINER: What is he surrebutting,
15 Mr. Suazo?

16 MR. SUAZO: I'm just asking him to
17 follow up on what he just said, Madam Hearing Officer,
18 which is proper surrebuttal.

19 THE EXAMINER: So you're asking him for
20 another example of what he was saying to surrebut
21 Mr. Alexander's testimony?

22 MR. SUAZO: Correct.

23 THE EXAMINER: All right. Go ahead.

24 MR. MCGOWEN: There's some further
25 evidence. I can give you example from when I was at

1 Union Pacific Resources and then at Trinity Resources.
2 So at Union Pacific, I was part of a team of
3 engineers, this is when I was in my 20s, that we -- we
4 figured out a way to go restimulate wells in the
5 field. So we did a few wells.

6 And then Trinity Resources hired me as
7 engineering manager to work for them. And that was my
8 only job was to go take old wells, inactive wells or
9 marginal wells that -- that had very little value at
10 that point, and apply this -- this technique. Now,
11 why didn't everybody else go do this? Well, they had
12 a different point of view.

13 Also, the way this works is all the
14 other operators -- it's -- it's, like, who's going to
15 go skinny dipping; right? You know, somebody's got to
16 jump in first. Everybody else is sitting on the edge
17 of the pool waiting to see who's going to jump in.
18 And then once they see your results, well, then, now
19 they'll -- they'll put their capital to work.

20 But somebody has to be the pioneer and
21 somebody has to go try it. So what I did in that case
22 is I screened the entire field, 4300 wells. I wrote a
23 computer program to do this. Looked at all the -- the
24 wells that had been stimulated before, and then went
25 in and tried to -- tried to buy properties.

1 So in that -- that case, a lot of those
2 properties were really poor properties that I think
3 probably would've been forced to have been plugged.
4 There were operators that were sitting on them for a
5 long period of time. And they didn't know what to do
6 with it and they didn't have the capital to -- to do
7 anything with it, so --

8 The -- when you -- when you describe
9 the process that, well an operator's -- it's going to
10 be easy to figure all this out, it's like you're
11 calculating your -- your tax return or something, that
12 isn't how it works. It's an iterative process. I can
13 give many examples throughout my whole career of -- of
14 why that's not true.

15 So that would be my comment. That was
16 my only thought about that one topic that -- that
17 Mr. Alexander talked about.

18 BY MR. SUAZO:

19 MR. SUAZO: So then how does limiting
20 beneficial use to nonspeculative purposes hurt
21 entrepreneurs in the industry?

22 MS. FOX: Madam Hearing Officer.
23 Objection. It's improper surrebuttal. He really
24 needs to identify -- otherwise this surrebuttal could
25 go on for a long time. He really needs to identify --

1 and you have been very clear in our hearing conference
2 and in this hearing that you need to identify the
3 witness testimony that is being surrebutted, and other
4 parties have done that throughout this hearing.

5 THE EXAMINER: Mr. Suazo.

6 MR. SUAZO: So I think, you know, to
7 some degree that's true, but on the other hand, you
8 know, beneficial use has been covered by every
9 witness. If I need to specify every single witness
10 that touched beneficial use, I've been talking about
11 every single witness.

12 It's a general question about
13 beneficial use that I think has come up, and he's --
14 it's been in his direct and his rebuttal, and it's a
15 follow-on question to what was already considered to
16 be proper surrebuttal. I'm just asking him for his
17 opinion on how that can impact speculative purposes,
18 which is a court issue in this proceeding.

19 MS. FOX: Madam Hearing Officer, he's
20 given direct and rebuttal testimony on that, and this
21 is surrebuttal.

22 THE EXAMINER: Yeah. I do remember he
23 gave direct and rebuttal testimony on that. I think
24 we've heard from him on that already.

25 MR. SUAZO: Okay.

1 THE EXAMINER: He said specifically
2 it's dark down there and we need time to -- for trial
3 and error.

4 MR. SUAZO: Very good. All right.
5 Well, Madam Hearing Officer at this time, NMOGA moves
6 to admit to the record the direct testimony of
7 Mr. McGowen and its appendix A, the rebuttal testimony
8 of Mr. McGowen and its appendices A and B, and the
9 demonstrative exhibit used for the summary of his
10 direct examination.

11 THE EXAMINER: Okay. I'll pause for a
12 moment in the event there are objections.

13 They're admitted. Thank you.
14 (NMOGA Exhibit D was marked for
15 identification and received into
16 evidence)

17 MR. SUAZO: And at this time, I make
18 the witness available for cross-examination.

19 THE EXAMINER: All right. I imagine he
20 might draw some.

21 Should we take a short break before you
22 begin? Let's just take ten minutes, come back at
23 10:05.

24 (Off the record.)

25 THE EXAMINER: And it's 10:05. Let's

1 come back from the break, please.

2 Ms. Fox or Mr. Tisdell? Ms. Fox, go
3 ahead.

4 MS. FOX: Thank you, Madam Hearing
5 Officer. Good morning, commissioners.

6 CROSS-EXAMINATION

7 BY MS. FOX:

8 MS. FOX: Mr. McGowen, my name is
9 Tannis Fox. I'm a lawyer with Western Environmental
10 Law Center, and I represent Applicants in this
11 proceeding. Do you have a copy of your direct and
12 rebuttal testimony with you?

13 MR. MCGOWEN: Yes.

14 MS. FOX: On pages 9 through 10 of your
15 direct testimony, you discuss Applicants' proposed
16 definition for beneficial purpose and beneficial use;
17 correct?

18 MR. MCGOWEN: Yes.

19 MS. FOX: And I brought up that
20 definition on the slide before you. In that
21 testimony, you state "It," referring to the definition
22 of beneficial purpose and beneficial use, "also could
23 be interpreted as excluding enhanced oil recovery, EOR
24 projects, geothermal, monitoring, injection, seismic,
25 and other regulatory or reserve management uses, which

1 are effectively excluded." Correct? Is that your
2 testimony?

3 MR. MCGOWEN: Yes.

4 MS. FOX: So Applicants' proposed
5 definition doesn't exclude monitoring injection;
6 correct?

7 MR. MCGOWEN: I don't think so. I
8 would -- I would hope not.

9 MS. FOX: Right. In your -- you can
10 see that Applicants' proposed definition for
11 beneficial purposes and beneficial use on the slide
12 and your testimony that says that monitoring injection
13 is excluded from that definition, and it's correct
14 that monitoring an injection are included in
15 Applicants' proposed definition is my question.

16 MR. MCGOWEN: Yes. I think that's
17 right. Yes.

18 MS. FOX: Are you not sure that it's
19 right?

20 MR. MCGOWEN: No. I'm just -- the --
21 yeah. It looks that -- that -- I agree with you.

22 MS. FOX: Okay. Thank you. In that
23 same testimony, you say that other uses not expressly
24 included in the proposed definition, such as EOR and
25 geothermal, are effectively excluded; correct?

1 MR. MCGOWEN: Yes.

2 MS. FOX: Now, other NMOGA witnesses
3 have levied the same criticism; correct? That
4 Applicants' proposed definition of beneficial purposes
5 and benefits use is limiting and excludes such
6 activities as enhanced recovery; correct?

7 MR. MCGOWEN: I think that's correct.
8 I don't -- I don't recall what everybody else said
9 necessarily.

10 MS. FOX: So I'm showing you, in
11 addition to the proposed definition for beneficial
12 purposes and beneficial use, the existing definition
13 in the commission's rules for inactive well; do you
14 see that?

15 MR. MCGOWEN: Yes.

16 MS. FOX: And are you familiar with the
17 existing definition of inactive well in the
18 commission's rules?

19 MR. MCGOWEN: Yes.

20 MS. FOX: Now, neither you nor any
21 NMOGA witness has objected to the existing definition
22 of inactive well; correct?

23 MR. MCGOWEN: No. I don't believe so.
24 Are you talking about the existing definition?

25 MS. FOX: Yes. Of inactive well.

1 MR. MCGOWEN: Well, again, I don't --

2 MS. FOX: You have --

3 MR. MCGOWEN: I don't --

4 MS. FOX: You have, in your testimony,
5 objected to that definition; is that correct?

6 MR. MCGOWEN: No.

7 MS. FOX: Applicants' expert, Tom
8 Alexander, testified that Applicants' proposed
9 definition for beneficial purposes and beneficial use
10 was taken directly from the definition of inactive
11 well. Are you aware of that testimony of
12 Mr. Alexander's?

13 MR. MCGOWEN: You know, I don't really
14 remember, but that sounds correct.

15 MS. FOX: And do you see how
16 Applicants' proposed definition for beneficial use
17 mirrors the language from the definition of inactive
18 well, in that it gives the same examples of beneficial
19 use, which are production, injection, and monitoring,
20 as in Applicants' proposed definition for beneficial
21 purposes and beneficial use?

22 MR. MCGOWEN: Yes.

23 MS. FOX: And neither you nor any other
24 NMOGA witness has contended that the existing
25 definition of inactive well limits beneficial purposes

1 of a well to production, injection, and monitoring;
2 correct?

3 MR. MCGOWEN: Again, I don't remember
4 what everybody else said.

5 MS. FOX: Let's limit it to your
6 testimony then.

7 MR. MCGOWEN: Okay. Yeah. I'm sorry.
8 Could you ask the question again?

9 MS. FOX: Yeah.

10 MR. MCGOWEN: I'm sorry.

11 MS. FOX: You have not contended that
12 the existing definition of inactive well limits
13 beneficial purposes to only production, injection, and
14 monitoring; correct?

15 MR. MCGOWEN: No.

16 MS. FOX: Okay. So looking at
17 Applicants' proposed definition for beneficial
18 purposes and beneficial use, it "Means that an oil or
19 gas well that is being used in a productive or
20 beneficial manner such as production, injection, or
21 monitoring." In the context of the definition, what
22 do you believe the words "such as" mean?

23 MR. MCGOWEN: Let's see here. Could
24 you run that question by me again? I'm sorry.

25 MS. FOX: That's okay.

1 MR. MCGOWEN: Such as.

2 MS. FOX: Looking at Applicants' --

3 MR. MCGOWEN: Oh, "such as." I see it
4 now. I'm sorry. It's in bold. Well, that's a good
5 question because -- I'm not totally sure. I'd say the
6 only thing that concerns me a little bit is the rest
7 of the sentence there, which is "This assumes that you
8 are currently drilling, completing, repairing, or
9 working over."

10 And that's the kind of stuff that I
11 would -- that's what I think might be falling under
12 speculative is that I'm going to do those things.

13 MS. FOX: Looking at the definition,
14 not for inactive well, but for beneficial purposes and
15 beneficial use, what do you think the words "such as"
16 mean? Do you think that they mean "for example" or
17 "including"?

18 MR. MCGOWEN: Well, they've given --
19 they've given three things there; right? Production,
20 injection, monitoring. And then it's -- but it's
21 actually, I guess, what you would call it, I'm not an
22 English major, but present tense, being drilled,
23 completed, repaired, or worked over.

24 MS. FOX: Right. I'm sorry. We're
25 looking at the definition for beneficial purposes or

1 beneficial use, not inactive well.

2 MR. MCGOWEN: Oh, I'm -- okay. Okay.
3 Sorry.

4 MS. FOX: That's okay.

5 MR. MCGOWEN: Let's see. Well, they
6 did leave out part of this down here that's -- I -- I
7 kind of like.

8 MS. FOX: And my question is --

9 MR. MCGOWEN: Say again.

10 MS. FOX: -- the third time, what do
11 you think the words "such as" mean in the definition
12 of beneficial purposes or beneficial use?

13 MR. MCGOWEN: I guess it could include
14 other things. Is that what you're driving at?

15 MS. FOX: That is.

16 MR. MCGOWEN: Okay. All right.

17 MS. FOX: So it could include other
18 things like EOR and geothermal?

19 MR. MCGOWEN: Yes. I think it might.
20 It'd be nice if it said that succinctly, but -- it'd
21 make it easier to understand.

22 MS. FOX: On page 9 of your direct
23 testimony, you state, "I am concerned that defining
24 these terms," again, referring to beneficial purposes
25 and beneficial use, "now will conflict with their use

1 and other existing OCD regulations, including approved
2 TA under existing 19.15.25.12 NMAC and the proposed
3 amendments to the same." Is that your testimony?

4 MR. MCGOWEN: Yes.

5 MS. FOX: And in your testimony, you
6 cite to a possible conflict in the use of the terms in
7 existing 19.15.25.12 NMAC and the amendments
8 Applicants propose thereto; correct?

9 MR. MCGOWEN: Yes.

10 MS. FOX: And in your testimony, you
11 don't cite to any other provisions in the commission
12 rules where there might be a potential conflict;
13 correct?

14 MR. MCGOWEN: No.

15 MS. FOX: Okay. So I brought up the
16 language. I will bring up the language. Let's see.
17 Let me -- there we go. That's good enough. I brought
18 up the language from 19.15.25.12 and part of
19 Applicants' proposed amendments to that provision and
20 bolded the use of the term "beneficial use" where
21 used.

22 Now, in your testimony, you don't
23 explain how Applicants' proposed definition would
24 actually conflict with either of those provisions, do
25 you?

1 MR. MCGOWEN: I don't think I directly
2 talk about it. I think -- again, I'm not an attorney
3 and I always have a hard time interpreting all this
4 kind of language, but --

5 MS. FOX: I'm just referring to your
6 testimony, sir.

7 MR. MCGOWEN: Oh, no. I'm just trying
8 to explain that -- that where my concern comes in
9 is -- is there's something I don't understand as an
10 operator about how this impacts something else. So
11 that's -- that's kind of what I'm referring to is,
12 like -- this --

13 At the end of the day, everybody should
14 make sure that we understand that when you -- when you
15 change a term or define a term and use it in a
16 different way, that it doesn't impact something else
17 that you didn't intend.

18 MS. FOX: But my question is that you
19 didn't explain in your testimony when you raised the
20 concern about a conflict, you didn't explain what that
21 conflict would actually be in your testimony?

22 MR. MCGOWEN: That's true. I didn't
23 give a specific example.

24 MS. FOX: In your direct testimony on
25 pages 10 through 19, you discuss your opposition to

1 Applicants' and OCD's proposal to establish rebuttable
2 presumptions of no beneficial use; correct?

3 MR. MCGOWEN: Can you go to that here?

4 MS. FOX: Pages -- I don't have pages
5 19 to --

6 MR. MCGOWEN: Okay.

7 MS. FOX: -- 10 to 19 of your testimony
8 up.

9 MR. MCGOWEN: Okay. This -- go ahead.

10 MS. FOX: Okay.

11 MR. SUAZO: Objection. Can the witness
12 look at his testimony? I think he has it available.

13 MR. MCGOWEN: I can find it here.
14 Let's see. Can you help on what page that might be
15 on?

16 MS. FOX: Ten to 19 on your direct.

17 MR. MCGOWEN: Okay.

18 MR. SUAZO: I'm sorry. Ms. Fox, did
19 you say 1019 or 19?

20 MS. FOX: Ten to 19

21 MR. SUAZO: Ten to 19. Thank you.

22 MR. MCGOWEN: That's a lot. Okay. Go
23 ahead.

24 BY MS. FOX:

25 MS. FOX: That's why it's not up on the

1 screen.

2 MR. MCGOWEN: Okay. Thank you. Go
3 ahead.

4 MS. FOX: Yeah. The threshold for a
5 preliminary determination that a well presumptively
6 has no beneficial use is one that's producing less
7 than 90 BOE in less than 90 days in a 12-month period;
8 correct?

9 MR. MCGOWEN: Correct.

10 MS. FOX: Yesterday you testified that
11 the presumption is "not based on anything, not
12 geology." Correct?

13 MR. MCGOWEN: Yes.

14 MS. FOX: But the presumption is based
15 on production volume and production days; correct?

16 MR. MCGOWEN: Yes.

17 MS. FOX: You also said that the
18 definition is not based on a trend line; correct?

19 MR. MCGOWEN: Yes.

20 MS. FOX: But it is based on a trend
21 over 12 months in which production is about one
22 quarter of a barrel of equivalent and producing the
23 well about one quarter of the time; correct?

24 MR. MCGOWEN: I'm not sure if I said --
25 did I say trend line or did I say trend?

1 MS. FOX: You did say trend line in my
2 recollection.

3 MR. MCGOWEN: Okay. Well, let me
4 explain what I meant by that. That's -- when I'm
5 thinking of a trend, I mean what's going on in the
6 field. So if, for example, somebody is having good
7 results with a restimulation program nearby, I would
8 take that into account. I'm not saying that you can't
9 do a -- a decline curve on this well. That would be
10 easy.

11 What's not so easy is to figure out,
12 again, opportunity loss and, you know, what you could
13 do with it based on what's going on around you. So
14 you -- you know -- what I normally do is I look at
15 statistics about what other people have done in an
16 area and then I use that. So that's kind of -- that's
17 what I was trying to say.

18 MS. FOX: Okay. But you'd agree that
19 that the definition is at least looking at a trend
20 over a 12-month period?

21 MR. MCGOWEN: Yeah. I guess you could
22 say that. It's -- it's -- you're saying that this
23 well hasn't done very well, but it -- what else is
24 downhole? What else can I do? It -- it doesn't
25 really account for that.

1 MS. FOX: Now, Mr. Purvis's analysis in
2 Applicants' Exhibit 40 showed that the presumption
3 would apply to approximately 1700 wells or 3.7 percent
4 of all wells and 0.045 percent of all production in
5 the state. Do you have any basis to dispute this
6 analysis?

7 MR. MCGOWEN: I haven't done my own
8 analysis of this, so no.

9 MS. FOX: And producing 90 BOE means a
10 well that is producing less than one quarter of one
11 barrel of oil equivalent per day over a year; correct?

12 MR. MCGOWEN: Say that one more time.
13 I'm sorry.

14 MS. FOX: It's 90 BOE is translates
15 into a well producing less than -- slightly less than
16 one quarter of one barrel of oil equivalent per day
17 over a year.

18 MR. MCGOWEN: I think that's correct
19 math.

20 MS. FOX: Now, in your direct and
21 rebuttal testimony, you do refer to the June 24, 2025,
22 report from the New Mexico Legislative Finance
23 Committee on orphan wells; correct?

24 MR. MCGOWEN: Yes.

25 MS. FOX: You are familiar with that

1 report?

2 MR. MCGOWEN: I haven't reviewed the
3 whole thing, so -- I do have that factoid out of that
4 report.

5 MS. FOX: You're familiar with it
6 because you cited it in your testimony?

7 MR. MCGOWEN: Yes.

8 MS. FOX: So the LFC found on page 4 of
9 its report that: "For wells producing any volume of
10 oil or gas, the state typically leaves it to the
11 operators to decide when the well should be plugged.
12 In recent years, the average well produced roughly two
13 barrels of oil equivalent a day in the year," so
14 that's 12-month period, "before it was plugged."

15 Now, I'm not going to ask about any
16 other NMOGA witnesses. I'm just going to ask --

17 MR. MCGOWEN: Okay.

18 MS. FOX: Although I'd like to, but I'm
19 just going to ask you. You are not disputing this LFC
20 finding; correct?

21 MR. MCGOWEN: Well, I don't -- I don't
22 have any way to -- to verify that, but I'm not
23 disputing it.

24 MS. FOX: It looks like -- let me bring
25 up the chart here. LFC'S data source was in Veris for

1 this finding; correct?

2 MR. MCGOWEN: Yes.

3 MS. FOX: So the production level that
4 Applicants and OCD are proposing to establish a
5 rebuttable, underscore the word "rebuttable,"
6 presumption of beneficial use is one quarter of one --
7 of a barrel of oil equivalent, which is significantly
8 less than even the average production of a well in New
9 Mexico during the year before it was plugged; correct?

10 MR. MCGOWEN: That sounds right.

11 MS. FOX: On page 19 of your testimony,
12 you raised the concern that "Information required to
13 rebut a presumption of no beneficial use could require
14 disclosure of confidential and proprietary
15 information." And then you raise the same concern on
16 pages 26 through 28 of your direct testimony regarding
17 information an operator may be required to produce
18 that -- to show that a -- to prove up that a well
19 should be placed in temporary abandoned status.

20 And again, you raised this concern on
21 page 135 of your direct testimony in connection with
22 information that may be required to submit in the
23 context of a plugging and abandonment plan; is that
24 correct?

25 MR. MCGOWEN: Yes.

1 MS. FOX: And are you familiar that
2 there is a confidentiality provision in New Mexico
3 statute at 71-2-8 that I'm bringing up that applies to
4 the Energy Minerals and Natural Resources Department,
5 which is the state agency within which OCD resides.

6 And that provision allows -- requires
7 confidential information submitted by a company to be
8 kept confidential by the agency. And if that
9 information is disclosed, it is a misdemeanor. Are
10 you familiar with that provision?

11 MR. MCGOWEN: Yes, but I -- if I could
12 elaborate just a little bit.

13 MS. FOX: Please.

14 MR. MCGOWEN: Because I've had my
15 information. When I have confidentiality agreements
16 with service companies show up in other people's
17 hands -- and I've worked on a number of trade secret
18 expert witness cases. So -- and -- and normally we
19 put a -- we -- we would put a guard at the gate even
20 though everybody on location's supposed to be keeping
21 it confidential so that information on my wells isn't
22 getting out while I'm drilling.

23 So I understand that there's a -- a
24 legal precedent here and they -- and they put that in
25 place, and I think that's great. It's just as an

1 operator, I would be concerned about something that
2 was a -- a closely held trade secret escaping into the
3 public domain

4 MS. FOX: Have you ever submitted
5 confidential information to OCD and it's been
6 disclosed?

7 MR. MCGOWEN: No.

8 MS. FOX: Do you know of any example
9 where that has occurred?

10 MR. MCGOWEN: No.

11 MS. FOX: On pages 24 to 29 of your
12 direct testimony, you discuss your opposition to
13 Applicants' and OCD's proposals in 19.15.25 NMAC
14 regarding temporary abandonment; correct? That's
15 pages 24 through 29.

16 MR. MCGOWEN: Yes.

17 MS. FOX: But yesterday, I believe you
18 testified that your "biggest problem" with these
19 provisions is that part 25 -- in part 25 is that the
20 operator needs to provide a lot of documentation to
21 substantiate future beneficial use and additional time
22 for that information showing is needed; is that
23 correct?

24 MR. MCGOWEN: Yes.

25 MS. FOX: Do you believe that 90 days

1 would be a sufficient amount of time?

2 MR. MCGOWEN: Probably.

3 MS. FOX: And what if OCD could grant
4 an extension of time even to the 90 days for good
5 cause?

6 MR. MCGOWEN: That would be great.

7 MS. FOX: Okay. So I'm showing you
8 Applicants' Exhibit 8, which is a graphic of the
9 number of inactive wells from OCD's inactive well list
10 sorted by the amount of time they have been in
11 inactive status. And the wells in approved temporary
12 abandonment are inactive wells that are included in
13 OCD's inactive well list; correct?

14 MR. MCGOWEN: Yes.

15 MS. FOX: As far as you -- have you
16 ever -- OCD's inactive well list includes wells in
17 approved TA; correct?

18 MR. MCGOWEN: Yes.

19 MS. FOX: Okay. So you'll see here
20 that approximately 1150 wells had been in inactive
21 status more than eight years, almost 900 have been in
22 inactive status more than ten years, and 100 have been
23 in inactive status more than 25 years; correct?

24 MR. MCGOWEN: Yes.

25 MS. FOX: And you don't have any basis

1 to dispute this analysis, do you?

2 MR. MCGOWEN: No.

3 MS. FOX: And so LFC made similar
4 findings in table 9 on page 19 of its report that
5 almost 50 wells had been inactive for up to 40 years;
6 correct?

7 MR. MCGOWEN: Yes.

8 MS. FOX: And you don't have a basis to
9 dispute this analysis, do you?

10 MR. MCGOWEN: No.

11 MS. FOX: So Applicants' Exhibit 7 is a
12 compilation of data on inactive, approved TA, and
13 expired TA wells taken from OCD's inactive well list
14 on July 3rd of this year. And on that day, the
15 Environmental Defense Fund data manager who collected
16 the data found that 3,765 wells on -- that there were
17 3,765 wells on the inactive well list.

18 And she found a surprisingly high
19 number of those wells were out of compliance with part
20 25 of the commission's rules because the inactive
21 wells had never gone into TA status or had been
22 approved for TA status, but the TA status had expired
23 and did not -- had not entered into any kind of an
24 agreed compliance order with OCD.

25 So she found that 3,234 wells out of

1 3700 or so were 86 percent of the wells on the
2 inactive list were out of compliance. And you don't
3 have a basis to dispute this analysis, do you?

4 MR. MCGOWEN: No.

5 MS. FOX: So assuming this analysis is
6 correct, in your opinion, is 86 percent non-compliance
7 rate for inactive wells a high rate of compliance --
8 in non-compliance?

9 MR. MCGOWEN: I would say that that is
10 high, but I have to admit, when I look at that list, I
11 also think, "Well, what if 10 percent of those 300
12 some odd were wells that I could do something with?"
13 I'd hate to see them plugged before I got a chance to
14 do something with them. So that's -- again, I'm
15 trying to bring out from an operator's perspective of
16 there's also an opportunity set within that. But
17 obviously that is -- they're out of compliance.

18 MS. FOX: Right. And so if an operator
19 wanted to take advantage of that opportunity, they
20 should do so by following the rules?

21 MR. MCGOWEN: Whatever the rules are,
22 they should follow them.

23 MS. FOX: No. I get you're a rule
24 follower.

25 MR. MCGOWEN: Sorry?

1 MS. FOX: I get that you're a rule
2 follower.

3 MR. MCGOWEN: My wife might debate
4 that, but --

5 MS. FOX: LFC makes a similar finding
6 on page 18 of its report, finding that "virtually all
7 wells on the inactive list are eligible for
8 enforcement action." And you don't have a basis to
9 dispute this finding, do you?

10 MR. MCGOWEN: No.

11 MS. FOX: So I understand that you
12 oppose Applicants' and OCD's proposals in 19.15.25 to
13 require a showing of beneficial use for wells to be
14 placed in TA status and our proposed limitation within
15 which wells may be placed in TA. But NMOGA or you
16 haven't proposed any regulatory solutions to these
17 identified problems with active wells remaining in
18 inactive status and out of compliance over long
19 periods, have you?

20 MR. MCGOWEN: No, but I -- I think
21 everybody needs to work together to figure that out.
22 I will agree with that. That's a -- that's an issue
23 that needs to be addressed. So don't get me wrong,
24 I'm never saying that -- that it's not a problem that
25 needs to be addressed. I didn't feel like I was

1 in -- in a position to -- to negotiate on behalf of
2 NMOGA. But I can -- I was just trying to give my take
3 on it as an operator.

4 MS. FOX: You said in your testimony
5 that you have a lot of ideas, I think, for proposals,
6 but that was not within your scope of work to
7 undertake; correct?

8 MR. MCGOWEN: Yeah. Just kind of
9 general, you know, ideas, but as I've listened to, you
10 know --

11 MS. FOX: That was your testimony;
12 correct?

13 MR. MCGOWEN: Yeah. That's right.
14 What -- what I put in the -- what I put in the report
15 was I have some general things I recommended, but --
16 since I've listened to all the testimony from
17 everybody and kind of get a better feel for the scope
18 of the problem and everybody's viewpoints on it, I
19 am -- I have thought of a lot of things that, you
20 know, if anybody asked me, I might be willing to
21 share, so --

22 MS. FOX: Well, and are you aware of
23 the requirements in this proceeding that Ms. Morgan
24 alluded to yesterday, and that is if parties had
25 specific proposals that they were supposed to present

1 those specific proposals along with their director
2 rebuttal testimony? Are you aware of that
3 requirement?

4 MR. MCGOWEN: Completely ignorant of
5 all the legal stuff.

6 MS. FOX: Yeah.

7 MR. MCGOWEN: So --

8 MS. FOX: Yeah. We've agreed you're
9 not a lawyer, I'm not an engineer.

10 MR. MCGOWEN: Exactly.

11 MS. FOX: In your direct testimony on
12 pages 41 through 45, you discuss your opposition to
13 combining the terms approved temporary abandonment,
14 temporary abandonment, and temporarily abandoned
15 status; correct?

16 MR. MCGOWEN: Yes.

17 MS. FOX: And let me pull up those
18 various definitions. So the current definition for
19 approved temporary abandonment means a well that is
20 inactive and has been approved for TA in accordance
21 with the commission's rules and complies with the
22 relevant rules; correct? That's the first definition.

23 MR. MCGOWEN: At the top there. Yes.

24 MS. FOX: Yeah. At the -- you know --
25 the red underline is our proposed change and the black

1 is what the existing rule is.

2 MR. MCGOWEN: Yes.

3 MS. FOX: And if you look at the
4 current definition of temporary abandon, which is the
5 X'd out language, second on the screen, it means "The
6 status of a well that is inactive." Correct?

7 MR. MCGOWEN: Yes. That's how I would
8 normally have thought of that term as an industry
9 term.

10 MS. FOX: Okay. And I've also pulled
11 up the definition just for your information for
12 inactive well again. So is it your -- in your view
13 then, are the terms temporary abandonment and
14 temporarily abandoned status synonymous with the term
15 inactive well? Do they mean exactly the same thing?

16 MR. MCGOWEN: Well, no. This is --
17 this is where legalese and oil field vernacular maybe
18 conflict is --

19 MS. FOX: Again, I'm just looking at
20 your testimony about these definitions and what they
21 mean.

22 MR. MCGOWEN: Yes.

23 MS. FOX: Okay. It's your testimony.

24 MR. MCGOWEN: Right.

25 MS. FOX: Go on.

1 MR. MCGOWEN: I'm just trying to
2 explain.

3 MS. FOX: Okay.

4 MR. MCGOWEN: Okay. So this is what's
5 confusing to me. It says "temporary abandonment," but
6 that's the same as approved temporary abandonment. I
7 think that's what they're trying to say. So I don't
8 understand how -- like I can -- I can -- inside my
9 company, I can say: "I'm going to temporarily abandon
10 this well. Like, let's stop work on it. We're not
11 going to produce the well, and I'm not going to do
12 anything to it right now. I'm holding it and I'm
13 going to figure out what I'm going to do with it."

14 But I don't see how that's the same
15 thing as approved temporary abandonment. That's --
16 that was part of my confusion about how that is
17 worded.

18 MS. FOX: From an operational
19 perspective. But looking at the rules, my question is
20 can you point to where in the commission's rules where
21 the terms for temporary abandonment and temporary
22 abandoned status are not used when referring to a well
23 that's been in approved temporary abandonment status?
24 So can you point to a place in the rules where there
25 actually is a conflict?

1 MR. MCGOWEN: I'm -- I'm probably not
2 good enough to -- to do that. Yeah.

3 MS. FOX: And you didn't do that in
4 your testimony, did you?

5 MR. MCGOWEN: No.

6 MS. FOX: On pages 42 through 45 of
7 your direct testimony, you discuss your opposition to
8 Applicants' proposed definition for expired temporary
9 abandonment and expired temporary abandonment status;
10 correct? That's 42 through 45.

11 MR. MCGOWEN: Yes.

12 MS. FOX: On page 43, you argue, I
13 believe, again, that the proposed definition for
14 temporary -- for expired temporary abandonment and
15 expired temporary abandonment status may conflict with
16 use of these terms and existing rules; correct?

17 MR. MCGOWEN: I thought it's possible
18 that it might conflict. And then I also thought
19 that -- it -- it says "expired" but it could be that
20 you have a mechanical problem. That's -- that's not
21 really an expiration. That's just a -- that's a
22 different issue; right? So if you've got -- if -- if
23 it was past the time limit, that would make sense to
24 me that it's an expired temporary abandonment.

25 But if it's just we've discovered I've

1 got a leak, well that's -- that's more like a -- that
2 there should be some -- some other category maybe. I
3 don't know. But you see what I'm getting at that --
4 just reading it as an operator, I found that
5 confusing. And then also I don't understand the rules
6 maybe well enough to figure out whether it's going to
7 conflict with something or not.

8 MS. FOX: Well, there's no existing
9 definition for expired TA and the rules, so there
10 couldn't be a conflict with existing rules; correct?

11 MR. MCGOWEN: Well, as far as I know.
12 Yeah.

13 MS. FOX: Right. But you said in your
14 testimony that you thought there might -- that there
15 was a conflict between the proposed definition and the
16 existing rules, so I'm just clarifying that --

17 MR. MCGOWEN: Correct. And --

18 MS. FOX: -- it could be possible
19 because there's no --

20 MR. MCGOWEN: You're making a good
21 point.

22 MS. FOX: Thank you.

23 MR. MCGOWEN: That -- that I've
24 struggled to try to understand what all this means.
25 There's a reason why I'm not an attorney, but -- yeah.

1 I -- I -- you're making a good point.

2 MS. FOX: On page 3 of your rebuttal
3 testimony, you state that the LFC estimate of the
4 number of orphan wells should be relied upon to
5 calculate the number of orphan wells in New Mexico;
6 correct? That's page 3 of your rebuttal.

7 "Accordingly, I concur with
8 Mr. Arthur's recommendation that all analyses relying
9 on the Moss as a measure of the orphan well population
10 should be recalculated using LFC's figure." Does that
11 sound familiar?

12 MR. MCGOWEN: Is that what's on the
13 slide here or is that something else?

14 MS. FOX: That is on page 3 of your
15 rebuttal testimony, lines 57 through 66.

16 MR. MCGOWEN: I'm sorry. Could you ask
17 the question again?

18 MS. FOX: Sure.

19 MR. MCGOWEN: I meant --

20 MS. FOX: Yeah. No. On page 3 of your
21 rebuttal, you state that the LFC estimate of the
22 number of orphan wells that should be relied upon to
23 calculate the number of orphan wells in New Mexico
24 should be the LFC estimate. Specifically, you say,
25 "Accordingly, I concur with Mr. Arthur's

1 recommendation that all analyses relying on the Moss
2 as a measure of the orphan well population should be
3 recalculated using the LFC's figure." It's within
4 lines 57 to 66.

5 MR. MCGOWEN: Okay. Am I on the right
6 page? I'm sorry. Page 3 and 4?

7 MS. FOX: Page 3 of your rebuttal, I
8 have. I could --

9 MR. MCGOWEN: This is -- I've got it.

10 MS. FOX: I could have gotten it wrong.

11 MR. MCGOWEN: And what line number?

12 MS. FOX: It's between lines 57 and 66.

13 MR. MCGOWEN: Fifty-seven. I'm sorry.

14 MS. FOX: No. That's okay.

15 MR. MCGOWEN: Fifty-seven.

16 MS. FOX: It's a lot of words.

17 Essentially you're saying that LFC's estimate of
18 orphan wells should be relied upon on.

19 MR. MCGOWEN: I think that's what I
20 said. Yes.

21 MS. FOX: Have you found it? If you
22 want to find it, that's fine. And if I got the --

23 MR. MCGOWEN: -- see where it says
24 that. I'm sorry. Oh, okay. Here -- it's 65, 66, I
25 guess.

1 MS. FOX: Right.

2 MR. MCGOWEN: "Using LFC's figure only
3 then" --

4 MS. FOX: Correct.

5 MR. MCGOWEN: That is what I said in
6 the report. Yes.

7 MS. FOX: Yeah. And then above on
8 lines 57 to 58, you say "The LFC report will flex this
9 definition and places the number of orphan wells in
10 New Mexico at approximately 700." Correct?

