

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

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

9 IN THE MATTER OF:

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

14 TRANSCRIPT OF PROCEEDINGS

15 November 3, 2025
16
17

18 HEARD BEFORE:

19 HEARING OFFICER FELICIA ORTH

20 COMMISSION MEMBERS:

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

24 COUNSEL TO THE COMMISSION:

25 MR. ZACHARY SHANDLER, ESQ.

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

2 TRANSCRIPT OF PROCEEDINGS

3 HEARING OFFICER ORTH: Good morning. My
4 name is Felicia Orth, hearing officer appointed by
5 the Oil Conservation Commission to conduct a hearing
6 on OCC 24683 relating to well plugging and financial
7 assurance.

8 We are on day 11 of the hearing and have
9 reached another public comment session. I don't
10 believe I see anyone in the room here to offer public
11 comment, but I believe we have several folks online.

12 Here in the room, we have Commissioner
13 Ampomah and Commissioner Bloom. The Chair is online,
14 Chair Chang is online.

15 So let's see, Sheila, who are we going
16 to pull up first? This is Karen Kilpatrick.

17 Just a couple of things about public
18 comment. I will ask you to spell your first and last
19 name for the transcript. I will ask you, pursuant to
20 Commission rules, to swear or affirm to tell the
21 truth.

22 And I will ask you to keep your comments
23 to three minutes. In the event you have a lot more
24 to say, please submit your public comment and rating
25 to the Commission administrator, Sheila Apodaca.

1 Ms. Kilpatrick, can you unmute
2 yourself.

3 MS. KILPATRICK: My name is Karen
4 Kilpatrick. It's K-A-R-E-N, K-I-L-P-A-T-R-I-C-K.

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

7 MS. KILPATRICK: Yes, ma'am, I do.

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

9 MS. KILPATRICK: Thank you for your time
10 today. I was born in Gallup while my father was
11 working at the Prewitt refinery in 1954. In 1956, my
12 father took a job at the Conoco refinery in Artesia
13 just before I turned two years old. He worked there
14 in the lab for 25 years before his health forced him
15 to retire.

16 My older brother went to work there
17 shortly after my father's retirement and worked in
18 the lab for 40 years before he retired. This brother
19 also worked in a jewelry store or owned one from 1966
20 until he closed it and retired in 2011.

21 My younger brother graduated high school
22 in 1977 and started at the refinery a year afterwards
23 as a pot mechanic. He worked his way up to managing
24 the asphalt plant. He was laid off after 32 years of
25 work when he was 61 or 62 years old.

1 I have spent 60 years in Artesia with
2 ten years in Texas and Virginia at different times.
3 Most of the time, Artesia is self-sustainable, but
4 there is a lot that would make it better. Our
5 biggest and oldest oil drilling company, Yates
6 Drilling and Production Company, sold out to EOG a
7 few years back. EOG went through a reorganization
8 and moved their offices from here to Midland, Texas.

9 We have the largest oil pool under our
10 county that we cannot access due to drilling
11 regulations already on the books. Why try to place
12 more on companies that would leave the state? There
13 are too many regulations on the state and federal
14 lands where drilling could be done and was done in
15 the past.

16 The new proposed regulations may cause
17 the companies currently doing business in Eddy and
18 Lea County to withdraw. This could lessen the influx
19 of oil and gas money. This would mean less funds for
20 schools.

21 I would really recommend the Commission
22 to vote these new proposals down. Thank you very
23 much for your time and listening to me.

24 HEARING OFFICER ORTH: Sheila, who do we
25 have next?

1 Andrew Klooster, can you unmute
2 yourself?

3 MR. KLOOSTER: Can you hear me all right?

4 HEARING OFFICER ORTH: Yes. Thank you. If
5 you would spell your first and last name.

6 MR. KLOOSTER: Perfect. Thank you. My name
7 is Andrew Klooster. It's A-N-D-R-E-W,
8 K-L-O-O-S-T-E-R.

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

11 MR. KLOOSTER: I do.

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

13 MR. KLOOSTER: Thank you. I am the Colorado
14 field advocate and an optical gas imaging
15 thermographer with Earthworks, and I'm thankful for
16 the opportunity today to lend my voice in support of
17 stronger bonding and cleanup rules.

18 For over ten years, Earthworks has
19 deployed optical gas imaging cameras here in
20 New Mexico and in other states, both nationally and
21 internationally, to document emissions from
22 facilities throughout the oil and gas supply chain
23 and at each stage in the lifecycle of an oil and gas
24 well path.

25 We have used this experience to advocate

1 for new rules and regulations to mitigate emissions
2 from facilities that pose a risk to public health and
3 the environment. I personally served as a
4 thermographer for Earthworks for the past five years,
5 and in those five years I have conducted over 2,000
6 surveys of roughly a thousand different oil and gas
7 facilities throughout the Mountain West, including
8 Colorado, Idaho, Montana, Utah, and here in
9 New Mexico in the San Juan Basin.

10 I've made multiple trips to San Juan and
11 Rio Arriba counties, and what I've observed at
12 marginal wells in New Mexico is not surprisingly, but
13 unfortunately, no different than what I've observed
14 at similar wells in Colorado or elsewhere.

15 Let me elaborate on that point. When
16 you spend as much time as I have looking at
17 low-producing and abandoned wells with an optical gas
18 imaging camera, you will likely observe over and over
19 again emissions from loose fittings and valves,
20 cracked or unsealed stuffing boxes, broken gauges and
21 controllers, improperly maintained storage tanks,
22 malfunctioning flares and separators, and even as in
23 the case of a facility in San Juan County a few years
24 back, emissions wafting directly out of the ground
25 itself due to a cracked flowline on a well pad.

1 These emissions are not just a sign of
2 aging and perhaps in some instances poorly maintained
3 equipment, they pose a threat to public health and
4 the environment. I worked with a rural community
5 here in Colorado where the emissions from just a
6 single leaking tank battery on a low-producing well
7 pad made multiple people from various households sick
8 with nausea and headaches and potentially exposed
9 them to a particularly dangerous pollutant, hydrogen
10 sulfide.

11 Now that well pad is shut down, but the
12 public will be footing the bill to clean up the mess
13 because the operator was, for all intents and
14 purposes, financially insolvent long before their
15 equipment started leaking and impacting public
16 health.

17 This should never happen. The public,
18 particularly those who may have already suffered
19 negative consequences from nearby oil and gas
20 facilities, should never have to pay to clean up a
21 mess they did not create, a mess that they may have
22 already had to pay for in the form of bills for
23 doctor's visits, laboratory tests, or air purifiers.

24 This really is a very common-sense
25 proposition. The operators that drill the wells and

1 make a profit from the wells, should pay the cost to
2 clean up those wells after their productive life
3 cycle has ended.

4 New Mexicans have lived on and cared for
5 this land for centuries. To honor that legacy, the
6 state must adopt rules that ensure that New Mexico's
7 people and land do not pay the price for a mess they
8 did not create. Thank you.

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

11 Next we have Matt Strickler.

12 Mr. Strickler, can you unmute yourself?

13 MR. STRICKLER: Yes.

14 HEARING OFFICER ORTH: Hello. Would you
15 spell your first and last name, please?

16 MR. STRICKLER: Yes. My name is Matt
17 Strickler. Matt, M-A-T-T, Strickler,
18 S-T-R-I-C-K-L-E-R.

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

21 MR. STRICKLER: Yes.

22 HEARING OFFICER ORTH: Thank you. I'll
23 start your time.

24 MR. STRICKLER: Hello. My name is Matt
25 Strickler. I'm a native New Mexican and a graduate

1 of Farmington High School. I chose a degree and
2 career in the energy sector and have over 20-plus
3 years experience in the industry.

4 The start of my energy career began in
5 Texas and expanded to work in Colorado, Oklahoma,
6 New Mexico, and internationally. I chose to return
7 to the state in 2011 and hope to remain in
8 New Mexico. My family and I love the climate and the
9 people here in Northwest New Mexico. I would very
10 much like to remain optimistic about our family and
11 future generations having a life here.

12 Unfortunately, over the last 14 years,
13 I've seen my focus shift from 100 percent progress in
14 investments based in New Mexico to a de minimis
15 amount of consideration in new investments in
16 New Mexico. Aside from legacy assets in New Mexico,
17 we have turned almost all of our efforts to
18 investments in Oklahoma and Texas. The regulatory
19 and energy policy environment in New Mexico has been
20 the primary reason for our shift outside of the state
21 as risk and returns are rarely competitive.

22 I do not believe my experience is
23 unique, as policymakers have taken an increasingly
24 hostile approach to small independent producers in
25 favor of large corporate interests. I am concerned

1 that as the shale production, particularly in the
2 southeastern New Mexico peaks, the budget level of
3 Santa Fe has increased since the pandemic and will
4 eventually lead to a cascade of insolvencies for the
5 small producers in the state in favor of the larger
6 oil and gas interests.

7 Policy measures like the proposed
8 marginal well bonding will lead to a cascade of
9 insolvencies if energy prices ever take a downturn.
10 And I strongly urge the rulemaking bodies to stress
11 test these measures before triggering a cascade of
12 liabilities to the State of New Mexico as they take
13 solvent companies and drive them into insolvency.

14 I thank you for your time and
15 consideration and I hope this committee makes the
16 right decision.

17 HEARING OFFICER ORTH: Thank you,
18 Mr. Strickler.

19 If you're on the platform and would like
20 to offer comment, please raise your virtual hand. If
21 you have dialed in using a telephone, you can press
22 star 5 to raise your hand. Is there anyone else at
23 all who would like to offer comment at this time?

24 The next opportunity for public comment
25 will be this afternoon at 4:00 p.m. And during that

1 comment session, there will be available an
2 interpreter between English and Spanish, Spanish and
3 English.

4 All right. If there's no one else, we
5 will return to the technical case.

6 Thank you, Mr. Cloutier, for sending an
7 updated lineup this weekend. Are we still on that
8 path?

9 MR. CLOUTIER: Yes, Madam Hearing Officer.
10 I were uncertain when Mr. Gilstrap is available this
11 morning before noon. If he is, and we're done, we
12 can put him on. If not, he's ready to go at 1:00.

13 Mr. Ezzell will be here to follow up on
14 that. And we are well on our way unless,
15 Mr. Tremaine and Mr. Hall try and ask more questions
16 than they're entitled to, to finish on Tuesday.

17 HEARING OFFICER ORTH: Okay.

18 MR. CLOUTIER: I am obviously just teasing,
19 since Mr. Tremaine's smiling. And Mr. Hall may be
20 glaring.

21 HEARING OFFICER ORTH: Thank you very much,
22 Mr. Cloutier.

23 MR. CLOUTIER: And then we will have the two
24 witnesses available on Thursday, as outlined in my
25 e-mail to you and all counsel.

1 HEARING OFFICER ORTH: All right. So we may
2 have Commissioner Ampomah and others -- we may have a
3 break, if you will, between today and Thursday or
4 tomorrow and Thursday due to witness availability.

5 MR. CLOUTIER: I think we're just going to
6 convene versus Microsoft Teams. Commissioner
7 Ampomah's, the hearing officer's reference. But I
8 have one witness who is out of the country until
9 sometime tomorrow afternoon; another witness who's
10 not available today, but is available tomorrow.

11 Since they're both available Thursday
12 morning after conferring with the hearing officer and
13 counsel, we thought it might be best if we just
14 reconvene for those two witnesses virtually on
15 Thursday morning.

16 HEARING OFFICER ORTH: It's something that's
17 in discussion, but we don't have that discussion
18 official yet.

19 MR. CLOUTIER: Yes.

20 HEARING OFFICER ORTH: Commissioner Ampomah.

21 COMMISSIONER AMPOMAH: Yeah, so if I can
22 know the time, because I've already booked my hotel
23 and I need to know that, and if I need to go back
24 home or not.

25 HEARING OFFICER ORTH: Okay. Thank you.

1 MR. CLOUTIER: Thank you.

2 HEARING OFFICER ORTH: Commissioner Bloom.

3 COMMISSIONER BLOOM: That would certainly
4 work for me. I'm glad you're discussing this with
5 respect to Thursday. And just to note, tomorrow I
6 will not be able to be in Santa Fe, but I will
7 participate virtually. I don't think I'll miss any
8 portion of the meeting, but I'll be virtual tomorrow.

9 HEARING OFFICER ORTH: Thank you.

10 Mr. Winchester, would you join us up
11 here at the front, please. Thank you. If you would
12 spell your first and last name, please.

13 THE WITNESS: All right. Is that better?
14 Jim Winchester, last name is W-I-N-C-H-E-S-T-E-R.

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

17 THE WITNESS: I do.

18 HEARING OFFICER ORTH: Thank you. Go ahead,
19 Mr. Cloutier.

20 JIM WINCHESTER,
21 having first been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. CLOUTIER:

24 Q. Mr. Winchester, good morning. Would you
25 please introduce yourself to the Commission?

1 A. Certainly. Good morning. Jim Winchester,
2 director of the Independent Petroleum Association of
3 New Mexico. We're a volunteer trade association, oil
4 and gas producers who explore and produce E&P oil and
5 gas in New Mexico. And we're made up of predominantly
6 those independent producers, along with businesses and
7 professions who support those producers.

8 Q. Thank you. Have you been in attendance in
9 person or virtually throughout these proceedings?

10 A. On and off. I've been in the room for some
11 parts of the proceeding. I've also been listening on
12 the virtual platform. And at times I've been able to
13 catch up a little bit on the department's YouTube
14 channel. I have certainly not caught up on
15 everything. And sometimes when I was listening, I was
16 multitasking. So I'm not sure that I've caught
17 everything.

18 Q. Okay, thank you. And you submitted direct
19 and rebuttal testimony in these proceedings,
20 Mr. Winchester?

21 A. Yes, that's correct.

22 Q. Do you have any corrections or
23 clarifications to the testimony you submitted?

24 A. Yes. Thank you. Based on what occurred in
25 the proceeding, I do have a couple of clarifications.

1 First, in my rebuttal, I testified
2 concerning reaction from multiple members of my
3 association to a form that was issued by the Division
4 in August or September that interpreted as
5 implementing -- as though this rulemaking had been
6 adapted.

7 My testimony from the members at the
8 time was truthful. My clarification is that after
9 Mr. Hall questioned an earlier witness, and I
10 apologize, I don't remember who that was, I discussed
11 Mr. Hall's questions with members, and I wish to
12 clarify that I think the initial form's reactions was
13 misplaced.

14 Q. Anything else?

15 A. Yes. I spent a lot of time in my direct
16 testimony talking about what was and what was not
17 represented by the master orphaned well spreadsheet.
18 Again, I do not think what I testified to in direct is
19 inaccurate, however, in listening to the applicants
20 and to the Division, I do not think that they are
21 trying to use each entry on that spreadsheet as the
22 scope of the current orphan well issue in New Mexico,
23 which is something that I heard prior to the hearing.

24 Since both the Division and the
25 applicants seem to be using the number of roughly 700

1 for the number of orphaned wells that the Division has
2 the responsibility to plug, I think it's a number that
3 is roughly accurate. So I don't think that my
4 testimony about the spreadsheet has much relevance.

5 IPANM agrees with the applicants and the
6 Division about the scope of the current orphan well
7 problem. And to be clear, IPANM agrees that it is a
8 problem that does need a solution.

9 MR. CLOUTIER: With that, Madam Hearing
10 Officer, I'D move the admission of Mr. Winchester's
11 direct and rebuttal testimony as demonstrative IPANM
12 Exhibits 10 through 13, 27, 28, 40, 43, 44 and 46
13 through 53.

14 HEARING OFFICER ORTH: I'll pause for a
15 moment in the event there are objections. Those
16 exhibits are admitted.

17 (Admitted: IPANM Winchester Direct
18 and Rebuttal Exhibits 10 through 13,
19 27, 28, 40, 43, 44 and 46 through 53.)

20 BY MR. CLOUTIER:

21 Q. You've already touched on this,
22 Mr. Winchester, but would you describe your role in
23 the oil and gas industry?

24 A. Yes, certainly. I am, as I mentioned,
25 executive director of IPANM, again, a trade

1 association. And as a trade association, I do a
2 number of administrative functions, everything from
3 preparing a budget, membership trainings, industry
4 events, communications, general operations, staff,
5 including myself, and a part-time operations manager.

6 My primary duty, though, in this role,
7 is to really listen to my board and the membership and
8 communicate their collective views to the legislature,
9 to the general public, and today to this Commission.

10 Q. Do you hold yourself out as an expert in
11 things like day-to-day oil and gas operations, running
12 an oil and gas company, or implementing the
13 regulations that affect oil and gas companies.

14 A. Not at all. I did work here at EMNRD and
15 NMED from 2011 to 2015. In my role with those
16 departments, I learned about some of the issues at the
17 time from the regulatory perspective. But safe to say
18 I'm not an expert in those regulatory issues.

19 I'm also not a lawyer. I know that
20 non-lawyers can contribute to drafting and
21 interpreting regulations, but I don't hold myself as
22 having a skill in that area.

23 In my role at IPANM, I learn things
24 every day from members about the industry and their
25 companies. But I've never been active or employed

1 directly for an oil and gas company.