11 MR. MCGOWEN: Yes.

12 MS. FOX: Okay. So then in your
13 opinion, should the commission also rely on LFC's
14 estimates for the number of wells at risk for
15 abandonment, which include 1400 inactive wells for
16 which OCD has not pursued plugging authority in
17 approximately 3000 low producing wells at risk of
18 being orphaned? I'm showing LFC's findings on the
19 slide for you.

20 MR. MCGOWEN: Well, I guess since
21 there's been some changes in the calculations that
22 I've understood -- if I had my druthers, I would --
23 you know -- if you asked me to do it, I would do it
24 all over again and then try to make sure I understood
25 what was right. So I haven't done enough analysis, I

1 think, to give you a good answer based on what I know
2 right now.

3 Obviously there's a lot of wells
4 that -- that are -- that are orphaned and somebody
5 needs to do something about it and the industry needs
6 to pay for it. But I -- I would hesitate to say I --
7 I know exactly what that number is.

8 MS. FOX: You don't -- do you know of
9 any better estimate than what the LFC has provided in
10 its report that I'm showing you?

11 MR. MCGOWEN: I don't at this time.
12 No.

13 MS. FOX: And in your opinion, should
14 you rely on the LFC's estimate for the state's current
15 and near future liability for well plugging and site
16 remediation, which is between 700 million and \$1.6
17 billion?

18 MR. MCGOWEN: If -- if you're asking an
19 engineer if I'm going to rely on all this, I would say
20 I would do it -- I'd have to do it all over again.
21 I'd have to make sure I understood how everybody did
22 their sorting, and -- now, obviously these are big
23 numbers and I know it's going to be a big number,
24 so -- but I can't say for sure what numbers you guys
25 should be using.

1 MS. FOX: You didn't run your own
2 numbers is what you're saying?

3 MR. MCGOWEN: That's correct.

4 MS. FOX: And do you know how much
5 funding was in the state's reclamation fund as of
6 April 2025 according to LFC?

7 MR. MCGOWEN: I don't recall the exact
8 number, but I don't think it was enough.

9 MS. FOX: That's correct. It's about
10 \$67 million. So on pages 69 through 90 of your direct
11 testimony, you discuss your opposition to Applicant
12 and OCD's proposals to increase financial assurance;
13 correct?

14 MR. MCGOWEN: Correct.

15 MS. FOX: But you haven't proposed any
16 specific increases to the current financial assurance
17 requirements to address the state's current and near
18 future liability for well plugging and site
19 remediation?

20 MR. MCGOWEN: All I've -- all I've
21 discussed -- I did discuss that in some of my answers,
22 which is, again, as an engineer, I would like to see
23 something that's based on what we know about what
24 causes wells to degrade and come up with a system.
25 It's the kind of things engineers enjoy doing. It may

1 complicate things.

2 But it's -- I -- I would use hardcore
3 statistics. I would be thinking about all these
4 factors and then try to target -- use that -- that
5 methodology to target the wells that are the biggest
6 problems and they would need the biggest bonding. But
7 I'm not sure exactly what the numbers should be.

8 MS. FOX: But in this proceeding that
9 was filed well over a year ago, you have not proposed,
10 and NMOGA has not proposed any increases in financial
11 assurance to address the potential liability, which
12 you acknowledge is very large?

13 MR. MCGOWEN: I -- I don't know that --
14 I don't know what NMOGA has proposed, but I have not
15 proposed that.

16 MS. FOX: Thank you very much for your
17 testimony, Mr. McGowen.

18 MR. MCGOWEN: Thank you.

19 THE EXAMINER: Thank you, Ms. Fox.

20 Mr. Tremaine or Mr. Hall?

21 MR. TREMAINE: Thank you, Madam Hearing
22 Officer.

23 CROSS-EXAMINATION

24 BY MR. TREMAINE:

25 MR. TREMAINE: Good morning,

1 Mr. McGowen.

2 MR. MCGOWEN: Good morning.

3 MR. TREMAINE: Okay. So just kind of a
4 roadmap here. You put out some kind of high level
5 conclusions or descriptions in your testimony, which
6 you rely upon in making your recommendations or
7 ultimately later on the conclusions. So I just want
8 to set the stage that -- I want to kind of drill down
9 into some of those, and I can give you some citations.

10 But this is not an exercise in quizzing
11 you on, like, what you said on page 1 of 137 or
12 anything like that. I want to --

13 It's not about her.

14 MS. FOX: It's great.

15 BY MR. TREMAINE:

16 MR. TREMAINE: I'm trying -- I'm just
17 trying to set the stage that I want to talk about some
18 general concepts and, like, drill down. Because
19 you've outlined a lot of experience here that I think
20 is going to be really important for ours and the
21 commission's understanding.

22 So I'm also from the Midwest, and so I
23 love idioms, and you were kind of cracking me up. The
24 statement at the end that, "The reason I'm not an
25 attorney," that one got me. Is that you're wise, you

1 were smarter than that, is that what you're saying?

2 MR. MCGOWEN: Well, maybe numbers are
3 my friend. Words may not be, so --

4 MR. TREMAINE: All right. Well, at the
5 beginning of your testimony, you talk about -- I
6 believe you used the word "speculation" here. But
7 you're talking about the capital stage of development.
8 So there's a stage where an operator is -- and you as
9 an operator were raising capital for a development; is
10 that fair?

11 MR. MCGOWEN: Yes.

12 MR. TREMAINE: Okay. So when you are
13 starting a project like that, at that stage, are you
14 as an operator factoring in end of life
15 decommissioning costs?

16 MR. MCGOWEN: Yes.

17 MR. TREMAINE: Okay.

18 MR. MCGOWEN: Everybody asks about
19 that.

20 MR. TREMAINE: Yeah. Yeah. And how --
21 when you are putting together one of these projects,
22 how are you accounting for decommissioning costs?

23 MR. MCGOWEN: Well, when you do
24 engineering economic analysis, you need to come up
25 with an estimate of what you think it's going to cost

1 to plug the well. And you put that in as one of your
2 negative cash flows in your -- in your projection.
3 That's a standard practice.

4 MR. TREMAINE: So you talked about
5 redevelopment of field. So you -- the potential of
6 taking -- we're going to call it generally. Again,
7 it's not a quiz on the 1,180. But you have marginal
8 wells, however you're defining them, and you want to
9 redevelop the area. Do you have to make an assessment
10 of what it's going to take to plug and reclaim the
11 surface associated with each of those marginal wells?

12 MR. MCGOWEN: Yes.

13 MR. TREMAINE: Okay. Have you
14 articulated in your experience what plugging costs for
15 the companies that you've managed have been?

16 MR. MCGOWEN: Well, it is -- it is well
17 specific and area specific. So I think we -- I've
18 talked about in the report, you know, like, these
19 numbers look like it might be similar to Texas. Of
20 course, I'm working in Texas, not New Mexico.

21 What I would do if I was doing
22 engineering economic analysis, I would go to my -- you
23 know -- my completion engineer or my drilling engineer
24 and we would develop an authorization for expenditure.
25 We would call vendors. We would have a procedure.

1 We'd figure out how many days it was going to take.

2 And -- and then we would also put a
3 contingency on top of that for when inevitably
4 something's going to go wrong, which is often. So you
5 put some sort of risk factor on that and then use that
6 in your economics.

7 And then of course when you're putting
8 the project together in the first place, particularly
9 if you're talking to private equity, they're going to
10 want to know, "Well, is there any liabilities out here
11 I need to know about?" "Well, yeah. There's a bunch
12 of wells out here that we don't know what to do with.
13 We're -- we're going to -- we want to plug."

14 They're going to want you to -- you
15 know -- you got to -- you got to put all that in your
16 economic analysis.

17 MR. TREMAINE: So you get a projection
18 or even an estimate of those plugging costs and
19 incorporate that; is that fair?

20 MR. MCGOWEN: Yeah. You always -- you
21 have to estimate plugging costs. Yes.

22 MR. TREMAINE: Okay. You referred to
23 your development activities. I believe the phrase on
24 page 2 of your testimony was that you executed full
25 cycle acquisition, development, divestiture, and

1 decommissioning programs, including plugging and
2 abandonment, P&A, and surface restoration activities.
3 That's kind of the topic that I'm referring to here.

4 MR. MCGOWEN: Yes.

5 MR. TREMAINE: And I think it's fair to
6 say that the hot button topic in this hearing is
7 focused on the divestment and the decommissioning
8 aspect of that, so --

9 MR. MCGOWEN: Yes.

10 MR. TREMAINE: Zooming out for just a
11 second. I believe you referenced three companies that
12 you had acted as a CEO of, all Navidad entities.
13 Roughly how many wells have you -- have these
14 companies for which you were the CEO, spud and
15 completed?

16 MR. MCGOWEN: I'm thinking it's going
17 to be about 60, probably. No more than that actually,
18 'cause there was -- there's Navidad Resources Inc.,
19 and we drilled wells with a company called Newman
20 Production Company. In that case, we were the
21 engineering department and they were the operator,
22 so --

23 I've actually forgotten how many wells
24 we drilled. But those were Freestone County, Cotton
25 Valley Lime, Cotton Valley Sand, Travis Peak in East

1 Texas. That was -- that was when gas was going to go
2 through the roof. And then we -- we actually took
3 this acreage that became the -- the basis of the next
4 company. So at the next company, I think we drilled
5 about 50 wells.

6 And then we had Navidad Resources LLC.
7 We only drilled 10, but those were \$20 million apiece.
8 So the -- they were quite a bit more expensive.

9 MR. TREMAINE: Those were big
10 horizontal wells; right? That's a --

11 MR. MCGOWEN: Yes.

12 MR. TREMAINE: Okay. And were those
13 all projects where you were taking over lower
14 producing wells, holding acreage with those wells, and
15 then redeveloping?

16 MR. MCGOWEN: Actually, most of that
17 work I did was in my early part of my career when I
18 started at Union Pacific Resources and then at -- at
19 Trinity Resources. I did -- I did more of that kind
20 of work there. And then we did end up with a few
21 wellbores that we picked up. For example, at Navidad
22 Resources LLC, there was a -- a 15,000-acre lease that
23 was held by the state of Texas.

24 And there was one well that was a -- a
25 well that was on its last legs. But it was -- it was

1 effectively holding the lease. The primary term was
2 going to fall out and that -- that well was only going
3 to hold, I think, 160 acres. So there was a
4 15,000-acre lease. So I -- I bought that well from an
5 operator, a bigger operator who didn't see the value
6 in it. I bought that well for \$500,000 with the
7 15,000 acres.

8 And then I got the state of Texas to
9 give us a continuous drilling clause. And we went in
10 and did our -- our completion treatment on that well,
11 which involved water fracking about six different
12 zones and co-mingling a gas zone with an oil zone.
13 Put that on production and we proved up that block,
14 and then we subsequently drilled --

15 This is a good example of that was a
16 horrible well that anybody else would've plugged. But
17 we took it. That actually was a -- was a -- the thing
18 that proved up the sweet spot of the whole company and
19 we ended up making -- one well we drilled in there
20 was, like, a million barrel well.

21 MR. TREMAINE: Okay.

22 MR. MCGOWEN: But we were using a
23 different technique. So that's -- then, now, I did
24 have wells I had to plug and -- and I had wells I
25 tried to reenter that were plugged that I then had to

1 plug, so --

2 MR. TREMAINE: Let me interject for a
3 second because that's actually -- that's really useful
4 information. But what I'm kind of getting at here is
5 I want to know, like, how many lower producing
6 wells -- so you've talked about drilling these various
7 wells. In these development projects, how many lower
8 producing wells roughly have your companies taken on?

9 MR. MCGOWEN: Let's see. Again, that's
10 all I did at -- at UPRC and at Trinity, but -- and I
11 did some drilling at -- at both of those two. But
12 in -- at -- at those two -- those three companies,
13 let's see, we had one, two -- I think it was only,
14 like, a handful. So that wasn't my primary -- what
15 was driving that was the -- the private equity guys
16 wanted us to lease and drill. So that's what we did.

17 MR. TREMAINE: The mineral rights and
18 the acreage are what's valuable in that kind of deal;
19 right? You need to be able to hold it, but it's going
20 to be the horizontal well that's going to be
21 productive in the redevelopment plan?

22 MR. MCGOWEN: Yeah. Then the -- there
23 is -- the sad story is that after we went in and
24 proved up this -- this commingle technique and the new
25 frack, some guys went and bought the package to the

1 north of us that I -- my private equity guys wouldn't
2 let me buy. And they just backed up and did our frack
3 on a bunch of marginal wells, and they sold it for
4 \$715 million, so --

5 MR. TREMAINE: Right.

6 MR. MCGOWEN: So that's -- that's why I
7 drove a used pickup over here and -- and they're have
8 jets, I guess, but -- yeah.

9 MR. TREMAINE: Fair. Divested at the
10 wrong time.

11 MR. MCGOWEN: Yeah.

12 MR. TREMAINE: The -- but you already
13 answered my other question, which was -- but I'll just
14 ask you to confirm that. In those examples you
15 provided, you then went into those marginal wells, you
16 worked over, recompleted, did some other maintenance
17 work, and either, you know, brought a well back online
18 or improved its production; is that fair?

19 MR. MCGOWEN: Ask me that one more
20 time. I'm sorry.

21 MR. TREMAINE: Yeah. So you had just
22 given us an example of all the things you did to that
23 single well that you bought and how you improved its
24 production. So I'm just asking you to confirm that in
25 this example, you know, you're getting these marginal

1 wells, in a lot of cases you're doing workovers or
2 recompletions or some other work on the well?

3 MR. MCGOWEN: That's the point. That's
4 what you're looking for and -- where somebody else
5 sees a marginal well, I see about four or five million
6 bucks it took to put that hole in the ground that I
7 don't want to have to spend it again.

8 MR. TREMAINE: Okay. So we've talked
9 about a bunch of these wells, kind of the mid cycle
10 actions. What percentage -- again, roughly. Of all
11 the wells we've talked about, what percentage of those
12 wells have your companies plugged and abandoned?

13 MR. MCGOWEN: That was a small
14 percentage because we were drilling new wells. I did
15 have to plug a -- I got -- I had one package that
16 we -- that where we had acreage we bought and we got
17 to the end of the private equity cycle and they were
18 ready to sell. And so I never got to -- I never got
19 to do anything with it, so -- so that -- that well was
20 in Navarro County.

21 And then there was a well in Madison
22 County that -- I was in the middle of drilling it and
23 oil prices dropped and they made me lay the rig down,
24 and it was -- it was sitting over there and it hadn't
25 been finished. And should have been, but wasn't.

1 Let's see. And then there was -- trying to think if
2 there was any other ones.

3 That was at Navidad Resources LLC. At
4 the current company that I just -- we just sold the
5 assets of, that was all new drilling, so --

6 MR. TREMAINE: Okay. Okay.

7 MR. MCGOWEN: And then -- let me back
8 up a sec. But in my new project I'm working on is
9 going to involve solely reentering old wells.

10 MR. TREMAINE: Okay.

11 MR. MCGOWEN: Yeah.

12 MR. TREMAINE: Great. And that -- but
13 that's --

14 MR. MCGOWEN: That's in the future.

15 MR. TREMAINE: That's a project in
16 the --

17 MR. MCGOWEN: Yes.

18 MR. TREMAINE: Okay. So it sounds like
19 the majority of the wells that we've talked about,
20 whether they were new wells you drilled or lower
21 producing wells that you worked on, your companies
22 ultimately sold most of those wells to other companies
23 prior to plugging and abandonment?

24 MR. MCGOWEN: We did. Yes.

25 MR. TREMAINE: Okay.

1 MR. MCGOWEN: And just to have
2 elaborate on that. We carved out the wells that had
3 to be plugged when we -- and they didn't buy any of
4 those. And then -- and unfortunately, I had -- all
5 the employees went with the asset and I was the only
6 one left. And so I had to get my coveralls and go out
7 and plug those wells.

8 MR. TREMAINE: Okay. Those are the few
9 examples that we talked about --

10 MR. MCGOWEN: Right. So that's how we
11 handled it is I made sure they got -- they were
12 plugged correctly.

13 MR. TREMAINE: Okay. All right. When
14 you were bringing -- let's talk about the specific
15 mechanism. I know when you're talking about the
16 capital stage, you were saying that you have to get
17 projections or estimates and incorporate that in to
18 get the equity backing. And by -- and that that I'm
19 referring to is the decommissioning costs.

20 But in terms of actual operations,
21 while you're managing one of these projects, how are
22 you accounting for those eventual decommissioning
23 costs? Are you saving money from the production of
24 the new wells? Are you relying upon production
25 revenue from new wells that's happening later to plug

1 wells in real time? Or what's the actual mechanism
2 there? Do you understand my question?

3 MR. MCGOWEN: Well, you should always
4 make sure you have enough capital on hand to -- to
5 take care of all your obligations. So that's --

6 MR. TREMAINE: You're essentially
7 reserving funds through the operation while you have
8 enough revenue to plug the wells and holding that for
9 decommissioning costs; is that fair?

10 MR. MCGOWEN: That's what a prudent
11 operator should do.

12 MR. TREMAINE: Completely agree with
13 you. Thank you. You mentioned a phrase in your
14 testimony. I don't have a citation to it. But you
15 said -- you referred to one of the sales as de-risk
16 deposition. Is that -- do you recall that?

17 MR. MCGOWEN: Yes. And that has a
18 specific meaning.

19 MR. TREMAINE: It's a term of art in
20 the industry; right? I want to --

21 MR. MCGOWEN: Yeah. What -- what
22 you're de-risking is whether your -- your idea that
23 you came up with was going to work or not. So
24 you're -- you're not de-risking something to do with
25 plugging. You're -- you're de-risking, is this a

1 viable economic project? You know, are the
2 hydrocarbons there? Can I -- if I spend this money,
3 am I going to get a sufficient rate of return on that
4 investment? So you're -- so that's the term of art,
5 is you're de-risking basically a concept. Yeah.

6 MR. TREMAINE: Okay. Is selling wells
7 before you have to pay for their plugging liability a
8 part of de-risking?

9 MR. MCGOWEN: Selling. I'm -- I'm
10 sorry. I'm not following.

11 MR. TREMAINE: Is divesting of assets
12 before you have to pay for decommissioning costs, is
13 that a part of de-risking?

14 MR. MCGOWEN: No. I've never -- I've
15 never done that. That's -- that's not what that term
16 means to me; right?

17 MR. TREMAINE: Okay.

18 MR. MCGOWEN: I'm -- I'm talking about
19 really you're trying to figure out whether -- you
20 know -- am I going to make any money on this project
21 or not? Now, maybe what you're talking about would be
22 what people might call rationalizing your portfolio;
23 right? So that's a different term of art, I think.

24 MR. TREMAINE: And rationalizing your
25 portfolio -- thank you for that clarification. So if

1 you rationalize your portfolio as part of that
2 divesting of assets before you have to pay for
3 decommissioning? Okay.

4 MR. MCGOWEN: Yeah. And that's --
5 that's funny 'cause that -- my example of my -- of my
6 little well that I got that kind of made the company,
7 that was a -- that was a big outfit with lots of smart
8 people who rationalized their portfolio. So I got to
9 have a little laugh at their expense.

10 MR. TREMAINE: Didn't work out in that
11 case, did it? So if I'm worried that my old Nissan
12 Xterra is getting up there in miles and I'm going
13 to -- about to have a bunch of, you know, maintenance
14 costs, significant maintenance costs, and I sell it
15 before I do that, is that a reasonable analogy for
16 rationalizing my portfolio?

17 MR. MCGOWEN: Well, I would think so,
18 but the -- whoever buys it should take into account
19 that -- what they're buying and -- and that it comes
20 with its own set of problems.

21 MR. TREMAINE: Yeah. I mean, after I
22 sell it, it's their problem, so -- I mean, would you
23 agree with that?

24 MR. MCGOWEN: I'm trying to think about
25 that. I guess that sort of depends on the -- there's

1 some legal issue -- issues there maybe.

2 MR. TREMAINE: I can't hide the
3 problems from them when I sell it; right?

4 MR. MCGOWEN: Right. But do you still
5 own an environmental liability, for example?

6 MR. TREMAINE: Right.

7 MR. MCGOWEN: 'Cause normally in a
8 purchase and sale agreement, they'll -- they'll write
9 into the contract, "Oh, I'm not buying your
10 environmental liability that you created before I took
11 over this well." That's -- you know -- that's a
12 normal -- you know -- normal clause you see in a
13 purchase and sale agreement --

14 MR. TREMAINE: Normal -- right. Yeah.

15 MR. MCGOWEN: -- is you told -- you
16 told me it was clean when I bought it. Getting an
17 as-is whereas is a little hard.

18 MR. TREMAINE: Yeah. Fair enough.
19 Fair enough. When you sell wells, what happens -- so
20 you as a prudent operator, your Navidad entities
21 you've talked about, you're saving money for any
22 decommissioning costs that you're projecting, but then
23 you sell the wells. So what happens to the resources
24 that you had held allocated to the decommissioning
25 costs of those wells once you sell them?

1 MR. MCGOWEN: Well, I mean, the -- the
2 cash that I have stays with -- with me and gets
3 distributed to the investors and it's the new guy's
4 problem. If I'm answering your question.

5 MR. TREMAINE: Pardon? Sorry. Yes.
6 You absolutely are. So when you -- let me think here
7 for a second. I might come back to this.

8 Let me ask you about -- you referred to
9 yesterday in your slide 37 -- actually, strike that.
10 I want to stay there.

11 You talk about in your testimony and
12 NMOGA's presentation generally talks about risk-based
13 approach to financial assurance; right?

14 MR. MCGOWEN: Yes.

15 MR. TREMAINE: Can we agree in the room
16 that risk-based strategy appropriate?

17 MR. MCGOWEN: Yes, but I don't -- I
18 don't think we've -- we've actually identified what
19 that exactly means yet.

20 MR. TREMAINE: Right. Right. I
21 respect that the parties don't agree that the current
22 petition is appropriately risk-based. But what I
23 want -- I want to ask you about portfolios. So you've
24 managed a lot of -- you've managed several oil and gas
25 well portfolios and large projects.

1 When you have -- you're preparing
2 estimates and projections and risk assessments for
3 equity backers, et cetera -- we've talked about that.
4 If you took -- if you said, "Hey Equity, I want an
5 investment because I want to go buy 50 wells that
6 produce 500 to 1500 BOE per year and I just want to
7 operate those wells," would you get equity backing for
8 that plan?

9 MR. MCGOWEN: Well, the industry has
10 shifted a bit in that respect recently I think. There
11 are -- it depends on the strategy of the -- of the
12 equity backer. Some folks are going after just
13 long-term reserves and -- and are buying -- you
14 know -- are buying properties like that. Other folks
15 want you to be able to do additional development.

16 So I guess I would say right now,
17 the -- the whole -- the whole PE model is in -- in
18 flux at the moment; right? -- because of all these
19 things that have happened. So I would say that
20 there's some folks that might buy that property and
21 it'd be willing to put money into it and it would be
22 more of a -- almost like -- like a limited
23 partnership.

24 You would buy it and then you would
25 have to produce and -- produce those wells and then

1 distribute revenue to the -- to the investors. But in
2 that case, you -- you better take into account that
3 you have to plug some of those wells.

4 MR. TREMAINE: Okay. So hypothetical
5 here, if you have a portfolio that has 50 wells that
6 all produce 750 BOE on an annual basis --

7 MR. MCGOWEN: Is that cumulative or for
8 a piece?

9 MR. TREMAINE: A piece. Thank you.
10 Yeah. So each well -- I'm trying to make this simple.
11 Lawyer math. So you have 50 wells, all of the wells
12 are what would fall under the proposed definition of
13 marginal well in this petition; all right? So they
14 all are producing magically 750 barrels of oil
15 equivalent per year.

16 And then you have a second portfolio
17 where you have 25 wells that are in that situation,
18 and then you have additional wells that are new
19 horizontal wells producing. Which of those portfolios
20 in your professional opinion is of higher risk?

21 MR. MCGOWEN: Okay. So let's think
22 about that for a minute. Here's -- here's part of the
23 problem is if you -- when you buy those horizontal
24 wells, whoever's selling it is trying to get a rate of
25 return and whoever's buying it is trying to get a rate

1 of return. So what's the risk involved in the new
2 wells?

3 Well, in the new wells is how -- how
4 early in the process am I? If it's -- let's just say
5 most of the wells have three to six months production
6 versus if they've got five years production. So I
7 have an unreliable decline curve. You're still in
8 transient flow during that early period and you don't
9 really know where the curve's going to break over.

10 So I've seen folks get burned on that
11 where they thought, "Oh yeah, I've got all these
12 reserves." And then they buy it and they find out
13 three years later it went into the toilet on them. So
14 that's a separate issue; right? I -- I think most
15 private equity groups and investors would think,
16 "Well, I've got a big asset base here and that's
17 probably the lower risk."

18 Unless on the other side, do I have
19 something I'm going to go do with all those marginal
20 wells that I already know -- for example, if I know
21 that I've -- I've been able to do this particular
22 treatment in a -- in that same field and it's working
23 like gangbusters and I can buy all those, I'm -- I'm
24 probably not going to want to have to deal with the
25 big ask problem with that big package.

1 I'll probably go buy the -- I have much
2 less capital exposure. I can get the whole thing for
3 cheap and then go apply my technique and -- and bring
4 all the wells' production up. My rate of return could
5 be much higher. So there's a risk versus reward
6 issue, if you will. So it's -- I mean, I understand
7 you're hypothetical. I'm not sure what you're driving
8 at, but I'm trying to answer the question.

9 MR. TREMAINE: Sure. Well, so you
10 would expect the portfolio that has a newer horizontal
11 well to produce more revenue; right?

12 MR. MCGOWEN: But you're also going to
13 pay for that cash flow stream --

14 MR. TREMAINE: When you buy it; right?

15 MR. MCGOWEN: When you buy it.

16 MR. TREMAINE: Right. But your
17 response to my hypothetical was that what you would do
18 is you would -- in either case you would seek to
19 improve or redevelop those; right? That's the example
20 you provided in response.

21 MR. MCGOWEN: Yeah.

22 MR. TREMAINE: You can buy the marginal
23 well portfolio for cheaper, but what you're going to
24 do is you're going to redevelop it?

25 MR. MCGOWEN: That's -- my approach has

1 always been I want to know that I've got some sort of
2 upside potential beyond what I paid for it.

3 Otherwise, why did I buy it, so --

4 MR. TREMAINE: Have you ever in your
5 professional experience -- well, strike that. I'm
6 going to move on.

7 I want to ask you about some of your
8 references that you made to corrosion. So in slide 37
9 yesterday during your direct, you talked about -- I
10 believe what you said was, I'm paraphrasing, rust
11 cement, essentially corrosion is what kills wells; is
12 that fair?

13 MR. MCGOWEN: Yeah. The cement doesn't
14 corrode but the --

15 MR. TREMAINE: It can degrade?

16 MR. MCGOWEN: Well, probably not.
17 If -- if you had good cement to start with it,
18 sometimes it'll actually get harder and -- and you can
19 get barite settling, I've discovered the hard way,
20 that makes a really good sealant. So as the barite
21 settles out of the drilling mud, that can pack off
22 above your cement and make a really good seal.

23 MR. TREMAINE: Let me back up because I
24 don't want to misquote you. I thought you said
25 cement. I might be wrong. I was taking notes on the

1 fly, but --

2 MR. MCGOWEN: I didn't want to imply
3 that cement corrodes, put it that way.

4 MR. TREMAINE: Fair.

5 MR. MCGOWEN: It's -- corrosion is a --
6 is a metallurgical term.

7 MR. TREMAINE: I believe that the part
8 that I'm highlighting here is that you said that
9 corrosion is what kills wells. Yeah.

10 MR. MCGOWEN: Yeah. What you should be
11 worried about is where you have corrosive fluids in
12 contact with steel.

13 MR. TREMAINE: Okay. And then you had
14 indicated I think on that slide or the series of
15 slides, a number of kind of elements that can cause or
16 increase corrosion. What I want to ask you is, is
17 time one of the functions that can contribute to
18 corrosion?

19 MR. MCGOWEN: Well, time doesn't drive
20 corrosion, but corrosion is a time dependent process.

21 MR. TREMAINE: Better way to put it.
22 That's why lawyers ask engineers questions. If you
23 leave a well unplugged for years and you don't perform
24 any work on that well, that could increase the risk of
25 corrosion to the well; correct?

1 MR. MCGOWEN: If you -- if you leave it
2 abandoned and you put a -- a corrosion inhibited fluid
3 inside the wellbore, you can essentially pickle the
4 inside of the wellbore. What corrosion is, is it's
5 actually a -- like a battery. It's a -- it's an ion
6 exchange. So if you can put a film of something on
7 the surface of the metal that stops ion exchange, you
8 can kill the corrosion. So that's internal corrosion.

9 MR. TREMAINE: Thank you, sir. But
10 that's not what I asked you. What I asked you was if
11 you leave it alone. I understand that, like, a
12 prudent operator can do things to prevent corrosion
13 and OCD might even require those things in certain
14 circumstances.

15 But I'm asking you if you just leave it
16 alone -- time contributing to corrosion. If you leave
17 it alone for five years, you could have worse
18 corrosion than potentially than if you leave it alone
19 for, you know, five weeks?

20 MR. MCGOWEN: Exactly. That's correct.

21 MR. TREMAINE: Okay. So regarding
22 plugging. You provided some testimony regarding
23 plugging, and you stated, I think consistent with your
24 testimony today, that certain plugging -- aspects of
25 plugging depend on corrosion and metallurgy of the

1 well; is that correct?

2 MR. MCGOWEN: Yes.

3 MR. TREMAINE: Okay. And so a well
4 regard -- a well we've agreed can be exposed to
5 corrosive environments; right?

6 MR. MCGOWEN: Yes.

7 MR. TREMAINE: Okay. And the well can
8 be exposed to corrosive environments regardless of its
9 plugging status; right?

10 MR. MCGOWEN: Yes.

11 MR. TREMAINE: We've talked a bunch
12 about temporary abandonment and approved temporary
13 abandonment. Is it your understanding -- is it
14 consistent with your understanding that in New Mexico
15 under the current rules, once a well is tested and put
16 in approved temporary abandonment, that well does not
17 require additional downhole monitoring for another
18 five years?

19 MR. MCGOWEN: Well --

20 MR. TREMAINE: I'm just asking you
21 about the status of when testing --

22 MR. MCGOWEN: Downhole -- downhole
23 monitoring. I mean, actually what you're monitoring
24 is at the surface.

25 MR. TREMAINE: Okay. And so that

1 abandoned TA well, that is going to be potentially
2 subjected to the same corrosive environment as any
3 other well; correct?

4 MR. MCGOWEN: Well, again, did you --
5 did you pickle it when you plugged it or did you --

6 MR. TREMAINE: I'm asking you about
7 the --

8 MR. MCGOWEN: -- abandon it, or --

9 MR. TREMAINE: I'm asking about the
10 environment and the exposure of the well or the
11 casing, tubing, what have you, not what did the
12 operator do?

13 MR. MCGOWEN: No. I -- I guess
14 I'm -- well, that is the environment I guess though;
15 right? Is the fluids -- the fluids are the -- are the
16 electrolyte. So it's inside the wellbore. So if
17 you -- I'm -- I'm unsure if I follow the question.
18 I'm sorry.

19 MR. TREMAINE: Okay. Could a caliper
20 log encasing inspection -- because you referenced this
21 in your testimony. Could a caliper log encasing
22 inspection identify potential corrosion that isn't --
23 that does not constitute a complete failure at the
24 time of the inspection?

25 MR. MCGOWEN: It could. And I think

1 the -- the issue I got there is what's your criteria
2 to determine when you have a -- something that you
3 have to do something about? With a pressure test,
4 it's really obvious. If you see a pressure -- a leak,
5 obviously, you know you have a problem.

6 So I've -- I've never really used those
7 tools for that purpose. I've always used them for I
8 see a pressure -- if I see a leak of some kind, I go
9 in and I use those tools to figure out where the leak
10 is. Like, why do I have a problem? So I -- I've seen
11 them used as a diagnostic tool.

12 And something else I've seen is that
13 folks will gather a lot of data sometimes and then
14 they don't do anything with it. So if you're -- if
15 you're going to require logging, we ought to know what
16 are you going to do with it and what's the criteria.

17 And then the other problem is all these
18 different tools can be interpreted differently.
19 There's an interpretation that's required. So you --
20 you -- just seems like the rule is a little bit vague
21 on all that to me.

22 MR. TREMAINE: I understand your
23 position. Thank you. Did you hear the testimony of
24 Lauren Diede?

25 MR. MCGOWEN: I don't think so.

1 MR. TREMAINE: Okay. I'll move on
2 anyway. I want to move on and ask you -- you've
3 talked about this concept of a bad actor, and I kind
4 of want to examine that a little bit. I think that
5 that -- bad actors are absolutely a concern for
6 everyone, but it -- like talking about the beneficial
7 use definition, it's not really defined. So when you
8 talk about an oil and gas operator who's a bad actor,
9 what does that mean to you?

10 MR. MCGOWEN: Well, if you look at my
11 CV, I spent five years doing environmental auditing
12 for -- for clients and doing spill prevention control
13 and countermeasure plans. And then I did about 500
14 different surface facilities where people were buying
15 and selling wells. So I got to see a wide variety of
16 operating characteristics.

17 So for example, an Exxon location, you
18 could basically eat off the pad if you wanted to and
19 it would be fine. You know, they had -- they even had
20 all their piping color coded by -- by the fluid that
21 was in it. And then there were other operators --
22 this would be a good example of -- he's stuffing box
23 leaks on his pump jack and he digs a trench and it
24 goes into the creek and the oil's going down in the
25 creek. So this is the -- that guy's a bad operator.

1 MR. TREMAINE: Okay.

2 MR. MCGOWEN: Yeah.

3 MR. TREMAINE: So when you talk about
4 bad actors, it sounds like you're talking about
5 intentional malfeasance?

6 MR. MCGOWEN: I don't know if it's
7 intentional. It's -- it can be incompetence, it can
8 be ignorance, it can be laziness.

9 MR. TREMAINE: You're getting into my
10 next question. So do you include negligence and
11 incompetence in bad actor, your definition of a bad
12 actor?

13 MR. MCGOWEN: Well, I know that --

14 MR. SUAZO: Objection. This calls for
15 a legal --

16 MR. MCGOWEN: Yeah. I know. Those are
17 legal terms, but --

18 MR. TREMAINE: Bad actor's not a
19 defined legal term.

20 MR. SUAZO: Well, negligence is.

21 MR. TREMAINE: I'll move on. He
22 already testified to this fact. I was just trying to
23 clarify.

24 THE EXAMINER: Thank you.

25 //

1 BY MR. TREMAINE:

2 MR. TREMAINE: If an operator is
3 operating a portfolio -- so you've talked about
4 decommissioning costs and reserving costs. If an
5 operator, however they acquired it, acquires a
6 portfolio of wells and they do not have the funds or
7 the revenue to decommission those wells, they're
8 clearly undercapitalized, is that a bad actor?

9 MR. MCGOWEN: I don't know if it's a
10 bad actor. I mean, they haven't done anything wrong
11 yet, but -- but they might.

12 MR. TREMAINE: In that situation, is
13 that portfolio at a higher risk of abandon -- of
14 orphaning?

15 MR. MCGOWEN: I would say yes. If --
16 if you've got somebody that -- if you get -- yeah. I
17 don't know how you figure out if they don't have any
18 intention of -- of properly abandoning their wells or
19 not, but -- or if they're going to raise capital going
20 forward, I don't know; you know?

21 MR. TREMAINE: Okay. Thank you. You
22 talked about the -- I'm wrapping up here.

23 MR. MCGOWEN: Okay.

24 MR. TREMAINE: We're very close. So
25 you talked about some issues with the OCD's -- or the

1 WELC's proposal for beneficial use -- presumption of
2 beneficial use, and the 30-day period to provide a
3 response; do you recall that generally?

4 MR. MCGOWEN: Yes.

5 MR. TREMAINE: Madam Hearing Officer,
6 I'd like to share my screen real briefly here.

7 BY MR. TREMAINE:

8 MR. TREMAINE: So I'm going to point
9 you to -- this is always dangerous, because I'm using
10 someone else's exhibit, but I'm going to point you to
11 Petitioner's Exhibit -- Bates number 32, Exhibit 1E.
12 So I just want to confirm with you that beneficial
13 purposes is -- so for the understanding, like --
14 right?

15 This is the red line proposal. You
16 stated you're not a lawyer. The black is the existing
17 rule text and the red are the proposed changes. So
18 would you agree that a determination that a well is no
19 longer usable for beneficial purposes already exists
20 in the current rule?

21 MR. MCGOWEN: Yes.

22 MR. TREMAINE: Okay. You testified at
23 to some length about the concern, which I -- that even
24 though you're not applying a legal analysis or
25 determination to this as an operator, you want to be

1 clear on what the role means; right?

2 MR. MCGOWEN: Yes.

3 MR. TREMAINE: Okay. So if OCD were
4 under its existing rule to tell you as an operator
5 that there was a determination of no beneficial use
6 for one of your wells, which we can already do, what
7 would that mean to you? How would you know what that
8 means in their current rule?

9 MR. MCGOWEN: Well, I guess it means in
10 their opinion, I don't have anything else I can do
11 with that wellbore. I need to plug it.

12 MR. TREMAINE: And does -- would you
13 agree with me if I stated that there is not a clear
14 provision in the current rule for you to respond to
15 that determination?

16 MR. MCGOWEN: I -- I guess that's true.
17 Yeah. That sounds -- sounds correct.

18 MR. TREMAINE: If beneficial use is not
19 defined in the current rule and OCD were to issue a
20 determination of no beneficial use, wouldn't you think
21 that that would be of concern to operators?

22 MR. MCGOWEN: Yeah. I think there
23 needs to be -- what I'm trying to think about here is,
24 like, as an operator, what would I like to see? I'd
25 like to see some way to have a little bit of grace to

1 make your argument and have enough time to put
2 together your argument. I don't see anything in here
3 that suggests everything is well centric.

4 So -- so that's how do I explain my
5 program. Like, if I had a -- like I've talked about;
6 right? So that I have all these candidate wells left
7 to go do something to. So I guess I'm not saying you
8 shouldn't have some sort of improvement in the way
9 this is all written and that they make it clearer and
10 the -- the definitions are more obvious.

11 The operator needs enough time to
12 figure out how to make that argument. Sometimes you
13 have partners and you got to get them on board with
14 what you're going to do. So all these things take
15 time. And I'm not sure -- the -- there's -- there's
16 something about it that bothers me, which is that I
17 could just see that the projects I would think of
18 might be rejected out of hand because I don't have
19 enough data. So at -- at the time that I make the
20 proposal; right?

21 MR. TREMAINE: So let me ask you this
22 to your response. So in the situations that you
23 outlined, so Navidad put together -- the various
24 entities put together proposals, you got equity
25 backing.

1 In that situation, you would be able to
2 come to the division and say: "Yes, this, well is
3 producing a small amount, but here's this other
4 additional information. I've got \$500 million in
5 equity backing. We have already planned for
6 decommissioning costs. We've already done site
7 assessments for environmental remediation," et cetera,
8 et cetera.

9 Do you -- that's something that if
10 you're in the -- at any stage of your redevelopment
11 plan, you are going to have that information
12 available; right?

13 MR. MCGOWEN: Yeah. That's correct.
14 But then a bunch of my wells are already in -- might
15 already be in this other category. So it just -- so
16 it seems like this could be done better, put it that
17 way. But there ought to be a way to -- to do this
18 so -- so that I have some assurance that all these --
19 all my target wells aren't going to get thrown out and
20 that I'm not --

21 There could be something completely
22 arbitrary or the engineer on the other side at the
23 OCC -- OCD just thinks I'm crazy. It wouldn't be the
24 first time. So, you know, how -- how do -- I don't
25 know how you solve that problem exactly, but that's

1 all I'm bringing to the table is just think about
2 that; you know? Think about that when you're working
3 through this.

4 MR. TREMAINE: So all the things that
5 we just talked about, all those examples, isn't it
6 fair to say that OCD in its recommendation and the
7 petitioner in adopting this recommendation
8 incorporated all the types of planning and
9 capitalization documentation as specific examples of
10 what an operator can provide in this proposal to rebut
11 the presumption of no beneficial use?

12 MR. MCGOWEN: Well, they mentioned a
13 lot of data that you could -- that you could dump, but
14 it's for that particular well. So let's just say
15 that -- again, in my example of the thing I kind of
16 want to go do in Texas that nobody's done before, I've
17 got to convince this -- somebody that I don't know who
18 it is, that this idea I have that nobody else has had
19 or executed yet --

20 This -- I heard some discussion about
21 the PRMS, the Petroleum Resource Management System. I
22 think some of these ideas would be contingent reserves
23 particularly, or maybe possible reserves under that.
24 So that means that, you know, contingent's like 5
25 percent or less probability of success, possible is

1 going to be, you know, 10 percent probability of
2 success.

3 So is -- what's the hurdle? That's
4 what I'm trying to understand. There's no indication
5 of what the hurdle might be and how open the
6 commission might be to accepting some of those kind of
7 things.

8 MR. TREMAINE: If I represented to you
9 that it was Mr. Powell's testimony and position that
10 the division specifically structured this to allow for
11 the type of information you're talking about, a back
12 and forth with operators, and would encourage
13 redevelopment plans, is that something that would
14 assuage any of your concerns?

15 MR. MCGOWEN: I don't know whether it'd
16 completely alleviate it, 'cause I just -- I don't know
17 how that -- it's all going to turn out.

18 MR. TREMAINE: Okay.

19 MR. MCGOWEN: Yeah.

20 MR. TREMAINE: Uncertainties that --
21 you're a planner. Thank you, Mr. McGowen. I really
22 appreciate the dialogue this morning. I think it was
23 helpful. And I pass the witness.

24 MR. MCGOWEN: Thank you.

25 THE EXAMINER: Thank you, Mr. Tremaine.

1 Mr. Moore, do you have -- oh,
2 Mr. Graeser for the state land office.

3 MR. GRAESER: Yes. Thank you. I'm
4 filling in for Mr. Moore, so I appreciate everyone's
5 patience while I kind of muddle through this a bit.
6 I'm not too familiar with the record.

7 CROSS-EXAMINATION

8 BY MR. GRAESER:

9 MR GRAESER: Mr. McGowan, in your
10 direct, I believe towards the end of the direct, you
11 were discussing paying quantities. Do you have a
12 formula or a method by which you suggest measuring
13 paying quantities?

14 MR. MCGOWEN: Well, that's always a big
15 debate because that comes under many mineral leases.
16 We'll use that term; right? So -- and -- and
17 actually, I've been on some expert witness cases where
18 you have to talk about that, so -- in -- in my mind,
19 obviously, it -- it means that you're making -- you
20 know -- revenues must exceed expenses over some
21 timeframe.

22 The difficulty gets to be, like, what
23 timeframe are we talking about? So yeah. That's --
24 that's a -- sometimes a subject of contention is
25 exactly how to calculate that. It may require an

1 expert opinion for somebody to -- to say, "Well,
2 what's a reasonable way to calculate that?"

3 MR. GRAESER: So are you proposing any
4 way to calculate that?

5 MR. MCGOWEN: Well, the -- the --
6 nobody's ever defined what the timeframe is for
7 that -- you know -- there's no definition that I know
8 of where they -- this is the timeframe you have to use
9 for -- and it depends on what the documents are.
10 Maybe a mineral lease might have that defined, but --
11 it's got to be over some time period; right?

12 So obviously it's paying quantities,
13 revenues must exceed expenses. That part's easy. I
14 think the harder part is, well, is that over 90 days
15 or a year or two years or five years? What's -- you
16 know -- what's the -- what's the criteria on the
17 timeframe?

18 MR. GRAESER: Right. Do you have any
19 thoughts on that, an appropriate timeframe?

20 MR. MCGOWEN: I haven't really thought
21 that through. I -- I don't -- I haven't really
22 thought that through actually, is to give you a -- a
23 definite answer on that.

24 MR. GRAESER: Okay. And any thoughts
25 on specific factors that might be included in that

1 paying quantity analysis?

2 MR. MCGOWEN: Well, if you look at
3 your -- this is an issue with the -- your revenues and
4 you've also got an issue with projecting revenues. So
5 for example, during COVID when we had negative oil
6 prices, there was a period there where you could have
7 said, "Well, none of your wells are producing in
8 paying quantities right now and all my expenses are
9 ongoing."

10 Obviously it's all your operating
11 expenses. I don't think you would allocate overhead.
12 I don't -- that's not a normal way to do it. I think
13 you would do it on a -- on a -- like, a well basis.
14 So I don't think you would allocate your office
15 overhead, but you would -- and maybe have direct
16 operating expenses related to -- to operating that
17 well.

18 And then you need to take into account
19 whatever you can sell the -- the product for, and
20 you're going to need to take into account any
21 differentials, you know, all those kinds of things
22 that you have to calculate. And -- and you have a
23 revenue -- you know -- revenue minus expenses
24 basically. Does that make sense? Am I answering your
25 question?

1 MR. GRAESER: No. I appreciate it.
2 I'm just wondering if you had any -- you could bring
3 any light to what does appear to be a ongoing
4 discussion. I'll move on.

5 So I believe on slide 89 on your
6 rebuttal -- and I'm sorry. I don't have the document.
7 Perhaps someone can bring it up. But we may not need
8 to. You were referring to environmental costs. I'm
9 wondering if you can shed some more light on what
10 costs you are including in that?

11 MR. MCGOWEN: Well, I don't remember
12 the exact context of that.

13 MR. SUAZO: I can bring it up.

14 MR. MCGOWEN: I could tell you -- could
15 somebody bring that up so I can look at it? But --

16 MR. GRAESER: Appreciate that.

17 MR. SUAZO: Mr. Graeser, you said slide
18 89 of the rebuttal; correct?

19 MR. GRAESER: Correct.

20 MR. SUAZO: Thank you.

21 MR. MCGOWEN: Oh, let's see. You say
22 slide 89 or page 89?

23 MR. SUAZO: Slide 89.

24 MR. MCGOWEN: Okay. Okay. My slides
25 don't have numbers on them, I'm afraid. Oh, okay.

1 Good. Okay. All right. Let's see. Where does it
2 talk about -- oh, there it is. Right there. Yeah.
3 Maybe you should ask your question again, please.

4 BY MR. GRAESER:

5 MR. GRAESER: Yeah. I mean, so my
6 question is what are you including in those
7 environmental costs?

8 MR. MCGOWEN: Are we talking about V?

9 MR. SUAZO: Objection. These are not
10 the witness's environmental costs. They're from one
11 of the applicants' witnesses, I believe, Mr. Purvis.

12 THE EXAMINER: Oh, Mr. Graeser.

13 MR. GRAESER: Okay. Okay. I
14 appreciate that.

15 THE EXAMINER: I know you weren't here
16 for the Purvis testimony.

17 MR. GRAESER: Yeah. No -- no worries.
18 And I apologize.

19 BY MR. GRAESER:

20 MR. GRAESER: So let me move on to
21 Mr. Tremaine's comparison of the well and his Nissan
22 Xterra, I believe it was. So he asked you the
23 question, once you sell it, it's the buyer's problem;
24 right? And you said yes, but you hesitated; correct?

25 MR. MCGOWEN: Well, yeah, 'cause I'm

1 thinking about the purchase and sale agreements that
2 I've, you know, executed, and when I buy properties,
3 what I try to build into my purchase and sale
4 agreement. And good attorneys would not advise you to
5 take on everything that the guy did to the property
6 before you owned it. I -- I think everybody would
7 agree with that. So that's what -- that's what my
8 counsel has advised.

9 So now, you would love them to take on
10 those liabilities, but they -- you know -- they
11 probably won't. So in -- in the experiences I've had,
12 if it -- if it's something that I did to the property
13 before they took it over, then that's my problem.

14 And then what I try to do then is I
15 create a baseline for what I -- you know -- I make
16 sure that I've taken care of all of my environmental
17 problems before I sell it to them, 'cause I know that
18 I may -- beyond anything to do with a commission, you
19 could have a -- a surface owner or, you know, somebody
20 else come back at you, they've found a problem later.

21 So you want to make sure that it's --
22 that's really my only protection is to go take care of
23 my business in that case. If -- if I'm -- unless --
24 unless I can talk the guy into taking my environmental
25 liabilities going forward; right? To accept what I --

1 whatever I did before. Does that make sense?

2 MR. GRAESER: It does. So for
3 instance, a state land office lease may be the source
4 of an ongoing obligation that you can't pass on;
5 right?

6 MR. MCGOWEN: Well, that's true. There
7 could be something in a -- I think mainly, like, it --
8 the lease I had with the state of Texas, for example.
9 I don't know -- I don't recall exactly what was in it,
10 but I wouldn't be surprised if there was something
11 like that in there. Or university lands is another
12 thing in Texas. So I -- I don't -- I haven't taken a
13 university lands lease, so I'm not that familiar with
14 it, but --

15 I don't know that you can completely
16 escape from all that liability. I was on a -- an
17 expert case many, many years ago where they were
18 basically trying to go after operators that had
19 drilled wells, like, in the '20s and '30s. I don't
20 know whether they were successful or not.

21 But there's -- like, this is why --
22 this is one of the reasons why, if I'm ever going to
23 sell anything, I'm going to clean everything up before
24 I sell it and I'm going to do my own site assessments
25 and I'm going to have filed all my paperwork and I'm

1 going to have done everything correctly.

2 And if there's anything I think might
3 come back to bite me, like -- like a plugged well --
4 unplugged wells, I'm going to go plug those wells. So
5 that's just my approach because I don't -- I'm not
6 sure if I -- I don't know. I'm not a lawyer, but I'm
7 not sure you can totally escape from that liability.
8 Does that make -- am I answering your question?

9 MR. GRAESER: It does. You did answer
10 my question, and I appreciate your approach. Thank
11 you. I appreciate your time. I don't have any other
12 questions for you.

13 MR. MCGOWEN: All right. Thank you.

14 THE EXAMINER: Thank you. Let's see.
15 I don't know that we have Ms. Nanasi on the platform.

16 Mr. Maxwell, do you have questions of
17 this witness? He may have stepped away.

18 Mr. Rankin, do you have questions?

19 MR. RANKIN: No questions for this
20 witness. Thank you.

21 THE EXAMINER: All right. I know EOG
22 is monitoring the proceedings, but does not have
23 questions.

24 Mr. Cloutier.

25 MR. CLOUTIER: Just a few, Madam

1 Hearing Officer.

2 CROSS-EXAMINATION

3 BY MR. CLOUTIER:

4 MR. CLOUTIER: Good morning,
5 Mr. McGowen.

6 MR. MCGOWEN: Good morning.

7 MR. CLOUTIER: We met yesterday for the
8 first time here in this room, but my name's Drew
9 Cloutier, and I represent the Independent Petroleum
10 Association of New Mexico. Just a few questions to
11 follow up on what's been going on here today and in
12 this rulemaking.

13 You present as a prudent operator, and
14 so I want to put you in a situation that's going to
15 occur if this rulemaking is adopted. You're operating
16 some marginal -- some wells that are approaching
17 marginal status, however, that's going to be defined
18 on the rules, and you see it. What as a prudent
19 operator are your rational choices at that point faced
20 with bonding expense?

21 MR. MCGOWEN: I -- well, it -- one
22 thing I'm trying to understand from the regs, from
23 what I'm reading, is it seems like I may need to
24 proactively put some of my wells into temporary
25 abandonment status to avoid getting into the situation

1 where there's a trigger and then I've got to justify
2 what I'm going to do with it.

3 So I don't quite understand how that
4 works under the regs that they're proposing. So -- so
5 would I -- would it -- would it be prudent for me to go
6 ahead and try to get them -- all those marginal wells
7 and -- and do some kind of temporary abandonment and
8 just shut them in if I had some period to do that
9 instead of, well, then all of a sudden they all get
10 triggered and next thing you know, I'm -- I'm in a
11 bind; right?

12 I've got to try to prove what I'm going
13 to do with them in the future. So that's confusing to
14 me under the regs.

15 MR. CLOUTIER: Let me try and clarify
16 it.

17 MR. MCGOWEN: Yeah.

18 MR. CLOUTIER: Let's just say you're
19 faced with a binary choice. You're either going to
20 have to bond these wells or not. What is a prudent
21 operator going to do?

22 MR. MCGOWEN: Well, depends on whether
23 I think I could do something with them or not. I
24 guess I might have to just plug them. I mean, that's
25 one option would be to say, "Do I have the time to

1 figure this out?" If I -- if I'm going to go test
2 something in one or two of them and see what happens,
3 will I have time to figure out whether it worked and
4 do the other ones? If I don't have time to do any of
5 that, then I'm just probably going to have to plug
6 them, I guess.

7 MR. CLOUTIER: And you would plug them
8 even if you were making some money off of them still.
9 But is your expense -- your operating expenses
10 exceeded or were less than your revenues --

11 MR. MCGOWEN: You just have to decide
12 if the carrying cost was worth it and -- and worth
13 having to get the extra bonding and -- and then go
14 through the whole rigmarole of trying to convince
15 everybody that you've got a plan for the future.

16 I mean, you're having a -- you're
17 trying to convince yourself that you've got a plan for
18 a future if you try something new. So you need to get
19 enough data. But there -- you know -- there -- it's
20 a -- it's a very possible scenario that you might say,
21 "I just -- I just need to plug these things."

22 MR. CLOUTIER: Yeah. And let me -- as
23 you've pointed out, when you're facing this decision,
24 either plug or incur the bonding expense and see if
25 you're going to be able to do something -- well, I'm

1 going to assume some facts not in evidence. I'm going
2 to assume that Suazo Operating Company is also a
3 prudent operator and you're a prudent operator.

4 Is it possible that two different
5 prudent operators might look at the same situation
6 differently? One might plug and one might keep it?

7 MR. MCGOWEN: Yes.

8 MR. CLOUTIER: As a person with about
9 40 years' experience in the oil and gas industry, do
10 you believe that if faced with this choice, the State
11 of New Mexico would lose production, leave producible
12 hydrocarbons in the ground on an overall basis?

13 MR. MCGOWEN: You're talking about
14 overall, these overall rules that we're talking about?

15 MR. CLOUTIER: Yes. If we're faced
16 with this, again, binary choice, either bond or not to
17 bond, that there will be operators who will choose to
18 plug and therefore leave prudent operators --

19 MR. MCGOWEN: Well, I get --

20 MR. CLOUTIER: -- hydrocarbons in the
21 ground?

22 MR. MCGOWEN: Yeah. Let me think about
23 that a minute. Well, there -- there's one particular
24 provision that's the most terrifying from an
25 operator's point of view, which is this 15 percent

1 thing, because it's like this sudden dramatic change
2 in my whole financial picture; right? That I didn't
3 anticipate going in, so --

4 And I've discovered that -- for
5 example, private equity never -- they never like
6 negative surprises about money. So that -- that one
7 right there I think could push you into a situation
8 where you would be -- well, you know, depending on
9 your resources and -- and what -- like, I have no idea
10 what the surety market's going to do. So there's huge
11 uncertainty to me.

12 You know, some of the testimony I've
13 heard doesn't sound very good. So could I end up in a
14 situation where I just can't get the bonds? So now
15 what do I do? Well, am I just have to start plugging
16 wells? I'm just have to get them off the books.

17 MR. CLOUTIER: I think you answered my
18 question. You anticipated a couple of others like you
19 did with Mr. Tremaine a couple minutes ago. Are there
20 federal tax incentives for producing -- low producing
21 wells that may be defined as marginal wells under a
22 different definition?

23 MR. MCGOWEN: Well, this is the thing
24 that I've noticed. Everybody's talking about the
25 marginal well. And the way I've always looked at it

1 is there's actually incentives. So until recent
2 history, everybody wanted to protect the small
3 operator and protect their ability to keep producing.

4 So that -- I think it's \$25 a barrel.
5 I mean 25 barrels a day, I think it was, which is a
6 pretty high number, but it was actually on the
7 opposite side. It was to help you get the marginal
8 production tax credit, which you only got with a
9 certain ridiculously low oil price. But it was
10 actually intended to be an incentive to keep you in
11 business, not to put you -- not to make you plug your
12 wells.

13 And the same thing in -- Texas has
14 something similar. Louisiana has something similar.
15 Even extending over to inactive wells, it -- it's --
16 you could just find it on the internet pretty easy.
17 There's -- there's -- they list all these different
18 incentives that are available to cut your severance
19 tax for --

20 And they're trying to encourage --
21 those are all designed and they -- and they define
22 their marginal wealth, not as a punishment and -- and
23 to force you as a trigger to kill your well, but as a
24 way to help you keep it online. So it's definitely an
25 apples and oranges kind of thing.

1 MR. CLOUTIER: Okay. And can you put
2 some meat on the bone for the commission if you know
3 about this Texas program or Louisiana program what
4 these incentives look like?

5 MR. MCGOWEN: Well, I don't -- I don't
6 have it memorized, but the one I'm excited about is
7 starting in 2026, Texas is going to have a -- a 100
8 percent severance tax abatement for three years or --
9 or -- with a \$750,000 cap if you take an inactive well
10 and you stimulate it, if you put a frack on it.

11 So that would take a lot of the risk
12 away of trying a new idea and seeing if you're -- if
13 you can come up with a refrack that'll actually work
14 or restimulation. So that's just one example. Texas
15 has a -- a -- they actually have one that's sort of
16 the opposite of what we're talking about here, which
17 is -- I believe it's if your well's been down for two
18 years, if you'll bring it back up to production, you
19 can get a five-year abatement of your -- of your
20 severance tax. And then Louisiana has some things
21 that are similar.

22 They don't -- they don't call it a
23 marginal well. They call it a incapable well. They
24 have a different term for that, but --

25 MR. CLOUTIER: Okay.

1 MR. MCGOWEN: Now, I'm not -- I'm not
2 an expert on everything and that -- all the New Mexico
3 regulations, but it did occur to me that the one way
4 to help alleviate some of this would be, along with
5 some sticks that sound like everybody wants to put
6 into place, it'd be great if you had some carrots that
7 would attract investment capital and attract the kinds
8 of entrepreneurs that would bring capital that do have
9 the wherewithal to plug everything properly and do all
10 their environmental due diligence and do the thing --
11 you know -- follow the rules, basically.

12 MR. CLOUTIER: Thank you for your time,
13 Mr. McGowen.

14 MR. MCGOWEN: Thank you.

15 THE EXAMINER: Thank you.

16 Mr. Suazo, do you have some redirect?

17 MR. SUAZO: I do, Madam Hearing
18 Officer.

19 REDIRECT EXAMINATION

20 BY MR. SUAZO:

21 MR. SUAZO: Mr. McGowen, let's start
22 with some of the questions you were asked about NMOGA
23 offering a proposed definition for beneficial use.
24 Sorry, that's me. Sorry.

25 You recall, Ms. Fox asking you whether

1 NMOGA submitted a definition for beneficial use?

2 MR. MCGOWEN: I --

3 MR. SUAZO: Sorry. Do you recall?

4 MS. FOX: Objection. I didn't ask
5 that.

6 MR. SUAZO: I believe she did.

7 THE EXAMINER: Yes. You asked about
8 the beneficial use versus marginal well; yeah?

9 MS. FOX: With the beneficial use
10 discussion, that was all about our proposal. I didn't
11 ask about the NMOGA proposed definition of beneficial
12 use. I'm just --

13 MR. SUAZO: I recall that she did.
14 That was my recollection. I guess we can go to the
15 transcript.

16 THE EXAMINER: Yeah. I'm sorry. I
17 share his recollection. It might be wrong.

18 MS. FOX: Yeah. No. I didn't ask
19 about NMOGA's definition is all I'm saying.

20 THE EXAMINER: Okay. Thanks.
21 Go ahead, Mr. Suazo.

22 BY MR. SUAZO:

23 MR. SUAZO: Do you recall being asked
24 about proposed definitions of beneficial use?

25 MR. MCGOWEN: Yes.

1 MR. SUAZO: Have you reviewed the
2 testimony of NMOGA witness, Clayton Sporich?

3 MR. MCGOWEN: I'm trying to remember.

4 MR. SUAZO: I understand there's a lot
5 out there.

6 MR. MCGOWEN: Yeah. I -- I'm -- first
7 off, I'm terrible at names. Another engineering trait
8 I think maybe. I don't really remember. I'm sorry.
9 So --

10 MR. SUAZO: Okay. Are you aware
11 whether Mr. Sporich offered a proposed definition for
12 beneficial use?

13 MR. MCGOWEN: Was that here at -- at
14 this testimony? Like -- or was it in his written
15 testimony?

16 MR. SUAZO: Well, he hasn't testified
17 yet, so it would have to be in his written testimony.

18 MR. MCGOWEN: Okay. I don't remember.
19 I'm sorry.

20 MR. SUAZO: Based upon the discussion
21 and the questions from the commission in this
22 proceeding, are you aware whether NMOGA intends to
23 submit additional proposals to the commission?

24 MR. MCGOWEN: I have heard that
25 discussed. Yeah. That they -- that they're going to

1 submit some things.

2 MR. SUAZO: Do you recall being asked
3 about a potential point system or talking about a
4 potential point system for prioritizing orphan wells
5 yesterday?

6 MR. MCGOWEN: Yes.

7 MR. SUAZO: Are you able to provide
8 additional detail about that?

9 MR. MCGOWEN: Well, and I realize a lot
10 of people aren't going to like this, but engineers
11 like to be -- you know -- use science. So, you know,
12 we know what causes corrosion, we know how that works,
13 we know about cement; right? So -- and we also know
14 that -- I'll give you one example of something that
15 you should probably look for, which is proximity to
16 injection wells.

17 So let's just take an example. If I
18 said I had a -- I've got a well drilled in the '40s
19 and it's been there a long time. And I look at the
20 cementing records, and I don't -- I don't think I've
21 got cement over the zone that they're injecting salt
22 water into. And so that means I could have cross flow
23 of a -- of that brine going across the casing on the
24 outside of the casing; right?

25 So I would expect that would be one of

1 my wells I should be worried about; right? That's --
2 that's a -- that would be a higher risk. So could you
3 come up with a point system? I think so. I think if
4 you did -- what you need -- what you're trying to
5 figure out a way to do is to -- is to break the
6 population up into risk groups using first principles
7 of engineering. And you could do some statistical
8 analysis and also do some analytical analysis.

9 If I was given the problem to solve, I
10 would start with these outlier wells, these really big
11 ones, and I'd figure out -- I'd go -- I'd go through a
12 root cause analysis and figure out why that happened.
13 What was the -- it's -- the -- the technique is called
14 Failure Mode and Effect Analysis, FMEA. And it's a
15 known -- it's a known technique that's backed up by,
16 you know, decades of literature.

17 So I would go figure that out, and then
18 that would be a good -- good way to figure out, okay,
19 what were the things that caused these wells to be
20 these outliers? 'Cause they're the ones that are
21 skewing your plugging costs. Those are the ones you
22 need to go address.

23 They should have -- and then you could
24 say, "Okay, now I've got -- I'm going to develop a
25 point system based on the known factors." Right? And

1 I -- I got a spreadsheet in my head I can visualize I
2 could build.

3 MR. SUAZO: Very good. And the reason
4 why I asked that is because I wanted to ask if you
5 recall being asked about the LFC report by Ms. Fox and
6 I think Mr. Tremaine?

7 MR. MCGOWEN: Yes.

8 MR. SUAZO: Okay. In your view, is the
9 LFC a perfect estimate as it is?

10 MR. MCGOWEN: No. But I don't -- I
11 don't know that there is such a thing as a perfect
12 estimate, but I think given everything we know now
13 and -- and given all the discussion and sort of like
14 I've been talking about, scrubbing the data properly,
15 you know, making sure you understand if you've got
16 multiple populations within your -- within your large
17 population, that you're sampling it correctly, I think
18 you could do a better job of that.

19 MR. SUAZO: So am I correct to
20 understand that you think that estimate can be
21 approved with -- improved with additional OCD and
22 perhaps industry data?

23 MR. MCGOWEN: Yes.

24 MR. SUAZO: So you talked about raising
25 capital for projects where others may not see a lot of

1 value. In your opinion, from a operational
2 perspective, how might potential financial backers
3 view the increased costs associated with financial
4 assurance?

5 MR. MCGOWEN: Well, it -- it depends on
6 what you're doing, of course. If I'm just -- if I'm
7 taking new leases and I don't deal with any of these
8 old wells, that's one scenario. It -- it might push
9 you to do that because you want to stay away from this
10 problem, you know, this whole issue. So that's one
11 possible scenario.

12 Another scenario would be they would
13 want to know what impact are these rules going to have
14 on our operations. And in particular, the -- the big
15 thing that -- that all these folks want to hear is the
16 term "running room." So what that means is this is a
17 risk business and a risk mitigation and a risk
18 reduction business.

19 In other words, you need to -- you have
20 to try something, you've got a hypothesis, you -- you
21 go execute, you see what the results are. That tells
22 you whether your hypothesis was correct or not. And
23 then you need -- you need enough evidence that what
24 you're trying to do is working so that you can proceed
25 and then do that in a larger scale.

1 So like I said before, if -- if they're
2 thinking, "Wow, in the middle of this whole process, I
3 could have a whole bunch of my -- my target wells
4 could get eliminated." If that's unclear, if that's
5 ambiguous, or subject to somebody's decision making
6 outside their control, like, you don't -- I don't know
7 what they're going to do.

8 So at that point, you would be -- you'd
9 be in a jam trying to raise money to do that. It'd be
10 a lot -- if there was -- the -- the more concise the
11 process is, the more predictable the process is,
12 the -- the better chance you're going to get, you
13 know, capital attracted. I think that's obvious.

14 MR. SUAZO: Do you recall Ms. Fox
15 showing you a chart that showed how long wells have
16 been inactive with some being inactive or temporarily
17 abandoned for in excess of 20 years?

18 MR. MCGOWEN: Yes.

19 MR. SUAZO: And do you recall some of
20 those wells being inactive for as long as 40 years?

21 MR. MCGOWEN: Yes.

22 MR. SUAZO: In your opinion, the fact
23 that these wells have been in that condition for so
24 long, is this a failure of the rules to function as
25 intended, or would this be a failure to enforce over a

1 long period of time?

2 MR. MCGOWEN: Well, don't want to throw
3 rocks at anybody, but seems like it -- they probably
4 should have -- somebody should have made them plug
5 those really old wells. That sounds -- you know --
6 and they're -- they're probably the ones that are
7 causing all the problems. I -- I could see how you
8 might have -- you know -- we've got a 40-year-old
9 well, you know, that sounds like a -- something I'd
10 want to be concerned about. Yeah.

11 MR. SUAZO: Sure. And, you know, I
12 think that, you know, there's plenty of -- you know --
13 if you want to call it blame, it's probably too strong
14 a word, to go around. But in your opinion, is what
15 Applicants are proposing through these rules
16 essentially asking operators to pay for, you know,
17 infractions that occurred many years ago?

18 MR. MCGOWEN: Well, I -- I guess you're
19 getting to a -- a point about fairness maybe. I'm not
20 sure if -- you know -- I don't know how that enters
21 into this kind of a conversation, but -- you are --
22 you are probably going to need -- you know -- that
23 what you're saying is that you're -- you're -- folks
24 in the present are going to have to pay for the sins
25 of their -- of their forebearers as it were.

1 MR. SUAZO: Thank you, Mr. McGowen.

2 No further questions.

3 THE EXAMINER: All right. Thank you,
4 Mr. Suazo.

5 We're just a few minutes ahead of noon,
6 so let's return at one and we'll go to commission
7 questions of Mr. McGowen.

8 MR. MCGOWEN: Okay.

9 THE EXAMINER: Thank you.

10 (Off the record.)

11 THE EXAMINER: All right. We're back
12 after a lunch break, and we turn to the commissioners
13 for their questions of Mr. McGowen.

14 Commissioner Ampomah, do you have
15 questions?

16 MR. AMPOMAH: Sure, I do.

17 Thank you, sir, for your testimony
18 today. And I always love it talking to the engineers.
19 We're going to have some fun.

20 MR. MCGOWEN: Uh-oh.

21 MR. AMPOMAH: Please, can you bring up
22 the slides. That will be Exhibit, I think, 1A. Let's
23 start from slide number 14.

24 So sir, there has been a lot of
25 discussions and, you know, I just want to see how we

1 can really narrow or come to more or less like a
2 consensus. And I do know that NMOGA with -- counsel
3 is saying they will provide us with red lines here and
4 there, but I really want to make sure that things are
5 discussed, you know, so I don't get any surprises when
6 we receive the final red lines.

7 So here, the first question that I'm
8 going to ask you, there's been a lot of discussion,
9 and I just want to know if you are okay with the
10 definition of the beneficial purpose or beneficial use
11 as it stands now if the commission just strike out the
12 speculative purposes?

13 MR. MCGOWEN: I guess since we have --
14 since we have "such as" in there, I guess that opens
15 it up that there could be other -- other things
16 that -- that aren't listed. And from an operator's
17 perspective and a non-lawyer, if -- if there were a
18 few other things listed that were obviously part of
19 that -- that statement, you know, I wouldn't --
20 wouldn't be opposed to that just to make it clearer or
21 easier to understand.

22 But overall, I -- I would say yes,
23 if -- if -- the thing that most concerns me is, is
24 what is -- what does speculative purposes mean and how
25 does it play out.