2 So I guess that's a long way of saying
3 that I have some knowledge about a number of industry
4 matters, but not always in any great depth.

5 Q. Please explain to the Commission the purpose
6 of your testimony here today.

7 A. Yeah, there's three things. First, we have
8 a number of members who volunteered and even asked to
9 tell the Commission about their company and how they
10 would be affected by the rulemaking. In fact, some of
11 those members initially submitted written testimony,
12 but we have now submitted their comments in writing,
13 as you and Ms. Tripp thought it best to pare down our
14 presentation. I do think that those individual
15 members have and will provide valuable insight.

16 However, there are other members that we
17 represent that don't want to be in the limelight,
18 which is certainly understandable. So in my capacity
19 as their representative, where I heard some basic
20 concerns multiple times, I'm here to tell the
21 Commission about those concerns. So that's really my
22 first purpose for being here and testifying.

23 Second, there were occasions in the
24 rulemaking where we thought the Commission needed more
25 information from industry than the testifying

1 operators could provide. So we did survey our
2 members, and I'm presenting the results of those
3 surveys.

4 And then the third thing is, we have
5 been criticized for not engaging on this rulemaking.
6 And I'm here to tell the Commission as to why that is.

7 Q. Let's move to specific areas of your direct
8 testimony.

9 MR. CLOUTIER: If we could move to slide 3,
10 please, Mr. Everhart.

11 BY MR. CLOUTIER:

12 Q. And there are changes to 19.15.5.9 proposed
13 by the applicant. The first is a change to A(4).
14 What's the purpose of your testimony today regarding
15 that issue?

16 A. Okay. Certainly, I think in general IPANM
17 members are concerned about two rule changes sort of
18 related to what we're considering an operator in good
19 standing. So 19.15.5.9A(4), so based on the current
20 rule, the member feedback that I've received is that
21 I'm told that the current regulations allow an
22 operator to be maybe 1 or 2 percent out of compliance
23 with the existing rule to plug. In other words, the
24 rule, as it's written now, forces operators to plug,
25 but it's a rule that recognizes the reality that there

1 may be some lag time between the need to plug in an
2 actual plugging.

3 My understanding is that this has to do
4 with any number of reasons, including but not limited,
5 for example, like the availability of plugging crews,
6 service companies to plug within a certain time frame.

7 I think the concern with the new
8 19.15.5.4A(4), and I think that starts at slide 3 as
9 you mentioned, is what referring to as "the death
10 penalty," that the new proposal seems to eliminate any
11 tolerance for even being one well out of compliance.

12 Now my members read that as such, that
13 if you are one day out of compliance with plugging one
14 well, you're not eligible to operate any wells.

15 Q. And there is a new provision suggested at
16 A(5) of that same rule. Can you tell the Commission
17 what members' concerns are?

18 A. Okay. So just to clarify, this is
19 19.15.5.9A(5), correct?

20 Q. Correct.

21 A. So this, to my understanding, adds that one
22 violation of the venting and flaring rule and the
23 operator is deemed not in good standing. So I think
24 it's the same deal where you're no longer eligible to
25 operate any of your wells.

1 And in addition to that, my members have
2 brought to me further concerns that by referencing
3 Part A of the venting and flaring rule, even
4 permissible venting and flaring under Subparts B, C,
5 and D of that rule is not allowed. And again, I want
6 to emphasize this is how it reads to our operators.

7 Q. And could you articulate the concerns that
8 you've been told about that operators have expressed
9 to you about these two changes?

10 A. Okay, sure. There's three things. First,
11 if we go back, you and I, Mr. Cloutier, participated
12 for IPANM in a civil penalties rulemaking a couple
13 years ago. And we heard a number of times that the
14 OCD has a toolbox, various tools at its disposal, when
15 it finds an operator in non-compliance. This includes
16 the civil penalty matrix, that waste factors and
17 circumstances to come up with appropriate penalty.
18 But here, there's no such discretion or penalty matrix
19 available. I think that's why it's been dubbed the
20 death penalty, one strike and you're out.

21 Second, and I think it needs to be asked
22 both for the stated mission of the Oil Conservation
23 Commission and the Division in terms of preventing
24 resource waste and for the public, how is it good for
25 the state to withdraw an operator's ability to

1 operate, say, you know, an additional hundred wells
2 for one violation of one well.

3 Third, and this is really a central
4 theme here throughout the rule, and this is the
5 thinking, if the collective goal of these rules is to
6 prevent orphan wells under this one strike and you're
7 out provision, the proposed rule effectively orphans a
8 lot of wells.

9 Q. Thank you, Mr. Winchester.

10 The next area of your testimony I want
11 to talk about is concerns you expressed on the issue
12 of bonding. Can you tell us, on an overall basis,
13 what the concern is that IPANM had with it?

14 A. Okay. Thanks. And I think this is a slide
15 7. Adding the new bonding requirements is effectively
16 a sledgehammer. And that gets to what I'm bringing up
17 here and showing here on the slides moving forward.

18 In my direct written testimony, I
19 testified that how bonding has historically been
20 ineffective in New Mexico. And this is supported in
21 slide 7 by the most recent seven annual reclamation
22 reports showing that bonds were only drawn on to --
23 total two in the past seven years, amounting to less
24 than \$250,000 after plugging 193 wells.

25 Now, this is upsetting to IPANM members

1 first because the Division is asking for essentially a
2 600 percent increase for their individual bond, with
3 no blanket option. And I'm not sure that any industry
4 could survive a sudden 600 percent cost in its
5 holdings.

6 And the industry is being asked this,
7 when the state collects virtually none or very little
8 of his existing bonds. It's just not good policy or
9 practice, as it's been relayed to me.

10 And I think to sort of put a circle on
11 this one, this was asked back in June at the LFC
12 meeting, legislative finance committee meeting, in
13 Taos. Assistant Deputy Secretary Sheldon testified in
14 front of the legislative finance committee that this
15 is the equivalent of that "The juice is, is not worth
16 the squeeze." Should I go on?

17 I mean, I've noticed since then that
18 there's been a slight change of approach, again, at
19 the June LFC hearing, when that reference was made.
20 You know, there was bipartisan pushback. And I know
21 that I brought that up as a concern in my written
22 testimony submitted on August 8th.

23 Now, in this rulemaking, I found out for
24 the first time that in the last half of August, the
25 OCD made bond demands of three of the largest

1 offenders on its orphan well list. And whether the
2 timing suggests OCD got the message, it really doesn't
3 matter. We just want to be on the record now as
4 saying that we're glad to see that the Division is
5 doing this.

6 But the argument remains, the bonding
7 system right now offers us no evidence that it
8 protects the taxpayer. And our members who are coming
9 forward in this hearing are demonstrating that bonds
10 only succeed in creating hardships for the good
11 operators and, therefore, really risk increasing
12 orphaned wells.

13 Q. Thank you, Mr. Winchester.

14 I'd like to move to your testimony
15 concerning Exhibits 17 and 23. I think that's around
16 slide 18 or so. These are two of the Division's
17 exhibits. They're Exhibits 17 and 23. Tell the
18 Commission what you did at a high level.

19 A. Sure. So I want to first give some context
20 related to this. It's come up before in this
21 rulemaking but most operators plug their wells. The
22 Division or somebody else may wish that some of these
23 wells get plugged sooner and there may be
24 disagreements about when wells need plugging, but I
25 want to make it clear good operators take care of

1 business, including the plugging of wells and
2 reclaiming of property.

3 Now Exhibit 17, it's been clarified as
4 I've been told, and it seems like the Division and the
5 applicants agree, that there are a number of wells on
6 the spreadsheet that have been plugged.

7 Exhibit 23 is one of the TA well
8 exhibits submitted by the Division.

9 Q. So in addition to having talked about the
10 number of wells that have already been plugged, does
11 your testimony on these exhibits have any other
12 relevance to the Commission in your mind?

13 A. Okay, sure. A couple of things. First, on
14 Exhibit 17, when we analyze it, as we do on slide 8, I
15 believe that's our slide, but correct me if I'm
16 wrong --

17 Q. It's not on there?

18 A. -- it demonstrates that the population of
19 those orphan wells is concentrated into a smaller
20 number of operators; ten, to be exact.

21 And again, on that slide 8, this shows
22 that the problem in scope is involved in ten operators
23 that account for 75 percent of the total orphan wells.

24 Second, and most important, if we look
25 at Exhibit 23, that is the basis, to my understanding,

1 of at least a good chunk of legislative finance
2 committee's concerns about another 4,300 wells being
3 orphaned in addition to the 700 unplugged. I think
4 there ought to be real doubt as to whether these wells
5 unfortunately will ever get bonded.

6 Q. Let's look at the next slide, please, and
7 then the next one after that.

8 A. That's slide 22, I think.

9 Q. Tell us what's depicted here. This is taken
10 from your testimony?

11 A. Okay, this is the number that we did and ran
12 based on Exhibit 23, and you can see it again on page
13 22 of the slides. As you can see there, it indicates
14 that almost 40 percent of the wells in Exhibit 23, the
15 TA list, are concentrated into ten operators.

16 Based on the well count of those
17 operators in Exhibit 23, we've calculated the amount
18 of their extra bond under the new rule proposals. And
19 under notes, there is publicly available information
20 about those operators which we've compiled.

21 And if I may, I want to briefly walk
22 through that list.

23 MR. CLOUTIER: If we could go to the next
24 slide, please, slide 22.

25 A. Yeah, back to slide 22. I'm going to

1 briefly walk through this list just to illustrate
2 something.

3 First you know we look at the top.
4 There's Ridgeway in Arizona. It has 287 wells, it's
5 under a compliance order. And the question I ask is
6 and what members have asked me: Do we think that the
7 state will come up with \$43 million in extra bonding.

8 The next one, Acacia Operating, I
9 believe it's pronounced, it has 231 wells in
10 Exhibit 23. Only one well shows up on the orphaned
11 well spreadsheet, Exhibit 17. But essentially, under
12 the new bonding, they will owe an extra \$34 million.
13 And I think we are pretty uncertain regarding their
14 bonding capacity.

15 The next one LLJ Ventures shows 149
16 orphaned, and I think we can conclude it's very
17 unlikely that they will be able to post \$40 million in
18 bonds.

19 LH Operating has 131 wells, but recently
20 sold to EON Resources, and they are planning secondary
21 recovery through waterflooding. So that's
22 substantial.

23 Q. Excuse me. Let me interrupt. Do you know
24 that personally or was that the result of some other
25 information that was provided to you?

1 A. No, I do not know that personally. But that
2 is information that is publicly available, to my
3 understanding.

4 Okay. Dominion Production holds various
5 compliance orders, but with those -- regarding
6 compliance orders on financial assurance violations, I
7 think it's obvious that they will not meet the new
8 bonding requirements. So that's another \$18 million.

9 Cano Petro we know very well filed for
10 bankruptcy, they're gone. So we know there's an
11 additional 17 million in bonding coming there.

12 Hilcorp is on this list. And as we
13 know, they have submitted information to the
14 Commission. They have a very robust well program.
15 They are successfully reworking wells, and that's
16 transformed old wells into individual success stories.
17 So they're responsible. They're actively plugging
18 wells. They should be considered low risk and yet,
19 this rule would cost them \$15 million of bonding,
20 which doesn't make sense because their plugging and
21 repurposing track record is there.

22 They are concerned, however, that, you
23 know, their ability to continue to grow through
24 acquisitions in their business model is under
25 tremendous threat with the uncertainty of the OCD

1 authority to reject acquisitions. So they're out
2 there like that and they're not alone.

3 I'm moving on. The smaller operators,
4 like OEM, they'll be asked to increase bonding, \$13
5 million. I think it's unlikely given their portfolio.

6 Empire, Maverick, they're each being
7 asked to increase 12, \$11 million respectively.
8 They're less known, but with uncertain bonding
9 capacity.

10 And then at the bottom, Northern Pacific
11 has 65 wells on the inactive list and 83 wells on the
12 orphaned well spreadsheet.

13 So overall, I think the pattern we see
14 here is that most of these operators, outside of
15 Hilcorp, on the orphaned well list lack the financial
16 ability to provide bonds.

17 Q. Thank you. Did members and you notice
18 anything else about the population of Exhibit 23?

19 MR. CLOUTIER: Next slide, please.

20 A. Yeah, we noticed that there were other
21 operators on 23, Exhibit 23, who we would describe as
22 problem operators, again, publicly available
23 information, that suggests they are no longer capable
24 of plugging or bonding.

25 I think this is slide 25, is that

1 correct?

2 Q. That's one.

3 A. Okay. Slide 25, that is a list that we've
4 compiled of those operators.

5 Q. And what's over there in the notes, just for
6 a summary? I don't think we need to walk through it.

7 A. Yeah, I think what we're showing here is
8 we're identifying the operators, we're showing how
9 many wells we counted in Exhibit 23 for that operator.
10 Then we multiplied that number by 150,000, and then
11 that summarizes the information based on what we knew
12 about that operator.

13 Now, this is a technicality I want to
14 make clear. Exhibit 23 itself was presented as a PDF.
15 It was not in Excel format. So you can't do a direct
16 conversion of the data we're sorting through on a PDF
17 as you could on an Excel. So we manually counted
18 entries for each operator. And it's possible that our
19 counts were a little off.

20 But they are as close to be expected,
21 you know, when you're looking down at a PDF document
22 like that. So point being is that they may be
23 slightly off, but they're represented to make the same
24 point.

25 Q. Could you summarize for the Commission what

1 you and membership would like the Commission to
2 understand about the analysis done on 17 and 23, OCD
3 Exhibits 17 and 23?

4 A. So on 26, that shows the summary, same as,
5 you know, our previous analysis. You know, we've
6 identified a total of 19 companies that are going to
7 be asked to come up with a combined quarter billion
8 dollars of bonding. And the information is clear that
9 the capacity is simply not there.

10 But here's what we do know. The
11 companies not showing up on this list, they're overall
12 responsible. Their track record is such that they are
13 not in a risky category because they plug their wells.
14 And yet in this rule, it will saddle them, the good
15 operators, with excessive bonding costs. And I think
16 this is the fundamental argument with this bonding
17 rule proposal.

18 I mean, in the minds of the members who
19 I've talked to, it's clearly and unfairly putting an
20 enormous burden on good actors. And that is going to
21 be, you know, essentially 600 percent bonding
22 increases per well thrust upon these less risky
23 operators.

24 I think the conclusion based on the
25 perspective of our members, is that with this rule,

1 the Division risks creating more orphan wells now from
2 good companies. But the problem that this rule is
3 supposed to be fixing is orphan wells.

4 Q. You've mentioned that 600 percent figure a
5 couple of times. Is that going to be the cost for
6 every operator?

7 A. Well, depending on the scope of the rule.
8 And I believe there's a threshold analysis related to
9 marginal wells that's being talked about or proposed.
10 If that threshold is what falls under those marginal
11 wells, then all those marginal wells will be bonded at
12 150,000, which is a 600 percent increase from the
13 25,000 that is on the rule now. And I hope I state
14 that correctly, but it's a little confusing.

15 Q. It's a number that you've derived from
16 listening to members overall, correct?

17 A. Yes, correct.

18 MR. CLOUTIER: Madam Hearing Officer, that
19 concludes the direct testimony of Mr. Winchester, and
20 we'd like to move to his rebuttal.

21 HEARING OFFICER ORTH: Thank you.

22 BY MR. CLOUTIER:

23 Q. First slide of the rebuttal will be --

24 A. 27?

25 Q. Yes, sir. So OCD employee Mr. Justin

1 Wrinkle submitted written testimony about lease
2 operating expenses. Did you see that testimony?

3 A. Yes. And as a result of that, that was one
4 of the surveys we ran internally with our association
5 to get information, on some of which our members are
6 testifying.

7 Q. And you ran a survey to get even more
8 information than just the members who are testifying,
9 as I appreciate it?

10 A. Yes, of course. Exactly. Some of the
11 members are testifying.

12 Q. Okay. And what would you like to tell the
13 Commission on an overall basis about what you found
14 out from members?

15 A. Okay. As I understand Mr. Wrinkle's
16 testimony, we may not have much disagreement.

17 Q. You're talking about his live testing to the
18 Commission, correct?

19 A. Correct. And I'm talking about what we are
20 presenting and finding in slide 23 -- or excuse me,
21 28. So this is slide 28, and Mr. Wrinkle identified
22 cost of equipment that members in that first column
23 generally referred to as "camp X." But what needs to
24 be clear here, coming from my members, is that these
25 expenses are almost always incurred at the beginning

1 of the life the well itself, not when it gets into
2 so-called marginal status.

3 The second thing I want to point out
4 here is that Mr. Wrinkle seem to agree that every well
5 is different cost-wise. For the costs he identified
6 and my members agreed with were true lease operating
7 expenses. Many of them, my members report, are not
8 common to every well. And those are the ones denoted
9 in red in that second column on slide 28.

10 Q. We could go to the next slide. And could
11 you briefly tell the Commission, on those items in
12 that second column what your summary of member
13 feedback revealed about those particular costs?

14 A. Okay, certainly. I'll be brief. Slide 29.
15 The point here is to show the Commission that our
16 members disagree with the high-cost assessments that
17 Mr. Wrinkle is presenting, depending upon how members
18 in the real world come up with those cost numbers.

19 So I just want to point out these in
20 particular. Compression in itself as a cost becomes
21 less prevalent the lower the capacity of the well in
22 terms of production.

23 Road/access, most just blade roads every
24 one or two years. It's often that these roads are
25 spread across multiple wells and sometimes multiple

1 operators. Nobody that we had talked to within the
2 Independent Petroleum Association had heard of numbers
3 related to high figures related to road/access like
4 that.

5 The field operator, every well, you
6 know, they use contractors and cost is one-third or
7 less than what Mr. Wrinkle experienced at Marathon.

8 Hot oil chem treatments, you know, no
9 more than once per year; often less or none.

10 Marketing is taken out of the price
11 paid, runs about 2 percent. The marketer is getting
12 better prices than the operator.

13 And then water removal is common for oil
14 wells only. A well would only use, you know, that one
15 way.

16 So again, just to reemphasize that there
17 is disagreement on those costs and we believe, based
18 on what was presented by Mr. Wrinkle and then what was
19 discussed within the membership, it's high.

20 Q. And we've got a couple of surrebuttals.
21 Let's walk through your conclusions about the lease
22 operating expenses that you and the members were able
23 to come to. Tell the Commission kind of bullet point
24 fashion.

25 A. So these were some just quick number

1 comparisons that members had discussed and come up
2 with. So when the capital expenditures are eliminated
3 from Mr. Wrinkle's testimony, his cost figures are in
4 the range of about \$1,925 per month.

5 Our members are reporting that the
6 marginal well falls in the range of \$600 to \$300 --
7 or, excuse me, \$1,300 per month.

8 The difference, perhaps, Mr. Wrinkle is
9 coming from a big company versus our members, who
10 testify that they can operate wells more efficiently
11 than those larger companies.

12 And then even if you run a calculation
13 accepting Mr. Wrinkle's figure at the price of \$65 per
14 barrel, less \$1.35 marketing fee, essentially one
15 barrel per day is a break-even point at 63.65 times 1
16 times 30 is \$1,928.60. So I think that shows what
17 we're talking about.

18 MR. CLOUTIER: That concludes
19 Mr. Winchester's rebuttal testimony, Madam Hearing
20 Officer. We have a couple of items in surrebuttal.
21 BY MR. CLOUTIER:

22 Q. First, Mr. Winchester, some new
23 information's come to you and membership. And would
24 you raise that?

25 MR. CLOUTIER: I think next slide, please.

1 BY MR. CLOUTIER:

2 Q. All right. Tell us about the new
3 information and what you would request the Commission
4 do with it.

5 A. Okay, sure. This one caught us by surprise.
6 And by "us," I mean membership. I think it late on a
7 Friday in early October that the State Land
8 commissioner announced that rulemaking will be
9 forthcoming to substantially increase bondings on
10 leases.

11 And they are in the early stages of
12 that. They have announced a number of discussions,
13 open discussions regionally, to gather and talk a
14 little bit more and share information about that. So
15 that is on top of obviously what we're talking about
16 here.

17 Q. And the concern is what, double bonding or
18 excess bonding?

19 A. Yeah, I think that's a --

20 MR. NYKIEL: Madam Hearing Officer.

21 HEARING OFFICER ORTH: Yes.

22 MR. NYKIEL: I'm going to object. This is
23 Matt Nykiel with applicants. I'm not clear what he's
24 surrebutting. He hasn't identified rebuttal
25 testimony or page number, so I'm not sure what he's

1 surrebutting here.

2 MR. CLOUTIER: This is a concern, Madam
3 Hearing Officer, that came up after all rebuttal
4 testimony was submitted and public information. This
5 is my last question on the point and just wanted to
6 express the industry's concern. But if you deem fit,
7 we'll move on.

8 HEARING OFFICER ORTH: All right. Yeah,
9 let's move on.

10 Thank you, Mr. Nykiel.

11 BY MR. CLOUTIER:

12 Q. Mr. Winchester, have you heard that in these
13 proceedings, IPANM has been accused of not having a
14 solution?

15 A. Yes, I've heard that and I disagree. And I
16 think for some context, my observation from memory
17 personally is that industry expressed major concerns
18 about what turned in to be HB133 and that was a
19 significant stakeholder discussion that occurred in
20 2023 before the 2024 session.

21 And we met up to about ten exhaustive
22 meetings with industry participants that included
23 NMOGA, it included the Division, it included the
24 applicants. And the concerns that we had then are the
25 same basic concerns that we have about this proposal.

1 And there was never any material movement on the
2 issues about how to address those concerns in that
3 stakeholder process in the first go-around.

4 Independent operators in those meetings
5 and I felt that the smaller operator concerns
6 specifically were never given -- were not addressed.
7 And in many instances, the proposals came back a week
8 later even worse for industry as the weeks progressed.

9 So I viewed the entire process as very
10 frustrating. It was a waste of time. And my members
11 who invested time expressed a feeling of futility,
12 especially when HB133 was filed and it did not address
13 our fundamental concerns.

14 So HB133 died in the legislature back in
15 2024 as we brought our valid concerns to them.

16 Now, as far as this hearing, it was
17 within months after that bill died that the Western
18 Environmental Law Center gave industry notice that it
19 was proposing rulemaking and that was forthcoming.

20 Now, I'll be honest, I can't remember
21 the sequence of e-mails, I can't remember necessarily
22 if NMOGA brought this to our attention or if Ms. Fox
23 reached out to us directly. Regardless, we were on
24 those e-mails.

25 But when that happened, the question

1 from my members immediately to me were, "Well, the
2 bill died, right?" The second question was, "Has
3 there been any discussion since that session a couple
4 months ago on how to best address orphaned wells, how
5 to best anticipate orphaned wells or any of the big
6 issues that the applicants in the Division say that
7 they're now seeking to address?" The answer is no.

8 And days later, just like that, the new
9 proposals were filed for rulemaking. Now, after the
10 filing our members took time to digest the rulemaking
11 proposals. We were aware that overtures were being
12 made to further discuss this. But it was after the
13 fact, without prior scoping to see if anything had
14 changed in the views of the Division or the
15 applicants.

16 Thus, after reviewing those rules, the
17 consensus with my members was these already filed
18 rules had shifted even further away from workability
19 for small operators. And IPANM members simply can't
20 invest time, people, resources and money on another
21 long stakeholder process based on what had happened
22 the first time around.

23 And I just want to illustrate this for
24 everybody involved. The undertaking that took place
25 for all of those months, those ten sessions in '23,

1 was massive. Keep in mind, everyone is in the same
2 position. But smaller operators don't have government
3 affairs people. Our owners and operators' staffs had
4 and would have to again sacrifice time from the field
5 to attend to these meetings, and they already proved
6 fruitless and a waste of their time and their
7 resources.

8 And filed rules, in its entirety,
9 represents, in the minds of my members, an existential
10 threat to their operations.

11 Now, I want to be clear, we do feel that
12 there are solutions that are out there. And we want
13 to and can and would be willing to continue to explore
14 those. But in the paradigm and in terms under which
15 this rule is proposed, membership from IPANM got the
16 message that real changes in the rulemaking proposal
17 were not going to come. So here we are today here
18 making our case.

19 Industry did not ask for this rule.
20 Members have varying opinions about the extent of the
21 orphaned well problem. But I think all acknowledge
22 there are orphaned wells that need to be attended to
23 and there are ways to plug them. But my members have
24 expressed to me, bonding is not that answer. It's
25 punishing the good members, the ones, as far as we

1 know, who are plugging wells that need plugging.

2 The real question to IPANM is how to pay
3 and plug the remaining orphan wells and those that
4 might get into that situation. So that's why we've
5 been proposing and pushing for a fix of the oil and
6 gas conservation tax to go to the reclamation fund to
7 get this done.

8 MR. CLOUTIER: Thank you, Mr Winchester.

9 That concludes Mr Winchester's
10 surrebuttal testimony, Madam Hearing Officer.

11 HEARING OFFICER ORTH: Thank you very much,
12 Mr. Cloutier.

13 Mr. Nykiel, will you be doing the
14 cross-examination?

15 MR. NYKIEL: Yes, that's right. It sounds
16 like you can hear me loud and clear.

17 HEARING OFFICER ORTH: Yes. Thank you.

18 CROSS-EXAMINATION

19 BY MR. NYKIEL:

20 Q. Good morning, Mr. Winchester. My name is
21 Matt Nykiel. I'm an attorney with the Western
22 Environmental Law Center, and I represent applicants.
23 Thank you for your testimony.

24 Would you let me know, as we go on, if
25 there's any trouble understanding me through the

1 virtual platform?

2 A. Certainly.

3 Q. Okay. Thank you. And it looks like you
4 have a copy of your direct and rebuttal testimony in
5 front of you?

6 A. Yes.

7 MR. NYKIEL: And, Madam Hearing Officer, may
8 I have permission to share my screen? It looks like
9 I do. Okay. Is that presenting?

10 HEARING OFFICER ORTH: Yes. It could be a
11 little bigger for ease of reading. There we go. All
12 right. Thank you.

13 BY MR. NYKIEL:

14 Q. All right. Mr. Winchester, I'm pulling up
15 your direct testimony at page 6. At line 14, you
16 testified that virtually all of applicant's proposal
17 comes from parties that have little to zero
18 understanding or experience, be it in government or
19 industry; is that right?

20 A. Right.

21 Q. And you're aware, though, that Oxy USA, Inc.
22 supports or doesn't object to several of the
23 applicant's proposed rules; is that right?

24 A. Yes. With the clarifier that Oxy is in a
25 different position than the membership of IPANM.

1 BY MR. NYKIEL:

2 Q. And among those proposed rules that Oxy has
3 supported or not objected to, those include
4 applicant's proposal to increase financial assurance
5 for active and inactive wells?

6 A. If they said so, is that what you're saying?
7 Oxy did? Mm-hmm. Okay, sure.

8 Q. And Oxy has also not objected to applicant's
9 proposal to establish a presumption of no beneficial
10 use?

11 A. Sure.

12 Q. Would you like me to bring up their
13 demonstrative that they used in their slides to
14 confirm that, or would you accept that as true?

15 A. Oh, no, I accept that.

16 Q. Okay. And lastly, just that Oxy is not
17 objected to applicant's proposal to require that
18 operators certify on registration or transfer that
19 they are not subject to any forfeiture demands in any
20 domestic jurisdiction; is that right? Or is that your
21 understanding?

22 A. I will take that as your understanding,
23 which I believe -- I'm sure I have no reason to
24 believe why that's not the case.

25 Q. Okay. And you're also aware that the

1 New Mexico State Land Office strongly supports
2 applicant's proposed rulemaking?

3 A. I just want to backtrack on that last line
4 of questioning.

5 I think I've raised the point, but Oxy
6 is not representative of small producers and is not a
7 member of IPANM. So I just want to make that clear.

8 Q. Yeah, but they haven't objected to
9 applicant's proposed rules that operators certify that
10 they're not subject to any forfeiture demands in any
11 other jurisdiction, though?

12 A. Yeah, that's -- I mean, that's from their
13 position, certainly.

14 Q. And so, you're also aware that the
15 New Mexico State Land Office strongly supports
16 applicant's proposed rulemaking. I think I heard you
17 testify that you're aware of that. Yes, very much so?

18 Okay. And you're also aware that the
19 New Mexico Oil Conservation Division supports
20 applicant's proposed rulemaking?

21 A. Right.

22 Q. And, in fact, some of the rules that
23 applicants have adopted and proposed were first
24 recommended by the Division? Is that your
25 understanding?

1 A. I can't speak to that. In fact, we're
2 starting to go back into the talks that took place for
3 HB133, and there were so many regulation proposals
4 that were bouncing around. I don't know if it came
5 from the applicants or if it came from OCD.

6 Q. Okay. I'm just going to pull up here just
7 very quickly, this is applicants Exhibit 15?

8 This is the testimony of Mr. Alexander.
9 Would you please read lines 18 through 20 that are
10 highlighted here.

11 A. "OCD initially proposed a definition for
12 'marginal well' in its February 12, 2025, Redline
13 proposals to all parties in the proceeding and
14 proposed increased financial assurance for these wells
15 in 19.15.8 NMAC. Applicants adopted OCD proposals."

16 But again, that doesn't give context to
17 what was going on before then. But regardless, I had
18 no problem with this.

19 Q. Okay.

20 A. As I said, they were being bounced around
21 between the two parties, the regulations and the
22 proposals.

23 Q. In your preparation for your testimony, you
24 reviewed the testimony of OCD's witnesses; is that
25 correct?

1 A. Not line by line. I was more paying
2 attention specifically to what was being said in oral
3 testimony, and when I could. So I can speak to
4 whatever questions you have, and if I have knowledge,
5 I certainly will answer. If not, I definitely will
6 say that I am not aware of that.

7 Q. Sure. Are you aware that both Mr. Wrinkle
8 and Mr. Diede worked in the oil and gas industry prior
9 to their employment with the OCD?

10 A. Yes. With larger companies.

11 Q. And are you aware that between the two of
12 them, they have nearly 40 years of combined industry
13 experience?

14 A. Sure. Certainly.

15 Q. And did you review the testimony of
16 applicant's witnesses as well in your preparation for
17 this hearing?

18 A. Same question. Hit or miss.

19 Q. Okay. Are you aware that --

20 MR. CLOUTIER: Sorry, Mr. Nykiel.

21 Mr. Winchester, because of the virtual
22 platform, please try not to step on Mr. Nykiel's
23 question when you answer. You're answering very
24 quickly.

25 Apologize, Madam Hearing Officer.

1 MR. NYKIEL: Thanks, Mr. Cloutier.

2 MR. CLOUTIER: Apologies.

3 MR. NYKIEL: Oh, no worries.

4 BY MR. NYKIEL:

5 Q. So, are you aware that Mr. Alexander,
6 applicant's first witness, worked in the oil and gas
7 industry?

8 A. Yes. I saw his testimony and listened to
9 it.

10 Q. Okay. And he had worked in the industry for
11 over three decades, correct?

12 A. Correct. But again, to be clear, industry
13 is a broad definition, representative of a wide
14 spectre of companies in different positions
15 financially, in terms of their place, in terms of
16 their various producing basins that they're working
17 in.

18 Q. And you're aware that Mr. Purvis, also
19 applicant's second witness, also worked in the oil and
20 gas industry and works in the oil and gas industry?

21 A. Yes, yes. For sure.

22 Q. And he has over three decades of experience
23 at this point?

24 A. That, I can't attest to. But I take it as
25 your word, as no reason to believe it's not true.

1 Q. Okay. I'm going to pull up your direct
2 testimony again and bring us to page 1. At line 14,
3 you testified that all the matters to which you
4 testify were also raised by IPANM members, correct?

5 A. Correct.

6 Q. And on line 5, you testified that IPANM,
7 quote, solicited and got a lot of member comments
8 about applicant's proposed rulemaking, correct?

9 A. Correct.

10 Q. Now, neither you nor IPANM provided written
11 copies of those comments that you received from your
12 members?

13 A. Correct. That's information that is within
14 the confines of private operating companies who are
15 disclosing that internally, but who did not wish to be
16 in the limelight.

17 Q. And your testimony doesn't provide the
18 identity of the members you received comments from,
19 correct?

20 A. Correct, with the same stated reason.

21 Q. And how many members does IPANM have?

22 A. Last count, 107 different companies; total
23 members represented over those, in the range of 350.

24 Q. Okay. And I'm back at your direct testimony
25 on the same page, line 7. You testified that of the

1 member comments you received, different members
2 commented on different parts of the proposed rule,
3 correct?

4 A. Correct.

5 Q. I'm going to jump to your rebuttal
6 testimony. And just as an example, there on page 11,
7 at line 12, you state that after you circulated the
8 testimony of OCD expert Mr. Wrinkle, you received
9 comments from seven companies, correct?

10 A. Right.

11 Q. And at line 13, I'm looking at the statement
12 you made here when you state, "All those responses
13 indicate that even if Mr. Wrinkle's testimony reflects
14 his experience at Marathon, no member believed those
15 costs were accurate for low-producing wells," correct?

16 A. Correct.

17 Q. Now when you say "no member," you're
18 referring to the seven companies you received
19 responses from, correct?

20 A. Correct. In that particular survey.

21 Q. Okay.

22 A. There were additional discussion with
23 members who, you know, would make same comments.

24 Q. Okay. And --

25 A. But I didn't -- I didn't chart those or --

1 I'm sorry, I didn't mean to walk over you. I didn't
2 chart those or log those.

3 Q. Okay. And I just scrolled to page 12 of
4 your rebuttal testimony. At line 2, you state that
5 members thought that Mr. Wrinkle's testimony was not
6 accurate.

7 And the same question here. When you
8 refer to "members," you're referring to the seven
9 companies you received responses from?

10 A. I think it's the same response, the seven,
11 and then those based on conversations anecdotally.

12 Q. And approximately, how many oil and gas
13 companies would you estimate operate in New Mexico
14 offhand?

15 A. Well, I think if you look at the number of
16 entities that are currently on OCD's reporting list, I
17 think it's in the neighborhood of 450, something like
18 that.