1 MR. AMPOMAH: Yeah. And there's been a
2 lot of discussion on that. So I'm not going to probe
3 further because where you -- when you say that "such
4 as" there, then it means it's just going to be a
5 finite number of items that if we want to put all of
6 them into a definition is probably not going to be
7 possible; right?

8 MR. MCGOWEN: Right. Like, what I've
9 seen in contracts is they'll -- now, I'm not a
10 lawyer -- is, you know, "including but not limited
11 to." Right? Something like that so that it's obvious
12 what that means.

13 MR. AMPOMAH: I hope counsel will take
14 notice of that.

15 MR. MCGOWEN: Yeah. Right.

16 MR. AMPOMAH: That is a very important
17 point. I appreciate that. Yeah. Thank you for that.
18 Let's go to slide number 16. And I just want to make
19 it quick. So under D, so you're saying that the 30
20 days are short. Do you have any date in mind?

21 MR. MCGOWEN: Well, I think obviously
22 you never know how much time you need, but if you
23 had -- if you had 90 days and maybe if you had some
24 additional grace, some -- some way to -- to work that
25 out on the fly, given the complexity of the project.

1 Like, let's say you had -- you know -- I've only got
2 one well I'm dealing with, that's one thing.

3 But if I'm actually trying to -- to
4 work with somebody on a program of some kind, you
5 could have a -- you're going to have to have
6 discussions back and forth. You're going to have to
7 have explanations. They -- it'd be great if the OCD
8 could say: "Well, I need more data. Go away and do
9 this analysis, come back to me." You know, that kind
10 of thing.

11 You might even need to bring in some
12 third-party consultants to help. So if -- if there
13 was -- again, I'm -- I'm just -- I'm spit balling here
14 at this point, but, you know, I could see if -- if you
15 could treat it with such that -- how do I get -- how
16 do I prevent losing an opportunity here, and -- and
17 how do I how do I prevent waste, then a -- a bit -- a
18 bit of grace on this would be helpful. Does that
19 answer your question?

20 MR. AMPOMAH: Yeah. It does. And --
21 but definitely I think based on most of OCD days that
22 I've seen, it's mostly 90 days. But I think OXY also
23 proposed something where they also added the language
24 to the effect of OCD working with the operator to make
25 sure that at least the operator exhaust all possible

1 options before they make their final determination.

2 So if counsel can look at what OXY
3 proposed and then combine that with what you're saying
4 and provide that to the commission, that would be
5 really helpful. But so you're saying that probably 90
6 days you are not opposed to that?

7 MR. MCGOWEN: Not -- not opposed, but
8 I -- I would add the caveat that flexibility somehow
9 built into this process; right? -- for -- to deal with
10 the complexity of the project; right? If it's -- if
11 it's a bigger project or it's -- or it's a more
12 unusual technology somebody wants to bring, or --
13 you -- you see what I'm saying?

14 So I'm not -- I'm not trying to draft
15 language here, but -- but I'm just -- you know -- just
16 saying that's a concern from an operator's
17 perspective.

18 MR. AMPOMAH: Let's go to slide number
19 29. And so there has been a lot of discussions about
20 the approved temporary abandonment and all of that.
21 So the applicant witness, I think Mr. Alexander,
22 proposed some exceptions to the commission for our
23 consideration. I don't know if you've had the chance
24 to review that.

25 MR. MCGOWEN: If there's something

1 beyond what's in my little notebook here, I haven't
2 seen it.

3 MR. AMPOMAH: Okay. Let me see if I
4 can read that to you. He's saying that beyond, let's
5 say, the getting to the seven years, eight years
6 before any well can extend, you know, to be TA, he has
7 some suggestions for the commission. So I just want
8 to read that to you.

9 MR. MCGOWEN: Who -- who's -- I'm
10 sorry. Who's --

11 MR. AMPOMAH: Mr. Alexander.

12 MR. MCGOWEN: Oh, Mr. Alexander. Okay.

13 MR. AMPOMAH: Yes.

14 MR. MCGOWEN: Okay.

15 MR. AMPOMAH: So he said that in order
16 to avoid the loopholes; right? So he's saying one, it
17 has to be limited in scope, limited in time, subject
18 to periodic OCD review, based on sound engineering,
19 technical, economic, and administrative information.

20 And he added to five and six, which
21 I'll still read anyway. "Not based upon guess work,
22 hinges, and speculations or the like." And then the
23 last one is "Carefully crafted to avoid any kind of
24 loophole leading to abuse." Do you have any comments
25 on these?

1 MR. MCGOWEN: Well, this is -- this is
2 based on my experience with bringing -- this has been
3 true since I was in college. My -- my buddies would
4 make fun of me. Like, I'd always say, "Well, there
5 must be a better way to do this." Right?

6 So I -- I've actually presented things
7 to folks that were highly qualified, but maybe they
8 didn't have the same experience I did, and maybe they
9 didn't have the same appetite to try new things. So
10 what concerns me a little bit in there is -- I -- I
11 wish it was some way you could make it so cut and
12 dried that it'd be easy to come to agreement with
13 everybody about -- you know -- there's some things
14 that are obvious.

15 Like, let's just say you've got a --
16 oh, I don't know. There's a sand behind pipe; right?
17 And you've got e-logs and you've done the subsurface
18 geology and maybe it's a conventional play, and you've
19 got pressure data -- you know -- all the good stuff;
20 right? And you can do all your calculations and you
21 can go perforate and -- and put those wells online,
22 and -- and it's -- it -- you know -- it's -- it's
23 obvious. It's the kind of thing you could get at
24 Ryder Scott or somebody to book reserves for.

25 What I'm concerned about is that some

1 of the things in the future that we might kind of need
2 to have in our -- in our arsenal in the -- in the
3 business is things that might be considered more
4 contingent. So I'm just -- I'm not totally sure how
5 to solve this problem, but that just seems a little
6 bit -- a little hard cut, if you know what I'm trying
7 to say.

8 So now, I don't know how you get around
9 that. I'm not -- I'm not telling you how to get
10 around that. I'm just saying that's my concern is I
11 can imagine a lot of things that I proposed in the
12 past that have ended up working would probably get
13 rejected. And they -- and they were -- you know --

14 I -- I drove all over Houston, Texas,
15 trying to talk private equity guys into doing stuff
16 and they all thought I was out of my mind until I
17 found one that would give me a chance; right? So --
18 and I've had one of the top reservoir engineers in the
19 country totally misinterpret what he was looking at.

20 And he -- he would've said, "Well, you
21 don't have any beneficial purpose." Yeah. So that's
22 my concern. Am I making sense here? So I don't know
23 how to solve the problem, but I'm just presenting it
24 that might be something you might want to consider.

25 MR. AMPOMAH: Yeah. So as for the

1 commission, we have to make this tough decision;
2 right? And we're just trying to build some consensus
3 here. So, you know, I asked Mr. Arthur yesterday
4 about the same issue. You know, he thought that the
5 number one to number four, it's probably okay, which
6 will be if before OCD can more or less give anybody
7 opportunity to go beyond the stipulated amount of
8 time, it has to be limited in scope.

9 I think all parties will probably be
10 able to agree to that, limited in time subject to
11 periodic OCD review, and then more or less based on
12 engineering, technical, and economic and
13 administrative information.

14 MR. MCGOWEN: And I -- I guess, correct
15 me if I'm wrong, but I -- I guess it already, there's
16 already that kind of beneficial purpose language. So
17 this is the -- you know -- limited in time. How can I
18 describe what I'm worried about? What I'm -- what I'm
19 worried about is if -- I guess it all depends on what
20 the attitude toward this whole thing is; right?

21 Is it -- is -- is there a spirit of
22 innovation within the process? Or is it a "I just
23 want to get all these wells plugged"? And if -- you
24 see what I'm getting at? So I -- I can't really tell
25 you how to solve the problem. That's just -- I'm just

1 going to give you my concern is as long as everybody
2 thinks it through and -- and you don't kill off a
3 bunch of opportunity. And I'm -- I may not be very
4 helpful in my answer, but that's kind of what I'm
5 thinking.

6 MR. AMPOMAH: You know, as a reservoir
7 engineer, I was also concerned about, let's say if a
8 well is plugged, let's say after eight years, probably
9 will not have the opportunity to do a hands on
10 recovery. Or let's say any other cool stuff that we
11 can do. But also OCD is concerned about just using
12 that as a loophole, you know, to --

13 MR. MCGOWEN: Exactly. Exactly.

14 MR. AMPOMAH: So definitely there has
15 to be something that the commission has to put in
16 there. So just aside what Mr. Alexander has provided
17 to the commission, do you have anything that you can
18 propose to the commission for our consideration?

19 MR. MCGOWEN: Well, here -- here's just
20 a thought; okay? -- is I'm looking at some of the
21 things that they're doing in Texas. For example,
22 the -- the -- there's an enhanced oil recovery credits
23 you can get. There's a -- there's a carbon
24 sequestration combined with and soil recovery you
25 could get for your severance tax.

1 And then there's also this new thing
2 that's going to be coming into effect next year, which
3 is a -- a restimulation of an inactive well. So I --
4 what I've kind of wondered about, if -- if at the same
5 time you're doing this, you've got a -- an incentive
6 program to bring in capital; right? So that you
7 have -- so that -- so that you're balancing out --

8 And maybe I'm getting rid of some
9 wells, but I'm also bringing capital to repurpose
10 wells, and that would be focused on that. So that's
11 just a thought. And that's something that you see --
12 actually see that in -- I think Louisiana has some
13 regulations to try to maintain.

14 But what Texas is doing is the thing I
15 think is -- really makes a lot of sense is encouraging
16 things that would have a longer impact, a bigger
17 impact if you could prove up those concepts. Like, if
18 a few people in a big field figures out how to do a
19 enhanced soil recovery, well, everybody and his
20 mother's going to want to do it at that point.

21 And so you could -- you could really
22 leverage that; right? You get a bigger return on that
23 investment. So anyway, am I -- am I helping here at
24 all? I'm trying to --

25 MR. AMPOMAH: Yeah. I believe that one

1 will be for NMOGA to go to the legislature for that
2 because probably will be beyond my scope. Okay.
3 Let's go to slide number 35. So on this provision
4 number four and five, you've have -- you know -- you
5 had a lot of comments on that. And I read through all
6 your comments, but for us, we need action items. So
7 is it possible for you to provide any language that
8 you want amended on this one?

9 MR. MCGOWEN: Oh, gosh. Well,
10 something to think about here is what would trigger
11 you to spend more money and start going into a -- a
12 hole and running things in and out of the hole. So
13 again, if I -- if I had -- if I was in a situation
14 where I was going to run a caliper log and a -- and a
15 casing integrity log and I didn't really know what the
16 pass fail was and what would require me to take
17 additional action, I would find that a little bit
18 confusing as an operator.

19 I'm -- I'm also thinking that -- you
20 know -- I think one thing I talked about earlier was
21 that -- was cement, and I haven't heard anything in
22 here where -- where anybody talks about anything about
23 cement. So if you had -- for example, if I've got a
24 well with a cement bond log and I show cement -- let's
25 just say I've cemented all the way to surface on the

1 production string.

2 Well, that well's pretty solid. And if
3 I just pickle the inside of the casing, well, there's
4 no fluid contacting the outside of the casing 'cause
5 I've got cement covering it up. I don't know why I'm
6 running -- I'm having to run extra logs on that;
7 right? That's -- that's, like, a really great
8 situation.

9 Or let's say I have a DV tool in that
10 well where you could do a two -- two-day cement job so
11 that I get cement over the shallow zones all the way
12 to surface. Well, in that case, my surface casing
13 is -- is got cement behind pipe. That should be the
14 surface for sure and for certain; right?

15 And then if I got cement all the way to
16 surface on that next string and maybe even an
17 intermediate string, then I'm pretty bulletproof on
18 the aquifer at that point. I mean, there's a lot of
19 wells I -- that I completed where I ran an extra
20 string of pipe and cemented all the way to surface or
21 I used a DV tool.

22 So in that case, could you -- is there
23 some sort of caveat to deal with a -- with a
24 difference in risk; right? So that you're not really
25 spending money that you don't need to spend. Again,

1 I -- I know I'm complicating things, but if you
2 could -- if you could think it through that --
3 'Cause what's -- you know -- if you
4 think about it, the -- what's -- what's the external
5 corrosion risk? Well, it's -- it's salt water exposed
6 to the backside of the casing or you don't have cement
7 or you don't have subtle barite. So it's -- you
8 know -- that's just -- I'm just saying as an engineer,
9 I think that's some of the things I've been thinking
10 about on this is that anything you could add;
11 right? -- where there --

12 Now, again, I'm -- I'm adding a lot
13 of -- I'm -- I'm afraid I'm adding complexity because
14 that's what we engineers do sometimes. But you would
15 be taking care of that case. And you wouldn't do
16 it -- be doing unnecessary work on wells that don't
17 require it.

18 If you've got good cementing records
19 and you don't have any pressure problems and it's a
20 young well, then, you know, do I really need to run a
21 caliper log and a -- and a casing integrity log?
22 Could there be language that would allow you to focus
23 on, I've got these -- I've got these critical factors
24 that we know are contributors to corrosion, and so I
25 want to make sure I go check that.

1 So what's the criteria? And I -- I
2 think you could use the National Association of
3 Corrosion Engineers, for example, API maybe, to come
4 up with standards for minimum wall thickness,
5 something like that, that you could -- you could put
6 in. And -- and I think there's -- that's -- you
7 should be able to get a standard on that.

8 You might even be able to base it on
9 pressure. Like, if you know the burst pressure and
10 you know the -- know the wall thickness, is there some
11 minimum required, you know, relative to the pressures
12 you think you're going to see? So that was a
13 complicated long answer, but -- am I answering your
14 question?

15 MR. AMPOMAH: Well, it sounds to me
16 that you have a problem with the caliper log, but you
17 also add into it that is a cement bond log.

18 MR. MCGOWEN: Well, that's a
19 possibility. You know, it -- it depends on the
20 situation. But if you've -- if you've got reason to
21 believe -- well, let's just say you're -- you're
22 pumping a cement job and you never get returns; right?
23 Well, what -- what do you do about that; right? And
24 that's part of your submitting records that you
25 submitted.

1 So anyway, I -- I -- you know -- I
2 don't -- I don't see it as being a complete solution,
3 but I -- it -- it seems like you ought to be looking
4 at the situation and then figuring out what you need
5 to do based on the facts. Whether I can -- you can
6 write that into a rule or not, I don't know. That's
7 the challenge for the attorneys to figure out, I
8 guess.

9 MR. AMPOMAH: But I do like the casing
10 integrity log, though.

11 MR. MCGOWEN: Well, as -- as long as --
12 like something I ran into with caliper logs sometimes
13 is you -- you'd get, you know, scale. And I've -- in
14 directional wells, I've had -- I've had caliper logs
15 get hung up; right? -- trying to go around the corner.
16 So like, if you're forced to go around a caliper log,
17 you may very well get it hung up and get it stuck.

18 So -- if you're in a directional well.
19 So that's -- that's one of the things that entered my
20 mind is this is just a blanket got to run a caliper,
21 got to run a casing integrity log. Casing integrity
22 log, it should just have centralizers and is using
23 either sonic or electromagnetic capability and is
24 trying to get a wall thickness.

25 So I think I like that one better,

1 'cause all the caliber log is telling you -- you
2 know -- sometimes the -- when they manufacture this
3 casing, there's a lot of variation in the idea of the
4 casing; right? So you're -- you're depending on that
5 variation in the idea of the casing to figure out
6 whether you've got wall thickness or not.

7 Now, it would tell you if you had a
8 hole, but if you had a pressure leak, you already knew
9 you had a hole; right? It might tell you -- I'm not
10 sure if it's high enough granularity in the data to
11 tell you if you've got excessive pitting. So I agree
12 with you, the casing integrity log is probably more
13 useful; right?

14 MR. AMPOMAH: And I agree with that
15 too. And then know that you also added a cement bond.
16 You did to that category too. Let's go to --

17 MR. MCGOWEN: Well -- well, if
18 you -- if you have reason to believe you don't have a
19 good cement job. That's what I was thinking. Am I
20 making sense here? If I lost -- like, I pumped my
21 cement and I never got returns to surface of any kind,
22 like, I don't even get mud back, I'm -- where did my
23 cement go? Okay. That's clear.

24 But if I got really good returns and I
25 can calculate -- let's just say I've got a good --

1 I've got a good caliper log on the open hole; right?
2 And I've -- I've -- I don't have super washouts, and I
3 can calculate the volume of the annulus, and I know
4 how much cement I pumped, and I know how much mud I
5 got back, well, then I can make a pretty good estimate
6 of where my cement went in that case; right?

7 But if -- if I've got -- if I don't get
8 any returns, I don't know where the cement went, so --
9 right? So yeah. That -- that might be a -- I -- I'm
10 just saying, like, making everybody run every log in
11 the world every time may not be required. You might
12 want to think about that and have some sort of
13 engineering judgment maybe.

14 MR. AMPOMAH: Okay. Let's move on.

15 MR. MCGOWEN: Okay.

16 MR. AMPOMAH: Line number 38. Here, I
17 read your testimony. And then also based on the
18 discussions, my question to you is, you know, the
19 approved temporary abandonment, is it your opinion
20 that this type of category are in compliance and
21 should not be treated otherwise?

22 MR. MCGOWEN: I'm -- I'm sorry. Could
23 you try that again?

24 MR. AMPOMAH: Yeah. Let me repeat that
25 again. So the approved temporary abandonment wells

1 category, I'm asking you, is it your opinion that
2 these temporary or approved temporary abandonment
3 wells are in compliance and should not be treated
4 otherwise?

5 MR. MCGOWEN: Yeah. That makes sense.
6 If they're following all the rules and they've done
7 everything they're supposed to do.

8 MR. AMPOMAH: Okay. Then let's go to
9 slide number 40. So when I look at the expired
10 temporary abandonment, when you look at that
11 definition, does this definition clarify that a well
12 is no longer in approved, let's say, temporary
13 abandonment status category and then also is not in
14 compliance?

15 MR. MCGOWEN: Yeah. I was trying to
16 figure something out. So I -- I saw this -- the
17 slides where they were showing that in the New Mexico
18 data system, they're already using that term, which I
19 hadn't seen before. And what I was wondering about on
20 that is, you know, the way they're using it there,
21 what did they think that meant when they did that;
22 right?

23 Did they think that was something that
24 was out of -- you know -- that was not within the
25 regulatory tolerance or -- or what -- or maybe I'm

1 thinking about the other definition. Go -- maybe it's
2 the other one, isn't it? It was -- had the -- the
3 screen that it showed and you had the drop down on the
4 database on the website.

5 MR. AMPOMAH: Yeah. I remember --

6 MR. MCGOWEN: Was it expired -- it was
7 expired temporary abandonment, wasn't it?

8 MR. AMPOMAH: I don't think I saw
9 expired, but I saw abandoned -- temporary abandoned --

10 MR. MCGOWEN: It was three words. I
11 thought it was expired temporary abandonment. So I
12 guess, are there wells that are already -- that are
13 already in the system that are -- that -- that meant a
14 different thing at the time; right? So does it mean
15 something different now?

16 Like, when I think about temporary
17 abandonment, I never knew that that was a dirty word
18 until now; right? You know, we -- we would
19 temporarily abandon wells as a regular course and --
20 because we -- that was something we did internally
21 that, okay, I'm not going to -- I don't know what -- I
22 don't -- I'm not going to produce this well right now,
23 but I'm -- I don't know what I'm going to do with it,
24 but I'm -- I'm either going to abandon it or I'm going
25 to do something else with it. But that was kind of an

1 internal to the company.

2 I -- I got to -- you know -- I'm
3 sitting here thinking about this after everything
4 that's been discussed and all the questions I've been
5 asked. And I don't hate this and I'm not sure why
6 it's such a big deal at this point. It seems like
7 it's one of the lesser important issues, but I -- I
8 may not understand what effect it has in some other
9 legal context.

10 Like, does it trigger something I don't
11 understand? That would be my hesitation about that
12 is, is just make sure that it's not confusing or that
13 it doesn't trigger something somewhere else. Just --
14 just verify that.

15 MR. AMPOMAH: Well, don't you believe
16 that the approved TA should be classified and
17 differentiated from --

18 MR. MCGOWEN: Yes.

19 MR. AMPOMAH: -- expired TAs?

20 MR. MCGOWEN: Yes. Definitely. Yeah.
21 Yeah. Yeah.

22 MR. AMPOMAH: So don't you believe that
23 it's just a clarity that this one is given to
24 differentiate between approved TA and an expired TAs?

25 MR. MCGOWEN: Well, I could see another

1 idea would be -- there's two reasons why it could be
2 no longer approved; right? Is -- one of them is it
3 has a mechanical integrity problem. And the other one
4 is that it just ran out of time on how long it was
5 supposed to be abandoned.

6 So what popped into my head when I was
7 thinking about this was, well, what if you had a
8 lapsed -- you know -- lapsed temporary abandonment,
9 and you had a different category for maybe something
10 completely different you could call it if you had a --
11 a mechanical maintenance issue.

12 Then when you were categorizing it in
13 your database, everybody would know, well, these are
14 the ones that we got to go do something about that --
15 that have an actual mechanical problem. These are the
16 ones that just ran out of time; right? It'd be two
17 different categories of -- I mean, asking for ideas.
18 I'm just giving you ideas that -- that popped into my
19 head, so --

20 MR. AMPOMAH: Yeah. But, you know,
21 from, let's say OCC point of view, rule has to be very
22 clear, not confusing --

23 MR. MCGOWEN: Right.

24 MR. AMPOMAH: -- so when anybody reads
25 it, they do know how to implement it.

1 MR. MCGOWEN: Right. So if you said --
2 what I'm saying is let's say you said "lapsed
3 temporary abandonment," then you would know what that
4 meant. That meant time. And if you said, you know,
5 "mechanical integrity problem," whatever you want to
6 call it, you would know that that was, 'cause that one
7 had a mechanical integrity.

8 I'm thinking too about -- I've done a
9 lot of database work, so I was thinking how you would
10 categorize these in your database to keep track of all
11 this stuff.

12 MR. AMPOMAH: Oh, so instead of the
13 expired, you want elapsed?

14 MR. MCGOWEN: Yeah. You can say
15 elapsed.

16 MR. AMPOMAH: Okay.

17 MR. MCGOWEN: Now, again, I'm just
18 giving you some ideas.

19 MR. AMPOMAH: Okay.

20 MR. MCGOWEN: And then that doesn't
21 sound the same as maybe anything that's used anywhere
22 else; right?

23 MR. AMPOMAH: Okay.

24 MR. MCGOWEN: And then -- and then over
25 on the -- if this mechanical integrity is the reason

1 it fell out of favor, then, you know, you need to come
2 up with something else for that. 'Cause that's the
3 one you really got to worry about; right? That's the
4 well that you need to go do something about.

5 MR. AMPOMAH: Okay. Let's go to slide
6 number 45. And I'm building a case here for us to
7 discuss about the bonding and all of that. So bear
8 with me on that. So on this slide, if the commission
9 to decides to keep the 90 days, there will be no
10 issues; right?

11 MR. MCGOWEN: Well, obviously I'm not
12 making these decisions. I would feel better if you
13 had more than 30 days. So that -- I like 90 days
14 better than 30. If you had a little bit more than
15 that, I'd be even happier with -- with it. So
16 that's -- maybe that's my answer.

17 MR. AMPOMAH: Thank you. Now to the
18 difficult one. Let's get to slide number 55. So I do
19 have a lot of questions here that I want to walk
20 through with you on this one.

21 MR. MCGOWEN: Okay.

22 MR. AMPOMAH: Help the commission to
23 understand from your point of view the difference
24 between inactive well and a marginal well.

25 MR. MCGOWEN: Well, obviously inactive

1 well is -- is not -- is not producing, I guess. So
2 that would be the difference, I suppose. Yeah.

3 MR. AMPOMAH: Now, so looking at the
4 title "E," inactive wells and wells in approved and
5 expired," or let's say elapsed, elapsed temporary
6 abundant status. So I asked you earlier a question
7 about do you believe that approved TAs are in
8 compliance? So more or less should be left alone?

9 MR. MCGOWEN: Yes.

10 MR. AMPOMAH: You remember that?

11 MR. MCGOWEN: If you verify the
12 mechanical integrity and it's approved for temporary
13 abandonment, then it seems like you -- that that
14 well's in good shape.

15 MR. AMPOMAH: With this bonding issue
16 that we're discussing here, will it be your suggestion
17 that the commission should probably take out the
18 "approved" from this category?

19 MR. MCGOWEN: So for inactive wells?

20 MR. AMPOMAH: So if you look at it, it
21 is inactive wells with -- yeah. Read through that.

22 MR. MCGOWEN: Okay. Well, here's some
23 of my hesitation with this -- this sort of line of
24 questioning, just so you know, is I'm thinking of
25 these regulations sort of like a computer program. In

1 my programming experiences I would -- I would change
2 something over here and I'd break something over here
3 that I didn't intend to; you know?

4 So that's what I'm worried about is
5 that -- and obviously the folks that put all this
6 together really thought it through carefully in how
7 all these things interact. So having said that --
8 maybe ask your question one more time. Help me out
9 here.

10 MR. AMPOMAH: Okay. You know, and I'm
11 trying to see where the compromise could be, you know,
12 so NMOGA can really look at it and come up with
13 something. You know, I don't really want NMOGA to
14 just give recommendations and then all of a sudden
15 closing statements or whatever, we see a bunch of red
16 lines. That one is going to be tough.

17 From my point of view, I want to be
18 able to discuss issues before I vote on it. You know,
19 if I've not discussed issue, I'm not really going to
20 feel comfortable voting on it as an engineer, as you
21 said; right? So on this one, the E, would you agree
22 or let's say recommend that we change the heading to
23 "Inactive wells in expired TA status"?

24 MR. MCGOWEN: Inactive wells. So you
25 want to take out the "approved"?

1 MR. AMPOMAH: Exactly.

2 MR. MCGOWEN: Okay. Let me think about
3 this a minute. Let's see. Inactive wells. And so
4 wells in expired, temporarily abandoned status or
5 whatever you come up with -- and you're taking out
6 "approved" also in the next line, I guess?

7 MR. AMPOMAH: Yes.

8 MR. MCGOWEN: You put me on the spot
9 here, so let me see if I can figure this out. I
10 don't -- I don't know whether I can really do this,
11 but I'm going to give it my best shot to answer your
12 question. So it seems like if you take the "approved"
13 out, what have you done? So you -- you've got
14 inactive wells that are not -- that are not in
15 temporarily approved status, so they haven't been
16 through that process yet. So we take those out of the
17 picture.

18 And then you've got wells that were --
19 I guess at one point they were -- they were approved,
20 but now they're not. Okay. So -- and then I've got
21 inactive wells that haven't gone through the whole
22 process yet. Okay. Well, that's a good point. So
23 does it end up being that -- that you wouldn't have to
24 post a bond for the approved temporary abandoned
25 wells? Ah, okay. Thank you.

1 MR. AMPOMAH: I'm doing the work for
2 NMOGA, which is not good.

3 MR. MCGOWEN: Okay. I see where you're
4 headed now. Well, I have been wondering about that,
5 why -- why are we having to post a bond for something
6 that we figured out is not a threat; right?
7 Particularly if I spent a bunch of money to figure
8 that out, which is what is being requested.

9 So, you know, I'm not making any
10 decisions and I'm not in charge here; okay? So I'm
11 just giving you what I'm thinking. But, you know, I
12 don't think that's a terrible idea. Put it that way.

13 MR. AMPOMAH: You know, we've talked
14 about bad actors and then prudent operators. So as
15 you think about it, prudent operators will more or
16 less follow the rule and they'll make sure that their
17 work's in compliance. So as I think about it, if
18 they're in compliance, then why should we punish them?

19 MR. MCGOWEN: Well, that's -- that
20 makes sense to me. It does.

21 MR. AMPOMAH: Now, you've talked
22 about -- so now we're just focusing on the inactive
23 wells and then expired wells -- expired status wells.
24 Those wells are not in compliance. Now, why would you
25 have a problem putting that 150,000 bond on them?

1 MR. MCGOWEN: Well, okay. There's --
2 there's going to be a debate about that amount; right?

3 MR. AMPOMAH: Yeah.

4 MR. MCGOWEN: Based on what we think
5 actual plugging and remediation costs are. So if we
6 could maybe table that -- that amount -- you know --
7 I -- I don't -- you're asking, like, do I have an
8 objection to -- to folks that have got wells that are
9 not in compliance posting a bond. I -- I can't say
10 that I think that's completely unreasonable. That
11 seems reasonable to me, so --

12 MR. AMPOMAH: Yeah. And OXY also a
13 agreed to that as well.

14 MR. MCGOWEN: So and -- and I guess the
15 other -- now, there is the other big hammer that's in
16 this whole thing; right? Maybe -- maybe we're going
17 to get to it in a minute, which is that 15 percent.

18 MR. AMPOMAH: We'll get to that.

19 MR. MCGOWEN: Yeah.

20 MR. AMPOMAH: We'll get to that.

21 MR. MCGOWEN: Right. So that actually
22 plays into this; right?

23 MR. AMPOMAH: We will get to that one.

24 MR. MCGOWEN: Okay. All right.

25 MR. AMPOMAH: Okay. Now, I just want

1 to ask you, I think we are in agreement that wells
2 that are not in compliance, definitely those are the
3 wells that can -- that will be probably be in a
4 position where OCD has to plug those if they are not
5 in compliance.

6 MR. MCGOWEN: Well -- well, they might.

7 MR. AMPOMAH: They might.

8 MR. MCGOWEN: They might.

9 MR. AMPOMAH: They might.

10 MR. MCGOWEN: Yeah.

11 MR. AMPOMAH: And then based on all the
12 testimony, OCD's saying in that instance is \$150,000
13 that I have to use to plug these wells?

14 MR. MCGOWEN: Well, I'm -- I'm not
15 going to vote for the amount at this point, but I
16 would say that, you know, it's -- it's -- I would
17 expect what comes out of this is something that's
18 similar to that, but I don't know what's going to come
19 out of it; right?

20 MR. AMPOMAH: And this one is all
21 inactive and expired. So those ones I think we have
22 to go all in and put it on, you know, as suggested by
23 the applicants and even OXY also agreed to that. But
24 if you look at E, you know, we've discussed about the
25 approved TA status. Do you believe that there has to

1 be a bonding category for that or that can also fall
2 into the active bonding -- the overall blanket
3 bonding?

4 MR. MCGOWEN: Well, yeah. And this
5 is -- this is where these things interact; right?
6 Because, you know, you would be motivating the
7 operator to do more to make sure that -- that the well
8 was -- you know -- had -- had the mechanical integrity
9 and everybody had the evidence to -- to show that if
10 they felt like -- if that took them out of the status
11 where you didn't have to have a -- a bond for that
12 particular well.

13 So, you know, properly -- properly
14 temporarily abandonment, I've got -- I've done all the
15 things that you need to do engineering wise. I've got
16 corrosion inhibited fluid in the wellbore. I'm
17 monitoring it; you know?

18 So, you know, there might be a little
19 balance there if you could move those -- where you
20 don't have to have a -- a bonding on those, but you --
21 but you're just focused on the ones that are -- like
22 you said -- am -- am I answering your question?

23 MR. AMPOMAH: Yes.

24 MR. MCGOWEN: Okay.

25 MR. AMPOMAH: And as we are talking

1 through this, I believe it'll build a case for NMOGA
2 to give us something that we are aware of. I don't
3 want any surprises. That is why I'm asking you these
4 questions, so --

5 MR. MCGOWEN: Okay. Well, just to be
6 clear, nobody's given me authority to do anything.

7 MR. AMPOMAH: Oh, yeah. Once you're on
8 the seat, you are helping us too to make decisions.

9 MR. MCGOWEN: Okay.

10 MR. AMPOMAH: Yeah. Let's go to slide
11 number 56. Another big problem. Yeah. So yesterday,
12 Commissioner Bloom asked Mr. Arthur about if there
13 could be any exceptions to the marginal rule, you
14 know, so something to think about. We'll come to
15 that. But I want to explore the bonding for this
16 category that we have here.

17 MR. MCGOWEN: Yes.

18 MR. AMPOMAH: Now, you stressed on
19 using the age, the depth, and all of that, you know,
20 the risk based approach. Can you explain to the
21 commission from your opinion, you know, how some of
22 these factors that you've listed before, you know,
23 especially the age of the well, can be incorporated in
24 let's say the bonding for the marginal wells?

25 MR. MCGOWEN: Well, folks may hate

1 these ideas I come up with, but when I'm looking --
2 when I'm trying to figure out candidates for
3 restimulation, I -- I build a system for ranking;
4 right? And I would go through the well files, and I
5 would -- I would -- actually, I worked with a
6 geologist to do this, and we would come up with a way
7 to provide points.

8 But in this case, I think what you'd
9 really like to have is you need to figure out what the
10 drivers are that's causing these outliers. That's one
11 thing I'd -- I'd like to see people do. And that
12 would give you a lot of information. And then also
13 see if you could get -- if you could come up with a --
14 with a system of ranking the wells by risk and then
15 get that to correlate; right? Us engineers like
16 correlations.

17 MR. AMPOMAH: Yeah.

18 MR. MCGOWEN: If you could get that.
19 'Cause right now what we have is everybody say, "Well,
20 look at the -- do this plot." And well, God, the
21 plugging cost doesn't seem to go with the depth;
22 right? But it kind of does, but it kind of doesn't.
23 Well, that means you don't have a great correlation.

24 And you would understand what I'm
25 saying, R squared. So wouldn't it be great if you

1 could figure out something that was a linear
2 relationship where you had developed a -- a way of
3 ranking these; right? And then you could -- and then
4 if you had made some clear guidelines of how to put
5 them in the different buckets and then come up with
6 a --

7 Now, everybody may hate this idea
8 'cause it's complex, but if you're technically trying
9 to really focus in on where the risk is, that's how I
10 would do it. If I -- if I owned a portfolio of wells
11 and I was trying to figure out which ones were the
12 highest risk for plugging, that's what I would do. I
13 would -- I would figure out a way to rank these
14 things, I'd have a point system, I'd focus in on those
15 wells.

16 So if you did the same thing here,
17 there's the possible that -- then you wouldn't be
18 penalizing folks that have taken care of their
19 business; right? That have -- that have young wells,
20 that are dealing with -- and say I've got a well that
21 makes almost no water and it makes almost all oil and
22 very little gas and it's sweet gas. Well, oil is a
23 pretty nice corrosion inhibitor; right? So that one's
24 not as big a problem, so --

25 And this other thing to think about, I

1 got thinking about this. Like, we're talking about
2 the corrosion and the -- what's going on right there
3 at that time. Well, you got to remember that the
4 thing that was corroded over the life of the well. So
5 if you think about CO2 partial pressure and what that
6 does to metallurgy. So if earlier in the life of the
7 well, I had really high pressures; right?

8 Let's say I've got gas and CO2 in it
9 and I've got high pressures. My partial pressure,
10 based on the percentage of CO2 in that gas stream's
11 going to be high. Well, that -- that means it's -- it
12 had been attacking my steel early on in the life of
13 the well, not right now.