19 Q. Now, Mr. Winchester, I want to ask about
20 your personal testimony in this. And just to
21 reiterate, your testimony is as a fact witness today,
22 correct?

23 A. Yes, sir.

24 Q. And not as an expert?

25 A. Correct.

1 Q. And as you said, the summary of your
2 experience indicates that you're the executive
3 director of IPANM, right?

4 A. Right.

5 Q. And the summary of your experience also
6 states that you're a former EMNRD employee, right?

7 A. Correct.

8 Q. What was your job title at EMNRD?

9 A. Communications director for both EMNRD and
10 the New Mexico Environment Department. So I split
11 time between those two divisions.

12 Q. So you haven't been qualified as a corporate
13 finance or risk expert, right?

14 A. Certainly not.

15 Q. I'm going to direct us to your direct
16 testimony again at page 4. At lines 6 through 22, you
17 discuss applicant's proposed rules for operator
18 transfer at 19.15.9.9B NMAC; is that right?

19 A. I apologize. Can you please reference again
20 the page of the testimony in which one, if it's direct
21 or the rebuttal?

22 Q. Yes. Direct testimony and page 4.

23 A. Okay, which lines?

24 Q. Lines 6 through 22. It's this paragraph
25 that begins with the question, "What's your next

1 comment about the change of operator proposal?"

2 A. Correct.

3 Q. Okay. So, as you understand it, among other
4 things, the proposed rule here would require a new
5 operator to provide OCD a plugging and abandonment
6 plan, correct?

7 A. Yes.

8 Q. And specifically at line 20, you opine that
9 reviewing an operator's plugging and abandonment plan
10 would do little to nothing to assure the state that an
11 operator will have the funds available in the future
12 to plug and abandon; is that right?

13 A. Correct.

14 Q. Okay. I'm going to pull up applicant's
15 Exhibit 72-D, which is that rule we're talking about.

16 MR. CLOUTIER: And I'm going object, Madam
17 Hearing Officer. This exhibit was admitted after the
18 direct testimony that Mr. Nykiel is referencing and
19 represents a change to the rulemaking that
20 Mr. Winchester did not have available to him at the
21 time of his direct.

22 HEARING OFFICER ORTH: Mr. Nykiel.

23 MR. NYKIEL: Yeah, my line of questions
24 isn't -- it doesn't go to the changes that were made
25 here. It goes to what was already existing in the

1 proposed rule at the time of his direct.

2 HEARING OFFICER ORTH: All right. Go ahead.

3 BY MR. NYKIEL:

4 Q. So I was trying not to introduce too many
5 additional colors, to avoid a rainbow here. But there
6 are colors, and I'd like you to focus on the light
7 blue, please. Would you please read the first two
8 sections that are highlighted in light blue, just
9 to -- I just want to confirm that this is the plugging
10 and abandonment plan you were talking about here.

11 A. What am I reading again?

12 Q. Just in light blue at the top, that one, and
13 the second one. And then we'll follow up with the
14 third light blue paragraph below.

15 A. Okay. Well, first of all, it's blocked
16 because there's a thing that's in front of it. Okay.
17 Good:

18 A new operator shall make such
19 applications in writing and provide...a plugging and
20 abandonment plan.

21 Q. Okay. So that's what you were talking about
22 in your direct. Would you please read the final
23 paragraph highlighted in blue.

24 A. The plugging and abandonment plan shall be
25 certified by an authorized representative of the new

1 operator and shall demonstrate that the new operator
2 has and will have financial ability to meet the
3 plugging and abandonment requirements of 19.15.25 for
4 the well or wells to be transferred in light of all
5 operator's assets and liabilities. The Division may
6 request the operator to provide additional
7 information, including corporate credit rating,
8 corporate financial statements, long-term liabilities,
9 reserves and economics reports, records and historical
10 records for documentation, decommissioning activities,
11 estimated operators, Commission applications, and
12 history of inactive wells.

13 So I read this, but I'm not sure if this
14 was added or if this is initial, and really where
15 we're going. I know that we have members who have
16 concerns about this.

17 MR. CLOUTIER: Madam Hearing Officer, I
18 think we're a little past 15 minutes, even accounting
19 for the couple times I interrupted.

20 HEARING OFFICER ORTH: No, it just hit 15 --
21 16 minutes.

22 Mr. Nykiel, are you done with your
23 examination?

24 MR. NYKIEL: Have one final line of
25 questions.

1 HEARING OFFICER ORTH: Okay.

2 MR. CLOUTIER: Line?

3 MR. NYKIEL: I'll conclude on this line.

4 BY MR. NYKIEL:

5 Q. So, Mr. Winchester, when you testified that
6 the plugging and abandonment plan would serve no
7 utility to the Division, that was not based on any
8 expert experience you have in corporate finance
9 analysis or risk assessment, was it?

10 A. I think I've made it clear that it's based
11 on what we hear collectively from operators.

12 HEARING OFFICER ORTH: Yeah, I think he did
13 make that clear, Mr. Nykiel.

14 All right. Thank you very much,
15 Mr. Nykiel.

16 Mr. Tremaine or Mr. Hall.

17 MR. TREMAINE: Mr. Tremaine. Thank you,
18 Madam Hearing Officer.

19 CROSS-EXAMINATION

20 BY MR. TREMAINE:

21 Q. Good morning, Mr. Winchester. We've had the
22 opportunity to meet virtually before. I think this is
23 maybe the first time in person, or online now. So, if
24 that's the case, nice to meet you officially.

25 I'm Jesse Tremaine, I'm the legal

1 director for the Oil Conservation Division. I have a
2 couple kind of general questions.

3 A lot of your testimony we've really
4 kind of gone over quite a bit in hearings, so I'm
5 going to try to be quick.

6 So, I just want to reiterate, you've
7 already answered this, make sure you agree for
8 foundation, that your testimony summarizes the
9 concerns expressed by some of IPANM's membership,
10 correct?

11 A. Correct.

12 Q. At the beginning of your testimony, which I
13 very much appreciate, I believe that you had
14 identified that some or two specifically of those
15 concerns raised in your direct were alleviated after
16 you clarified some of the information and discussed
17 those issues with your membership. Is that fair?

18 A. Sure. Yes. Correct.

19 Q. Thank you for that. And you are a fact
20 witness here, so you did not perform or provide any of
21 your own analysis or expertise?

22 A. Correct. As a fact witness, to my
23 understanding, yes, of course.

24 Q. So all of your testimony is presenting
25 undocumented hearsay to the Commission?

1 A. I don't agree with that at all. I think
2 that what we are presenting is the positions of
3 operators who do not want to seek the limelight. And
4 I think they're very justified in having concerns if
5 they do step forward. So I think we're providing a
6 summation, and I am representative of what those
7 concerns are.

8 Q. Well, I'm not going to ask you to testify to
9 the definition of hearsay, so I'll be move on.

10 I want to ask you some questions about
11 financial assurance timing and forfeiture. So
12 specifically and not to get into -- are you familiar
13 with the provision of 19.15.9.8, operator registration
14 provisions?

15 A. Um, no, if you bring it up, I could review
16 it and maybe it will ring a bell. I just don't know
17 the provisions by number.

18 Q. I still have share authorization. All
19 right. So, Mr. Winchester, I want to point you to --
20 so this is -- again, this New Mexico OneSource. It's
21 Compilation Commission, official legal publisher of
22 the State of New Mexico. And I like to use these
23 because there's no -- there's no reading rainbow.

24 So in 9.8A, operator registration, would
25 you be so kind as to read that please, A.

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

6 Q. All right. So before you begin operations
7 as a new operator, you have to provide these three
8 things listed under A. And do you agree with me that
9 the third thing that you have to provide before
10 beginning operations is the financial assurance that's
11 required?

12 A. As it says here. Again, I'm not sure
13 referring to 19.15.8 in particular is something that I
14 have knowledge of by name.

15 Q. Right. But, I mean, you would agree it says
16 the "financial assurance" and then provides another
17 section of the rule?

18 A. Correct.

19 Q. And I'll represent and actually I'll show
20 you here, just to make sure there's no trickery here,
21 19 Part A is the financial assurance requirements.

22 So 9.8 stands for the proposition that
23 when you register as a new operator, you have to
24 provide the financial assurance before you begin
25 Operating. That's that reference.

1 So with that in mind, I want to ask you
2 about your awareness of OCD's current practices in
3 this regard. Are you aware that OCD currently
4 requires financial assurance before well transfers?

5 A. I'm not sure of what the procedure is in the
6 particulars.

7 Q. Okay. So you don't know?

8 A. I don't know off the top of my head.

9 Q. Well, I thought it was implied from your
10 testimony that you were suggesting that the
11 requirement to -- that OCD require and review
12 financial assurance prior to a transfer was a new
13 thing.

14 A. So, I'm confused I guess. Can you restate
15 the question?

16 Q. Well, was it your testimony that it was
17 going to be a problem for OCD to require financial
18 assurance prior to approving a transfer of a well?

19 MR. CLOUTIER: Mr. Winchester did not
20 testify to that here today, Madam Hearing Officer.
21 Can I ask Mr. Winchester -- Mr. Tremaine to pull
22 up --

23 MR. TREMAINE: I will rephrase.

24 BY MR. TREMAINE:

25 Q. Let me direct you to your testimony. So, on

1 page 2, line 6, you're referring to --

2 A. I'm sorry, which document?

3 Q. I have it up on the screen.

4 A. Rebuttal or direct?

5 Q. This is your direct.

6 A. Okay. Thank you.

7 Q. This is your direct?

8 A. Page 6.

9 Q. So, page 2, line 6, you stated the proposal
10 for amending rule 19.15.8.9, which is financial
11 assurance provision, is vague and very broad, it would
12 not allow an operator to proceed with any proposed
13 acquisition until the operator has furnished the
14 required financial assurance.

15 You later state, starting on line 10,
16 that obviously this is absurd and will not happen.

17 So, I'm just asking you, you seem to
18 directly state or imply there that that's not already
19 the practice. I'm just trying to clarify that that's
20 your testimony.

21 A. That, I'm still a little confused in terms
22 of I think we're getting bogged down in procedural
23 order.

24 Q. Well, sir, your testimony is, which is on
25 the screen, that it would be absurd and impractical

1 for an operator to provide financial assurance for a
2 well that they do not yet have registered with the OCD
3 and operate. Is that your testimony?

4 A. I think I'm pointing out the problems that
5 operators would face if, upon acquisition, they had to
6 take upon, under this rule, new financial assurance
7 individually for each well, as opposed to what's
8 currently in rule with a blanket fund.

9 And if I'm confused, it's because I am
10 confused.

11 Q. So just to put a bow on this, it was not
12 your understanding that OCD already requires financial
13 assurance prior to transfer of wells.

14 A. As we sit here today, I will just stand by
15 what I've put down in the document, because I'm
16 actually not quite certain what your question is.

17 Q. Are you aware that it's OCD's practice that
18 if a well transfer would cause the receiving operator
19 to fall out of compliance with the financial assurance
20 for the well plugging and inactive well requirements
21 in OCD's rules, that OCD requires, on a case-by-case
22 basis, agreed compliance orders for inactive wells
23 prior to approving a transfer?

24 A. Are you asking me about an existing rule or
25 are you asking me about information submitted in my

1 testimony?

2 Q. I'm asking you if you are aware of OCD's
3 practice. Because you are stating in your testimony
4 that this is impractical, it doesn't work, it won't
5 happen. And I'm challenging that because OCD already
6 does it.

7 A. Okay. So what's the question again, please?

8 Q. The question was, were you aware of the fact
9 that OCD requires agreed compliance orders for
10 inactive wells if the transfer would cause the
11 receiving operator to fall out of compliance with
12 existing OCD rules?

13 A. Again, we're getting into procedure and
14 process and timing.

15 Q. Well, Mr. Winchester, we're getting into
16 your knowledge of OCD's rules and practices, which is
17 what you are testifying about and the implications of
18 the new rules.

19 A. In regards to what I've been informed by
20 members.

21 Q. So those statements are not based on any
22 personal experience?

23 A. I think there's a combination, but based on
24 predominantly the input from members.

25 Q. Okay. Thank you. I want to ask you about a

1 few things here with share screen again. You spent
2 some time on this slide 22, just a demonstrative aid,
3 and talked about some of these operators and the
4 financial assurance implications for each of those.

5 You walk through here. Ridgway,
6 Arizona, that's been the source of some discussion at
7 the hearing. If OCD had not entered into the
8 settlement agreement with Ridgway, Arizona, to your
9 knowledge, what would have been OCD's other
10 enforcement options regarding those 287 wells?

11 A. I can't answer that. I don't know --

12 Q. Okay.

13 A. -- the regs number by number.

14 HEARING OFFICER ORTH: Mr. Tremaine, five
15 minutes.

16 MR. TREMAINE: Okay. Thank you.

17 BY MR. TREMAINE:

18 Q. So when we talk about this slide -- well,
19 first of all, are you aware that Acacia Operating is
20 one of the remaining interests from Remnant?

21 A. I am not aware beyond what is presented
22 here.

23 Q. Okay. And are you aware that OCD brought at
24 least two separate enforcement actions related to the
25 LLJ Ventures wells?

1 A. Are we talking about Acacia or are we
2 talking about the previous --

3 Q. No. I just referred to LLJ Ventures.

4 A. Oh, LLJ. Okay, I'm sorry. Could you
5 restate the question? I thought we were still on
6 Acacia.

7 Q. So, LLJ Ventures, there were two inactive
8 well NOVs related to that. Were you aware?

9 A. No, sir.

10 Q. Okay. Were you aware that there is an NOV
11 pending against LH Operating for inactive wells?

12 A. There is an NOV, is that what you're saying?

13 Q. Notice of violation, yes, for inactive
14 wells.

15 A. My information here, you know, indicates
16 that they've been acquired by Ian, so I'm not sure
17 semantically. No, I'm not aware.

18 Q. Okay. Were you aware that OCD is engaged in
19 extensive discussions with energy related to Dominion
20 Production?

21 A. Three agreed compliance orders, correct.
22 Two regarding financial assurance violations.

23 Q. Aside from the agreed compliance orders.
24 I'll move on.

25 So, Mr. Winchester, do you agree -- I

1 mean, because the point of this slide is that we're
2 not going to recover additional financial assurance
3 from the operators that are already out of compliance,
4 and I would very much agree with that.

5 Is it your testimony that there is not a
6 concern that other currently solvent operators could
7 end up in a similar posture?

8 A. I think the demonstration with this
9 exhibit --

10 Q. That's not what I'm asking you about. I'm
11 asking you if you are testifying as to the potential
12 for other operators to end up in a situation.

13 A. No, sir. I'm testifying from the standpoint
14 that the good operators that are out there are going
15 to be saddled with excessive extra bonding that jumps
16 in scale, that is unreasonable for a good operator to
17 continue their operations.

18 Q. According to your own testimony, Cano Petro
19 was a good operator until they were not, right?

20 A. I don't know if I ever said Cano Petro was a
21 good operator.

22 MR. CLOUTIER: Objection. He never said
23 that.

24 BY MR. TREMAINE:

25 Q. You said that they were solvent and they

1 were compliant with OCD rule until they filed
2 bankruptcy.

3 A. I don't think I even said that either.

4 Q. Okay. I'll let the record stand.

5 I want to point out -- Mr. Winchester,
6 there's been a lot of talk about the 66 million in the
7 reclamation fund. And in your testimony on page 8,
8 direct testimony on page 8, line 14, you're stating
9 that the state is now under pressure to spend initial
10 and follow-on federal sums awarded under the IIJA?

11 So first of all, under the IIJA funds,
12 are you able to articulate for the Commission which
13 phase of the federal grant? We are currently
14 operating under?

15 A. No, sir.

16 Q. Okay. So you don't really know the terms or
17 the conditions of the federal grant?

18 A. Based on conversations that were brought up
19 specifically by former OCD Director Dylan Fuge, in
20 which we were in those conversations in those
21 extensive stakeholder meetings, it was made very
22 clear, even with numbers that I don't recall, 25
23 million, 50 million, whatever, that there was pressure
24 in statements that he had said that we need to spend
25 that money first.

1 Q. Is it consistent with your understanding
2 that --

3 MR. CLOUTIER: Madam Hearing Officer, we're
4 well beyond 15 minutes. I didn't start my clock
5 until after Mr. Tremaine's pleasantries to Mr.
6 Winchester.

7 HEARING OFFICER ORTH: All righty. So I had
8 that we started at 10:16 and it's just now turning
9 10:32, so this is 15 minutes.

10 MR. TREMAINE: Thank you, Madam Hearing
11 Officer.

12 HEARING OFFICER ORTH: Thank you,
13 Mr. Tremaine.

14 MR. CLOUTIER: Thank you.

15 HEARING OFFICER ORTH: Let's see. Mr. Moore
16 or Mr. Biernoff or Mr. Grazer? Who do we have here?

17 MR. MOORE: Good morning, Madam Hearing
18 Officer. I'll be representing the Commissioner this
19 morning.

20 HEARING OFFICER ORTH: Terrific, thank you.

21 CROSS-EXAMINATION

22 BY MR. MOORE:

23 Q. Good afternoon, Mr. Winchester. My name is
24 Richard Moore. I represent the Commissioner of Public
25 Lands and the New Mexico State Land Office. Thank you

1 for your testimony this morning.

2 I just had a few questions concerning
3 some of the things you testified about this morning.
4 In your testimony, and I will share my screen here,
5 you testified to what you referred to as the death
6 penalty proposal.

7 In testifying to that, you referenced
8 the current rule 19.15.5.9A(4), and I believe
9 testified that the current rule allows an operator to
10 be out of compliance with plugging obligations for 1
11 to 2 percent of its wells; is that correct?

12 A. I did. And I won't purport to be an expert
13 on the specifics of that rule, but I will say that
14 that was as, you know, indicated to me. And that's
15 why I sort of used the approximation when describing
16 that existing rule.

17 Q. Okay. And I'm just going to look and bring
18 that rule up quickly. As I believe Mr. Tremaine
19 already explained, this is the New Mexico OneSource
20 and the administrative code as reflected on New Mexico
21 OneSource. This is the current rule.

22 If you could read 19.15.5.9A(4) and how
23 many wells that allows an operator to be out of
24 compliance with.

25 A. So are you talking about A, B, C, D

1 specifically, two wells or 50 percent --

2 Q. Yes. 19.15.5.9A(4)(a), under that
3 regulation as currently written, if a company operates
4 four wells, how many wells under this regulation, as
5 currently written, may it be out of compliance with?

6 A. Well, I mean, that's interpreting the rule.
7 I can only read the rule. Two wells or 50 percent of
8 the wells that the operator operates, whichever is
9 less, if the operator operates 100 wells or less.
10 Five wells if the operator operates between 101 and
11 500 wells. Seven wells if the operator operates
12 between 501 and 1,000 wells. And then ten wells if
13 the operator operates more than 1,000 wells.

14 Q. And so would you agree that under (4)(a), as
15 written, an operator can be out of compliance for more
16 than 1-2 percent of wells? Is that correct?

17 A. They can be out, as it reads, two wells or
18 50 percent of the wells the operator operates,
19 whichever is less, if the operator operates 100 or
20 less.

21 Q. And looking at subpart (b), five wells, if
22 an operator operates between 105 and 500 wells. If an
23 operator has 101 wells and five are out of compliance,
24 that's more than 1 to 2 percent. Would you agree?

25 A. Five wells if the operator operates between

1 101 and 500 miles. That's how it reads.

2 Q. So, would you agree that it's only the
3 larger operators that, as the rule currently reads,
4 may be out of compliance with only 1 or 2 percent of
5 their wells?

6 A. I think you are getting into semantics and
7 interpretation of the rule. So I would say when
8 you're talking about large operators, that's a very
9 vague term. So I guess I can't answer that with the
10 context in which the question is coming from.

11 I'm not trying to be difficult, Richard.
12 I'm trying to further understand and not necessarily
13 agree with your conclusion. Because I think large
14 operators is a different definition to different
15 people.

16 Q. I suppose, just to reframe the question,
17 it's only if an operator is operating -- if they have
18 ten wells that are inactive and they operate 1,000,
19 that's in the 1 to 2 percent range. But if an
20 operator is operating with fewer than 500 wells, has 5
21 wells out of compliance, that is a larger percentage
22 than 1 to 2 percent?

23 A. If that is the correct math, then yes.

24 Q. All right. And then I'm going to turn to,
25 you also testified to the operation of 19.15.25.8. So

1 I turn to that. This is also the rule as currently
2 written and reflected on New Mexico OneSource.

3 So under 19.15.25.8B, the rule requires
4 that an operator shall either properly plug and
5 abandon a well or place that well into approved
6 temporary abandonment, in accordance with 19.15.25,
7 within 90 days after first a 60-day period following
8 suspension of drilling operations, correct?

9 A. Correct. As the rule reads, yes.

10 Q. And then B(2), a determination that the well
11 is no longer useful for beneficial purposes, or B(3),
12 a period of one year in which the well has been
13 continuously inactive; is that correct?

14 A. That is the rule, correct.

15 Q. So just to be clear, under 19.15.25.8, as
16 currently written, the rule does not allow an operator
17 to be out -- the rule doesn't allow 1 to 2 percent of
18 an operator's well or really any percentage of an
19 operator's wells to be out of compliance with this
20 rule?

21 A. I don't know what you're stating
22 essentially. I think the rule speaks for itself.

23 Q. And you don't see any language -- I guess,
24 just to be clear, you don't see any language in
25 19.15.25.8, as currently written, that provides leeway

1 for when a well has to be plugged under B(1), (2), or
2 (3)?

3 MR. CLOUTIER: Madam Hearing Officer,
4 Mr. Winchester stated clearly at the beginning he's
5 not an expert on rule interpretations, and we're
6 asking him to interpret rules that he's never held
7 himself out to the Commission as having any expertise
8 on that.

9 HEARING OFFICER ORTH: Yeah, Mr. Moore. I
10 think he has offered up his limits.

11 MR. MOORE: Fair enough. I'll move on from
12 this specific language.

13 BY MR. MOORE:

14 Q. But given the two rules we just discussed,
15 and what you did discuss in your direct testimony,
16 would you say that there is currently a conflict
17 between 19.15.25.8 and 19.15.5.9, as currently
18 written?

19 MR. CLOUTIER: Same objection.

20 HEARING OFFICER ORTH: Mr. Winchester, if
21 you can answer the question.

22 A. I don't know.

23 Q. And leaving the specific language of the
24 four members, would you agree that clarity in the
25 regulations that apply to your members is beneficial?

1 A. I'm sorry, Mr. Moore, you were cutting out.
2 Can you repeat the question, please.

3 Q. I apologize. I was just wondering if you
4 would agree that for your members, that clarity in the
5 in the regulations that apply is useful?

6 A. Yes.

7 Q. And same with regulators, clarity in the
8 rules concerning when a well must be plugged is
9 beneficial for that regulators of your industry?

10 A. Yes, certainly.

11 Q. And now you mentioned briefly in discussing
12 upcoming state land office bonding rule changes, that
13 it would be best for these rulemaking proceedings to
14 wait for the State Land Office proceedings to continue
15 or even conclude; is that correct?

16 A. I don't know if I stated that. I think the
17 discussion point there is the introduction of a State
18 Land Office rule proposal, and the timing of that
19 coming in the midst of this. And the process, again,
20 by which prior to, there was rumors that something was
21 forthcoming, but that there was no prior input. And,
22 again, the rule just was posted.

23 Q. And just one question on that. Are you
24 aware that the State Land Office does not require
25 bonds for wells on any private land?

1 A. I am not an expert on State Land Office
2 rules and regulations.

3 HEARING OFFICER ORTH: Mr. Moore, five
4 minutes.

5 MR. MOORE: Thank you, Madam Hearing
6 Officer. I just have one final line of questioning.
7 BY MR. MOORE:

8 Q. So I'll share my screen again with the
9 slides from your direct testimony. In that testimony,
10 you discussed a number of companies seen on the screen
11 that account for around 1,300 wells on the inactive
12 list, roughly 74 percent of the total list; is that
13 correct?

14 A. As presented, correct.

15 Q. Now, if these companies, such as Cano Petro
16 or Ridgeway Arizona, if they had been required to
17 provide higher bonding while they still had assets and
18 some of their wells were still producing, would you
19 agree that the OCD would be in a better position to
20 address the plumbing expenses for these companies?

21 A. But I can't agree, only because I think
22 you're asking a speculative question. So I just don't
23 know. I don't think anyone really knows if so and so
24 had been with this. Well, they weren't.

25 MR. MOORE: Fair enough. And I believe that

1 those are all the questions that I have. Thank you
2 for your testimony today.

3 HEARING OFFICER ORTH: Thank you, Mr. Moore
4 and Mr. Winchester. Let's take a break at this point
5 and come back at 11:00.

6 THE WITNESS: I have a quick question. Was
7 there any redirect, or are we done?

8 HEARING OFFICER ORTH: No, there's still
9 more people to come along.

10 MR. CLOUTIER: She's giving you a break
11 before Miguel breaks you over the coals.

12 THE WITNESS: Okay. Thank you. I wasn't
13 sure if I was dismissed or not.

14 (Recess held from 10:44 to 11:00 a.m.)

15 HEARING OFFICER ORTH: We have Ms. Nanasi
16 with us. Who would be next?

17 Mr. Maxwell, do you have questions?

18 MR. MAXWELL: No questions. Thank you.

19 HEARING OFFICER ORTH: Thank you.

20 Mr. Rankin, do you have questions?

21 MR. RANKIN: None. Thank you, Madam Hearing
22 Officer.

23 HEARING OFFICER ORTH: Thank you.

24 EOG is monitoring.

25 Mr. Suazo, do you have questions?

1 MR. SUAZO: Just a few questions, Madam
2 Hearing Officer.

3 CROSS-EXAMINATION

4 BY MR. SUAZO:

5 Q. Mr. Winchester, good morning?

6 A. Good morning.

7 Q. I'm Miguel Suazo. I'm representing NMOGA in
8 these proceedings?

9 And Mr. Tremaine asked you about
10 financial assurances the operators must have in place
11 before they're operating, under the current rules, and
12 what the changes would be under the proposed rules.

13 Is it your understanding of the current
14 rules that they require operators to have financial
15 assurance in place before they operate and produce
16 wells?

17 A. I think we're getting back into the timing
18 of when that procedure takes place. But based on what
19 you are presenting, yes.

20 Q. Okay. And so is it your understanding that
21 applicants are essentially proposing requiring
22 operators to have financial assurance in place before
23 they even acquire the rights to operate or own those
24 wells?

25 A. Yes. And I think, to my understanding, the

1 analogy is you're buying a car and you have to put the
2 payment down before you even kick the tires or check
3 it out. Is that the correct analogy?

4 Q. Well, I mean, I think it's one analogy. I
5 think, really, to your point, though, what I'm just
6 trying to understand is that IPANM opposes these
7 proposed changes primarily because of the timing
8 associated with the acquisition of financial
9 assurances in relation to the actual acquisition of
10 the wells themselves, correct?

11 A. Yes. And I hope that that was what I was
12 trying to illustrate with the car acquisition analogy.

13 MR. SUAZO: Thank you, Mr. Winchester. No
14 further questions.

15 HEARING OFFICER ORTH: Thank you.

16 Mr. Cloutier, do you have redirect?

17 MR. CLOUTIER: Just one question, if I could
18 have Mr. Everhart share a slide, please.

19 REDIRECT EXAMINATION

20 BY MR. CLOUTIER:

21 Q. Mr. Winchester, I don't remember exactly
22 this table, but Mr. Tremaine put up a table like this,
23 and there are a few of them in your testimony. A
24 couple of questions?

25 Were you intending by presenting these

1 tables for the information in them to imply or
2 actually make any criticism of the Division for their
3 enforcement actions against any of these operators?

4 A. Absolutely not.

5 Q. And do you intend, do you purport that on
6 your notes column that every single enforcement action
7 that the Division has taken is described there and
8 that there can't be any others?

9 A. No. This is all, as far as I know, in terms
10 of the knowledge that we have.

11 MR. CLOUTIER: Okay. That's all.

12 HEARING OFFICER ORTH: Thank you.

13 Commissioner Ampomah, do you have
14 question?

15 EXAMINATION

16 BY COMMISSIONER AMPOMAH:

17 Q. Good morning, sir. I'm William Ampomah, a
18 professional engineer from New Mexico Tech. Nice to
19 meeting you, sir?

20 A. Nice to meet you, sir.

21 Q. So I do have just probably two or three
22 questions for you. So if we can bring up your
23 testimony, direct testimony. I want to start with
24 Page 10 of the direct testimony?

25 A. Yes sir, I have that.

1 Q. So you were asked a question about can you
2 go into more detail why increasing the FA levels
3 impact small operators. And you said -- you answered:
4 The surety market is not just tighter or more
5 difficult for small operators. It is unavailable?

6 Can you explain a little bit on that to
7 the Commission?

8 A. Certainly. And I will do this to the best
9 of my understanding, based on education that I've
10 received from my membership.

11 The surety market, again, to my
12 understanding, is essentially not available for the
13 smaller operators because they have made concerted
14 decisions not to get involved in those companies for
15 whatever reasons of their analysis.

16 And from that standpoint, what I hear
17 from operators is that our options are cash. And to
18 expound upon that a little bit more, it's daunting
19 when a \$25,000 bond for one well is to be increased
20 600 percent.

21 We're doing a paradigm shift to
22 essentially a very high number bonding level, which I
23 believe our members don't agree with in terms of that
24 number. I think it's been clear and we wanted to be
25 clear from the get-go, even in our prior negotiations,

1 that we don't agree with the \$150,000 amount.

2 Q. Thank you, sir. Now, so based on your
3 testimony, you did a lot of surveying, you know, to
4 get your members' thoughts about these proposed rules?

5 I want to know, is there any bonding
6 options that your members really recommend to the
7 Commission for a consideration?

8 A. I'm sorry, you're asking for are there any
9 other options, is what you're saying?

10 Q. Yeah. So you said that your members totally
11 disagree with the \$150,000?

12 A. Yeah.

13 Q. So based on the survey, did you ask your
14 members the type of bonding levels that they will be
15 comfortable with? Especially we all agree that this
16 is a problem.

17 A. I think that I would have to defer back to
18 my board in order to get direction to put out any sort
19 of a number. But that being said, I don't think we in
20 any way want to close the door about talking about it.
21 Does that make sense?

22 Q. Yeah, that makes sense. So, you know, the
23 commissioners have tried very hard to more or less
24 push for some consensus between all the parties. And
25 definitely NMOGA is open to more or less discuss more

1 with the Division and also with the applicant?

2 I want to ask if IPANM is also on board
3 to discuss and see if there could be any consensus
4 between all the parties.

5 A. Certainly. But I want to be very clear and
6 nuanced because of what we are talking about in our
7 direct testimony. I think the willingness is to
8 definitely talk, but there are still some fundamental
9 differences. And there's also still the question
10 looming out there of whether or not the Commission has
11 the authority.

12 So I don't want to say that we're going
13 to come into it and be able to necessarily reach a
14 number. However, I think that discussion is helpful
15 for everyone. I don't know what the outcome would be,
16 but I certainly want to make sure that that is
17 something that we are involved with, but also, you
18 know, not in any way -- making clear that our
19 fundamental arguments still are in play. Does that
20 make sense?

21 COMMISSIONER AMPOMAH: Yeah, that makes
22 sense. Thank you so much for your time. No further
23 question.

24 THE WITNESS: Okay. Thank you.

25 HEARING OFFICER ORTH: Thank you.

1 Commissioner Bloom, do you have a
2 question?

3 COMMISSIONER BLOOM: Yes. Thank you, Madam
4 Hearing Officer.

5 EXAMINATION

6 BY COMMISSIONER BLOOM:

7 Q. Mr. Winchester, good morning?

8 A. Good morning, sir.

9 Q. Just a couple questions for you. At the
10 outset here today, did Mr. Cloutier state that you
11 would reply to OCC criticism that IPANM hasn't engaged
12 with applicants?

13 A. Would I agree that we haven't engaged in
14 conversation with the applicants?

15 Q. I can repeat that. So at the outset here
16 today, did Mr. Cloutier state that you would reply to
17 OCC criticism that IPANM hasn't engaged with
18 applicants?

19 A. Yes. I believe we talked about that.

20 Q. Okay. Do you know who made that criticism?

21 MR. CLOUTIER: Criticizing the Commission?
22 I said that before the OCC -- I meant to say that
23 IPANM had been criticized before this Commission.
24 And if I misspoke, that is my sincere apology.
25 Because I have not heard any criticism from the

1 Commission. And if anybody deserves the wrath for my
2 misstatement, it's me, not Mr. Winchester.

3 But I wish to be excruciatingly clear,
4 there has been criticism in these proceedings, but it
5 has not come from any of the three commissioners.

6 COMMISSIONER BLOOM: Okay. Thank you,
7 Mr. Cloutier. And I may have misheard, too, so the
8 record would certainly clear that up.

9 BY COMMISSIONER BLOOM:

10 Q. I think if anything, I expressed
11 frustrations, and I think it was that NMOGA's
12 witnesses made recommendations that weren't backed
13 with implementable solutions or there was no redline
14 for at least some of them, and that witnesses did not
15 provide, in some cases, data or evidence to back their
16 recommendations. Does that sound right to you?

17 A. I think the question is whether or not
18 financial assurance works. And I think what we are
19 saying is that, based on the history and base that we
20 know who predominantly are the bad actors, the only
21 outcome going down this particular road is going to be
22 punishing good actors, and we're not going to be able
23 to collect on the bad actors.

24 It's, I think, the foundation of what we
25 are representing, you know, from my IPANM's

1 perspective.

2 Q. Okay. Thank you for clarifying your
3 position. Yeah, just in general, and I won't speak
4 for the other commissioners, but I've been through a
5 number of rulemakings, and I think sometimes we're put
6 in an uncomfortable position to have to draft new
7 material from things like a loose recommendation,
8 without suggested language, and perhaps more
9 importantly, without the data or other material to
10 back up those provisions. Does that make sense?