14 And then as -- as the pressure drops,
15 my CO2 partial pressure drops. In the latter life of
16 the, well, it's not going on. So the question is how
17 much damage was done in the -- in the early period;
18 right? So you'd want to look at that. Is that making
19 sense here?

20 MR. AMPOMAH: You know, it'll be much
21 easier if let's say all the people that are going to
22 implement the rules do have the knowledge that you
23 have, but unfortunately we don't; right? So we need
24 to come up with some rules here; right?

25 MR. MCGOWEN: Well, let -- let -- the

1 CO2's -- CO2 content is something you can measure.
2 And if they're selling gas, I guarantee you the -- the
3 gas purchaser is -- is making them analyze that on a
4 continuous basis. So if I got a high CO2 well, you
5 could categorize that differently. Am I making sense
6 there?

7 MR. AMPOMAH: Yeah. You are.
8 Definitely engineers are discussing so -- I'm okay
9 with that --

10 MR. SUAZO: Madam Hearing Officer, I'd
11 like to proffer -- you know -- I think the direction
12 from the commission has been pretty clear that you
13 would like to see some additional recommendations and
14 proposals from industry. And we're fully prepared to
15 do that.

16 I just want to make sure that the
17 witness doesn't get too far away from his testimony in
18 terms of getting into specific proposals. But just
19 want to throw that out there that that is certainly
20 something we're preparing to do.

21 MR. AMPOMAH: Yeah. So I went through
22 the remaining witnesses, and the question that I do
23 have is do they have the information that we are
24 looking for; right? So let's say in his testimony, he
25 talked about using the depth, the age.

1 MR. SUAZO: Sure.

2 MR. AMPOMAH: He talked about all of
3 that.

4 MR. SUAZO: Of course.

5 MR. AMPOMAH: But there's no
6 quantification. So I'm trying to see if I can get
7 that --

8 MR. SUAZO: Understood.

9 MR. AMPOMAH: -- to help us.

10 MR. SUAZO: Okay.

11 MR. AMPOMAH: Okay.

12 MR. MCGOWEN: Well, think about a
13 decision tree; okay? You could -- you could start out
14 with I've got boxes with arrows; right? And I go,
15 "How old is the well?" Categorize that; you know?
16 "What's the fluid system?" Categorize that. It
17 wouldn't have to be that terribly complicated to -- to
18 come up with a risk profile.

19 MR. AMPOMAH: Yeah. But there's no
20 testimony in front of the commission that does exactly
21 what you are saying to tell us -- you know -- to
22 advise us how to implement the risk base. It's all
23 recommendation, but there's no direct, you know, steps
24 to help us --

25 MR. MCGOWEN: I -- I understand.

1 MR. AMPOMAH: -- making the rule.

2 MR. MCGOWEN: I'm just -- I'm proposing
3 a -- a -- I just -- I mean, if you gave me this as an
4 engineering project, I would -- I would still have to
5 take some time and go analyze all the data and come
6 back and give you an answer. And I -- I haven't had
7 the luxury of doing that, so --

8 MR. AMPOMAH: Yeah. And that is
9 exactly what the applicants' experts, they did. I
10 mean, they substantiated everything that they are
11 providing to the commission. But NMOGA is actually
12 not doing that. You know, and they are great
13 industrial discussions that we've had, but we want
14 boom, boom. We want the bottom line items here.

15 So on this one, D, would you be okay
16 if, let's say we change the inactive wells to expired
17 TA status wells?

18 MR. MCGOWEN: So are we -- are we
19 taking -- you're -- you're -- okay. One second here.
20 You're taking the inactive wells out, but you're
21 keeping the marginal wells in?

22 MR. AMPOMAH: Yes. And then we do
23 expired TAs.

24 MR. MCGOWEN: Well, I'm trying to
25 figure -- okay. If I had a marginal well and it -- it

1 had mechanical integrity, why is it more of a risk
2 than a temporarily abandoned well; right? That's --
3 that's a confusion for me. In fact, somebody's
4 watching it every day probably. You know, it's --
5 it's -- if it's making oil, you're -- you're coating
6 the tubulars.

7 You might have corrosion inhibition
8 programs ongoing where you're injecting corrosion
9 inhibitor. I mean, you should anyway. So it seems
10 like your marginal well is not -- is not a bigger --
11 is -- is not a bigger risk than your temporary
12 abandoned well.

13 MR. AMPOMAH: And I'm trying to build a
14 case here. So would you agree or do you have any
15 experience where a five-year well, a ten- year well
16 could become a marginal world, let's say from primary
17 production, right at the end of primary production.
18 Even though this is a new well, but we are hitting the
19 residual oil saturation to the primary, so it will
20 become more or less a marginal well, based on our
21 definition.

22 MR. MCGOWEN: At some point it would --
23 you know -- depending on how you want to define
24 marginal wells, at some point every well is going to
25 be a marginal well. Yeah.

1 MR. AMPOMAH: So the question that I
2 asked you earlier on with regards to number one, I was
3 thinking if NMOGA can provide us with some
4 exceptions -- you know -- because you've discussed all
5 these great items about -- let's say a marginal well,
6 which is not aged. It's not going to be an orphaned
7 well, or, let's say, will not require the same
8 plugging cost, you know, compared to, let's say, a
9 well that could probably become an orphaned well.

10 MR. MCGOWEN: Yeah.

11 MR. AMPOMAH: So would you agree
12 that -- I mean, NMOGA can come up with some -- or the
13 parties can come up with some options or, let's say,
14 exceptions, that even Commissioner Bloom brought that
15 up, and I thought it was a good idea too.

16 MR. MCGOWEN: So would these be kind of
17 like on a case by case basis exceptions or would they
18 be --

19 MR. AMPOMAH: Exactly. Not necessarily
20 a case by case, but a bullet point similar to what
21 Mr. Alexander tried to do for the beneficial use. So
22 let's say if IPNM or let's say NMOGA feels like this
23 is really harsh and it's not really targeted, we want
24 it to be more targeted. So could there be some
25 exceptions to really make sure that we are not really

1 going after the small producers who are still prudent
2 producers?

3 MR. MCGOWEN: Okay. So those
4 exceptions would apply to marginal wells?

5 MR. AMPOMAH: Yes.

6 MR. MCGOWEN: And -- and the exceptions
7 would be based upon what?

8 MR. AMPOMAH: I mean, that --

9 MR. MCGOWEN: That's what you're asking
10 me; right?

11 MR. AMPOMAH: Well, so what I'm trying
12 to get at is --

13 MR. MCGOWEN: Yeah.

14 MR. AMPOMAH: -- not necessarily the
15 definition of the marginal wells, but is it all
16 marginal wells that we have to put that \$150,000 bond
17 on?

18 MR. MCGOWEN: Okay. So yeah. Let's
19 think about that a minute. So are all marginal wells
20 created equal?

21 MR. AMPOMAH: Exactly.

22 MR. MCGOWEN: Okay. Well, I'm saying
23 that they're not.

24 MR. AMPOMAH: So I want to see --

25 MR. MCGOWEN: Yeah. I see what you're

1 saying; right? So well, if you use the same approach
2 that we talked about earlier, if you had a way to
3 categorize, then you could say: "Well, look, these
4 are -- these marginal wells are not at risk because
5 they're in this category. These marginal wells are."
6 And have some sort of a cutoff.

7 So now, again, you know, you need to do
8 some more engineering to figure out what that looks
9 like exactly. I don't think it's horrible though. I
10 don't think it's, like, a terribly difficult task.
11 You're going to need some well data and you're -- you
12 know -- you need a good robust database that has your
13 information in it that's been scrubbed.

14 And then you need to start working the
15 problem and see if you can simulate the outcome based
16 on the way you break it down. And then figure out,
17 well, is it going to -- is it -- if I do this, is it
18 going to raise enough money to take care of the -- the
19 problem -- the ultimate problem?

20 Which is, you know, are we going to
21 have enough assurance here to make sure everything
22 is -- the state's not stuck with anything? So I think
23 that's doable. I think it's possible to do -- do
24 something like that.

25 MR. AMPOMAH: So number two, so the

1 applicant was generous and OCD is saying that
2 beginning May 1 -- I got it right this time.
3 Beginning May 1, 2028, an operator shall provide one
4 well plugin financial assurance for each marginal
5 well. You know, on that provision, don't you believe
6 that they are giving operators enough time to also
7 make sure that you don't really have a lot of their
8 wells in marginal category?

9 MR. MCGOWEN: Run that by me again. I
10 didn't -- I put -- I'm sorry. I didn't understand.

11 MR. AMPOMAH: So number two.

12 MR. MCGOWEN: Number two. Okay.

13 MR. AMPOMAH: Yeah. It's not, like,
14 one --

15 MR. MCGOWEN: This says January on
16 there, so I'm -- I'm --

17 MR. AMPOMAH: So it's May.

18 MR. MCGOWEN: Oh, it's May now? Okay.

19 MR. AMPOMAH: Yes.

20 MR. MCGOWEN: Okay. Okay.

21 MR. AMPOMAH: It's May now.

22 MR. MCGOWEN: That -- that confused me.
23 Sorry.

24 MR. AMPOMAH: Yeah. So don't you
25 believe that they are providing enough time for

1 prudent operators to at least work on their wells, you
2 know, to make sure that they do not -- especially in
3 '23 --

4 MR. MCGOWEN: Oh, '23. Yeah. Yeah.
5 Yeah. Okay. So that does give them some time. Now,
6 where we were at a minute ago was we were talking
7 about having some marginal wells that are not subject
8 to the -- to the financial assurance because you can
9 categorize them as low risk. And this gets where all
10 these things are interacting; right?

11 Like, there's all these, you know, do I
12 get both of these or one of these; you know? Because
13 you -- you cut down on the burden on the operator
14 if -- if you can say: "Well, I'm taking these wells
15 off the table. They meet the criteria for a -- it's a
16 'marginal well,' but it -- it's exempted because of,"
17 this criteria, whatever that might be.

18 Well, then that would give you time,
19 yeah, to -- to figure out, well, what am I going to do
20 about the marginal wells that -- that look like
21 they're a threat? 'Cause again, I don't think all the
22 marginal wells are created equal.

23 MR. AMPOMAH: So number three. There
24 has been a lot of discussion. And I want to ask you,
25 30 percent has been the other number that has been

1 thrown out, you know, outside of 15 percent. Do you
2 think it's a good number?

3 MR. MCGOWEN: Well, here's the thing
4 that I don't understand though is, like, okay, let's
5 just say I've got 100 wells, and I've got 15 of them
6 that are currently -- and under this, it's marginal or
7 inactive; right? -- under what it reads right there, I
8 guess. So maybe I get another five. Something
9 happens, they go down, whatever -- for whatever
10 reason, frack hits, something.

11 And so now, suddenly I've got this huge
12 financial assurance issue for all my wells. And what
13 that feels like is suddenly my blanket bun just turned
14 into, like, you know, \$15 million overnight. So
15 that -- this is the one -- this is one of the many
16 things in this whole thing that is just disturbing
17 from an operator's perspective.

18 I -- I didn't -- I don't understand why
19 you wouldn't just say: "Well, I got one more well
20 that doesn't meet the criteria. Why don't I get
21 another bond on that one? Why am I -- why am I
22 getting hammered for all my wells?" Now, I understand
23 there was a -- there was a theory in there that, well,
24 that's going to get rid of some of the bad operators
25 and --

1 But what could happen is -- you know --
2 how the surety market's really going to react to this,
3 does anybody really know? Well, if -- if they don't -
4 - if the guy can't get his surety and he's suddenly
5 got a \$15 million issue that he can't handle, I think
6 he may just hand you the keys and walk off, and now
7 you've just been left with all of this mess to deal
8 with.

9 So that doesn't -- that doesn't seem
10 like a -- a great idea to me. It seems like either
11 you need to raise that number quite a bit and/or give
12 the ability to make it incremental. Like, okay,
13 you've got more wells now than you had last week that
14 are not meeting the criteria. Here -- here's your
15 additional plugging assurance requirement.

16 MR. AMPOMAH: So Mr. Purvis showed us
17 the analysis that he did, you know, showing why they
18 picked the 15 percent, and then OCD deputy director,
19 he thought that the industry will come to the table to
20 have that discussion to come up with some number.

21 MR. MCGOWEN: Yeah.

22 MR. AMPOMAH: But as of now, it has not
23 happened. You know, but 30 percent, Mr. Arthur feels
24 like it was okay. And we've looked at the numbers at
25 least based on what was presented to us.

1 MR. MCGOWEN: Yeah. I think that was
2 speculation.

3 MR. AMPOMAH: Okay. We'll wait to see
4 what --

5 MR. MCGOWEN: Because that's the guess.
6 That's just the guess; right? Like, who knows what
7 the number ought to be? If you made it incremental,
8 then it's, like, if I got a -- if I got a well
9 that's -- that's a problem, I get more financial
10 assurance and I do that incrementally every time I get
11 one. Now, that's different; right?

12 Now, maybe if you raise it high enough,
13 you don't really trigger that very often; right? But,
14 again, my concern is you put this -- this small
15 operator, even a pretty good size operator, in a bind
16 financially without intending to, and they just walk
17 off and leave it. They just leave you with a problem.
18 So that would be a -- an unintended consequence of
19 the -- of this; right?

20 And I -- I don't know enough about the
21 surety markets. I mean, you know, we -- we had an
22 expert on that, that sounded pretty compelling to me.
23 But that's up to you guys to decide. You know, I -- I
24 know that -- what I do know about risk and
25 institutions that lend money is if -- if I had -- I

1 had a well that was a --

2 The first well I drilled for the -- the
3 current -- the -- the most recent company; right? --
4 was -- was the best well I've ever drilled in my
5 career. It's like a million and a half barrel well.
6 It was -- you know -- came in great. I couldn't
7 borrow a dime on that well, 'cause I got one well;
8 right?

9 So you have to get a -- you have to be
10 able to spread the risk. So I had to -- I had -- have
11 concentration risk is the way they -- what they told
12 me. You know, "We're not going to loan you any money
13 on that." So even when I got six wells, they're kind
14 of like, "Maybe." So I -- we finally got them loan us
15 some money so that we didn't have to use all our
16 equity to continue development.

17 So my point is, the principle that
18 makes sense to me, from what I've heard, and -- and,
19 again, I'm not a surety expert, but is concentration
20 risk. So if you had a whole bunch of surety in New
21 Mexico, you've got a lot of concentration risk and a
22 lot of concentration risk -- \$15 million with one
23 operator who -- who apparently was in enough of a bind
24 that he, you know, was having a hard time not plugging
25 all his wells. I don't know.

1 But I guess what I'm saying is you
2 just -- you might drive some folks over the cliff, and
3 then they walk off and leave you with a mess. And I
4 know you don't want that; right? So is there another
5 answer to this question; right? Is there another way
6 to do that? Incremental. And take an incremental
7 approach with risk adjusted bond amounts based on how
8 risky the wells look. Am I making -- making any sense
9 there?

10 MR. AMPOMAH: Yeah. But still, if you
11 look at number two, they've already given you more
12 than two years also, you know, to make sure that you
13 do whatever you have to do to not fall into that
14 \$150,000 per well.

15 MR. MCGOWEN: Well, yeah. I -- I think
16 just if you saw this -- if I saw this cliff coming,
17 I'm just going to have to abandon my plans for a bunch
18 of my wells and just plug them, and -- and figure out
19 something else to do; right? Because I wouldn't want
20 to be in that situation where I had that cliff right
21 there.

22 And I wouldn't want to be going to my
23 private equity guys going: "Hey guys, I got this
24 little problem here. I can't get financial assurance
25 for \$15 million, but I -- I'm supposed to have that

1 tomorrow." And I -- and I'm not quite clear -- like,
2 how quick do I have to have this financial assurance?
3 Pretty quick, I think. So that just sounds like a
4 nightmare from an operator's perspective. I'll just
5 be frank with you.

6 MR. AMPOMAH: We will hear -- we'll
7 wait and see what NMOGA will provide to the
8 commission. But my last question to you -- on page 75
9 we are on here. Page 75. So you're saying that the
10 12-months assessment window, so you're referring to
11 the marginal wells at 12 months. You're saying that
12 is very short. So what is your recommendation?

13 MR. MCGOWEN: Okay. So you're taking
14 about one month's engineering study I would need to
15 do, and put it into one -- ten minutes or something.
16 So let think about this a minute, but I want to do my
17 best to try to give you an answer. Okay. So the
18 scenario I was thinking of was -- I'm literally -- I'm
19 literally picturing in my mind something I want to go
20 do in Texas; right? -- with some marginal wells, so --

21 And I'm -- I'm visualizing, okay, I
22 want to retain my running room long enough to get it
23 done and I've got to convince everybody to keep giving
24 me more money so I can keep going; right? So I got to
25 test the concept. It would probably take me a year.

1 I know it's taken me a year. I still don't have my
2 deal signed and I've been negotiating with these guys
3 for a year.

4 Now, they're sitting on the wells;
5 right? The wells are out there right now and they're
6 sitting on the wells. So it's taken me a year just to
7 negotiate the -- the deal. So the whole thing can
8 evaporate on me before I ever get started. Then once
9 I get the deal done, well, now -- I can't go raise
10 money until I have the deal; right? So now I got to
11 go talk to folks to see if somebody will back me.

12 Well, how long is that going to take?
13 Well, I'm hoping it only takes about six months,
14 something like that maybe. And then I got to go
15 execute the first one. So I go do the first ones and,
16 hooray, they work. Okay. So then they're going to
17 go, "Okay, go do a few more." Right? You see what
18 I'm getting at?

19 Now, I know you -- I know everybody
20 wants a hard and fast number and it would be a lot
21 simpler, but I'm just -- now, if that's what everybody
22 decides to do, that's what they decide to do. I'm
23 just saying that you -- you run the risk of -- of
24 basically squelching the ability to do what I just
25 talked about, which is -- was what's kind of the

1 approach I've taken in the past and -- and, you know,
2 found a bunch of oil that was valuable. Am I
3 answering your question?

4 MR. AMPOMAH: Well, so you are not
5 ready to tell us whether it's 24 months, whether it's
6 12 months, whether it's 18 months?

7 MR. MCGOWEN: Well, let's say -- let's
8 just say if you just -- you know -- I've only got my
9 little hypothetical here.

10 MR. AMPOMAH: Okay.

11 MR. MCGOWEN: What would I love to
12 have? I love to have, like, five years; right?
13 Because, well, you know this. You know, transient
14 flow; right?

15 MR. AMPOMAH: Yeah.

16 MR. MCGOWEN: How long does it take for
17 me to get a good decline curve; right? Dr. Fetkovich
18 would -- would speak to this; right? So, you know, if
19 I'm -- if I'm doing decline curves and transient flow,
20 well, you know, I'm really kind of guessing.
21 Particularly something that's never been done before.
22 I don't have any analogs to go to. So yeah, five
23 years would be great, but if -- if they -- is anybody
24 going to let them do that? I have no idea; right?

25 MR. AMPOMAH: Thank you so much for

1 your time. I appreciate the conversation.

2 MR. MCGOWEN: All right. Thank you.
3 All right. Thank you.

4 THE EXAMINER: Commissioner Bloom on
5 the platform, do you have questions of Mr. McGowen?

6 MR. BLOOM: Thank you, Madam Hearing
7 Officer. I think most of my questions have been asked
8 and answered, although Dr. Ampomah reminded me that I
9 had brought up the question yesterday of how we deal
10 with midstream lack of -- how we deal with potential
11 midstream shutdowns and how those could count against
12 the 180 days.

13 If we look at the definition of
14 midstream, perhaps, sir, we could extend that
15 definition. Let me pull it up here. So we have in
16 19.15.2 M(2), marginal well means an oil or gas well
17 that produce less than 120 days, less than 1,000
18 barrels of oil equivalent within a consecutive
19 12-month period.

20 We could add to that. However, days of
21 production lost to midstream shutdowns shall be
22 ignored and the 12-month period of scrutiny shall be
23 extended by the same number of days. Essentially, we
24 wouldn't hold the shutdown period against the
25 production of the well. Mr. McGowen, do you think

1 something like that could work as an exception in this
2 case?

3 MR. MCGOWEN: Yeah. I like -- I like
4 that. I like something like that, 'Cause there's a --
5 there's a force majeure type of issue. And I -- I
6 don't -- I don't know if you remember Snowmageddon, I
7 think they called it in Texas. We had a lot of
8 problems with that. And periodically we would have
9 the -- the compressors go down on the -- on the
10 midstream that was -- that our wells were going into.

11 And they -- they did helpful things
12 like, oh, they decided to put all our wells on a high
13 pressure line for their convenience, which -- which
14 meant we had to run around and get compressors. They
15 put everybody else -- all the other guys -- we had new
16 wells; right? So they were high pressure.

17 So long story short, we ended up having
18 to run around and get a bunch of compressors, which
19 was a -- you know -- so there's some force majeure
20 things like that, if -- if you could build those into
21 it, that -- that are beyond your controls. I -- I
22 would support that for sure.

23 MR. BLOOM: Yeah. Thank you. I was
24 thinking of force majeure as well. And I just wanted
25 to put that suggested language out there. It might

1 not be fully polished yet, but, you know, we can give
2 people some time to think about it. It's easier to
3 introduce the topic now than trying to do it on the
4 stand during deliberation, so -- Mr. McGowen, thank
5 you for your time. I have no further questions,

6 MR. MCGOWEN: All right. Thank you.

7 THE EXAMINER: Thank you, Commissioner
8 Bloom.

9 Chair Chang?

10 MR. CHANG: Nope.

11 THE EXAMINER: Nope. All righty. Any
12 reason not to excuse Mr. McGowen?

13 MR. MCGOWEN: Free at last. Free at
14 last.

15 THE EXAMINER: Thank you very much,
16 Mr. McGowen.

17 Is your mic on?

18 MR. CLOUTIER: Oh, I'm sorry.

19 THE EXAMINER: Okay.

20 MR. CLOUTIER: I apologize. I was
21 requesting that Commissioner Bloom be asked to
22 circulate his proposed language to the parties so that
23 the parties can look it over and appreciate his
24 suggestion.

25 THE EXAMINER: All right. I think that

1 would be unusual to ask a commissioner to propose
2 language. What he might be looking for is some
3 proposed language from each of you who would have a
4 position on it.

5 MR. CLOUTIER: I may be mistaken. I
6 don't -- but I thought he was reading some language
7 and it might just be easier for the parties. We
8 don't -- I don't take him to -- but in any event --

9 UNIDENTIFIED SPEAKER: The transcript
10 may help you if that is available.

11 THE EXAMINER: Yeah. All righty.
12 Shall we take a 12-minute break before our next
13 witness, come back at 2:20?

14 (Off the record.)

15 THE EXAMINER: Let's come back from the
16 break, please.

17 Mr. Suazo.

18 MS. FOX: Madam Hearing Officer.

19 THE EXAMINER: Ms. Fox.

20 MS. FOX: We have a outstanding motion
21 to exclude Mr. Sporich's rebuttal testimony.

22 THE EXAMINER: You do, don't you? All
23 right. And Mr. Sporich is next?

24 MR. SUAZO: Yes, Madam Hearing officer.

25 THE EXAMINER: Okay. Let's see. So

1 I -- what'd I do with that motion. I read the motion,
2 and the response, I didn't see a reply. Would you
3 like to offer a reply now? I'll give you the last
4 word on the motion. I'm inclined not to exclude the
5 testimony, just reviewing the direct testimony and the
6 rebuttal and even looking at the surrebuttal slides
7 that we got last night. But I'll give you the last
8 word on the reply.

9 MS. FOX: We're not moving to exclude
10 the surrebuttal. We're moving to exclude the
11 rebuttal. And that is because the requirements in the
12 procedural order are the same for rebuttal as for
13 surrebuttal. And that is that in rebuttal, the
14 rebuttal is rebutting direct testimony. And in order
15 to submit rebuttal testimony, the witness must
16 identify the direct testimony that it is rebutting.

17 And nowhere in Mr. Sporich's 18 pages
18 of rebuttal testimony does he specifically identify
19 direct testimony that he's rebutting. If you look at,
20 for example, the format that Applicants used for their
21 rebuttal testimony.

22 At the beginning of our rebuttal
23 testimony, there was a general question to each of the
24 witnesses, you know, do you have a general response
25 to, you know, the direct testimony submitted by

1 Industry? And there's a general response.

2 But for essentially for 200 pages of
3 rebuttal testimony, we followed the rules of the
4 procedural order, and that was to identify the
5 specific direct testimony by witness and by page
6 number that was being rebutted and asking for a
7 response. And I think the rules in that regard, both
8 for rebuttal and surrebuttal, are eminently clear.
9 And that was not followed in any way, shape, or form
10 by Mr. Sporich's rebuttal testimony.

11 In their response, NMOGA claims that
12 our motion to exclude was untimely. And that is
13 because in the procedural order, the time for filing
14 motions to exclude and motions to -- and dispositive
15 motions was September 15th. Rebuttal testimony was
16 filed September 19th.

17 So we are not time travelers and so
18 there was no way to submit -- to file the motion to
19 exclude by that date. That date, in my view, didn't
20 apply to rebuttal testimony because it could not have
21 been met.

22 NMOGA also complains that Mr. Morgan
23 submitted in surrebuttal sort of a tiny bit of
24 surrebuttal to Mr. Sporich's rebuttal, and therefore
25 the entirety of his rebuttal should come in. However,

1 at that point in time when Mr. Morgan was submitting
2 his -- giving his sur, there was not -- that rebuttal
3 testimony was not excluded. And so not to waive
4 surrebuttal, we had to present that.

5 But if the motion to exclude is
6 granted, we have no problem striking that surrebuttal
7 testimony of Mr. Morgan's. And then finally,
8 Mr. Sporich's 18 pages of legal -- it's basically 18
9 pages of legal argument, where he's talking about why
10 our proposals don't meet the requirements or are
11 outside authority of the Oil and Gas Act.

12 You know, obviously something that
13 could have been done in direct testimony, because what
14 he is "rebutting" are our proposals, not direct
15 testimony, in any way, shape, or form. And so -- but
16 because it's pure legal argument, NMOGA suffers no
17 prejudice. They can make all these arguments in their
18 post hearing brief. And for that reason we move to
19 exclude.

20 THE EXAMINER: Right. And I think,
21 Ms. Fox, the commission is going to be taking up the
22 motion to dismiss at the end of the hearing. And I
23 noted that there were definitely some overlap between
24 Mr. Sporich's testimony and that motion. And I agree
25 with you that his rebuttal testimony, or what they put

1 forth as his rebuttal testimony, only identifies the
2 applicants' testimony which it's responding to in the
3 most general of terms, not by witness, but by
4 regulatory section is what they say.

5 I'm not inclined to exclude it though,
6 not because of untimeliness obviously, and not
7 because -- well, because it would take excluding the
8 surrebuttal of Mr. Morgan. Although knowing that
9 Mr. Morgan provided surrebuttal, let me ask if there's
10 any other surrebuttal you would want to offer if
11 Mr. Sporich's rebuttal is not excluded.

12 MS. FOX: No, Madam Hearing Officer.
13 It's a legal argument.

14 THE EXAMINER: Yeah. Okay. I think
15 based on some of the questions the commissioners have
16 already had and their interest in this topic and
17 knowing that the rebuttal testimony did not as
18 rigorously follow the pre-hearing order as the
19 applicants did, again, I'm still not inclined to
20 exclude it, but thank you very much.

21 MS. FOX: Thank you, Madam Hearing
22 Officer.

23 THE EXAMINER: Mr. Suazo.

24 MR. SUAZO: Thank you Madam Hearing
25 Officer. NMOGA calls Mr. Clayton Sporich to testify.

1 THE EXAMINER: Mr. Sporich, would you
2 spell your first and last name please?

3 MR. SPORICH: Yes. Clayton,
4 C-L-A-Y-T-O-N, Sporich, S-P-O-R-I-C-H.
5 WHEREUPON,

6 CLAYTON SPORICH,
7 called as a witness and having been first duly sworn
8 to tell the truth, the whole truth, and nothing but
9 the truth, was examined and testified as follows:

10 THE EXAMINER: Thank you.

11 Go ahead, Mr. Suazo.

12 DIRECT EXAMINATION

13 BY MR. SUAZO:

14 MR. SUAZO: Mr. Sporich, how are you
15 this afternoon?

16 MR. SPORICH: Good, thank you.

17 MR. SUAZO: Excellent. Will you please
18 state your name and role in this proceeding for the
19 commission?

20 MR. SPORICH: Yes. My name is Clayton
21 Sporich, and I am the industry legal expert for NMOGA
22 for this hearing in front of the commission.

23 MR. SUAZO: And can you please tell the
24 commission about your professional background and
25 experience in the oil and gas industry?

1 MR. SPORICH: Yes. I've got
2 approximately 15 years of oil and gas land, legal, and
3 regulatory experience. I've worked with companies
4 primarily here in New Mexico from Matador Resources
5 when they were a new entry for horizontal development
6 in the early 2012 timeframe. And then most recently,
7 I was with Tap Rock Resources, which I co-founded with
8 my partners in 2016 to primarily develop here in New
9 Mexico in the Delaware Basin, which I left in 2024.

10 MR. SUAZO: And what was your role with
11 Tap Rock while you were there?

12 MR. SPORICH: I was EVP of land and
13 legal, in charge of obviously the land and legal
14 department, but also regulatory and administration.
15 We at Tap Rock there put together roughly 25 to 30,000
16 net acres in the Delaware Basin in New Mexico, and at
17 one point was one of the most active operators in New
18 Mexico between 2021 and 2023, producing upwards of
19 150,000 BOE per day.

20 MR. SUAZO: And in those roles or that
21 role, did your day-to-day duties involve oil and gas
22 operations in New Mexico?

23 MR. SPORICH: Yes.

24 MR. SUAZO: Now, let's move on to your
25 slide number three. What is the purpose of your

1 direct testimony, Mr. Sporich?

2 MR. SPORICH: Well, overall I'm a
3 little concerned with some of WELC's and Applicants'
4 proposals and how they exceed the authority granted by
5 the legislature. It is my legal opinion that many of
6 these provisions should be stricken or modified by
7 this commission to -- to maintain compliance with the
8 New Mexico Oil and Gas Act.

9 MR. SUAZO: And did you also file
10 rebuttal testimony in this case?

11 MR. SPORICH: Yes.

12 MR. SUAZO: What was the purpose of
13 your rebuttal testimony?

14 MR. SPORICH: The purpose of my
15 rebuttal testimony was to respond to certain arguments
16 and assertions made in the testimonies of WELC and OCD
17 witnesses and explain why NMOGA maintains that the
18 applicants' proposals are legally flawed and contrary
19 to the act.

20 MR. SUAZO: Now, moving on to your
21 slide number four. Could you please go over your
22 overarching concerns with Applicants' testimony and
23 proposals?

24 MR. SPORICH: Yes. Applicants'
25 proposals seem to promote waste and exceed the

1 statutory authority. We also believe that Applicants'
2 proposed changes to New Mexico's existing oil and gas
3 financial assurance regime conflict with the statutory
4 text and purpose of this commission.

5 Numerous independent violations of the
6 acts, limited financial assurance authority, and
7 Applicants' proposed amendments to 19.15.8.9 of NMAC,
8 and also to OCD's lack of jurisdiction to require that
9 operators certify compliance with the laws of other
10 states, as currently a proposed under Applicants'
11 updates to 19.15.9.8 B, C, and E of NMAC, governing
12 operator registrations, and 19.15.9.9 B and C NMAC,
13 governing transfer of operatorship.

14 MR. SUAZO: Thank you, Mr. Sporch.
15 Now, let's move on to your slide number five. Can you
16 help us understand your concerns with statutory
17 overreach, and can you provide an overview of the
18 provisions implicated in this rulemaking that you
19 believe fall outside of the commission and the
20 division's statutory authority?

21 MR. SPORICH: Yeah. You're going to
22 see on the next couple slides some tables that contain
23 visual representations of WELC's proposed changes
24 alongside with the statutory provisions that would
25 prevent this commission from adopting those proposals.

1 MR. SUAZO: Okay. And what are your
2 specific concerns with the provisions that violate the
3 commission's and division's duty to prevent waste and
4 protect correlative rights?

5 MR. SPORICH: As you can see from the
6 first proposal here to proposed definition of
7 beneficial purpose under 19.15.2.7 B(7) in NMAC, we
8 believe that this definition is narrow and it violates
9 OCC statutory mandate to prevent waste and protect
10 correlative rights.

11 Also, the applicants' presumption of no
12 beneficial use under 19.15.25.9 of NMAC seems to sweep
13 in wells capable of production in violation, again, of
14 OCC's statutory mandate to prevent waste and protect
15 correlative rights. We also believe that the
16 financial assurance for marginally produced wells
17 under 19.15.8.9 D of NMAC are too rigid and
18 impractical new margin well standards that facilitate
19 waste.

20 And finally on this slide, the
21 heightened requirements for marginally produced wells,
22 19.15.8.9 D NMAC. This could lead to premature
23 abandonment of marginally economic and shut-in wells
24 and prevent full recovery.

25 MR. SUAZO: Very good. Moving on to

1 slide six. Can you give us an overview of the next
2 bucket dealing with the additional statutory overreach
3 concerns that you have?

4 MR. SPORICH: Yeah. This next bucket
5 consists of the applicants' financial assurances
6 proposals that we believe directly violate the act's
7 expressed financial assurance limitations.

8 You see in here, the applicants'
9 financial assurance for active, inactive, and
10 temporarily abandoned wells under 19.15.8.9 C, E, and
11 F of NMAC violates statutory mandates that one well
12 financial assurance must be in amounts determined
13 sufficient to reasonably pay the costs of plugging the
14 wells covered by the financial assurance.

15 Also, WELC's financial assurance for --
16 for these active, inactive, and temporary abandoned
17 wells violate statutory mandates that OCD must
18 consider the depth of the well involved, the length of
19 time since the well was produced, the cost of plugging
20 similar wells, and such other factors as the OCD deems
21 relevant.

22 And finally on this -- this table here,
23 WELC's financial assurance for active, inactive ,and
24 temporarily abandoned wells and financial assurance
25 for marginally producing wells and annual CPI

1 adjustments to financial assurance requirements
2 violates the expressed \$250,000 statutory plugging cap
3 and expressed \$50,000 statutory cap for temporary
4 abandoned wells.

5 MR. SUAZO: All right. Thank you.
6 Let's move on to slide seven, which is the final slide
7 dealing with statutory overreach concerns. Can you
8 please explain to the commission your concerns as
9 depicted on this slide?

10 MR. SPORICH: Yes. This next bucket
11 here contains proposals that we believe that are
12 falling outside of OCC and OCD's enabling statute.
13 The WELC's annual CPI adjustments to financial
14 assurance requirements, that doesn't allow for annual
15 price adjustments. It doesn't mention it anywhere in
16 the act. And previous attempts to legislate this
17 exact same provision have failed.

18 The applicants' proposal to require OCD
19 to deny acquisitions based on financial assurance
20 under 19.15.8.9 A of NMAC seem to -- OCC's and OCD's
21 statutory authority doesn't extend to regulating
22 acquisitions or -- or private party transactions.

23 And finally, Applicants' register --
24 operator registration and changes of operator
25 restrictions seem to have OCC and OCD's authority in

1 this act is -- is limited by the act to the laws of
2 this state.

3 MR. SUAZO: Very good. Let's move on
4 to the next section of your testimony dealing with
5 beneficial purposes or beneficial use as proposed by
6 the applicants. Mr. Sporich, can you tell the
7 commission what your view is on WELC's proposal to add
8 a definition of beneficial purposes or beneficial use?

9 MR. SPORICH: Yes. NMOGA's belief that
10 these proposals contain unnecessary subjectivity for
11 what is considered beneficial. They also contain
12 operational -- constrain operational flexibility and
13 could trigger premature enforcement for plugging
14 requirements. And finally, it seems that some of
15 these terms might conflict with the legal term of art
16 used in water law.

17 MR. SUAZO: Now, why does no NMOGA
18 oppose WELC's attempt to prohibit speculative
19 purposes?

20 MR. SPORICH: Well, historically, uses
21 deemed to be beneficial in the context of oil and gas
22 regulations have been evaluated in -- in relation to
23 the concept of waste. For example, the proposal would
24 not allow for purposes such as secondary and tertiary
25 recovery, monitoring, and compliance issues.

1 I think that the -- the industry is --
2 is looking for definitions that are broad and flexible
3 and -- so that does not constrain future beneficial
4 uses to -- so that we are not preventing waste and --
5 and we are protecting correlative rights.

6 MR. SUAZO: And staying with this
7 slide, what is the risk of defining beneficial use too
8 narrowly? You kind of touched it already, if don't
9 have anything else to add but just thought I'd follow
10 up.

11 MR. SPORICH: Yeah. I -- as I
12 mentioned previously, it -- it has to deal with
13 secondary recovery and -- and tertiary recovery.

14 MR. SUAZO: Very good. Still sticking
15 with this slide. Can you describe in your experience
16 how low producing wells can be used for, you know,
17 other things that you kind of referenced to like
18 various testing and things of that nature?

19 MR. SPORICH: Yes. In my experience
20 specifically at Tap Rock Resources, we've taken over
21 older vertical wells and fracked different horizons
22 that had already -- that had not been previously
23 tested, and then extrapolated that -- that information
24 to continue to develop the field in that area.

25 MR. SUAZO: Okay. And did NMOGA's

1 other witnesses address this proposal as well?

2 MR. SPORICH: Yes.

3 MR. SUAZO: And did you review their
4 testimony?

5 MR. SPORICH: Yes. I reviewed the
6 testimony of Mr. Arthur, Mr. McGowen, and -- and found
7 it credible.

8 MR. SUAZO: Is the term "beneficial
9 use" already used as a legal term of art?

10 MR. SPORICH: Yes. As I mentioned
11 before, it's used in water law here in New -- in the
12 state of New Mexico. And to prevent cross use of this
13 term, the commission should clarify that beneficial
14 use is in oil and gas context -- in the oil and gas
15 context is altogether separate from beneficial use in
16 water law.

17 MR. SUAZO: Thank you. What is NMOGA's
18 final position on this issue?

19 MR. SPORICH: NMOGA urges the
20 commission to decline the applicants' proposal.
21 However, if the commission does adopt a definition, it
22 should be, as I mentioned previously, broad and
23 flexible so not as to constrain future beneficial
24 uses.

25 MR. SUAZO: Now, have you heard the

1 commissioners ask for additional proposals from NMOGA
2 in this proceeding?

3 MR. SPORICH: Yes. I have.

4 MR. SUAZO: And did you provide a
5 proposed alternate definition for the commission to
6 consider in your testimony?

7 MR. SPORICH: Yes. NMOGA proposes the
8 following language on this slide for beneficial uses.
9 "For beneficial use purposes and beneficial use means
10 that a well is being used or is reasonably expected to
11 be used in a productive operational or regulatory
12 capacity consistent with its intended purpose.

13 "This includes but is not limited to
14 production, injection, monitoring, regulatory
15 compliance, or participation in reservoir management,
16 pressure maintenance, or infrastructure optimization
17 programs.

18 "In determining whether a well is being
19 used for beneficial purposes, the division may
20 consider operational records, production or injection
21 history, regulatory filings, and operator submitted
22 plans or supporting documentation. The division shall
23 provide the operator a reasonable opportunity to
24 demonstrate beneficial use prior to making any
25 contrary determination.

1 "Use of a well shall not be deemed
2 non-beneficial solely because it has produced or
3 injected below a specific volumetric threshold, it has
4 been temporarily inactive due to maintenance, market
5 conditions, infrastructure limitations, or field wide
6 optimization.

7 "It is not producing and paying
8 quantities on a standalone basis but contributes value
9 to a univised or pad lettable operation. Use of a
10 well for speculative or indefinite purposes with no
11 planned operational role may be deemed non-beneficial
12 after consultation with the operator."

13 MR. SUAZO: Thank you, Mr. Sporich. I
14 know that was a mouthful. Let's move on to your next
15 section dealing with presumption of beneficial use,
16 which I think is slide 10. Can you please explain to
17 the commission your concerns with WELC's proposed
18 presumption regarding beneficial use?

19 MR. SPORICH: Yes. The applicants'
20 proposed minimum timeframe and volume thresholds that
21 if not met would result in a presumption of no
22 beneficial use. As proposed production wells would be
23 presumed to have no beneficial use if during any
24 consecutive 12-month period there is less than 90 days
25 of production and less than 90 total BOE.

1 For saltwater disposal and injection
2 wells, would be presumed to have no beneficial use
3 during any consecutive 12 months or less than 90 days
4 of injection and less than 100 barrels total injected.
5 But wells drilled but not completed for less than 18
6 months and wells that have been completed but not
7 produced for less than 18 months would be exempt from
8 the applicants' presumption of no beneficial use
9 threshold.

10 In my experience, many viable wells
11 have -- with beneficial uses beyond just production,
12 injection, or disposal would fall below this
13 threshold.

14 MR. SUAZO: Okay. And sticking with
15 slide 10 for the next few questions. What is NMOGA's
16 concern with the 90-day or one-year threshold?

17 MR. SPORICH: Our concern is that it's
18 overly rigid and -- and operationally can be
19 unrealistic, especially for wells with variable
20 production, maintenance downtime, or wells waiting on
21 infrastructure. NMOGA, you know, has -- had mentioned
22 previously that wells undergo many different life
23 cycles.

24 It's not just as simple as drilling one
25 horizontal well and -- and we produce and then that's

1 the end of the lifecycle for that well. So those are
2 some of their concerns.

3 MR. SUAZO: And how might this
4 presumption affect vested property rights?

5 MR. SPORICH: Well, if this presumption
6 is not adequately rebutted during the response window,
7 then the presumption would become a determination, and
8 that subject well is not capable of -- of beneficial
9 use, which could be a triggering event that mandates
10 plugging and abandoning obligations under the
11 existing -- existing rules.

12 MR. SUAZO: Can you help us to
13 understand why that impact on vested property rights
14 is not appropriate?

15 MR. SPORICH: Well, the applicants'
16 presumption as proposed would deprive the parties of
17 property and -- and the rights that they bargained for
18 when those rights were acquired. By contrast, the law
19 has historically abhorred forfeiture of property
20 rights and instead favors interpretations that support
21 protection of such rights.

22 The commission cannot deprive parties
23 of property and the rights they bargained for, and
24 should instead protect correlative rights.

25 MR. SUAZO: Does NMOGA believe that the

1 commission has the authority to adopt this
2 presumption?

3 MR. SPORICH: NMOGA does not. The Oil
4 and Gas Act charges this commission with preventing
5 waste and protecting correlative rights, not mandating
6 plugging based on arbitrary volume cutoffs. The
7 presumption risks depriving operators of property
8 rights without legal justification.

9 MR. SUAZO: All right. Let's move on
10 to your next slide, slide 11. Can you give us an
11 example of any unintended notice or due process
12 violations that might occur under this presumption as
13 it is proposed?

14 MR. SPORICH: Yes. As you can kind of
15 see from this -- this timeline chart here, it -- it
16 could be unclear from the language proposed when does
17 the 30-day rebuttal period actually begin? This
18 ambiguity makes compliance uncertain and creates
19 procedural risk, and without clarity, could amount to
20 a taking without adequate notice or a breach of
21 contract.

22 MR. SUAZO: And do you anticipate this
23 timeline can realistically be complied with?

24 MR. SPORICH: No. I think as mentioned
25 previously from a -- a few NMOGA witnesses, the 30-day

1 timeline seems to be extremely strict. In my
2 experience, getting all parties involved to sign off
3 on this type of information and properly understanding
4 it all, 30 days is -- is not adequate. I think
5 something closer to -- to 90 days would be a -- a
6 better use.

7 MR. SUAZO: Okay. And so what is
8 NMOGA's overall recommendation to the commission on
9 this provision?

10 MR. SPORICH: NMOGA recommends that
11 this commission oppose and not adopt the proposed
12 presumption provision under 19.15.25.9 in -- of NMAC.
13 This commission should retain the current rebuttable
14 presumption framework already embedded in the inactive
15 well rules, which offer a -- a more fair
16 determination.

17 MR. SUAZO: And if the commission
18 decides to move forward with Applicants' proposal
19 despite the position you've provided today, what
20 recommendations do you have for them?

21 MR. SPORICH: You can see here, again,
22 first, still recommend that -- that the rebuttable
23 presumption that the well is not a beneficial use only
24 applies that the well is not produced or injected for
25 any reason for five consecutive years and the operator

1 has not submitted a plan or application demonstrating
2 intent to return the well to productive service.

3 Second, here's a -- a more reasonable
4 timeframe, which, you know, a well inactive for more
5 than 15 months creates the rebuttable presumption that
6 a well is out of compliance.

7 MR. SUAZO: All right. Thank you.
8 That completes your slides on beneficial use in the
9 rebuttable presumption. Let's move on to the
10 financial assurance slides for well plugging. I
11 believe that's slide 14. Have you reviewed WELC's
12 proposal for active, inactive, and temporarily
13 abandoned wells?

14 MR. SPORICH: Yes.

15 MR. SUAZO: Can you please briefly
16 summarize that proposal for active wells under this
17 section?

18 MR. SPORICH: Yes. You can see on this
19 slide that points one and two summarize the changes of
20 active wells being, one, that the operator would be
21 required to provide individual financial assurances of
22 \$150,000 for each active well whether through a bond,
23 a letter of credit, or insurance policy.
24 Alternatively, operators could obtain a blanket bond
25 of \$250,000 to cover all active wells.

1 The second point that the applicants
2 proposed alone, an additional option of \$200,000
3 blanket bond for operators with five or fewer active
4 wells in its proposed amendments to the current
5 versions of 19.15.8.9 C(2) of NMAC.

6 MR. SUAZO: Was that proposal dropped?

7 MR. SPORICH: Yes. It was -- it was
8 dropped.

9 MR. SUAZO: Okay. Can you please
10 summarize WELC's proposal for inactive wells under
11 these sections?

12 MR. SPORICH: Yes. As you can see from
13 these slides here, points three and four. Three
14 would -- the operators would be required to provide
15 individual financial assurances of 150,000 per well,
16 whether through bond, letter of credit, or insurance
17 policy, for each and active well or well assigned
18 approved, pending, or expired temporary abandoned
19 status.

20 This requirement is written with no
21 flat blanket bond alternative in its proposed
22 amendment. And also, the applicant has proposed
23 adding a requirement under 19.15.8.9 F of NMAC that
24 \$150,000 single well bond be obtained for each well
25 not covered by blanket financial assurance and would

1 remove the blanket bond alternative in place under the
2 existing rule.

3 MR. SUAZO: Let's move on to slide 15
4 so you can touch on this point. How do these
5 proposals conflict with OCD's statutory framework for
6 one well financial assurance?

7 MR. SPORICH: Well, under the act,
8 70-2-14 A, OCD has the authority to require single
9 well and blanket financial assurance. However, the
10 statute makes clear that the one well financial
11 assurance must be in the amounts determined sufficient
12 to reasonably pay the cost of plugging the wells
13 governed by financial assurance.

14 MR. SUAZO: And did you hear the other
15 witness testimony on these points?

16 MR. SPORICH: I did.

17 MR. SUAZO: Okay. How do these
18 proposals conflict with OCD statutory mandate to
19 incorporate certain factors into the financial
20 assurance rules?

21 MR. SPORICH: Well, this portion of the
22 act goes on to require that when OCD determines
23 financial assurance amounts, OCD must consider the
24 depth of the well involved, the length of time since
25 the well was produced, the cost of plugging similar

1 wells, and such other factors as the OCD deems
2 relevant.

3 It doesn't appear that these factors
4 were considered under the proposed financial assurance
5 requirements and none are included in the proposal
6 itself. Instead, it's a one size fits all
7 proposition.

8 MR. SUAZO: How did these proposals
9 conflict with a statutorily mandated expressed cap on
10 blanket bonding amounts?

11 MR. SPORICH: Well, the -- the blanket
12 bonding requirements for inactive and approved,
13 pending, or expired temporarily abandoned wells under
14 19.15.8.9 E of NMAC would require an average of
15 \$150,000 per well in total coverage as well as the
16 additional blanket bond provisions under section F of
17 that -- provision F of NMAC of that section, requiring
18 a \$150,000 in additional per well coverage for each
19 well not covered by the blanket bond assurance, which
20 would easily require over \$250,000 in -- in bonding.

21 MR. SUAZO: So moving to slide 16. To
22 put a finer point on that, I guess, can you help us
23 understand the statutory overreach at stake here with
24 a comparison between the current statutory limits and
25 what WELC proposes?

1 MR. SPORICH: Yes. You know, as shown
2 on this table, the applicants' proposed changes
3 represent a stark contrast and a departure from the
4 current limitations. Namely, the statute requires a
5 blanket bonding amount of \$250,000 for active wells
6 that cannot be exceeded and other clear limitations on
7 financial assurances. The changes in the second
8 column categorically exceed those amounts.

9 MR. SUAZO: And what is NMOGA's
10 recommendation to reconcile these conflicts with the
11 Oil and Gas Act?

12 MR. SPORICH: Well, NMOGA opposes that
13 the use of an average \$150,000 per well blanket
14 bonding requirement. Instead, a \$250,000 maximum
15 blanking bonding amount should be utilized across the
16 board regardless of the number of wells in accordance
17 with the maximum amount of assurance set forth in the
18 act.

19 MR. SUAZO: And if the commission
20 decides instead not to utilize this \$250,000 statutory
21 maximum blanket bonding in accordance with the act,
22 what does NMOGA recommend?

23 MR. SPORICH: Again, preference would
24 be to -- to leave the blanket bonding in -- in place.
25 But if -- if the commission's going to go in a

1 different direction, a -- a tiered bonding amount
2 could be used to -- based on the number of uncovered,
3 temporarily abandoned wells similar to that that's
4 already in place.

5 Under the current version of 19.15.8.9
6 D of NMAC, operators must provide financial assurance
7 for wells in temporary abandonment status for more
8 than two years or for which temporary abandonment is
9 being sought.

10 Financial assurance may be satisfied by
11 either, one, per well bonding of \$25,000 plus \$2 per
12 foot of well depth, or blanket bonding for a tiered
13 approach of 150,000 for one to five wells, 300,000 for
14 six to ten wells -- or excuse me. Yes. Six to ten
15 wells, 500,000 for 11 to 25 wells, and a million
16 dollars for 26 and more wells.

17 MR. SUAZO: Let's move to your slide
18 18. Are you aware of any resources that the division
19 already has to cover costs associated with orphan
20 wells?

21 MR. SPORICH: Yes. As you can see
22 here, New Mexico has established the Oil and Gas
23 Reclamation Fund. It has historically been a fund
24 used for plugging and -- and reclamation of wells when
25 there isn't a locatable or financially viable

1 operator.

2 And as shown on this slide, and I think
3 as mentioned previously, as of April of this year, the
4 balance was just over \$66 million. However, despite
5 that high balance, New Mexico has made minimal
6 expenditures from a -- the reclamation fund, instead
7 using federal grants to pay for plugging orphaned
8 wells.

9 MR. SUAZO: All right. Let's move on
10 to your slide 19 where you discuss heightened
11 requirements for marginally producing wells. In your
12 opinion, how does WELC's financial assurance proposal
13 here operate for the newly created marginal well
14 category?

15 MR. SPORICH: Well, under Applicants'
16 proposal, it would require a \$150,000 single well
17 financial assurance for each marginal well involved in
18 an operator transfer to be posted by a transferee
19 operator, and required immediately upon effective date
20 of the proposed regulations.

21 Under its proposed 19.15.8.9 D(2) of
22 NMAC, the applicant would require a \$150,000 single
23 well bond of financial assurance for every marginal
24 well, required effective January 1st of 2028.

25 Under its proposed 19.15.8.9 D(3) of

1 NMAC, if the amount of marginal and inactive wells
2 registered to an operator, or a combination thereof,
3 makes up at least 15 percent or more of their total
4 New Mexico wells, then the applicants' proposal would
5 require a \$150,000 single well of financial assurance
6 for every well registered to that operator, not just
7 marginal wells.

8 MR. SUAZO: Have you heard any
9 proposals throughout this proceeding proposing raising
10 that 15 percent to 30 percent?

11 MR. SPORICH: Yes. I have.

12 MR. SUAZO: And I guess generally, can
13 you please, on your slide 20, describe NMOGA's
14 concerns with these proposals generally?

15 MR. SPORICH: Well, some of the
16 concerns are one, that they're vague and over --
17 overly broad. They penalize producing wells instead
18 of providing mechanisms to reduce costs associated
19 with marginal well production. The provisions could
20 lead to premature abandonment of marginally economic
21 and shut-in oil -- oil wells and prevent full recovery
22 from such wells.

23 MR. SUAZO: Have you heard discussion
24 in this proceeding about how the BLM treats what are
25 called stripper wells?

1 MR. SPORICH: Yes. I have.

2 MR. SUAZO: And do you -- can you
3 explain, you know, how that evidence is any sort of, I
4 don't know, policy choice to disincentivize the
5 premature abandonment of marginal wells like this?

6 MR. SPORICH: Yes. An example is, you
7 know, the BLM has been authorized to issue royalty
8 rate reductions for stripper oil wells pursuant to the
9 previous Federal Mineral Leasing Act. This policy was
10 implemented to prevent premature abandonment of
11 marginally economic and shut-in oil wells and to
12 maximize the ultimate recovery of such wells. Again,
13 it's more of an incentive versus a punishment.

14 MR. SUAZO: Okay. Let's move on to
15 your slide 21. In your opinion, why can't the
16 commission adopt the single well financial assurance
17 requirements for active wells under the proposed
18 changes to 19.15.8.9 C(1) and inactive wells under the
19 proposed change to subsection E(1)?

20 MR. SPORICH: Well, these proposed
21 amendments are not compliant with existing statutory
22 requirements and therefore cannot be adopted by OCD.
23 Both proposals impose a flat \$150,000 per well
24 requirement, disregarding the statutory mandate that
25 financial assurance amounts must be reasonably --

1 reasonable in relation to actual plugging costs, and
2 tailored to well specific factors such as depth,
3 production history, and comparable plugging costs.

4 MR. SUAZO: Are you aware what New
5 Mexico law says about an administrative agency's
6 relationship with its enabling statute? Slide 22.

7 MR. SPORICH: Yes. You see here the
8 Supreme Court of New Mexico has repeatedly held and
9 long made clear that the OCC and OCD as creatures of
10 statute must act strictly within the balance of their
11 enabling legislation.

12 In Sims vs. Meacham, the New Mexico
13 Supreme Court held that the commission lacked
14 authority to issue a compulsory pooling order where it
15 failed to make the statutorily required finding of
16 waste. The court emphasized that the commission must
17 fully comply with its creating law to possess any --
18 possess any jurisdiction in a -- in a matter. Excuse
19 me.

20 MR. SUAZO: And do you know of any
21 specific requirements of the Oil and Gas Act that
22 conflict with Applicants' proposals under the changes
23 to C(1) and E(1) that you just discussed?

24 MR. SPORICH: Well, here, pursuant to
25 the act 70-2-14 A, OCD must set one well financial

1 assurance "in amounts determined sufficient to
2 reasonably pay the cost of plugging." Furthermore,
3 the statute requires that OCD shall consider the depth
4 of the well involved, the length of time since the
5 well was produced, the cost of plugging similar --
6 similar wells, and such other factors as the Oil
7 Conservation Division deems relevant.

8 MR. SUAZO: And based on the testimony
9 you've heard and the testimony you've reviewed, is it
10 your view that the record establishes that Applicants'
11 proposals essentially disregard the statutory mandate
12 that's tied to one well financial assurance amounts?

13 MR. SPORICH: Yes.

14 MR. SUAZO: Can you explain?

15 MR. SPORICH: Well, the record is rife
16 with evidence that many of these wells can typically
17 be plugged for less than \$150,000. We've had experts
18 come up here, previously testified that they've
19 plugged wells for much cheaper. We've also had
20 experts that have come up and -- and discussed the
21 difference of plugging wells based off of history,
22 TVD, length, et cetera.

23 MR. SUAZO: And so if I understood what
24 you said, the proposed changes would strike the depth
25 considerations from the existing language?

1 MR. SPORICH: That's my understanding.

2 MR. SUAZO: Okay. And if I understand
3 correctly, you're saying that eliminating those
4 factors contravenes section 70-2-14 of the act?

5 MR. SPORICH: Correct.

6 MR. CLOUTIER: Objection. Leading.

7 MR. SUAZO: I'm just asking him
8 following up on that question. I'll move on. I think
9 he touched it there.

10 BY MR. SUAZO:

11 MR. SUAZO: What primary duties does
12 the act charge the commission and the division with?

13 MR. SPORICH: Well, when -- when it
14 enacted the act, the New Mexico legislature created
15 the OCC and gave the commission and division two major
16 duties, the prevention of waste and the protection of
17 correlative rights.

18 MR. SUAZO: And moving on to slide 26.
19 How does Applicants' proposal of the definition of
20 inactive combined with their proposed new requirements
21 for marginal inactive in your view result in waste?

22 MR. SPORICH: Well, we've had to NMOGA
23 witnesses discuss in detail that designating a well is
24 temporarily abandoned is not always indicative of the
25 well truly being inactive or ready for plugging from a

1 commission perspective.

2 Also too, the applicants' current
3 proposal may force operators to plug some wells that
4 have strategically been designated as temporarily
5 abandoned, as mentioned previously by Mr. McGowen, for
6 operational reasons in order to avoid non-compliance,
7 even though those wells may be productive in the
8 future. The result is a waste of natural resources,
9 which OCC is statutorily mandated to prevent.

10 MR. SUAZO: And going back to the
11 changes to 8.9 E. On your slide 27, is it your
12 opinion that the statutory requirement that OCD allows
13 wells in temporary abandonment status to remain under
14 the \$250,000 blanket financial assurance in any
15 two-year period ignores the statutory requirements?

16 MR. CLOUTIER: Objection. Leading.

17 MR. SUAZO: I can rephrase.

18 THE EXAMINER: Please.

19 BY MR. SUAZO:

20 MR. SUAZO: Can you explain your view
21 under 8.9 E and how it ties to the statutory
22 requirements pertaining to the blanket bond you just
23 discussed?

24 MR. SPORICH: Yes. You can see here
25 the acts under 70-2-14 A states that wells in a

1 temporarily abandoned status will remain under the
2 \$250,000 blanket financial assurance coverage for an
3 initial two-year period. The pertinent portion of the
4 statute states explicitly the OCD shall require a one
5 well financial assurance on any wells that has been
6 held in a temporary abandoned status for more than two
7 years.

8 Inexplicably, Applicants seek to ignore
9 this statutory mandate in its proposed changes to
10 19.15.8.9 D NMAC, which would require operators to
11 supply one well financial assurance for temporarily
12 abandoned wells before the statutorily prescribed
13 two-year period is concluded.

14 MR. SUAZO: Let's move on to slide 28.
15 Dealing with the same -- well, sorry. I can't see
16 that far. Can you please walk us through this slide
17 and why it's significant?

18 MR. SPORICH: Yes. Applicants'
19 proposed regulation under 19.15.8.9 E(2) of NMAC
20 requiring any blanket bonding for inactive and
21 pending, approved, or temporarily expired abandoned
22 wells to provide blanket bonds with a total of 150,000
23 for each well secured.

24 By definition, any blanket instrument
25 calculated on a per well basis would exceed \$250,000

1 statutory ceiling once it covered more than one well.
2 This directly conflicts with the act's section 70-2-14
3 A and renders the proposal unlawful.

4 MR. SUAZO: All right. Let's move on
5 to Applicants' proposals to adjust based on consumer
6 price index, slide 29. What does the applicant
7 propose with regard to CPI adjustments?

8 MR. SPORICH: So the applicants
9 proposed that OCD adjusts the financial assurance
10 amounts required based on inflation as published by
11 the CPI.

12 MR. SUAZO: And what is your view on
13 this proposal?

14 MR. SPORICH: Well, the -- the biggest
15 issues is -- is the primary concerns are they -- the
16 regulations must comply with the limited grant
17 statutory authority under their enabling act. As
18 mentioned previously under the -- in the table that I
19 reviewed earlier, nothing within the act remotely
20 discusses annual adjustments.

21 Moreover, the annual adjusted inflation
22 amounts are contrary to the plain language of the
23 statute since they're statutory caps, which would be
24 exceeded if adjusted for inflation.

25 MR. SUAZO: Do you know whether a

1 proposal like this has ever been introduced before?

2 MR. SPORICH: Yes. I believe it was
3 2024 under House Bill 133. They attempted to
4 introduce the CPI adjustment to financial assurances,
5 but it failed to pass the -- the legislature.
6 Applicants now are -- are attempting to reinsert the
7 same CPI adjustment provision, which we believe is
8 outside the scope.

9 I've heard commentary previously from
10 the commissioners that unfortunately sometimes the
11 legislature can't get to all the proposals or -- or
12 recommendations. However the legislature here did
13 take this up and it wasn't a time constraint. It was
14 they chose not to move forward with it.

15 That is a decision. Might not be the
16 right decision or the best decision, but it is its
17 decision to not act.

18 MR. SUAZO: Does NMOGA have any
19 recommendations on this provision if the commission
20 decides to proceed and adopt it?

21 MR. SPORICH: Again, our -- our
22 position is that they -- they lack statutory authority
23 to -- to move forward with this. However, if they do,
24 instead of using a -- a national CPI index, they
25 should either use a local or -- or New Mexico based

1 CPI index.

2 MR. SUAZO: All right. Let's move on
3 to your slide -- I think it's number 31, which
4 proposes -- which deals with acquisitions based on
5 financial assurance. Do you know what Applicants
6 proposed to 19.15.8.9 A regarding these acquisitions
7 and financial assurances?

8 MR. SPORICH: Yes. The applicant
9 proposes that OCD be required to deny approval of any
10 drilling or acquisition until appropriate financial
11 assurance is furnished. This effectively would make
12 OCD the gatekeeper for acquisitions and transactions.

13 MR. SUAZO: Do you know how this defers
14 from the current requirements?

15 MR. SPORICH: Yes. Under current
16 version of 19.15.8.9 A of NMAC, it requires the
17 operator before drilling or after acquiring a well to
18 provide acceptable financial assurance to OCD in the
19 form of a letter of credit, plugging insurance policy,
20 or surety bond. Currently no pre-approval of the
21 financial assurance is required as a precondition to
22 drilling or acquisition.

23 MR. SUAZO: Do you know if NMOGA has
24 concerns with this proposal from a legal perspective?

25 MR. SPORICH: Yes. Under the Oil and

1 Gas Act, OCD's authority is expressly limited to
2 preventing waste and protecting correlative rights.
3 It does not extend to regulating acquisitions or
4 private property -- property transactions. Expanding
5 OCD's role into approving or denying acquisitions
6 exceeds its statutory authority.

7 MR. SUAZO: You mentioned earlier a
8 house bill. Does that have any bearing on your
9 analysis of this section?

10 MR. SPORICH: Yes. As mentioned
11 before, it -- it was brought up previously and -- and
12 was not passed. So therefore, NMOGA believes that
13 this is an ultra-virus provision trying to insert this
14 in here. Even the legislature has decided that it is
15 not appropriate at this time.

16 MR. SUAZO: Do you know whether WELC
17 was involved in, I guess, the discussions around that
18 bill?

19 MR. SPORICH: I believe so, but I don't
20 have direct knowledge.

21 MR. SUAZO: Let's move on to your slide
22 33, with respect to your recommendations. What does
23 NMOGA recommend to the commission with respect to this
24 proposal?

25 MR. SPORICH: Oh, the solution for

1 NMOGA would be that OCD strikes this provision for
2 this ultra-virus amendment, which improperly extends
3 OCD's jurisdiction into property acquisition
4 transactions, risks regulatory overreach, and will
5 subject this commission to potential litigation.

6 MR. SUAZO: All right. Let's move on
7 to slide 34, dealing with marginal wells and
8 definitions. Are you familiar with Applicants'
9 proposed definition for marginal wells?

10 MR. SPORICH: Yes. The applicant
11 proposes adding a new definition for marginal well
12 wherein the applicant proposes a two-pronged test.
13 First, less than 180 producing days, and second, less
14 than 1,000 BOE over a consecutive 12-month period.

15 MR. SUAZO: Do you have any concerns
16 about this proposal?

17 MR. SPORICH: Yes. It creates
18 potential for situations where productive wells may be
19 misclassified because wells are often shut in for
20 durations for nearby drilling or offset fracking.
21 Today's world is -- is very different from previous
22 where it was just a bunch of vertical wells. As we
23 all know, horizontal's going in every different
24 direction in -- in New Mexico.

25 That's why the -- historically the

1 focus has always been on any particular well's
2 capability of production rather than solely its actual
3 production over a prescribed period of time.

4 MR. SUAZO: Do you know if Applicants'
5 proposal for this marginal well definition is
6 associated with its financial assurance proposal?

7 MR. SPORICH: Yes. Under the
8 applicants' proposal, classification as a marginal
9 well would trigger the heightened financial assurance
10 requirements for marginal wells proposed by the
11 applicants through 19.15.8.9 of NMAC.

12 MR. SUAZO: Do you have any concerns
13 about the proposal?

14 MR. SPORICH: Yeah. You can see here
15 because it's unclear how the definition will be
16 applied, whether it would trigger automatic
17 classification or only apply in financial assurance
18 determinations, adding this new definition for
19 marginal well may also affect regulatory enforcement,
20 leasehold rights, and interpretations of economic
21 production or paying quantities.

22 MR. SUAZO: Now, when you say
23 "leasehold rights," how do you mean those could be
24 impacted?

25 MR. SPORICH: Well, I -- I think the

1 biggest fear, and I think it's been brought up here
2 previously too, discussions about paying and producing
3 quantities. It -- it could directly threaten the
4 correlative rights of the -- of operator and the lease
5 holders.

6 If OCD is putting in this new
7 definition, telling you what is or what is not
8 marginal and what's available to hold wells -- for
9 instance, I know the state land office does not want
10 to, and most -- most lessors do not want lessees to
11 produce at a bare minimum level to maintain a lease.

12 But when you have a definition that
13 says that this is okay from a division, it -- it kind
14 of sets that floor that producing at this bare minimum
15 amount could hold -- hold on, and falling under that,
16 it might trigger the lease or -- or the rights to --
17 to go -- to -- to terminate. And again, if you're
18 looking at it on a well by well basis, you have to be
19 looking at it more from a leasehold or unitized basis,
20 not well by well.

21 MR. SUAZO: Let's move on to your slide
22 36. What is your concern with the proposal as it
23 relates to, I guess, the OCD's duties that you just
24 mentioned?

25 MR. SPORICH: Yeah. So their duty to

1 prevent waste and correlative rights and -- is what
2 we're getting at. And currently under the existing
3 definitions, OCD assigns allowable production
4 prorations to units to allocate gas production in
5 order to prevent waste and protect correlative rights.

6 There are no defined thresholds for
7 marginal units. Rather, OCD uses marginal units to
8 describe a unit not producing its allowed amount. The
9 allowed unit proration is dynamic based on OCD's
10 determination. Marginal units are provided with
11 regulatory exemptions, thus making production cost
12 effective.

13 Therefore, marginal and non-marginal
14 units are currently used in the regulatory sense to
15 prevent waste, manage correlative rights, and
16 incentivize production. The applicants' proposal will
17 eliminate this flexibility and instead impose rigid
18 and impractical standards that instead facilitate
19 waste.

20 MR. SUAZO: Does NMOGA have any
21 recommendations for the commission on these marginal
22 well and financial assurance proposals?

23 MR. SPORICH: Yes. NMOGA opposes the
24 applicants' definition of marginal well and urges the
25 commission to reject the applicants' proposal.

1 MR. SUAZO: Next slide. Can you walk
2 us through what your final recommendations on these
3 issues are for the commission?

4 MR. SPORICH: Yes. The proposed
5 definitive -- definition of marginal well is only
6 relevant to this rulemaking if the commission
7 concludes that it has authority under existing
8 statutes to mandate single well financial assurances
9 for low producing wells. If, as we believe, the
10 commission lacks such authority, then the proposed
11 definition is unnecessary.

12 Even if this commission finds some
13 basis to consider defining marginal well, it remains
14 unclear how the proposed definition would interact
15 with existing definitions, regulatory uses, and
16 established practices. Moreover, potential conflicts
17 with statutory language and the current common law
18 framework -- framework could create legal uncertainty
19 and invite future litigation.

20 MR. SUAZO: Let's go on to your next
21 slide. What are your concerns with the financial
22 assurance as it relates to the marginal well as it
23 states on your slide?

24 MR. SPORICH: Well, you can see here
25 that the -- the act under 70-2-14 A sets out

1 categories of financial assurance and expressly caps
2 those amounts. Any new categories such as the
3 applicants' proposed marginal requirement would
4 require a legislative amendment before they could
5 lawfully be adopted by the regulation.

6 MR. SUAZO: All right. Next slide. Do
7 you know whether NMOGA has reviewed OXY's proposal on
8 this provision?

9 MR. SPORICH: Yes.

10 MR. SUAZO: And what is NMOGA's view on
11 that?

12 MR. SPORICH: We agree with OXY that in
13 an event -- in -- in an efforts -- in an effort to
14 circumvent the acts express financial assurance
15 provisions for active marginal wells, Applicants ask
16 the commission to, A, define a marginal well, B,
17 remove these active wells from the \$250,000 blanket
18 financial assurance authorized by section 70-2-14, C,
19 impose a one well plugging financial assurance in the
20 amount of \$150,000 for each of these active marginal
21 wells.

22 And D, if over 15 percent of an active
23 operator's wells are considered marginal or inactive,
24 or a combination thereof, then the operator must
25 provide financial assurance in the amount of 150,000

1 for each of the wells registered to that operator,
2 including active wells producing above what Applicants
3 considers marginal threshold.