11 A. Correct. And I will say that the
12 discussions since the beginning of this rulemaking
13 have been clear from the Commission to focus on some
14 of those potential changes or recommendations. And I
15 think we're very much open to that discussion, which
16 gets us into more specifics.

17 That being said, if there is agreement,
18 I still think that fundamentally, you know, IPANM
19 reserves some serious questions about the entire
20 process. Does that make sense?

21 Q. Yeah, absolutely. Thank you. And just
22 lastly, my position at least is that parties don't
23 have to engage prior to coming here. I mean, there
24 might be times when that makes things easier for us if
25 there's some commonalities that you've found. I

1 understand that sometimes it makes sense for parties
2 to talk, but not always. Ultimately, that's up to
3 you. Is that clear?

4 A. It's up to the applicant. It's up to
5 whoever is submitting the rulemaking under those
6 rules. But certainly, given the extensive potential
7 impacts of this rule, you know, coming out with
8 essentially something that's this drastic, it's
9 probably better, I don't know, to talk about paradigm
10 shifts to the rule itself before we even present a
11 proposal that is just, you know, devastating to our
12 members.

13 COMMISSIONER BLOOM: Okay. I certainly
14 understand that as your position as well.
15 Mr. Winchester, thank you for your time. No further
16 questions.

17 THE WITNESS: Thank you.

18 HEARING OFFICER ORTH: Thank you. Chair
19 Chang, do you have questions?

20 EXAMINATION

21 BY CHAIR CHANG:

22 Q. Forgive me. I think I just missed this.
23 But were you saying that -- you had said something
24 about members needing to put up cash instead of bonds;
25 is that correct? Or something --

1 A. Yes, sir. I think, you know, when the
2 surety market is not there, the requirement is a cash
3 bond, to my understanding. So, yeah, \$150,000 per
4 well marginal.

5 Q. And I can certainly understand how that
6 would be an alarming or at least a concerning change
7 for your members?

8 We explored the rule there that said
9 insurance was also available as an option. Have
10 members considered or explored what insurance policies
11 may look like?

12 A. I can't speak for the members directly, but
13 I know that that is an avenue that anecdotally is
14 something that some are considering or looking into if
15 it's permissible.

16 I also do think there is confusion
17 whether or not the bond in this case is essentially
18 insurance. I think there is a difference, but I think
19 the members would agree with that. I'm sorry if I
20 created more confusion in answering that question.

21 Q. No, that's okay. Well, I certainly
22 understand that there is some concern about whether or
23 not the surety market and/or the insurance market will
24 be robust enough to facilitate the type of bonding
25 that we're asking for here. And I certainly

1 understand that if you had to put this amount of
2 financial insurance up in cash up front, that that
3 would be a recognizable burden?

4 But presuming that the financial
5 markets, whether through insurance policies or whether
6 through bonds, come up with a way to service this
7 market that will now exist if the rules are adopted,
8 typically the cost to bond and/or the cost to insure
9 the premiums are only a fraction, right, of the
10 overall cost?

11 And so this is where I'm struggling a
12 little bit. Because if you're telling me that an
13 operator can't afford the fractional premiums, isn't
14 that operator also by definition then going to
15 struggle to find the cash to actually plug the well
16 when the well is ready to be plugged?

17 A. I think, Mr. Commissioner, the -- and,
18 again, I'm not an operator, so I can't speak for them.
19 I think the financials based on cash flow for
20 companies vary. And I don't know if some of those are
21 based off of future returns. I don't know if some of
22 that money otherwise would be used in operations as
23 opposed to be hanging out there. You know, that's --
24 I think therein lies the question.

25 Q. So let me explore a different idea, and this

1 is going to be less -- sort of more directed at
2 something hopefully the attorneys can address at some
3 point. But I wanted to sort of use this format to try
4 to get a thought out there?

5 It seems to me that there has been a lot
6 of discussion around who -- you know, whether there
7 are good actors or bad actors. And I wanted to
8 explore whether or not there are perfectly good faith
9 operators, who, for misfortunes outside of their
10 control, whether it's a serious personal health
11 crisis, whether it's something else -- aren't there
12 good operators who, with absolutely good faith
13 intention, who end up, for some misfortune outside of
14 their control, being unable to plug a well, whether
15 it's through -- let me just start with, isn't that a
16 possibility, that there are good actors out there who
17 intended to do the right thing, but for reasons
18 outside of their control just simply couldn't?

19 A. Again, speaking on behalf of the members, I
20 don't know the scenarios that are out there that
21 impact all of this. And I'm not trying to in any way
22 be disrespectful or not answer the question. I
23 just -- I can't speak again when it comes to that.

24 Q. Sure. And I'm going to just raise a
25 hypothetical that you probably won't be able to

1 answer, but hopefully we'll get the attorneys to think
2 a little bit about how to address some of at least
3 where I'm coming from?

4 I certainly don't think that the intent
5 of any of this bonding is to punish anybody, but to
6 protect from misfortunes that can happen to both good
7 and bad actors. We've talked a little bit earlier in
8 the proceedings around drivers, how regardless of how
9 careful or not, or skillful a driver is, the state
10 requires everybody to bond to protect against -- or
11 not bond, but insure, against liabilities and risks,
12 regardless of how -- I mean, I don't think the state
13 is making any sort of judgment that drivers are
14 driving in either good or bad faith.

15 And similarly, in my capacity, and
16 you're welcome to take this as a hypothetical, so I'm
17 not introducing facts, not in evidence here. But in
18 my experience as the director of the Mining and
19 Minerals Division, I knew of an operator who, I'm
20 sure, there's absolutely no reason for me to believe
21 that he didn't intend to do the absolute right thing
22 of reclaiming his mine, but the man had a heart
23 attack, and so left the state with no choice but to go
24 after a bond as a way to reclaim that mine. Not
25 because he was -- I'm sure not because he was a bad

1 actor, but because life happens to all of us.

2 So, you know, I'm not even going to ask
3 you to answer -- well, you're more than welcome to
4 comment back. But I just want to leave that as a
5 thought that hopefully attorneys can address. I
6 certainly don't want the -- or I think it's -- from my
7 perspective, I don't know that the good actor/bad
8 actor helps me in making this decision. Because I do
9 think -- because it seems like what is important here
10 is how do we protect from risk that sometimes befalls
11 all of us even when we're doing absolutely all the all
12 the best. Right?

13 And so all I'm asking here to try to
14 form this into the form of a question is, isn't it
15 plausible that there are perfectly good actors acting
16 in perfectly good faith, but who, in the oil and gas
17 context, but for some misfortune outside of their
18 control, end up being unable to plug a well?

19 A. Mr. Commissioner, thank you. I appreciate
20 that insight. The only response I will say is that as
21 we move forward, as IPANM moves forward, I think some
22 of the witnesses will get further into the role that
23 the reclamation fund pays -- plays in this, both pays
24 and plays in this. And I think that that's something
25 just to draw attention to. And it's a piece of this,

1 whether we want to acknowledge that or not.

2 CHAIR CHANG: No, fair enough, fair enough.
3 That's okay. Thank you, sir. Very, very valid
4 point. That's all I have.

5 HEARING OFFICER ORTH: All right. Thank
6 you, Chair Chang.

7 Any reason not to excuse Mr. Winchester?

8 MR. CLOUTIER: No, Madam Hearing Officer.

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

11 THE WITNESS: Thank you all.

12 MR. CLOUTIER: Madam Hearing Officer,
13 Ms. Tripp will handle the examination, but IPANM
14 calls Kyle Armstrong next. We've set aside 30
15 minutes for his direct. I believe he'll have some
16 surrebuttal that will probably take us right up to
17 the lunch hour.

18 HEARING OFFICER ORTH: Terrific. Thank you.

19 Would you spell your first and last
20 name, please.

21 THE WITNESS: Yes. Kyle Armstrong, K-Y-L-E,
22 A-R-M-S-T-R-O-N-G.

23 UNIDENTIFIED FEMALE: Do you swear on affirm
24 to tell the truth?

25 THE WITNESS: I do.

1 HEARING OFFICER ORTH: Thank you.

2 Go ahead, Ms. Tripp.

3 MS. TRIPP? All right. Thank you, Madam
4 Hearing Officer.

5 KYLE ARMSTRONG,
6 having first been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. TRIPP:

9 Q. Mr. Armstrong, can you hear me okay?

10 A. Yes, I can.

11 Q. Okay. Great. And we have a couple slides
12 that we've prepared to kind of guide your direct
13 testimony here. So I'll share those this for the
14 COMMISSION'S benefit?

15 But can you introduce yourself to the
16 Commission in terms of your education, your employment
17 experience.

18 A. Sure. I'm the president and CEO of
19 Armstrong Energy Corporation, based in Roswell,
20 New Mexico. It's a small, primarily family-owned
21 company. I hold a JD. I practiced law for a very
22 brief period of time, but decided that was not the
23 direction I wanted to continue in my life. So I
24 certainly can't speak as a legal expert or should not
25 be relied on for that.

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1 I have been in the industry, exposed to
2 it my entire life; been with Armstrong Energy directly
3 for about 12 years. I took over as president and CEO
4 in 2020. I've held various functions within the
5 industry. I'm the past president of IPANM. I'm on
6 the board of directors for NMOGA. I served on
7 Governor Lujan Grisham's energy transition team, as
8 well as very briefly on the State Land Office energy
9 advisory council.

10 And over the last six years, I think I
11 have been a participant in every single negotiation
12 rulemaking task force, however you want to phrase it,
13 up until this one. So I've had some experience with
14 these.

15 Q. Thank you. And can you tell us a little bit
16 more about Armstrong Energy?

17 A. Sure. As I said, we're a small, independent
18 operator, primarily family-owned, based in Roswell.
19 All of our employees, geologists, engineers, pumpers,
20 are based in or around Roswell.

21 We operate currently about 70 wells.
22 And principally, those have been in southeast
23 New Mexico. We have operated in Texas for brief
24 periods of time in the past.

25 Q. And then in addition to operating wells,

1 does Armstrong Energy have any experience in plugging
2 wells?

3 A. Yes, we do.

4 Q. Can you expand on that a little bit?

5 A. Certainly. So we have, in the last --
6 trying to find a number here real quick. In the past
7 six years, we've plugged and abandoned about 16 wells,
8 and in the last two years, we've plugged four wells.
9 And I believe the cost of those four wells was
10 approximately \$120,000 each, inclusive of remediation
11 costs.

12 Q. So you mentioned Armstrong is a small
13 operator. If you had to describe sort of your
14 business model or how you've grown or acquired wells,
15 what process do you all follow?

16 A. Certainly. So I guess I should establish
17 the company was founded by my father in 1976, and we
18 have operated wells since approximately 1981. So we
19 have quite a bit of experience.

20 We currently employ about 23 full-time
21 employees, a handful of part-time employees. We
22 engage with service companies throughout southeast
23 New Mexico, primarily local; some of the larger
24 national companies as well. But we primarily utilize
25 local law firms, local CPAs, local tech folks. So we

1 are pretty ingrained within our communities.

2 In terms of what we do, historically, we
3 have drilled vertical wells. We have drilled and
4 operated a waterflood. About seven, eight years ago,
5 we acquired a couple of packages of wells from much
6 larger operators and undertook various operations to
7 maximize the productivity of those wells, in addition
8 to drilling some new wells there.

9 We hold interest in about 350 non-op
10 well, which is certainly another big part of our
11 business. And in the last 18, 24 months, we have been
12 actively pursuing opportunities outside of New Mexico.
13 We're participating in a non-op fashion in Louisiana,
14 Texas, Kansas, Oklahoma, are looking for prospects
15 that we can drill and/or operate outside of
16 New Mexico.

17 Q. And so the wells that you acquired in
18 packages, do those typically come from larger
19 operators?

20 A. Typically. An operator will put a package
21 of wells up for either a private sale or on various
22 online auction houses. And we have successfully bid
23 on at least two of those packages, two larger packages
24 in the last seven years. That was a major component
25 of our business for several years.

1 Q. And are those wells that are in the package,
2 are they typically -- are they large producers, or
3 would you consider them marginal, under the
4 definitions of these rules? Why would you want to
5 take on those packages?

6 A. Sure. Typically, it's a mix of both
7 productive wells and others that are, however you want
8 to define it, say lower-producing wells. And we
9 typically look at these for the upside potential in
10 them. Certainly the cash flow and production from the
11 larger-producing wells are what allow us to sustain
12 it.

13 The smaller wells is where the
14 opportunity lies, so it's going to be the smaller
15 producers. We've re-completed a number of wells and
16 dramatically increased production. We are able to
17 typically operate them more efficiently. So that's
18 sort of where the meat on the bone of those particular
19 transactions are, is taking existing wells and
20 improving upon them in some form or fashion.

21 Q. And you referenced earlier that you've been
22 involved in many different iterations of rulemaking or
23 legislation between the state and the oil and gas
24 industry. Specific to the proposed rules of this
25 proceeding, have you reviewed those?

1 A. I have.

2 Q. Okay. And do you have any concerns with
3 them on behalf of Armstrong Energy or from your own
4 personal experience?

5 A. Well, I have many concerns; if I can say,
6 four primary ones. First being, I don't see this as
7 being the vehicle for accomplishing the most good with
8 the least amount of harm.

9 More specifically, if I could point to
10 three different things, the definitions of beneficial
11 use do not capture or would leave out wells that we
12 operate that are productive and economic.

13 The definition of marginal wells under
14 this, again, requires greater flexibility. We have
15 wells that we have not been able to produce for a
16 variety of reasons that would cause a well to be
17 marginal. And I would say I object to the thought
18 that these are high risk in general.

19 As I said, we've operated for about 44
20 years. We've never orphaned a well. So the marginal
21 wells that I hold now, I don't think under any logical
22 or reasonable approach should be considered high risk.

23 And the third and my primary concern is
24 with the threshold that would require full bonding or
25 single well bonds for the entirety of our portfolio.

1 Q. And so what are some of the -- if these
2 rules were adopted, increasing financial assurance for
3 marginal wells or potentially for an entire portfolio
4 for an operator, what effect do you foresee?

5 A. Well, first, and with regard to individual
6 bonds, we currently bond through a surety company.
7 We've had a long-standing relationship, and we pay a
8 premium on those bonds every year.

9 I actually, just this morning, had
10 inquired of our company what the effect or what the
11 cost of putting these new bonds into place would be.
12 And if I focus solely on just the marginal well
13 component of it, we calculate that to be about an
14 additional \$1.5 million.

15 And their response was, certainly, there
16 will be additional collateral required. And I would
17 imagine, just from a business standpoint, given that
18 it exposes them to additional risk, to say nothing of
19 the cost of, perhaps, changing the price of these
20 bonds every year, that transactional cost of them will
21 be higher, and that will certainly be passed along to
22 us.

23 Q. And when you say "additional collateral,"
24 how would Armstrong fulfill that? Is that obtaining a
25 letter of credit? Is it designating property during a

1 lien-over?

2 A. As it currently stands, we don't actually
3 have to provide collateral on the basis of our balance
4 sheet. But we are told if we have to put this into
5 place -- and again, that solely pertains to the
6 marginal wells, not the entirety of our portfolio --
7 we would be required to do that. We have not had
8 discussions as to how that would look. I imagine it
9 would probably involve cash to a certain degree.

10 Q. So if you have to take on an additional 1.5
11 million in bonding just for your marginal wells, not
12 for your entire portfolio, have you looked at what
13 kind of effect that might have on those marginal wells
14 in terms of how you're going to operate them, or
15 whether it makes economic sense to continue operating
16 them?

17 A. Well, certainly in certain cases it would no
18 longer make sense to operate them. You know, every
19 additional cost that's placed on it, a low-volume
20 well, makes it uneconomic that much quicker.

21 So we would certainly have to look at
22 those wells to determine which ones we could continue
23 to do economically, which ones -- particularly if
24 they're put at risk of exceeding that threshold, we
25 would need to plug, thereby creating waste, thereby

1 taking away some of our revenue stream, taking away
2 revenue streams from the State of New Mexico, from
3 private mineral owners, from our working interest
4 partners who are in this well, who we owe certain
5 contractual obligations to.

6 Q. And then, have you had a chance to think
7 about if Armstrong Energy were to exceed that
8 15 percent threshold, what kind of impact you would
9 have?

10 A. Substantial. This is the part of this that
11 I really am unclear as to the intent or how they think
12 it's going to, candidly, protect against orphaning
13 wells.

14 You know, in my case, we operate roughly
15 66 oil and gas wells, a handful of disposal and
16 injection wells. So if I had to go get single-well
17 bonds for all those -- and under my current reading of
18 this, we would exceed the 15 percent threshold -- I
19 essentially need to have bonding of getting close to
20 \$12 million inclusive of other existing bonds.

21 We pay currently about 3 percent of the
22 face value of a bond, so we're going from under a
23 hundred thousand dollars into the hundreds of
24 thousands of dollars. And as I indicated previously,
25 it seems likely to me if they're going to have to take

1 on that much risk, they're going to charge me more for
2 it. So we could be looking into the 500-, 600,000,
3 perhaps more. There's really no way of knowing, which
4 is a concern.