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

8 MR. SUAZO: Let's move to your next
9 slide. So it says here that Applicants' proposal
10 undermines one of OCD's duties. What do you mean by
11 that?

12 MR. SPORICH: Well, even if the
13 commission had statutory authority, the proposal --
14 Applicants' proposal undermines, again, one of OCD's
15 core statutory mandates, and that is preventing waste.

16 Testimony from NMOGA has demonstrated
17 that imposing \$150,000 per well assurance on marginal
18 wells will incentivize premature plugging of wells
19 that remain mechanically sound, provide strategic
20 value, or potential productivity in the future. This
21 is the very definition of waste and directly
22 contravenes one of the primary statutory directives
23 under the Oil and Gas Act.

24 MR. SUAZO: All right. Let's move on
25 to the next section of your testimony, dealing with

1 changes to New Mexico's temporary abandonment program,
2 which I think is slide 41. Do you know what changes
3 Applicants are proposing to the approved temporary
4 abandonment requirements?

5 MR. SPORICH: Yes. The applicant
6 proposes to require a beneficial use demonstration for
7 approved temporary abandonment approvals and
8 extensions, also mandate extensive documentation,
9 which includes seismic, economic projections, HSE
10 plans, et cetera.

11 It proposed broadening public
12 intervention rights, impose hard cutoffs for approved
13 temporary abandonment eligibility, and require
14 operators of expired approved temporary abandoned
15 wells to reapply or plug.

16 MR. SUAZO: And does NMOGA have any
17 concerns with those proposals? Next slide, please.

18 MR. SPORICH: Yeah. One of the big
19 concerns is the disclosure of confidential and
20 proprietary -- proprietary information. In my
21 experience, some of -- some data that we've acquired
22 over the years, specifically seismic and geophysical
23 data, are subject to some of the most comprehensive
24 confidentiality provisions and -- and allow for very,
25 very little, if -- if any, disclosure to them.

1 Also economic forecasts are
2 proprietary, and more importantly, change on a daily
3 basis for -- for most operators. And you can see that
4 some of this may be restricted from disclosure by
5 other regulatory regimes.

6 MR. SUAZO: Did you hear any testimony
7 in this proceeding regarding a statute to protect
8 proprietary or confidential information?

9 MR. SPORICH: Yes. I heard I believe
10 earlier today.

11 MR. SUAZO: And given that you have
12 experience as in-house counsel for oil and gas
13 companies, do you feel protected by statutes such as
14 that?

15 MR. SPORICH: No. We do not. As
16 previously mentioned, it -- it's a minor offense.
17 That -- the information that -- that the government is
18 receiving had broad financial implications that are
19 out there. It's very hard to enforce those, to track
20 all that information down because it's the proverbial,
21 once the bill's wrong, you can't unring it.

22 So all it takes is one instance of any
23 of that information to come out and it's detrimental
24 to the entire industry.

25 MR. SUAZO: Are you saying that that

1 information is valuable and then that the statute
2 would not dissuade somebody from disclosing it?

3 MR. SPORICH: No. The statute -- well
4 for one, the -- I've only read that statute here as of
5 today, so -- but a -- a misdemeanor doesn't seem to --
6 doesn't seem to hold a lot of teeth to prevent
7 disclosure of classified -- confidential information.

8 MR. SUAZO: Okay. And what does no
9 NMOGA recommend that the commission do with this
10 proposal from the applicants?

11 MR. SPORICH: Well, NMOGA recommends
12 that the commission reject this amendment. If it's
13 not rejected, we should preserve as much flexibility
14 and limit burdensome requirements. The commission
15 should allow operators to continue using the form
16 C-103 with narrative explanations and proposed
17 timeframes. This approach preserves regulatory
18 flexibility.

19 MR. SUAZO: All right. Let's move on
20 to the next section, dealing with the definition of
21 approved temporary abandoned under 15.2.7 A(13). Now,
22 based on your slide, do you have any concerns with the
23 proposed definitional change?

24 MR. SPORICH: Yes. We do. The primary
25 concern here is the redundancy with the existing

1 definition under 19.15.25.12 of NMAC. It -- it
2 creates confusion, and I think that's been mentioned
3 by Mr. McGowen previously too. The proposed
4 distinction between temporary abandonment and approved
5 temporary abandonment lacks a defined purpose and
6 could complicate compliance.

7 For example, 19.15.25.12 of NMAC
8 already requires OCD approval of temporary wells -- or
9 temporary abandonment wells. The applicants' addition
10 of an unapproved temporary abandonment term may imply
11 a status not recognized by OCD, potentially
12 misclassifying wells as abandoned without oversight.

13 This risk conflating such wells with
14 orphaned wells defined in existing 19.15.2.7 A(13) of
15 NMAC as those without a reasonable operator.

16 MR. SUAZO: Do you have any examples of
17 that?

18 MR. SPORICH: Not --

19 MR. SUAZO: Okay.

20 MR. SPORICH: Not at the top of my
21 head.

22 MR. SUAZO: You know, I think you
23 covered that. Sorry. Sorry. My eye's bothering me.
24 Excuse me. Let's move on to your slide 44. Can you
25 explain NMOGA's recommendation to the commission?

1 MR. SPORICH: Yes. NMOGA's
2 recommendations are to, one, to avoid regulatory
3 confusion and unnecessary burdens, the commission
4 should reject the applicants' proposed amendments or
5 require clarification of its intent for purposes of
6 identifying a more appropriate amendment.

7 The commission must also ensure that
8 this terminology is harmonized throughout, across
9 sections that deal with approved temporary abandonment
10 in NMAC, and particularly with 19.15.25.12 and
11 19.15.2.7 A(13) to ensure clarity.

12 MR. SUAZO: All right. Let's go on to
13 your slide 45.

14 THE EXAMINER: You have five minutes,
15 Mr. Suazo.

16 MR. SUAZO: Okay.

17 BY MR. SUAZO:

18 MR. SUAZO: What is -- are you familiar
19 with WELC's proposal regarding expired temporary
20 abandonment?

21 MR. SPORICH: Yes.

22 MR. SUAZO: And what is that proposal?

23 MR. SPORICH: WELC proposes adding a
24 new definition that would classify a well as an
25 expired temporary abandonment or expired temporary

1 abandonment status under a new provision codified in
2 19.15.2.7 E(8) if it has been approved for temporary
3 abandonment status in accordance with existing
4 19.15.25.13. However, this no longer complies with
5 19.15.25.12 through 14 of NMAC.

6 MR. SUAZO: Okay. And moving on to
7 your next slide. You list your concerns in that first
8 bullet. What are those concerns?

9 MR. SPORICH: Well, the concerns are --
10 the -- the primary concerns are it -- it lacks clarity
11 and workable standards, and it fails to identify
12 events that trigger a shift from approved to expired,
13 how long a well would have to remain out of
14 compliance, or the seriousness of the issue that would
15 justify a change.

16 This kind of ambiguity creates
17 uncertainty for both the operators and the division
18 and invites inconsistent enforcement.

19 MR. SUAZO: Are you aware of any
20 consequences if this isn't clarified?

21 MR. SPORICH: Yeah. Without further
22 clarification, OCD could deem a well expired for minor
23 infractions or temporary compliance lapses such as
24 delay in conducting mechanical integrity tests and
25 minor lapses in required financial assurances or even

1 paperwork delays.

2 MR. SUAZO: Let's move on to your slide
3 47. What is NMOGA's recommendation to the commission?

4 MR. SPORICH: NMOGA's recommendation
5 here is they recommend that they reject WELC's
6 proposed definition. The current rules allow for
7 appropriate operational and regulatory discretion
8 depending on the fact specific circumstances.

9 The existing statutes and rules
10 properly address the compliance situation involving
11 temporary abandonment, defined procedures, timelines,
12 enforcement measures, informal compliance agreements,
13 cessation orders, and plugging mandates. This
14 flexible framework reflects the complex reality faced
15 by operators and regulators and the often
16 collaborative nature of addressing operational and
17 regulatory challenges.

18 MR. SUAZO: All right. Let's move on
19 to your section regarding operator registration and
20 restrictions. Slide 48. Can you summarize what
21 Applicants' proposed changes are based upon this
22 slide?

23 MR. SPORICH: Yeah. Yes. At -- at
24 first, the first proposal was adding a requirement
25 affirmative -- that required affirmative certification

1 by an officer, director, or partner that any new
2 operator is in compliance with all federal and state
3 laws, state oil and gas laws, and regulations in each
4 state where the operator does business.

5 Those requirements would apply when
6 there was a change of operator. The change that I've
7 seen updated is removing officer, director, and
8 partner, and having it certified by an authorized
9 person.

10 MR. SUAZO: Let's move on to slide 52,
11 dealing with your rebuttal. All right. Can you
12 please give the commission your final recommendations?

13 MR. SPORICH: For the -- on this slide
14 here?

15 MR. SUAZO: Yes.

16 MR. SPORICH: Okay. Well, since 2017,
17 the division has already been enforcing the proposed
18 amendments to 19.15.9.8 of NMAC and 19.15.5.9 of NMAC
19 by inserting these requirements into its forms,
20 specifically form C-145.

21 MR. SUAZO: Can you please tell the
22 commission your final recommendations?

23 MR. SPORICH: These recommendations --

24 MR. SUAZO: Yeah.

25 MR. SPORICH: -- are NMOGA recommends

1 that the commission refrain from adopting any of the
2 proposed amendments at this time, and at a minimum,
3 the commission should strike the provisions that do
4 not comply with New Mexico law.

5 MR. SUAZO: Next slide. What does no
6 NMOGA recommend if the commission proceeds with these
7 proposals?

8 MR. SPORICH: We have a number of -- of
9 recommendations in the event that the rulemaking does
10 go forward. But the first is we reject proposals
11 beyond the statutory authority. The commission must
12 decline amendments that exceed its authority under the
13 Oil and Gas Act, including Applicants' changes under
14 proposed 19.15.8.9 C(1) and E(1) of NMAC pertaining to
15 one well financial assurance for active and inactive
16 wells.

17 Applicants' proposed expansion of the
18 definition of inactive for purposes of financial
19 assurance requirements under proposed 19.15.8.9 E and
20 D of NMAC. Applicants' attempted circumvention of the
21 statutory requirement that OCD allow wells in
22 temporary abandonment status to remain under the
23 \$250,000 blanket financial assurance for an initial
24 two-year period under proposed 19.15.8.9 E of NMAC.

25 Applicants' creation of the marginal

1 well category under proposed new 19.15.8.9 D NMAC,
2 which exceeds the statutory restrictions contained in
3 the -- the Oil and Gas Act under 70-2-14 A and will
4 result in waste and contravention of the act.

5 Applicants' proposed blanket bonding
6 requirements for inactive wells and certain
7 temporarily abandoned wells under proposed 19.15.8.9
8 E(2) NMAC, and supplementing incomplete blanket
9 assurance under proposed 19.15.8.9 F of NMAC.

10 Applicants' proposed addition of
11 19.15.9.8 NMAC, governing operating registration, and
12 19.15.9.9 NMAC, governing changes of operator,
13 mandating certification to OCD of full compliance with
14 the laws of other states prior to commencement of
15 operations.

16 MR. SUAZO: Next slide.

17 MR. SPORICH: Next -- number two, the
18 amendment to form C-10 -- 145. Excuse me. I
19 recommend that the commission order OCD to strike the
20 unauthorized requirement that well operator is
21 certified compliance with other state laws from its
22 form C-145.

23 Number three, the beneficial use
24 definition. No -- no new definition or presumptions
25 of beneficial use should be added. If the commission

1 can consider such a definition, it must be
2 substantially amended to recognize beneficial uses
3 beyond production or injection volumes.

4 Number four, beneficial use
5 presumption. The commission should reject the
6 proposed presumption provision 19 --

7 THE EXAMINER: Mr. Sporich, would you
8 slow down a little? We're making a transcript.

9 MR. SPORICH: Yes ma'am. Sorry about
10 that.

11 The commission should reject the
12 proposed presumption provision 19.15.25.9 of NMAC.
13 The commission should retain the current rebuttable
14 presumption framework already embedded in the inactive
15 well rules. That is 19.15.5.9 B(2) of NMAC, which
16 offer a fair, more administrative standard without
17 shifting burdens prematurely.

18 Number five, reject a new marginal well
19 definition. A new definition risks misclassifying
20 viable wells and injecting investment uncertainty. If
21 the commission considers such a definition, it must
22 clarify how it would be applied and whether it would
23 automatically trigger heightened bonding requirements.

24 Number six, the recommendation is
25 temporary abandonment. No changes should be made to

1 the existing temporary abandonment program. Current
2 rules already provide sufficient protection through
3 mechanical integrity requirements and established
4 procedures, whereas the proposed amendments are
5 ambiguous and unworkable in practice.

6 Number seven, financial assurance. The
7 existing risk-based individual well and tiered blanket
8 bond framework should be retained. The commission
9 cannot adopt those financial assurance provisions that
10 exceed the statutory authority granted under the act.

11 Number eight, reject the CPI
12 adjustment. The commission should reject the annual
13 adjustment -- adjusted inflation amounts because they
14 are contrary to the plain language of the act's
15 statutory caps, which would be exceeded under this
16 provision.

17 Number nine, reject OCD's authority to
18 regulate transactions. The OCD -- the commission,
19 excuse me, should reject the applicants' amendment to
20 19.15.8.9 A of NMAC as an ultra-virus amendment which
21 improperly extends OCD's jurisdiction and do property
22 acquisition transactions, risks regulatory overreach,
23 and introduces substantial market and administrative
24 harm.

25 Number ten, recommendation is operator

1 registration and change of operator. The commission
2 must strike the provision mandating out-of-state
3 compliance in its entirety under both proposed
4 19.15.9.8 B and C, as it lacks the jurisdiction to
5 adopt these provisions.

6 The commission should also strike the
7 proposed requirement to mandate disclosure of any
8 current or past officers or owners with more than 25
9 percent interest who are affiliated with non-compliant
10 officer -- operators in the past five years.

11 Finally, the commission should strike
12 proposed 19.15.9.9 C(6) of NMAC under which OCD can
13 deny a change of operator if certifications or
14 disclosures show a substantial risk that the new
15 operator can't meet plugging and abandonment
16 requirements as overly broad and unworkable.

17 And finally, number 11, recognize and
18 utilize the reclamation fund. The reclamation fund
19 should be used and relied on as an alternative to
20 excessive bonding.

21 MR. SUAZO: All right. Did you provide
22 any surrebuttal in this case?

23 MR. SPORICH: Yes.

24 MR. SUAZO: Can you pull up those
25 slides, please?

1 BY MR. SUAZO:

2 MR. SUAZO: Okay. Let's start with
3 slide three. So this deals with the proposed changes
4 to 19.15.8.9 A on the financial assurances on
5 Applicants' Exhibit 88 where they have through this
6 proceeding proposed adding the phrase "operating
7 authority." Do you have any thoughts or concerns
8 based upon that proposal?

9 MR. SPORICH: Yes. NMOGA still opposes
10 this proposed amendment. Some of the big concerns are
11 that operating authority is not a defined term and
12 should be defined if it were included here. Operating
13 authority, as we all know, is used frequently in both
14 JOAs and compulsory pooling applications. So I think
15 a better definition -- definition of operating
16 authority would -- would help.

17 MR. SUAZO: And did NMOGA support
18 adding that language?

19 MR. SPORICH: No.

20 MR. SUAZO: Do you know if there's a
21 pending motion on this provision in this proceeding?

22 MR. SPORICH: I believe there is.

23 MR. SUAZO: Okay. So are you saying --
24 do you know if NMOGA objects to this provision because
25 of that motion?

1 MR. SPORICH: Well, yes. That's what I
2 said at the very beginning, that NMOGA still opposes
3 this proposed amendment.

4 MR. SUAZO: Okay. Let's move on to
5 slide four. What is Applicant proposing to change
6 with respect to this incomplete financial assurance
7 provision under Rule 8.9 F?

8 MR. SPORICH: It -- it appears that
9 they're trying to frame it as creating a blanket bond
10 or alternative for incomplete financial assurances.
11 But since other changes to 19.15.8.9 of NMAC still
12 apply, the blanket bond for inactive or TA'd wells is
13 not covered by existing assurance, but still total
14 an -- an average of 150,000 per well.

15 So there's still no blanket bond
16 alternative for inactive and approved pending and
17 expired TA wells under this provision.

18 MR. SUAZO: This is kind of a busy
19 slide. It says "Extraterritorial Compliance
20 Certification." What are your concerns with this
21 language here that that's highlighted?

22 MR. SPORICH: Well, as I mentioned
23 previously, I know that the applicants had changed
24 the -- the language to remove officer, director, and
25 partner and inserted authorized individual as well as

1 changing some of the -- the language between federal,
2 state, and just naming any domestic jurisdiction in
3 here. NMOGA still opposes this entirely, even the
4 modified language. I think that we should only
5 consider New Mexico, not other states.

6 I know there's been testimony or I
7 believe there's been testimony previously that the --
8 the federal -- the BLM requires this, and rightfully
9 they should, they are in charge of the United States.
10 New Mexico's in charge of New Mexico. Any
11 certification should only require disclosure of
12 forfeit advance and forfeited FA, if anything.

13 The other big thing here is, especially
14 coming from a -- a smaller private company, who's an
15 authorized official? I used to authorize many people
16 throughout. I -- there's no actual definition. Is
17 this the office -- you know -- someone of -- of high
18 authority or -- or is it anybody that can sign for the
19 company?

20 And I -- I would assume that the both
21 the state and -- and operators would want it to be
22 someone that -- that we're -- we're clear on who that
23 authorized individual is.

24 MR. SUAZO: So this slide deals with
25 the amended change of operator, the same

1 extraterritorial compliance issue. Looks like it's on
2 this. What are your -- what would you like the
3 commission to know about this proposal?

4 MR. SPORICH: I think there's the same
5 concerns and recommendations on the previous slide.
6 Otherwise, as mentioned previously, OCD can deny
7 operator changes which would inhibit transfers of --
8 of assets. Again, that would make OCD the gatekeeper
9 on any A&D deals.

10 MR. SUAZO: All right. Slide seven.
11 This shows the amendments to the proposed presumption
12 of no beneficial use. What are your -- what would you
13 like the commission to know about this slide?

14 MR. SPORICH: Well, we -- we have here
15 the -- the presumption makes operators basically
16 guilty until proven innocent. It's -- it's a
17 presumption that there is no beneficial use. The
18 procedure is to rebut the presumption of no beneficial
19 use, or -- obviously in subparagraph D.

20 And it should mirror the body of the
21 provision and -- and the whole -- and the whole thing.
22 So one of the other ones here too is looks like
23 they -- NMOGA wants to change the instance of "shall"
24 to "may." Applicants' may demonstrate beneficial use
25 of a well.

1 MR. SUAZO: All right. And I think
2 that brings us to the end of your surrebuttal. Is it
3 your understanding that the proposals that Applicants
4 initially submitted in this proceeding have changed
5 since this proceeding began?

6 MR. SPORICH: Yes.

7 MR. SUAZO: Okay. Madam Hearing
8 Officer, NMOGA moves to admit into the record the
9 direct and rebuttal of Clayton Sporich, the attached
10 appendices, and the demonstrative exhibits used to
11 summarize his direct and rebuttal and the surrebuttal
12 slides.

13 THE EXAMINER: Thank you. Other than
14 the objections already stated, I'll pause for a moment
15 in the event there are other objections.

16 They're admitted. Thank you.

17 (NMOGA Exhibit E was marked for
18 identification and received into
19 evidence.)

20 It's 3:41 and we need a break before
21 public comment, so let's come back at 3:55.

22 (Off the record.)

23 THE EXAMINER: All righty. Let's come
24 back from the break, please.

25 We are back after a short break, and

1 we've reached our second public comment session today.
2 I have two names. I don't see anyone in the room, so
3 I'm trusting that they are online.

4 Janice Granger, are you on the
5 platform?

6 MS. APODACA: I'm not seeing Janice on
7 here, but I do see Kenneth.

8 MR. SUAZO: Okay. Kenneth Ahler.

9 MR. AHLER: Hello.

10 THE EXAMINER: Hello. Just a few
11 things, Mr. Ahler. I will ask you and anyone else who
12 wants to offer comment to spell your first and last
13 name. I will ask you pursuant to the commission rules
14 to swear or affirm to tell the truth. And I'll ask
15 you to keep your comments to three minutes. Would you
16 spell your first and last name, please?

17 MR. AHLER: My -- my name is Kenneth
18 Ahler, K-E-N A-H-L-E-R.
19 WHEREUPON,

20 KENNETH AHLER,
21 called as a witness and having been first duly sworn
22 to tell the truth, the whole truth, and nothing but
23 the truth, was examined and testified as follows:

24 THE EXAMINER: Thank you. I'll start
25 your time.

1 MR. AHLER: You ready?

2 THE EXAMINER: Yes. Go ahead.

3 MR. AHLER: All right. My name is Ken
4 Ahler. I'm a New Mexico real estate broker. For 45
5 years, I've been selling farm to ranches all over the
6 state of New Mexico. I was raised on a ranch in South
7 Dakota. I migrated to Santa Fe, New Mexico, around
8 1984. I'm a U.S. Army veteran. I'm a graduate of
9 Texas Tech State University.

10 My family is from the Midland, Odessa
11 area, and they've been in the oil and gas industry all
12 my life. I worked for my cousin who was an oil well
13 driller in Midland, Texas, summers in the 1970s to
14 earn money to college education. I worked on oil rigs
15 in the Midland, Odessa area for two summers. I have a
16 deep appreciation for the oil and gas industry.

17 It's hot and dangerous work, as anybody
18 knows. I came to New Mexico in 1981. I started
19 selling farms and ranches in Ruidoso, New Mexico. I
20 have to deal with mineral rights and water rights on
21 the farms and ranches that I sell, and -- and have to
22 deal with increasing regulations every year in my real
23 estate business.

24 It's tedious is work and definitely
25 affects everyone and this industry's bottom line.

1 I've invested in oil and gas wells off and on for the
2 past 40 years. My investments are entirely dependent
3 on oil and gas regulations. Regulations oil and gas
4 companies have to deal with directly affect revenues
5 with the state of New Mexico and investors rely upon
6 to stay in business.

7 You know, 51 percent of New Mexico's
8 annual revenues come from the oil and gas industry.
9 It's common sense that regulations decrease revenues.
10 I'm urging you to seriously consider consequences of
11 adding new regulations that oil and gas producers have
12 to deal with. Thank you for your time. I appreciate
13 the opportunity.

14 THE EXAMINER: Thank you very much,
15 sir.

16 Is there anyone else on the platform
17 who would like to offer public comment at this time?
18 Our next session is at nine in the morning. If you
19 have dialed in on a phone, you can use star, five to
20 raise your virtual hand. If you're on your computer,
21 just raise your virtual hand.

22 We don't have anyone in the room to
23 offer public comment. All right. Then we will return
24 to the technical case.

25 Mr. Sporich. And your first examiner

1 will be Mr. Tisdell. Thank you.

2 MR. TISDELL: Yes. Thank you, Madam
3 Hearing Officer.

4 CROSS-EXAMINATION

5 BY MR. TISDELL:

6 MR. TISDELL: We met earlier, but I'm
7 Kyle Tisdell, I'm an attorney with the Western
8 Environmental Law Center, and I represent the
9 applicants.

10 MR. SPORICH: Awesome.

11 MR. TISDELL: I think there was not a
12 single proposal that we had that you agreed to. So
13 I'm going to focus less on that and more just
14 questions on trying to understand some of the
15 testimony that you've offered.

16 MR. SPORICH: Yeah.

17 MR. TISDELL: Do you have your direct
18 and rebuttal testimony with you and available to --

19 MR. SPORICH: Yes, sir.

20 MR. TISDELL: -- take a look at? Okay.
21 And you were the author of that testimony?

22 MR. SPORICH: Yes. I was.

23 MR. TISDELL: Did anyone else help you
24 prepare that testimony?

25 MR. SPORICH: Yes. I had legal

1 assistance from NMOGA's attorneys to help me with
2 legal research.

3 MR. TISDEL: Okay. Have you seen any
4 of the testimony that's previously been provided in
5 this case over the last couple weeks?

6 MR. SPORICH: Yes, sir.

7 MR. TISDEL: With the exception, I
8 guess, of Mr. McGowen who went earlier today. I
9 assume you were here for that. But you've been sort
10 of --

11 MR. SPORICH: Off and on. Yes.

12 MR. TISDEL: Okay.

13 MR. SPORICH: Yeah.

14 MR. TISDEL: So if there's -- if I
15 reference some of that testimony and you weren't
16 available for it, just let me know.

17 MR. SPORICH: Perfect. Will do.

18 MR. TISDEL: Let's begin with the
19 expertise you're offering in this rulemaking. You
20 have a law degree from Southern Texas College of Law;
21 is that correct?

22 MR. SPORICH: Yes. South Texas College
23 of Law. Yes, sir.

24 MR. TISDEL: South Texas.

25 MR. SPORICH: Out of Houston.

1 MR. TISDEL: Okay. And you graduated
2 in 2009 and were admitted to the Texas bar in 2011; do
3 I have that right?

4 MR. SPORICH: Correct.

5 MR. TISDEL: Okay. And you're not
6 licensed to practice in New Mexico; correct?

7 MR. SPORICH: No. I'm not.

8 MR. TISDEL: Well, I don't hold that
9 against you, but you might want to check in with
10 Mr. Suazo. And you have a history of working in the
11 oil and gas industry -- various operators and most
12 recently with Tap Rock Resources; is that correct?

13 MR. SPORICH: Yes, sir.

14 MR. TISDEL: And you said earlier in
15 your testimony that you left in 2024?

16 MR. SPORICH: Correct.

17 MR. TISDEL: And what is your current
18 employment?

19 MR. SPORICH: I'm here to consult for
20 NMOGA and I'm semi-retired right now.

21 MR. TISDEL: Okay. Great.

22 MR. SPORICH: We sold most of our
23 assets in 2023 and 2024, so I'm taking a little time
24 off.

25 MR. TISDEL: Good for you.

1 MR. SPORICH: Thank you.

2 MR. TISDEL: And you're still here with
3 us today.

4 MR. SPORICH: Yes, sir.

5 MR. TISDEL: Okay. So you're
6 knowledgeable about both New Mexico's Oil and Gas Act
7 and the relevant rules set forth in chapter 15 of the
8 administrative code dealing with oil and gas; correct?

9 MR. SPORICH: Yes. As I mentioned, Tap
10 Rock operated in New Mexico, and I've had the pleasure
11 of working with quite a few of these attorneys that
12 are in the room as well as with OCD and -- and the SLO
13 over time. So we've had to keep up with the different
14 rules and -- and regulations.

15 MR. TISDEL: Great. And currently the
16 terms "beneficial use" or "beneficial purposes" appear
17 throughout the rules; correct? But they're currently
18 don't have a definition; is that your understanding?

19 MR. SPORICH: Correct.

20 MR. TISDEL: And OCD has proposed to
21 define these terms at what would be 19.15.2.7.B(7)
22 NMAC. And that proposal's been adopted by Applicants;
23 correct?

24 MR. SPORICH: Yes, sir.

25 MR. TISDEL: And that definition is

1 that beneficial purposes or beneficial use means an
2 oil and gas well that is being used in a productive or
3 beneficial manner such as production, injection, or
4 monitoring, and does not include use of a well for
5 speculative purposes; correct?

6 MR. SPORICH: Correct.

7 MR. TISDEL: We've talked about that
8 definition a lot over the last almost two weeks.
9 Would you agree that the "such as" language in that
10 definition is intended to provide examples of
11 beneficial use but is not exclusive?

12 MR. SPORICH: To a certain extent. And
13 I think that Mr. McGowen touched on it earlier. I
14 think that it could be worded more clear to
15 specifically say that this -- this is not an
16 exhaustive list.

17 MR. TISDEL: But your understanding as
18 an attorney is that "such as" --

19 MR. SPORICH: Yes. As an attorney.
20 Yes.

21 MR. TISDEL: -- usually is not
22 exclusive?

23 MR. SPORICH: Correct.

24 MR. TISDEL: Right. And you offer what
25 you describe as a practical definition of beneficial

1 use or beneficial purposes at page 5 of your direct;
2 is that correct?

3 MR. SPORICH: Sorry. Where -- could
4 you point me where --

5 MR. TISDEL: Page 5 of your direct
6 testimony --

7 MR. SPORICH: Yeah.

8 MR. TISDEL: -- you provide your own
9 definition of beneficial use or beneficial purposes?

10 MR. SPORICH: Yes. I see it.
11 Paragraph 16.

12 MR. TISDEL: That definition is four
13 paragraphs long; is that correct?

14 MR. SPORICH: Yes, sir.

15 MR. TISDEL: Okay. Don't worry. I'm
16 not going to ask you to read it. The first paragraph
17 of that definition includes a longer list of examples
18 of what might be beneficial; correct?

19 MR. SPORICH: Correct.

20 MR. TISDEL: So that would be examples
21 that, again, with the proposed definition, "such as"
22 could include all of those examples that you provide
23 in that first paragraph; would you agree?

24 MR. SPORICH: Yes. I -- I always like
25 to be careful when you list out "such as," that it

1 stays within the same framework that -- that's
2 previously been listed. So when you say, "Such as,
3 you know, A, B, and C," it might not mean one, two,
4 and three. It -- it's not necessarily -- it's not an
5 endless list that you can just say it's a catchall, so
6 to speak.

7 I think that we want to make sure that
8 it's always -- it -- it defined as much as possible,
9 you know, the idea being list as much as possible so
10 that everyone has an idea what's in there. But again,
11 like you said and you've mentioned, it -- it is
12 definitely trying to be a catchall.

13 MR. TISDEL: Okay. And the idea with
14 that definition though, is that the agency, so OCD
15 would have some discretion in the application of that
16 definition, and so they would include things within
17 that list that made sense, but wouldn't exclude things
18 that didn't make sense in that; would you agree?

19 MR. SPORICH: I think so. I'm not --
20 not 100 percent sure of how that question was asked,
21 but --

22 MR. TISDEL: All right. Well, let --
23 it's a bad question.

24 MR. SPORICH: Yeah. Okay.

25 MR. TISDEL: Let's get on to the

1 remaining three paragraphs of that definition. And
2 that language is essentially regulatory in nature; do
3 you agree with that?

4 MR. SPORICH: I agree.

5 MR. TISDEL: Okay. And so you're also
6 familiar with the proposed presumption of no
7 beneficial use, you've talked about that a lot
8 already, which would apply where in a consecutive
9 12-month period, the well has not produced for at
10 least 90 days and has not produced at least 90 BOE; is
11 that correct?

12 MR. SPORICH: Correct.

13 MR. TISDEL: And then on page 8, you
14 state that rebutting the presumption may require
15 submission of proprietary financial information and
16 trade secrets; correct?

17 MR. SPORICH: I'm taking a look at page
18 8 right now. Just give me one second.

19 MR. TISDEL: Sure. You also talked
20 about that at, I think, slide 42 of your summary.

21 MR. SPORICH: Yes. I -- I understand.

22 MR. TISDEL: Okay. Are you aware of
23 71-2-8 applying to all of EMNRD and requiring
24 information provided to the agency to be held in
25 confidentiality and that willful violation constitutes

1 a misdemeanor?

2 MR. SPORICH: I -- I -- yeah. I
3 mentioned that earlier that I'd heard and I'd seen
4 that -- that provision previously. Unfortunately,
5 those type of protections could be too limited. Or
6 excuse me, those protections not broad enough to
7 protect the sensitive data that's coming out from the
8 oil and gas operators.

9 MR. TISDEL: Okay.

10 MR. SPORICH: It's -- it's quantum
11 of -- of dollars. The human nature seems to go if --
12 if it's a -- if you have the ability for a billion
13 dollars and you get a slap on the wrist. Most of the
14 time, human nature's going to say, "I'm going to take
15 the billion dollars and -- and avoid the -- and take
16 the slap on the wrist as well."

17 MR. TISDEL: Are you aware of instances
18 where OCD staff have been offered a billion dollars to
19 disclose confidential information?

20 MR. SPORICH: No. I have not.

21 MR. TISDEL: Okay. They probably
22 wouldn't still be working at OCD, I would imagine. Do
23 you have any firsthand experience --

24 MR. CHANG: Don't give any of my staff
25 any ideas.

1 MR. TISDEL: Must be really good
2 confidential information, I would imagine, at that
3 point.

4 BY MR. TISDEL:

5 MR. TISDEL: Do you have any firsthand
6 experience when you were working at Tap Rock or with
7 any other operator of OCD disclosing confidential
8 information that they had?

9 MR. SPORICH: I do not have any
10 firsthand information.

11 MR. TISDEL: Okay. OCD -- or excuse
12 me. Strike that.

13 Throughout your testimony and
14 throughout the testimony this week, we've heard about
15 NMOGA red lines that have been offered. And I believe
16 your testimony was the place where Exhibit A is the
17 red line that NMOGA had. So I want to walk through
18 that a little bit with you. So I'm going to share my
19 screen and we'll see if we can do this. Where was
20 the --

21 Sorry. Bear with me.

22 MR. SPORICH: No worries.

23 MR. TISDEL: Sorry. Apparently I
24 didn't have permissions to allow Teams to share my
25 screen, but I'm working that now. Let me --

1 MR. SPORICH: No problem.

2 MR. TISDEL: -- give it another try. I
3 apologize, Commission.

4 I am so sorry this is happening after
5 the break.

6 THE EXAMINER: Sheila.

7 MS. APODACA: He has permissions. I
8 can take them away and grant them again and see if
9 that helps.

10 THE EXAMINER: A different kind of
11 permission. Okay.

12 MS. APODACA: Yeah.

13 THE EXAMINER: Consent, if you will.
14 Okay.

15 MR. TISDEL: If we could just have,
16 like, two minutes.

17 THE EXAMINER: Sure.

18 MR. TISDEL: Yeah. Apologies.

19 Miraculously I'm back up. I sincerely
20 apologize.

21 MR. SUAZO: Gets the best of us.

22 MR. TISDEL: Yeah. Good gracious.
23 Okay.

24 BY MR. TISDEL:

25 MR. TISDEL: Thank you, Mr. Sporich.

1 Does this -- initially this was confusing for us
2 because it looks like Applicants' notice of errata
3 that was filed previously in this case. And so you
4 had to sort of scroll down through to see the
5 different exhibits. And I believe the red line that
6 NMOGA offered is provided within this document, even
7 if it doesn't necessarily look like NMOGA Exhibit A;
8 is that correct?

9 MR. SPORICH: Yes.

10 MR. TISDEL: Okay. And so I want to
11 talk about your testimony at page 5 of your direct
12 dealing with 19.15.25.9. This is the presumption of
13 no beneficial use. And you make the recommendation in
14 your testimony that the commission should retain the
15 current rebuttable presumption for inactive wells at
16 19.15.5.9 B(2); is that correct?

17 MR. SPORICH: Correct.

18 MR. TISDEL: And let's go to that
19 definition. And that will be -- so 19.15.5.9 and then
20 you can see B(2). That's the definition of inactive
21 well; correct?

22 MR. SPORICH: Correct.

23 MR. TISDEL: So your recommendation to
24 the commission is that the rebuttable presumption
25 should use this definition of inactive wells, which

1 says -- and then B(2) is down here. You see my
2 cursor? And that definition is a well inactive for
3 more than 15 months creates a rebuttable presumption
4 that the well is out of compliance; is that right?

5 MR. SPORICH: I see that. Yes.

6 MR. TISDEL: Okay. And then if we go
7 to your slide at seven -- this is your slide dealing
8 with -- or this is NMOGA's red line; correct? And we
9 can now scroll down to 19.15.25.9 A.

10 And then -- but this is the red line
11 that you provide, which is that there is a rebuttable
12 presumption that a well is not in beneficial use only
13 if the well is not produced or injected for any reason
14 for five consecutive years and the operator has not
15 submitted a plan or application demonstrating intent
16 to return the well to productive service; do you see
17 that?

18 MR. SPORICH: Yes. I see -- yes. I
19 see that.

20 MR. TISDEL: Can you help -- help me
21 understand the sort of recommendation that you make in
22 your testimony regarding the rebuttable presumption
23 and the use of that inactive well definition and then
24 the strikethrough in your Exhibit A, and those seem
25 very inconsistent.

1 MR. SUAZO: Madam Hearing Officer, I
2 just want to clarify with Mr. Tisdell. Do you know
3 what date this version of this is? Because I think
4 there's been different versions of it since then,
5 so -- I'm not sure if that clarifies the discrepancy
6 that you're trying to point out, but I just want to
7 make sure that we have the same date on the red line.

8 MR. TISDELL: I don't know the exact
9 date, Mr. Suazo. We obviously pulled this from
10 NMOGA's filing --

11 MR. SUAZO: Right.

12 MR. TISDELL: -- of direct testimony,
13 and so this was -- but I don't know the date that we
14 pulled that.

15 MR. SUAZO: Okay. Because I know there
16 was one -- I think the last one you submitted was in
17 June, and I just don't know if that's this one or --

18 MR. TISDELL: This is -- no. This is
19 your exhibit. This is --

20 MR. SUAZO: No. I know --

21 MR. TISDELL: -- your exhibit A.

22 MR. SUAZO: No. I know, but it's our
23 exhibit to redline to your most recent proposal, I
24 think as we knew it.

25 MR. TISDELL: I'm just trying to

1 understand the --

2 MR. SUAZO: Understood.

3 MR. TISDEL: -- difference between his
4 recommendation and his direct testimony that we should
5 use the inactive well definition and then the red line
6 that, again, is -- this is NMOGA's exhibit and why
7 those are two very different recommendations.

8 MR. SUAZO: Okay.

9 MR. SPORICH: Yeah. It -- it --
10 they -- they do -- they do conflict.

11 BY MR. TISDEL:

12 MR. TISDEL: I'm sorry?

13 MR. SPORICH: The -- the provisions do
14 conflict.

15 MR. TISDEL: Okay. And do you have an
16 explanation for that at all?

17 MR. SPORICH: Not -- not at this time.
18 It's -- it's been a while. I apologize. But yes, I
19 can see where you're saying that they are conflicting
20 provisions.

21 MR. TISDEL: Okay. Thank you. Let's
22 also then move on to recommendations that you've made
23 in your compliance section. And that's 19.15.5.9 A,
24 and then that's at 34 of your direct. I'll give you a
25 moment to get there.

1 MR. SPORICH: All right. I'm on page
2 34, 35.

3 MR. TISDEL: Thirty-four. Okay. And
4 do you see that that's your testimony regarding the
5 compliance section of the proposed rules?

6 MR. SPORICH: Under paragraph 121?
7 Yes.

8 MR. TISDEL: Yeah. And your testimony
9 there is that you reject the new compliance criteria
10 for inactive wells and venting and flaring; is that
11 correct? I'm paraphrasing, but you are rejecting
12 those two additions to the compliance?

13 MR. SPORICH: Correct.

14 MR. TISDEL: Yeah. And then at page
15 35, paragraph 124, you recommend not to adopt the
16 proposal and to preserve the existing framework; is
17 that correct?

18 MR. SPORICH: That is correct.

19 MR. TISDEL: Okay. And just so that we
20 understand, this is the most recent version of the
21 proposal. Just so that the commission can see. This
22 is the compliance section in the proposal as it
23 stands; right? -- for 19.15.5.9?

24 MR. SPORICH: Yes. It appears to be.

25 MR. TISDEL: Okay. And then we're

1 going to jump quickly back into your -- or NMOGA's
2 Exhibit A.

3 MR. SPORICH: Okay.

4 MR. TISDEL: And we're going to go to
5 20. And this is the compliance section. Do you see
6 that 19.15.5.9 A?

7 MR. SPORICH: Yes, I do. Yes, sir.

8 MR. TISDEL: Okay. And you see a
9 strike through or a strikeouts of A(4) there; correct?

10 MR. SPORICH: Correct.

11 MR. TISDEL: And that allows a certain
12 number of wells to be -- the current rules allow a
13 certain number of wells to be out of compliance?

14 MR. SPORICH: Correct.

15 MR. TISDEL: Okay. And so NMOGA's
16 proposal is to eliminate that exception?

17 MR. SPORICH: Current proposal. Yes.

18 MR. TISDEL: Okay. Thank you. So OCD
19 is proposed and Applicants have adopted a new
20 definition for marginal well; is that correct?

21 MR. SPORICH: Say that again. I'm
22 sorry.

23 MR. TISDEL: OCD and Applicants have --
24 OCD has proposed and Applicants have adopted a new
25 definition for marginal well --

1 MR. SPORICH: Yes, sir.

2 MR. TISDEL: -- as part of the
3 proposal? This defines a marginal well as producing
4 less than 180 days and less than 1,000 BOE within a
5 consecutive 12-month period; is that correct?

6 MR. SPORICH: Correct.

7 MR. TISDEL: If a well is operating
8 below this threshold, an operator could increase the
9 days or quantity of production to rise above that
10 threshold; correct?

11 MR. SPORICH: Yes. That's my
12 understanding.

13 MR. TISDEL: And under the proposed
14 rules, there would be an incentive for an operator to
15 increase production to get above that threshold if it
16 were possible; correct?

17 MR. SPORICH: Yeah. You're saying if
18 you were under that threshold --

19 MR. TISDEL: If you were --

20 MR. SPORICH: -- that there's an
21 incentive so that you don't have to pay the additional
22 financial assurances?

23 MR. TISDEL: Correct.

24 MR. SPORICH: Yes, sir. That's
25 correct.

1 MR. TISDEL: So it's not -- the
2 proposal on marginal wells is not just increased
3 financial assurances. It's also creating an incentive
4 for an operator to get above that threshold; would you
5 agree?

6 MR. SPORICH: Yes, sir. Correct.

7 MR. TISDEL: So if that's the case, the
8 incentive could operate to increase production on a
9 well?

10 MR. SPORICH: Yes. I -- there --
11 there's an argument for that. Yes.

12 MR. TISDEL: Okay. Are you familiar
13 with the now infamous rainbow slide breaking down
14 provisions of the Oil and Gas Act at 72-14?

15 MR. SPORICH: Is that Rankin's rainbow?

16 MR. TISDEL: That is Rankin's rainbow.
17 Never to die.

18 So your testimony on, I think, slide
19 six of your summary suggests that there is a statutory
20 cap within that statutory language; is that right?

21 MR. SPORICH: During my presentation,
22 slide six is what you were referring to?

23 MR. TISDEL: Yeah.

24 MR. SPORICH: Yeah. Yeah.

25 MR. TISDEL: And you sort of mentioned

1 that your reading of that suggests that there's a
2 statutory cap?

3 MR. SPORICH: Yes, sir. Yes.

4 MR. TISDEL: Can you point to language
5 within 72-14 where such a cap exists?

6 MR. SPORICH: Would you mind bringing
7 it up for me so -- I'm sorry. I don't have it right
8 here. I'm going to try to find it, but --

9 MR. TISDEL: Yeah. Sure. I'm going to
10 have to --

11 MR. SPORICH: If you have up.

12 MR. TISDEL: -- stop sharing this, I
13 think, and get into -- oh, here it is. You can see
14 that's the -- you'd agree that's the full definition.
15 This one --

16 MR. SPORICH: Yes.

17 MR. TISDEL: -- does not have
18 Mr. Rankin's Rainbow, unfortunately.

19 MR. SPORICH: Yes. Yes. I -- I see.

20 MR. TISDEL: But I think the sort of
21 relevant language begins here. Would you agree
22 that --

23 MR. SPORICH: That is correct. Yes.

24 MR. TISDEL: -- that is the language
25 captured in Mr. Rankin's Rainbow?

1 MR. SPORICH: It is.

2 MR. TISDEL: Okay.

3 MR. SPORICH: That's the relevant
4 language.

5 MR. TISDEL: All right. Can you
6 identify within that language where it says there's a
7 statutory cap?

8 MR. SPORICH: Well, the -- the way that
9 I read it is when it said -- where it says "not to
10 exceed 250,000," I would assume that is a cap.

11 MR. TISDEL: Would you do me a favor
12 and just read the first sentence of that --

13 MR. SPORICH: The yellow highlighted.
14 Yes.

15 MR. TISDEL: -- highlighted section,
16 please?

17 MR. SPORICH: "The Oil Conservation
18 Division shall establish categories of financial
19 assurance after notice and hearing."

20 MR. TISDEL: Okay. And then the second
21 sentence there says "Such categories shall include."
22 And then it includes that language on the \$250,000
23 blanket bond?

24 MR. SPORICH: Correct.

25 MR. TISDEL: So would you agree based

1 on principles of statutory construction, that that is
2 an example of a category that the legislature is
3 setting out, but not a cap on the ultimate categories
4 that could be established?

5 MR. SPORICH: Just give me one second
6 to -- to reread this and -- and --

7 MR. TISDEL: Yeah. Please take your
8 time.

9 MR. SPORICH: I -- the -- the way --
10 the way that I'm -- I'm reading it, and -- and again,
11 it's -- it's up to interpretation, obviously, but
12 it -- it is creating categories, one of which shall
13 include this blanket plugging financial assurance,
14 which is capped. So it does include -- it includes
15 a -- a blanket plugging FA, and there is a cap to that
16 amount.

17 MR. TISDEL: So that's a cap within
18 that category; correct?

19 MR. SPORICH: That's correct.

20 MR. TISDEL: But that doesn't apply to
21 the entirety of that section; correct? That would
22 just -- that cap applies just to that specific blanket
23 bonding category?

24 MR. SPORICH: I could see the reading
25 of that. Yes.

1 MR. TISDEL: Okay. You also said in
2 your summary of testimony earlier that the commission
3 lacks authority to establish financial assurance; is
4 that --

5 MR. SPORICH: Additional financial.
6 Yes. Correct. We -- we believe that NMOGA's
7 proposition is, is that this should be left up to the
8 legislature.

9 MR. TISDEL: Okay. Do you -- go ahead
10 and read that first sentence for me again in the
11 highlighted area.

12 MR. SPORICH: "The Oil Conservation
13 Division shall establish categories of financial
14 assurance after notice and hearing."

15 MR. TISDEL: So you would agree that
16 the legislature is conferring upon this commission and
17 division the authority to establish those categories?

18 MR. SPORICH: Yes.

19 MR. TISDEL: Okay. And notice and
20 hearing, that's sort of what we're doing right here?

21 MR. SPORICH: I believe so.

22 MR. TISDEL: Okay. Great. At page 21
23 of your direct testimony -- I'll give you a moment to
24 get to it. You state -- well, actually let me stop
25 sharing that.

1 This is your direct testimony that I'm
2 pulling up and then we'll go down to page 21.
3 Apologies.

4 MR. SPORICH: No problem. No problem.

5 MR. TISDEL: At the bottom of page 21
6 there, you say, "WELC alone proposed an additional" --
7 so we're talking about active temporary abandon and
8 inactive wells and incomplete blanket bonding; right?
9 And --

10 MR. SPORICH: Correct.

11 MR. TISDEL: You'd agree. And so WELC
12 alone proposed an additional option of a \$200,000
13 blanket bond for operators with five or fewer active
14 wells in its proposed amendments to the current
15 version?

16 MR. SPORICH: That's correct. Yes.

17 MR. TISDEL: Can you identify where
18 such a \$200,000 blanket bond is included in WELC's
19 proposal?

20 MR. SPORICH: Not off the top of my
21 head. I cannot. No.

22 MR. TISDEL: Yeah. So the current
23 version is 19.15.8.9 C(2). So we'll just take a
24 moment.

25 Sorry. What was that Tannis?

1 MR. SUAZO: Objection, Madam Hearing
2 Officer. On the \$200,000 proposal, I think that
3 mischaracterizes his testimony because he acknowledged
4 that that \$200,000 proposals was withdrawn by
5 Applicants.

6 THE EXAMINER: Oh.

7 MR. SUAZO: So just --

8 MR. TISDEL: There was never a \$200,000
9 proposal by Applicants in any version of our proposed
10 rules.

11 THE EXAMINER: And that was the point
12 of your question?

13 MR. TISDEL: Correct.

14 THE EXAMINER: Yeah. That's all he was
15 doing.

16 MR. SUAZO: Okay. I apologize.

17 MR. TISDEL: No worries.

18 BY MR. TISDEL:

19 MR. TISDEL: And 19.15.8.9 C(2), I'm
20 pulling that language up now so you can take a look at
21 it. That has to do with the blanket bonding amount
22 for financial assurance in the amount of \$250,000
23 that's consistent with the -- again, the legislative
24 requirement in 70-2-14; correct?

25 MR. SPORICH: I -- I believe so. Yes.

1 MR. TISDEL: Okay. So your testimony
2 regarding a optional \$200,000 blanket bond, do you
3 have any further testimony on that --

4 MR. SPORICH: No. But -- but I must
5 have read it -- must have misread something, so I
6 apologize.

7 MR. TISDEL: Okay. No problem. At --
8 at page 22 of your testimony, you call -- and I think
9 you testified to this earlier. You called for a
10 risk-based framework for financial assurance. And
11 then at page 23, you suggest that either a single
12 \$250,000 blanket bond regardless of the number of
13 wells, or you also suggest in the alternative a tiered
14 bonding amount, that those are alternatives that could
15 be proposed; correct?

16 MR. SPORICH: I believe so. Yes.

17 MR. TISDEL: Okay. And so your
18 proposal of a single blanket bond, regardless of the
19 number of wells, or a tiered bonding amount, that just
20 has to do with the number of wells that an operator
21 has; correct?

22 MR. SPORICH: I believe so. Yes. It's
23 just a blanket bonding.

24 MR. TISDEL: Okay. Can you explain how
25 just the sheer number of wells in your recommendation

1 is risk-based?

2 MR. SPORICH: No. Not at this time I
3 can't. It'd be something I have to come back to -- to
4 take a look at. I apologize.

5 MR. TISDEL: That's okay. Thank you.
6 And then I'm going to go back to -- this is your
7 redlined version. And we're going to go to -- this is
8 27. And so this is, again, dealing with the plugging
9 authority. Let me just make sure I'm -- yeah. This
10 is the plugging authority, and then it gets into the
11 financial assurance amounts. This is your redline
12 version; correct?

13 MR. SPORICH: Yes, sir. Correct.

14 MR. TISDEL: And then I want to go down
15 to G. So your proposal and your redline is basically
16 not to change virtually anything in the existing
17 proposed rules --

18 MR. SPORICH: Correct.

19 MR. TISDEL: -- a rejection of the
20 proposal that we're making. And then you go down to
21 G. And then your recommendation here is that the
22 commission -- and this is your redline. It was a
23 little hard to track, but your redline here is that
24 the commission shall evaluate financial assurance
25 amounts and make any adjustments as necessary by

1 periodic rulemaking at five to ten-year intervals
2 based on the most recently available industry cost
3 status, statistics, profiles, and bonding market
4 conditions; is that correct?

5 MR. SPORICH: Yes, sir.

6 MR. TISDEL: So essentially, you would
7 reject all the evidence that have been presented in
8 the hearing to date and all the pre-filed testimony,
9 and that five years or ten -- between five and ten
10 years from now, we should just do this again with new
11 evidence?

12 MR. SPORICH: Well, I -- I think I'd
13 like to be clear is I -- I do think that there should
14 be some framework. However, I think that we need to
15 make sure that we have industry -- more industry
16 insight into -- into these costs. I think that for
17 right or wrong, and it's not -- I'm not -- I'm here
18 representing NMOGA as their legal witness, but I'm not
19 a part of NMOGA.

20 I -- this is something that should be
21 continued to be talked with the commission and
22 Applicants to try to -- to get there. So I think what
23 I was trying to do is, is just slow down the process
24 and -- so that we can -- we can truly evaluate the
25 actual costs. We've heard a lot of discrepancies of

1 what the actual costs are.

2 What -- what makes it reasonable for
3 operators to -- to actually operate within the state
4 with some assurances, but give them flexibility while
5 also to -- protecting the state from being on the hook
6 for orphaned and abandoned wells for the plugging
7 liability for them.

8 MR. TISDEL: Okay. Are you aware -- so
9 the petition was first filed with the commission about
10 a year and a half ago at this point; does that sound
11 right?

12 MR. SPORICH: That -- that's what I've
13 heard through testimony.

14 MR. TISDEL: Are you aware of any
15 barriers that existed for NMOGA's participation over
16 the last year and a half?

17 MR. SPORICH: I'm -- I'm not personally
18 aware of that, but, again, I -- I'm not involved in
19 the direct negotiations, so I -- I -- I have no clue.

20 MR. TISDEL: Okay.

21 MR. SPORICH: It's just personal. I
22 have no -- no personal knowledge that there's any
23 barriers.

24 MR. TISDEL: To NMOGA's
25 participation --

1 MR. SPORICH: Correct.

2 MR. TISDEL: -- and submittal of data?
3 Are you aware in -- are you familiar with the other
4 testimony filed by NMOGA witnesses in this case?

5 MR. SPORICH: Yeah. I have read over
6 them.

7 MR. TISDEL: Okay. Are you aware of
8 any industry cost data statistics, profiles, or
9 bonding market conditions that was included in that
10 testimony?

11 MR. SPORICH: Off the top of my head,
12 no. I'm -- I'm not.

13 MR. TISDEL: Okay. I think we probably
14 covered that through other witnesses. So at page --
15 I'll go ahead and pull that up, I guess, so that we
16 can take a look at it.

17 So right now, we're talking about
18 temporary abandonment definitions that were included
19 in the proposal. And your rejection of those
20 definitions states that this risks conflating such
21 wells with orphaned wells. And then you say it's
22 defined in existing 19.15.2.7 A(13) NMAC as those
23 without a responsible operator creating ambiguity and
24 enforcement and liability allocation; do you see that?

25 MR. SPORICH: Yes.

1 MR. TISDEL: Okay. Are you aware that
2 there's no current definition for orphaned well within
3 the existing or proposed rules -- or excuse me, within
4 the existing rules?

5 MR. SPORICH: To the best of my
6 knowledge, in the existing rules, there is no
7 definition.

8 MR. TISDEL: Okay. And then you point
9 to the definition in 19.15.2.7. So I'll pull that up.
10 So 19.15.2.7 A(13) is the definition for approved
11 temporary abandonment, temporary abandonment, or
12 temporary abandonment status; do you see that?

13 MR. SPORICH: Yes.

14 MR. TISDEL: Okay. So can you just
15 help me explain that that is dealing with the TA --
16 various TA definitions, not any definition for
17 orphaned well; correct?

18 MR. SPORICH: Correct.

19 MR. TISDEL: Okay. And then your
20 testimony essentially rejects adding TA or TA status
21 to the existing definition of approved TA; correct?

22 MR. SPORICH: That is correct.

23 MR. TISDEL: Okay. Thank you,
24 Mr. Sporich. Those are all the questions I'll have.
25 I'll pass the witness.

1 MR. SPORICH: Thank you, Mr. Tisdell.

2 THE EXAMINER: Thank you, Mr. Tisdell.

3 Mr. Tremaine, do you have questions?

4 MR. HALL: If it's okay, Madam Chair,
5 it's Michael Hall. I'm going to ask questions for
6 OCD.

7 THE EXAMINER: Yes, sir.

8 MR. HALL: I'm going to try to go very
9 quickly.

10 THE EXAMINER: Thank you.

11 CROSS-EXAMINATION

12 BY MR. HALL:

13 MR. HALL: Good afternoon, Mr. Sporich.

14 MR. SPORICH: Good afternoon.

15 MR. HALL: My name's Michael Hall. I
16 represent Oil Conservation Division in this matter.
17 How are you?

18 MR. SPORICH: Good. And you, sir?

19 MR. HALL: Doing good. I believe I
20 heard you say you're not licensed to practice in New
21 Mexico; is that right?

22 MR. SPORICH: That is correct. As I
23 mentioned, I'm licensed in Texas. However, as I
24 mentioned, I -- I --

25 MR. HALL: Fair enough. Have you ever

1 been licensed in New Mexico?

2 MR. SPORICH: No.

3 MR. HALL: Are you holding yourself out
4 to be an expert in New Mexico law?

5 MR. SPORICH: Again, I've had to help
6 out with a company operating in New Mexico, so I'm --

7 MR. HALL: Are you holding yourself out
8 to be --

9 MR. SPORICH: No. I'm not.

10 MR. HALL: -- an expert in New Mexico
11 law.

12 MR. SPORICH: No. I'm not.

13 MR. HALL: Okay. So what is your
14 capacity here?

15 MR. SPORICH: It's for NMOGA as a legal
16 industry expert to testify on these rules that are
17 being promulgated by the applicants.

18 MR. HALL: Okay. So are you holding
19 yourself out to be an expert on these rules?

20 MR. SPORICH: A legal expert.

21 MR. HALL: Okay. Do you recall
22 speaking about the enabling statute for the OCC and
23 OCD?

24 MR. SPORICH: Yes, sir.

25 MR. HALL: Okay. Do you recall what

1 that is?

2 MR. SPORICH: Not off the top of my
3 head, but I can flip to it or if you can point me back
4 to -- in the slides, I can get to it.

5 MR. HALL: What is it in that statute
6 that you believe puts these proposed rules outside of
7 the enabling statute?

8 MR. SPORICH: Can we bring up the
9 statute here for me, please, Mr. Hall?

10 MR. HALL: Well, I'm asking about your
11 legal expertise here.

12 MR. SUAZO: Madam Hearing Officer, I
13 object. I think he should be able to look at the
14 slides if that's what he is being asked about.

15 THE EXAMINER: Do you have a particular
16 slide or topic in mind, Mr. Hall?

17 MR. HALL: Specifically his direct
18 testimony. I'm not -- I don't recall exactly where it
19 was that these proposed rules are outside of the
20 enabling statute.

21 THE EXAMINER: Yeah. He described, I
22 think, several ways in which he believed it was
23 outside.

24 MR. HALL: Okay.

25 THE EXAMINER: Which the general --

1 MR. HALL: I'll move on, Madam Chair.

2 BY MR. HALL:

3 MR. HALL: Now, I believe in your --
4 I'm going to look at your rebuttal testimony. Is this
5 an accurate -- is this still your testimony that the
6 act authorizes financial assurance only for the
7 secured well or wells plugging and abandonment costs,
8 not for reclamation?

9 MR. SPORICH: I'm sorry. Can you point
10 me out where --

11 MR. HALL: Sure. I'll share the
12 screen.

13 MR. SPORICH: Okay. Thank you.

14 MR. HALL: Sure. Looking there at --
15 this is the end of your paragraph 6 from your
16 rebuttal.

17 MR. SPORICH: Yes, sir.

18 MR. HALL: Do you stand by those
19 statements? Let me ask it another way. Do you
20 think -- have you heard the testimony that says
21 reclamation is not part of the 163,000? You've heard
22 about the 163,000; correct?

23 MR. SPORICH: I -- I've heard the 163,
24 but I have not heard about the reclamation. I'm
25 sorry. I just haven't --

1 MR. HALL: Okay.

2 MR. SPORICH: -- been a part of
3 the -- the proceedings to -- to hear that.

4 MR. HALL: What part of any testimony
5 makes you think reclamation was part of that figure?

6 MR. SPORICH: Usually within P&Aing a
7 well, you're going to have to reclaim the property.

8 MR. HALL: So assuming the testimony
9 before the commission is that is not part of that
10 163,000, you would agree that that amounts for
11 plugging?

12 MR. SPORICH: Yes, sir.

13 MR. HALL: Okay. Now, is it your
14 testimony that OCD has not considered depth, length of
15 time since the well was produced, and the cost of
16 plugging similar wells and such other factors as the
17 Oil Conservation Division deemed relevant?

18 MR. SPORICH: Well, what I -- what I
19 mean when we've -- when I've quoted this in -- in my
20 testimony and -- and rebuttals and -- and today was
21 it's not clear that it's -- that those are what -- how
22 those factors are going into it. We've had other
23 witnesses that have specifically said that different
24 depth.

25 And in my experience, different depths

1 are different -- different costs. So it's hard to --
2 when you lump it all in into one -- one number, it's
3 hard to see -- I -- it's hard for me to see the
4 breakdown. So if it is broken down, I haven't seen
5 it. I don't know what part of the 150,000 is for the
6 depth or is that 25 percent or is that 100,000 for
7 instance.

8 MR. HALL: So you would be more
9 comfortable if the rule said what percentage of the
10 financial assurance was applied to depth or other
11 factors that OCD considered?

12 MR. SPORICH: I would be comfortable if
13 it -- there -- there could be -- and this is me
14 personally, not OCD 'cause I haven't run it by them.
15 I would be comfortable along the lines that if there
16 was a formula for P&Aing a well, I think that that
17 should -- that that would be a -- a better use because
18 you would use these variables.

19 And I think that -- that helps come
20 with -- determine the -- the final number. And I
21 think that gets everybody kind of comfortable.

22 MR. HALL: Sure. You heard Mr. Powell
23 testify at length about those factors; correct?

24 MR. SPORICH: No. I did not,
25 unfortunately. I -- I was -- when -- when

1 Commissioner Powell was -- was up, I had family
2 matters I had to tend to.

3 MR. HALL: Oh, okay.

4 MR. SPORICH: I -- I apologize.

5 MR. HALL: So if he did that, that
6 would alleviate your concern there?

7 MR. SPORICH: That would partially
8 alleviate. Yes, sir.

9 MR. HALL: Now, do you think OCD's
10 plugging costs or industry's plugging costs are what
11 these bonds should cover?

12 MR. SPORICH: What do you -- what do
13 you mean by that? Like, are you -- do you mean
14 industry's plugging costs, what they come up with
15 should be the -- the -- what should be inserted into
16 the rules?

17 MR. HALL: Well, do you --

18 MR. SPORICH: I guess I'm -- I'm
19 misunderstanding the question. I'm sorry. Just
20 the --

21 MR. HALL: Do you agree that the famous
22 Rainbow statute says that one category is the cost of
23 plugging wells, and that's financial assurance should
24 be crafted to that?

25 MR. SUAZO: Objection. Can we pull up

1 the statute if he's going to reference it?

2 MR. HALL: Happy to.

3 THE EXAMINER: Do you remember --

4 MR. HALL: I can pull it up, Madam
5 Hearing Officer.

6 MR. SUAZO: Yeah.

7 THE EXAMINER: There we are.

8 MR. SPORICH: Okay. Could you repeat
9 the question? I got the statute here. Sorry,
10 Mr. Hall.

11 BY MR. HALL:

12 MR. HALL: Would you read the purple
13 part? That'll be easier.

14 MR. SPORICH: Yeah. Okay. No problem.
15 "And one well, plugging financial assurance and
16 amounts determined sufficient to reasonably pay the
17 cost of plugging the wells covered by the financial
18 assurance."

19 MR. HALL: Do you think that means what
20 it costs an operator to plug a well or the financial
21 assurance should cover what -- when it is orphaned and
22 OCD has to do that?

23 MR. SPORICH: I would assume it should
24 cover the reasonable cost of -- of plugging a well.
25 And if -- or excuse me. If industry can do it for a

1 cheaper amount, I would -- I would put that in the
2 bucket as you have to consider that as part of your
3 factors for what is reasonable for cost.

4 Just because, for instance, if Operator
5 A goes out there and drills a -- a well for a 100,000,
6 and operator B goes out there and drills a -- a well
7 for 50,000, you shouldn't just say like, "Well, we're
8 going to go choose" -- we being commission or OCD.

9 "We're going to go choose operator A
10 because they're better or I like them or it's a
11 brother-in-law situation." What I'm -- what I'm
12 getting at is you should -- you should use whatever --
13 the entire marketplace --

14 MR. HALL: It would make no sense for
15 financial assurance for the state of New Mexico to
16 contemplate industry costs because then they're being
17 plugged responsibly; correct? It's when OCD has to
18 plug it, that's the cost that matters?

19 MR. SPORICH: I could see --

20 MR. HALL: That's the whole purpose of
21 financial assurance, isn't it?

22 MR. SPORICH: I could understand it.

23 MR. HALL: Okay. You don't dispute
24 that, do you?

25 MR. SPORICH: No.

1 MR. HALL: Okay. Okay. Have you read
2 the New Mexico Legislative Finance Committee's report
3 on orphaned wells?

4 MR. SPORICH: I've -- I've read through
5 it. Not in detail though.

6 MR. HALL: Okay. Did you -- is your
7 testimony that they specifically said these rules are
8 outside of their recommendations? Or let me ask that
9 a different way. Is that your opinion as you sit here
10 today?

11 MR. SUAZO: Objection. I'm not sure we
12 can follow that question. Could you rephrase?

13 MR. HALL: Sure. I'll be happy to ask
14 it again.

15 BY MR. HALL:

16 MR. HALL: Is it your opinion as we sit
17 here today that the Legislative Finance Committee did
18 not -- that this rulemaking is outside of their
19 recommendations?

20 MR. SUAZO: Objection again. I can't
21 follow that question.

22 BY MR. HALL:

23 MR. HALL: Did you understand it,
24 Mr. Sporich?

25 MR. SPORICH: Not yet, but just give me

1 one second, Mr. Hall. 'Cause I'm trying to piece it
2 together.

3 MR. HALL: Well, I can ask it a million
4 different ways.

5 MR. SPORICH: I'm sure you can.

6 MR. HALL: So is it your opinion that
7 this rulemaking is somehow out of compliance with what
8 the LFC recommended?

9 MR. SPORICH: That -- I think that
10 there is -- there's many things that the LFC
11 recommended, and some of that was -- was included and
12 some of it was not.

13 MR. HALL: For instance, they
14 recommended that marginal wells, a rulemaking be
15 undertaken for that; correct?

16 MR. SPORICH: To take it --

17 MR. HALL: It's that financial
18 assurance?

19 MR. SPORICH: The LFC did.

20 MR. HALL: Okay. Thank you. Now,
21 generally, did I understand your testimony about
22 regulation of operators? Do you believe that's
23 outside of the OCD and OCC's jurisdiction, authority,
24 and control?

25 MR. SPORICH: If I'm understanding the

1 correct -- or their question correctly, operators do
2 fall under OCC and OCC -- OCD'S jurisdiction.

3 MR. HALL: And that would include
4 certifying an operator, a change of operator; correct?

5 MR. SPORICH: OCD currently does that.

6 MR. HALL: And that's perfectly legal,
7 isn't it?

8 MR. SPORICH: Yes. It's --

9 MR. HALL: It's not stealing anyone's
10 property to do that, is it?

11 MR. SPORICH: No. No.

12 MR. HALL: It's a necessary function of
13 OCC and OCD; correct?

14 MR. SPORICH: As long as it's -- it's
15 very specific and -- and tailored for the purpose of
16 assuring that the -- the new operator meets the
17 standards for OCD.

18 MR. HALL: And is there anything in
19 these proposed rules that makes you think that's not
20 occurring?

21 MR. SUAZO: Objection. Vague. Can we
22 be more specific about which section of the rules
23 here?

24 MR. SPORICH: No. I mean, from my
25 personal knowledge, I don't know of any -- anything

1 that OCD is not approving change of operator forms or
2 things like that. I will say, you know, in past
3 experience, the timeline for getting those things
4 approved has been lengthy. So I don't know if that's
5 a -- that's a barrier for new entrants or -- and/or
6 other operators in the area. But again, that's --
7 BY MR. HALL:

8 MR. HALL: Compliance should -- non-
9 compliance should be a barrier, shouldn't it?

10 MR. SPORICH: Non-compliance should
11 always be a barrier.

12 MR. HALL: Okay. I believe you
13 recommended in your direct testimony that instead of
14 transfers, you recommended operational authority; is
15 that correct? And I can go to it. I'm not trying to
16 trick you.

17 MR. SPORICH: Yeah.

18 MR. HALL: Excuse me. You see that
19 there, Mr. Sporich?

20 MR. SPORICH: Yes, sir.

21 MR. HALL: Okay. There's paragraph
22 116. And it's really the bottom part. You're talking
23 about, with regard to the proposed rules, activities
24 should be limited to operational activities. Is that
25 still your position, or did I understand that you have

1 withdrawn that position as a legal expert?

2 MR. SUAZO: Objection. That
3 mischaracterizes the testimony. I believe we
4 clarified that, you know, the operational language
5 was --

6 MR. HALL: I'll withdraw that question
7 and ask it a different way.

8 MR. SUAZO: -- motion to dismiss is
9 pending.

10 MR. HALL: So Mr. Sporich can answer
11 it.

12 MR. SPORICH: Yeah.

13 BY MR. HALL:

14 MR. HALL: Is this -- do you stand
15 behind paragraph 116 of your direct testimony?

16 MR. SPORICH: At this time, yes.

17 MR. HALL: Okay. Thank you.

18 Pass the witness.

19 THE EXAMINER: Thank you very much,
20 Mr. Hall.

21 And Mr. Moore, do you have any
22 questions of Mr. Sporich? We are at five, so you can
23 begin in the morning if you have more than a question
24 or so. Oh, it wasn't Mr. -- it was Mr. Graeser.
25 Sorry.

1 Are you going to have questions,
2 Mr. Graeser?

3 MR. CHANG: We cannot hear you if
4 you're speaking, Mr. Graeser. Looks like he's having
5 technical difficulties.

6 THE EXAMINER: All right. Let's
7 perhaps do it this way then.

8 Mr. Graeser, I'll call on you again
9 tomorrow morning as soon as we have taken some public
10 comment. Great. Thank you.

11 Let's break for the night then, and
12 we'll see you tomorrow morning at nine.

13 (Whereupon, at 5:01 p.m. the
14 proceeding was concluded.)

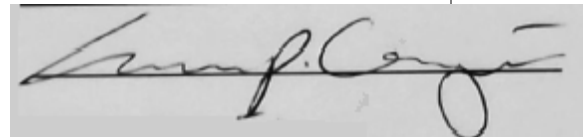
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CERTIFICATE

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.

November 13, 2025



GERALD ARAGON
Notary Public in and for the
State of New Mexico

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November 13, 2025



MORGAN PALMER

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