5 However, the bigger -- there are two
6 things at play there. One is the premiums, the bond,
7 which, if we had to, we could fund that. The bigger
8 issue is, what collateral is going to be required. If
9 we're looking at \$12 million in bonds, do we have to
10 provide 25 percent, 50 percent?

11 We would have to take a very long, hard
12 look at what we operate, what our opportunities are to
13 divest some of those wells, which I think once this is
14 in place would be nonexistent. And we have to look at
15 where else we're going to operate. There is a certain
16 threshold where I can no longer justify operating
17 within New Mexico. If this isn't it, it's pretty dang
18 close to it.

19 Q. And so, you know, that at least 360,000,
20 maybe up to 600-, 700,000 in premium, that's an annual
21 cost for the life of those wells, as long as Armstrong
22 is the operator; is that right?

23 A. That is my understanding of. There appears
24 to not be some clarity within the rule as to when a
25 bond can be released, what takes us out of the

1 threshold. What is the timing for that.

2 If I perhaps re-complete a well that
3 would take me out of the marginal status or above
4 15 percent, do I have to operate that well for an
5 initial 180 days, 360 days before I can apply to have
6 it removed? And during that time, do I have to
7 maintain that fully bonded level at quite an extensive
8 cost?

9 You know, putting down that amount of
10 cash for an operator of our size, candidly, it will
11 cost jobs. There's no question in my mind about that,
12 unfortunately. And I think most of my employees are
13 concerned and aware that that could be the case.

14 Q. And so your concern is that even if you
15 improve production for those marginal wells, there's
16 really no guarantee under the rules that that bond
17 comes back; is that right?

18 A. As I understand, and from listening to a
19 little bit of the prior testimony, these are
20 irrevocable bonds from the standpoint of it sets
21 certain obligations that they shall not be released
22 until -- and I don't have the exact language in front
23 of me, but until they have essentially been P&A'd and
24 fully reclaimed. That's a process that can take
25 months and in certain cases, from a reclamation

1 standpoint, years.

2 At what point will they then release
3 that bond is not clear to me. Certainly there's going
4 to have to be some interaction between the OCD and the
5 surety companies. And if we're at a point now where
6 the OCD is having to oversee hundreds if not thousands
7 of additional bonds -- and I've been told that they
8 are understaffed on a number of levels, and I think
9 that is generally understood -- good luck with being
10 able to process those requests in a timely manner.

11 We're talking about setting it to annual
12 increases. I assume the OCD will have to then
13 undertake every year an attempt to determine if
14 everyone is in compliance. So, it seems to me it
15 creates a huge bureaucratic headache from the OCD's
16 standpoint. There are much more efficient, less
17 harmful ways of going about this.

18 Q. And just to be clear, aside from the
19 hundreds of thousands in premiums that's out of
20 pocket, you're never going to see any of that back,
21 does an operator have access to the sums that are
22 secured by the bond when it comes time to actually
23 plug the well?

24 A. If we're having to put up cash as
25 collateral, then no.

1 Q. I think you mentioned earlier about how
2 you're interpreting marginal wells. And your direct
3 testimony certainly, you described some concern with
4 the days requirement which may constrain production.
5 Could you expand on that?

6 A. Certainly. You know, we have had a number
7 of wells -- we operate in areas that are not typically
8 considered core basin, and so the infrastructure, the
9 gas takeaway infrastructure areas in those locations,
10 is limited. Typically, we have maybe one midstream
11 company that will provide gas takeaway.

12 And so we've had instances where the
13 midstream company has informed us that they cannot
14 take our gas for a period of time; that can range from
15 a few days into I believe we had one well, it was
16 about 117 days out of 180 that we were not able to
17 produce. And these are wells that are otherwise
18 capable of production, meeting the minimum production
19 threshold. So there is certainly not flexibility to
20 address that in the rules as they are currently
21 written.

22 Q. In terms of these gathering systems, is it
23 just one component or is it a series of equipment, and
24 any disruption in the functioning of that equipment
25 could affect the ability to process gas?

1 A. I'm sorry. Just to clarify, you're talking
2 about on the midstream side, not on my operational
3 side.

4 Q. Yes?

5 A. There are any number of reasons why a
6 midstream company might curtail production from a
7 given operator or given area.

8 Plants have to regularly go down for
9 maintenance. Pipelines are in need of repair. It
10 sometimes happens that two midstream companies
11 contract to take one gas to the other and sometimes
12 those contracts fall apart or are not renewed, and so
13 that particular gas company may have to find a new
14 location to go with the gas.

15 Q. And so your concern as an operator is that
16 those are circumstances that are completely outside
17 your control, which could have potentially devastating
18 effects on the financial assurance that's required for
19 the wells that are affected?

20 A. Absolutely.

21 Q. Do you have some other concerns regarding
22 the effects of the proposed rule and some of the
23 market-based decisions that operators make?

24 A. Sure. So, again, going back to this
25 threshold, we, over a period of time, built the

1 company, made additional hires on the basis of these
2 acquisitions.

3 If I am somebody who is below that 15 to
4 30 percent threshold, and I want to go acquire wells
5 from a larger operator, who is not going to put in
6 place the time, capital that we do, because it's
7 simply not something that's within their area of
8 interest for whatever reason at that moment, if I look
9 at a package of wells that includes, and inevitably
10 does include, marginal wells, and that's going to take
11 me over that threshold where I have to fully bond
12 every single well, there's not a chance I'm going to
13 do that.

14 I have to pay the money up front to
15 purchase the wells. I need the money to go and work
16 them over. And now, if I'm having to put up
17 potentially millions of dollars in order to bond
18 those, it's not going to happen.

19 And so what will eventually occur is
20 because those are not wells that that operator -- by
21 definition, they're trying to sell them -- they're not
22 particularly interested in, they're not going to take
23 the activities, the uphole re-completions that we do,
24 it will create waste. And again, that is the
25 detriment of the state.

1 Q. And can you explain a little bit more why
2 you think it'll create waste? I guess the problem is
3 that there's nowhere for these marginal wells to go
4 after the rules imposed; is that right?

5 A. That's correct. Again, many wells may not
6 uphold potential that it is not worth their
7 engineering or geology time to look at, just to meet
8 their investment thresholds. It may not be an area of
9 interest to them, so they're not going to go and
10 complete those.

11 And if we have severely cut down on the
12 companies like mine that could otherwise acquire those
13 packages, the only logical conclusion is that they are
14 going to be plugged, and very few of them, if any, are
15 re-completed.

16 Q. Are there other purposes or uses for
17 vertical wells that you think this rule would
18 adversely affect?

19 A. Certainly. We were approached by one
20 company, and I'm not a practicing as a lawyer, and I
21 certainly could not explain the engineering of this,
22 but one company that was interested in utilizing a
23 wellbore to use gravity, weights and gravity to
24 generate energy renewables, I would understand it. If
25 we're not able to produce that well, and we have to

1 put bonding into place, that is a cost to me every
2 year to not be able to utilize that wellbore until
3 such time as the regulatory environment will allow for
4 it, the technology. All those sorts of things would
5 prevent us from doing that.

6 You know, carbon capture is certainly
7 another thing that's been discussed recently. And
8 utilizing an existing wellbore for that purpose is
9 certainly much less potentially harmful to the
10 environment than drilling a new well. So there are
11 multiple different reasons. We have utilized existing
12 wellbores for SWD or injection purposes. To put those
13 in place tends to take a fair bit of time from a
14 permitting standpoint, from an evaluation standpoint.
15 And, candidly, there are times where it's not needed
16 yet that we wouldn't pursue putting in an injection
17 well at that particular moment.

18 Q. And so it sounds like -- and we've heard in
19 other parts of this proceeding about the timing and
20 the way operators manage their wells. Would there be
21 a reason, so in addition to preventing waste, when
22 it's advantageous for a well to be idle rather than
23 immediately temporary abandoned or plugged, especially
24 considering your recent experiences with market prices
25 for gas?

1 A. Sure. Absolutely. Now, one, it's a need to
2 get regulatory certainty on how some of these
3 wellbores could be used. But to your question
4 about -- I think goes more to development of full
5 potential and whether or not -- why an operator would
6 not go in and immediately do that.

7 Just by way of example, I have a gas
8 well which is not a large -- it does not produce a
9 large volume of gas. We've identified uphole an
10 interval that we think could be productive for gas.
11 But as one of my geologists would say, it's a hole and
12 it is dark down there.

13 It's not as simple as going in and
14 saying we're in a complete uphole. There's never a
15 guarantee that that's going to work, so I'll have to
16 go spend -- it might be anywhere from 50,000 to a
17 quarter million dollars to re-complete uphole.
18 There's always the potential that something could,
19 candidly, go wrong, and we lose that wellbore
20 entirely.

21 And then the third part of that that you
22 got to is commodity prices. I don't think any
23 prudent -- it's sort of common sense. I think a
24 prudent or reasonable businessman is not going to say,
25 "I want to go get this additional production. I'm

1 making a little bit of money, maybe it's not right
2 now, but I want to put additional capital at risk to
3 get this additional production and not receive what I
4 view as a reasonable price for it."

5 And, in fact, we have run into
6 situations where there's such a glut of gas, we're
7 having to pay to have gas taken away. So under those
8 circumstances, why would I possibly consider going
9 uphole until it is necessary?

10 And again, if I go uphole, it doesn't
11 work, it's likely that well is going to be plugged and
12 we've created waste in the form of those downhole
13 reserves that we have abandoned.

14 Q. And so you talked a little bit about
15 reasonable prudent operator, and you mentioned earlier
16 that Armstrong owns some non-operating interests, so
17 do the proposed rules create a conflict for an
18 operator who has a responsibility to other working
19 interest owners?

20 A. Absolutely. So as the operator, we are
21 responsible for fully funding the cost of bonding a
22 well or a blanket bond. And we have, in our case,
23 working interest owners and most -- close to all our
24 wells, but most of our wells -- and, in fact, we
25 typically own anywhere from 25 to 40 percent, we own

1 100 percent in a few. Those costs, those bonding
2 costs, are not passed along to the working interest
3 owners.

4 What costs we can pass along are defined
5 by JOAs, joint operating agreements, contractual
6 obligations between the operator and the working
7 interest owners that have been in place for, in some
8 cases, decades.

9 So we're not -- even though we would not
10 be fully responsible for the cost of plugging, those
11 costs get posted on to the working interest owners.
12 The cost of -- and the collateral that would be
13 required falls solely on Armstrong as the operator.

14 You know, the other issue I see there,
15 again, going back to this certain threshold, if I have
16 working interest owners in a well that produces, let's
17 say, 200 barrels a day and by no means considered high
18 risk or marginal, but because other wells -- a
19 sufficient number of wells are marginal to put me over
20 that threshold, and I now have to put a "150,000 bond
21 on that particular well, I'm just eating that cost.

22 And there seems to be no reason to
23 impose that entirely on me. It seems that -- and,
24 again, this is the issue with the well. It, in fact,
25 puts another 85 percent of wells at risk of being

1 orphaned, and I'm one of those working interest owners
2 that, well, it's created waste, it's going to put them
3 in a position where they have lost their economic
4 benefit, and I could imagine a situation where it
5 would make us potentially liable to those working
6 interest owners. It's a problem I don't see a
7 solution to in this.

8 Q. And so it sounds like from your perspective
9 as an operator, not only would the proposed rules
10 increase waste, but they'd also potentially put more
11 wells at risk of being orphaned with that 15 percent
12 threshold?

13 A. And, again, I struggle to figure out -- if
14 the intent is to do the most good with the least
15 amount of harm, this does not fit within that box.
16 Because if you had an operator -- I'm not going to
17 speak as to myself. But an operator that had 100
18 wells, 15 of which were marginal, and they therefore
19 have to bond the additional, 85 wells, it seems to me,
20 if the concern is -- they're going to have to put a
21 lot more capital. If the concern is they don't have
22 the ability to financially plug those 15 wells, pretty
23 good chance they're not going to have the financial
24 ability to provide collateral on those additional 85.

25 So instead of minimizing the amount of

1 risk and amount of harm, we've expanded it. It's
2 going in the complete opposite direction, in my view.
3 The only logical reason I can see this is to try and
4 force operators to plug wells so that they get below
5 that 15 percent. So, in fact, it's an incentive to
6 create waste, not to lower risk.

7 MS. TRIPP: Okay. Thank you, Mr. Armstrong.

8 This concludes the portion of
9 Mr. Armstrong's direct testimony. I'll be moving to
10 some surrebuttal.

11 BY MS. TRIPP:

12 Q. And so, Mr. Armstrong, another witness in
13 this matter, Mr. Purvis, at page 41, lines 4 through
14 14, he argued -- you had opined, you'd offer some
15 testimony in your direct about uphole development, and
16 I think we covered that just now?

17 But Mr. Purvis argues that increasing
18 financial assurance works in the opposite direction to
19 encourage uphole development, but setting aside the
20 frequency of the scenarios and the relative cost in
21 competition. And this was in reference to your
22 explanation that there are wells and there are good
23 reasons why a well might remain idle.

24 And since then, you've gone back and
25 you've looked at those marginal wells that you were

1 concerned about, and this is represented on this slide
2 before you. Can you explain a little bit about the
3 circumstances for these wells? And I'll go to the
4 next slide for you.

5 A. Certainly. So the Hoover 27 Number 1 was a
6 part of a group of wells called the Hoover wells that
7 has some good producers in it, and it has some smaller
8 volume producers among it.

9 One of those wells, the Hoover 27 Number
10 1, was shut in for a period of time because we didn't
11 have a gas connection that we could utilize. So that
12 wound up being used for those purposes.

13 If you go back to the prior slide for
14 just a moment. The Chaparral 14 Fed Com Number 1 was
15 the well I indicated had uphole potential.

16 I believe Mr. Purvis, in his testimony
17 stated, if I can read from it please, that this
18 suggested policy works in just the opposite direction
19 and has motivations to develop more promptly and thus
20 serves the purposes of the OCD.

21 My understanding is one of the purposes
22 of the OCD is to prevent waste, which I hope I've
23 pretty well established this would have the opposite
24 effect.

25 So I don't think it would be the purpose

1 of the OCD to force an operator to go uphole and not
2 get the full economic benefit of those of that uphole
3 potential. And there's several of these wells I think
4 I could point to that, for a variety of reasons, are
5 still economic, that we don't produce every single
6 day.

7 For instance, the Ruth 20 Number 1 is
8 another well that we attempted a re-completion on. It
9 didn't particularly work, as is sometimes the case.
10 We tried pumping it and found it was uneconomic based
11 on the water production and some other factors.

12 We had it shut in for a period of time
13 and found that it was building up pressure and would
14 periodically flow on its own. So it's one that we
15 don't produce every single day or even close to that,
16 but it's a very low maintenance well. It produces
17 produces oil. It is a state well so provides
18 royalties to the state. But if I have to go and place
19 those bonds on that and have that additional cost,
20 there's a certain point where that's not going to be
21 productive any longer.

22 Q. Thank you. And then I just wanted to make
23 sure that when you mentioned about commodity prices or
24 gas prices, I mean, to pay people to take away, does
25 this graph sort of capture the current situation or

1 circumstances in terms of gas prices, which were
2 negative in 2024 for 109 days?

3 A. Sure. Certainly. We are a price taker, not
4 a maker. We have little to no ability to influence
5 the price that we receive for our products. And so,
6 in the current environment, we, in many cases, receive
7 pennies for each MCF of gas produced.

8 If not, in certain instances, we have
9 had instances where you have had to pay to have the
10 gas taken away to the tune of hundreds of thousands of
11 dollars in a couple cases.

12 Q. And then I wanted to allow you one chance
13 before we break for lunch. Mr. Purvis, pages 49 to
14 50, responded to your argument that the proposed rules
15 is going to disrupt and affect transfers. And you
16 touched on that a little bit. But one thing that he
17 adds is that he calls these transfers of packages of
18 wells from large operators to small operators to be
19 high-risk transfers. And so do you have a response?

20 A. Well, I've got 44 years of history that
21 indicates that's not the case. You know, I believe
22 Mr. Purvis has also previously stated that these are
23 the operators that will be missed the least.

24 That certainly is not the case within
25 our communities. That's the sort of comment, frankly,

1 that can only be made by somebody that doesn't live
2 here and is only looking at spreadsheets, that doesn't
3 see the larger picture.

4 I find his comments, just thinking in
5 terms of my employees, highly offensive, borderline
6 reckless. It will create waste, it will cost jobs and
7 to minimize the impact on those communities is beyond
8 ridiculous. I apologize, but I can't put it any other
9 way. It's something that angers me quite a bit.

10 MS. TRIPP: Well, thank you, Mr. Armstrong,
11 for your time today and for being there in person.

12 That concludes Mr. Armstrong's direct
13 and surrebuttal examination. I'll proffer the
14 demonstrative slides for surrebuttal and
15 Mr. Armstrong's direct testimony, for the record.

16 HEARING OFFICER ORTH: I'll pause for a
17 moment in the event someone has an objection.

18 They're admitted.

19 (Admitted: IPANM Armstrong Direct,
20 Surrebuttal Testimony and Demonstrative
21 Slides.)

22 HEARING OFFICER ORTH: Thank you, Ms. Tripp.

23 Thank you, Mr. Armstrong.

24 We're going to break for lunch, return
25 at 1:00, and we'll begin your questioning then.

1 (Lunch recess from 11:57 a.m. to.
2 1:00 p.m.)

3 HEARING OFFICER ORTH: Mr. Armstrong, would
4 you join us again.

5 Ms. Fox or Mr. Tisdel.

6 MR. TISDEL: Yes, Madam Hearing Examiner.
7 Just a few questions for us.

8 CROSS-EXAMINATION

9 BY MR. TISDEL:

10 Q. Good afternoon, Mr. Armstrong. My name is
11 Kyle Tisdel. I'm an attorney with the Western
12 Environmental Law Center, representing the applicants
13 in this matter. Really just a few questions for you?

14 Do have your direct testimony with you;
15 is that correct?

16 A. I do not.

17 Q. Okay. We can probably pull it up for you
18 then. Really, the point of the questions is just to
19 clarify some of the things that I heard in the summary
20 of your testimony, and then some of the things in your
21 written testimony as well?

22 And I know some of the well numbers are
23 moving targets, right, so I recognize that. I'm not
24 trying to pin you down on any exact number. I'm just
25 trying to understand a little bit more about those

1 wells relative to just the testimony to try to
2 understand what some of those thresholds are for
3 purposes of the rule.

4 So I think you had a demonstrative slide
5 in your testimony that identified 75 active wells, but
6 I think I heard you say that you had 70 currently
7 active; is that right?

8 A. That's correct. Going back and looking at
9 it, it was fewer than the initial number that I had
10 provided. And that's approximately 66 active
11 producing wells and then a handful of injectors and
12 SWDs.

13 Q. Oh, so 70 total wells, maybe 66 currently
14 producing at some level?

15 A. Correct.

16 Q. Okay, great. And then your testimony as
17 well, both your written testimony and then orally, you
18 know, you talked about the marginal well status. And
19 so, is it your understanding -- there's been some
20 confusion from prior witnesses around what the actual
21 threshold was for their testimony, what they were
22 applying, right? I heard from you that you were
23 available to hear some of that testimony, but maybe
24 not all from prior witnesses, but there has been some
25 confusion.

1 So I just want to understand, when
2 you're speaking of marginal wells, are you speaking
3 about the threshold as defined in the proposed rules?

4 A. That would be 1,000 BOE and 180 days of
5 production.

6 Q. Yes?

7 A. And 180 days, yes.

8 Q. Okay. Wonderful. And then I think Ms. Fox
9 is going to pull up a portion of your direct
10 testimony. And this is specifically at the bottom of
11 page 5 going into page 6, I believe. Yeah, and you
12 can see that testimony there. Looks like actually the
13 bottom of 6 going into the top of 7?

14 But that testimony essentially says that
15 you have five currently wells in marginal status; is
16 that correct? I think that five well count is on the
17 top of Page 7.

18 A. That states seven wells on the Hoover at
19 least produce into com battery. Five of those wells
20 would be considered marginal as a result. Not five in
21 total as to those Hoover wells.

22 Q. Okay. So five of the seven would be in
23 marginal status; is that what I'm hearing your
24 testimony to be?

25 A. I believe that to be the case. I think, as

1 you have indicated, there was some confusion around
2 what was being calculated on what basis. Without
3 being able to go back and look at each specific well
4 as the number of days produced or volumes. I imagine
5 some portion of that would still be considered five --
6 excuse me, still be considered marginal.

7 The five, I think at the point that was
8 drafted, I understood the rule a little bit
9 differently than has been discussed since.

10 Q. And then on the sort of first highlighted
11 sentence there, discusses, I think, maybe a subset of
12 those wells, right? Or maybe just the seven that
13 you're talking about, subsequently, but those wells
14 were shut in for 117 days out of the first 180 days of
15 the year? Do you see that?

16 A. I do.

17 Q. Then you're aware that the day's threshold
18 for marginal status is over the course of a full 12
19 months? And so this would represent half a year of
20 production?

21 A. It is not clear to me if we're talking about
22 a calendar year as to that 180-day production or if
23 it's a constant look-back. That has not been clear to
24 me from my reading of the rule.

25 So if what you're trying to get is we

1 produce the rest of that year, would we be able to --
2 over the 180 days, I think that perhaps could be true.
3 But if it's a look-back, then we would not be in
4 compliance. Actually, that would be -- I'm sorry. We
5 would not reach -- we would not reach the 180 days.

6 Q. Okay. And you had stated you are paying
7 surety currently on the wells that you have, correct?

8 A. Correct.

9 Q. And I think you discussed your premium right
10 now on surety is at 3 percent?

11 A. That's correct.

12 Q. Okay. So if we took those five wells that
13 you're defining as marginal here, assuming that each
14 of those would need \$150,000 single-well financial
15 assurance, that would be \$750,000. Does that sound
16 right?

17 A. In my understanding of math, I think that
18 would be the case, which is always questionable. But
19 again, that five-well only pertains to that group of
20 wells.

21 Q. All right. I also heard in your testimony
22 that since 2019, you had plugged 16 wells; is that
23 correct?

24 A. Yes, sir.

25 Q. Okay. And your average cost of plugging

1 those 16 wells was \$120,000; is that correct?

2 A. That is the four wells that we have plugged
3 over the last two years. And the ones prior to that,
4 I couldn't speak to what the cost of those were. We
5 didn't look that far back, because we thought the more
6 current information was better. And that's the figure
7 we're using for some wells that we're planning on
8 plugging.

9 Q. Okay. And then for the 16 wells, just
10 assuming that that \$120,000 figure is roughly
11 equivalent across for those four wells would apply to
12 those 16, that would be about \$1.9 million that you
13 expended in plugging costs. Does that sound about
14 right?

15 A. I'm not going to be able to do the mental
16 math on that, but I assume you have and that's
17 correct.

18 Q. I'm not going to get into a math contest
19 with you, certainly, because I think I probably would
20 lose that one. But I think my simple lawyer math
21 suggests that that sounds about like the right
22 average?

23 And then I also heard from your
24 testimony, just relative to across your operations, is
25 that you have several wells that are sort of higher

1 producing wells and that the higher production from
2 those wells sort of sustains your operations; is that
3 fair?

4 A. If I used the word "sustain," that's
5 probably not the most accurate word to have used. I
6 mean, they certainly create more of the revenues, more
7 of the net revenues than do the marginal ones.

8 But yeah, many of the marginal, at such
9 point that we can't make money on them, we tend to
10 plug them. So the marginal wells that are still in
11 production contribute to our bottom line.

12 Q. Okay. But is it a fair characterization to
13 say that the higher-producing wells sort of carries
14 the bulk of the water for the wells that are maybe
15 more marginally producing or lower producing?

16 A. That's probably fair.

17 Q. Okay. And then so for the wells that you're
18 plugging, I want to understand a little bit more how
19 you are paying for those wells. Are you paying for
20 those wells out of -- do you have a special fund that
21 is set aside to pay for those plugging expenses?

22 A. No. We pay for plugging out of cash flows
23 and existing cash on hand. But we have not designated
24 funds for plugging purposes.

25 Q. Okay. And that's fairly typical across

1 industry, right?

2 A. As to my understanding, yes, others may
3 handle it differently.

4 Q. And so the higher producing wells that you
5 have a really meaningful impact on your ability to
6 plug those wells, right?

7 A. They certainly contribute. Again, we try to
8 maintain a good cash balance so that we can plug out
9 as necessary or take advantage as those come up.

10 Or we do have a line of credit that we
11 can utilize if the existing cash on hand was not
12 sufficient. But over 44 years, that hasn't happened
13 yet.

14 Q. That's great. And you wouldn't be able
15 to -- if you only had a fleet of marginal or
16 low-producing wells, you wouldn't be able to plug
17 those wells in the absence of some of the higher
18 producing wells that you have; is that fair to say?

19 MS. TRIPP: Objection. That's speculative.
20 Madam Hearing Officer, that's going into the
21 economics of an individual well analysis and pulling
22 numbers out of the air.

23 HEARING OFFICER ORTH: Mr. Armstrong, if you
24 can answer it without speculating, go ahead.
25 Otherwise just say so.

1 A. I would say we've never been in a situation
2 where we suddenly have to plug every single marginal
3 well at the same time. And I'm generally unaware of
4 situations where that's occurred with others. I'm
5 sure there have been some.

6 But we would have sufficient cash flows
7 to continue operations until such time as additional
8 wells are required to be plugged.

9 HEARING OFFICER ORTH: Mr. Tisdell, five
10 minutes.

11 MR. TISDELL: I actually don't think I have
12 any further questions. Thank you, Madam Hearing
13 Officer.

14 HEARING OFFICER ORTH: All right. Thank
15 you, Mr. Tisdell.

16 Mr. Tremaine or Mr. Hall.

17 MR. TREMAINE: Mr. Tremaine. Thank you,
18 Madam Hearing Officer.

19 CROSS-EXAMINATION

20 BY MR. TREMAINE:

21 Q. Good afternoon, Mr. Armstrong. We've been
22 in passing in the past, but I'm Jesse Tremaine, OCD's
23 legal director. I want to share screen here and ask
24 you a couple questions.

25 I'm going to start out right on your

1 rebuttal slide Number 4. So there's 14 wells listed
2 on this slide, right?

3 A. That's correct.

4 Q. And this is wells that you pulled that you
5 felt would be, at some point in time in the year 2024,
6 would have fallen into the marginal well category as
7 defined, correct?

8 A. Potentially, yes.

9 Q. Potentially. Okay. So two of these wells
10 were plugged sometime in 2024. Did I understand that
11 right?

12 A. That is correct, the two Hilburn wells.

13 Q. Okay. Thank you for that. Down here it
14 says, "Wells with less than 1,000 BOE during 2024."
15 Did you use the and for the 180 days in generating
16 this list of 14 wells?

17 A. There were a couple other slides I think
18 indicated the 100 and -- so it would 180 days. I
19 think it is possible that some of these produced in
20 excess of 180 days.

21 Part of the challenge in identifying
22 those is, and we followed up with the OCD last week to
23 confirm this, we have been told, when we report
24 production, if we have a well that produces a certain
25 number of our barrels in a month, we report that as a

1 30-day production, not two days of production, not
2 three days.

3 So I think that would certainly be a
4 challenge, for me to go out and pull out which ones
5 actually, in fact, produced at 180 days versus -- it's
6 certainly not information that the OCD has requested
7 till this point.

8 Q. Okay. So this refers to 2024. Is this
9 based on production data for calendar year 2024 or
10 New Mexico Fiscal Year 2024?

11 A. Calendar year.

12 Q. Calendar year. Okay. Did you prepare as an
13 exhibit or provide the calendar year 2024 data that is
14 the basis of this slide?

15 A. No. I had a one of our engineers compile
16 this, so I don't believe I saw the raw data from it.

17 Q. So the record is not going to reflect that
18 that data to double-check. But we have the Fiscal
19 Year 2024 data, so I'm going to point you to that in a
20 second?

21 But first, I want to ask you about
22 applicant's Exhibit 1-A. This is page 15 out of 955.
23 If you could just please read the definition of
24 marginal well for the Division?

25 A. Certainly. Marginal well means an oil or

1 gas well that produces less than 180 days and less
2 than 1,000 barrels of oil equivalent within a
3 consecutive 12-month period.

4 Q. Okay. So, Mr. Armstrong, as you read that,
5 that refers to oil and gas wells, correct?

6 A. Correct. The BOE would indicate that
7 there's some conversion from gas to oil.

8 Q. Does that definition include injection
9 wells?

10 A. It does not. As I read that now, no, it
11 does not.

12 Q. Okay. And does that definition include
13 saltwater disposal wells?

14 A. No, it does not.

15 Q. All right. So I'm going to refer you to
16 page 32, and -- nope, sorry. It is page 39 of this
17 same exhibit. And I just want to point out and
18 confirm here, in the proposed definition under
19 presumption and no beneficial use, would you agree
20 with me that the 25.9A refers to production wells?

21 MS. TRIPP: Objection. Madam Hearing
22 Officer. Mr. Armstrong has not offered direct
23 testimony on the presumption of no beneficial use
24 provision in the proposed rules.

25 MR. TREMAINE: I'm just asking him to walk

1 through and clarify the various sections. He's
2 making a claim that there are 14 wells that fall
3 under marginal definition, and pointing out a
4 distinction in the rules. I'm not quizzing his legal
5 knowledge.

6 HEARING OFFICER ORTH: All right. So,
7 again, Mr. Armstrong, if you can answer the question.

8 A. Could you repeat the question?

9 Q. When you look at 25.9A here, does that
10 section, as you read it, refer to production wells,
11 oil and gas wells?

12 A. As I read it, yes.

13 Q. Okay. And 25.9B, does that refer to
14 injection or saltwater disposal wells?

15 A. It does.

16 Q. Okay. So the previous section that we
17 talked about, the definition of marginal wells does
18 not include any definition -- does not include
19 injection or saltwater disposal wells. But the
20 presumption of no beneficial use does include a
21 separate section related to injection or saltwater
22 disposal wells, correct?

23 A. That is correct.

24 Q. Okay. Bear with me here. So, I'm going to
25 go and look at -- OCD replaced Exhibit Number 16. And

1 this was distributed, so I'm opening it from the
2 distribution e-mail here. I'm going to click enable
3 editing so I can unlock it. And we're going to go to
4 review?

5 MR. TREMAINE: And I'll make a proffer for
6 the record that I shared the password with all the
7 parties here.

8 BY MR. TREMAINE:

9 Q. So, I've unlocked the sheet, so now we can
10 filter it. Okay? So, I'm going to do control all,
11 and we're going to go up to the top so we can see
12 these. And then I'm going to click on data, and I'm
13 going to click on this button filter. So, I've done
14 no Excel magic. This is lawyer Excel use, which is
15 always questionable?

16 And I'm going to go in here and filter
17 under the OGRID name Armstrong. Okay, so here, would
18 you agree that we have one Armstrong Energy
19 Corporation that pops up?

20 A. That's correct.

21 Q. Okay. All right. So, I'm going to go over
22 to BOE, and we're going to do less than 1,000. And
23 now we have 21 hits. But let's look at days in
24 production. And I'm going to click everything here,
25 clicking zero and 155s. The others are 304, 360, and

1 366. All right.

2 So, based on this, I get seven wells.
3 And I want to walk through here, because now, on your
4 slide 4, you have 14 wells. And you have them by well
5 name. This sheet has wells by API. So, I'm not going
6 to be able to do a direct comparison of which well is
7 which well.

8 But I just wanted to confirm here that
9 three of these wells are injection wells; is that
10 accurate?

11 A. That's what it indicates here, yes.

12 Q. And two of these wells are saltwater
13 disposal wells; is that accurate?

14 A. According to what it says here, yes.

15 Q. So, according to OCD's FY24 production data,
16 Armstrong Energy has two wells that would fall within
17 the marginal well definition. Would you agree?

18 A. Without going back and looking at -- I
19 understand that there are certain thresholds under
20 which saltwater disposal wells and injection wells can
21 fall under that. If my understanding was correct,
22 based on that Subparagraph B that you had me read.
23 And perhaps I read that wrong.

24 Q. Well, that was the basis of my question, was
25 that that section that we referred to was the

1 presumption of no beneficial use?

2 So, would you agree that under the
3 marginal well definition, which is what is relevant to
4 additional financial assurance, injection and
5 saltwater disposal wells do not fall under the
6 category?

7 A. If I were to give a more comfortable --
8 answer I'm confident, I would need to review that a
9 little bit more in depth to make sure my analysis of
10 it is correct.

11 Q. Okay?

12 A. I'm not -- I'd need to sit down and study it
13 a little bit. I'm a slow learner.

14 Q. Okay. Well, we've already covered that
15 part. So, let's assume that my filtering job here,
16 very simplistic filtering job here, was right and
17 we've got two wells that would fall in the marginal
18 well category?

19 At \$150,000, that would mean that
20 Armstrong Energy Corporation had to provide financial
21 assurance in the amount of \$300,000 in excess of what
22 you currently provide. Would you agree?

23 A. If that were correct.

24 Q. And do you agree that you would have, if the
25 current rule was promulgated, until May 1st, 2028, to

1 either provide that financial assurance or otherwise
2 plan for how you were going to manage or plug those
3 wells?

4 A. I believe that's the case as it is currently
5 written, yes.

6 Q. Okay. We walked through -- I did it the
7 long way. I wanted to avoid any foundation concerns
8 here?

9 Do you have any reason to dispute what
10 we just walked through to determine how many marginal
11 wells Armstrong Energy Corporation would have based on
12 the Fiscal Year 2024 data from OCD permitting.

13 A. Again, that prior slide that was shown was
14 analysis that was performed in house to look at those
15 particular thresholds. Only looking at the API
16 numbers, I couldn't tell you -- well, I could tell you
17 what the injection of SWDs are. But the other two
18 wells, I'd have to guess at what those are.

19 And, again, this comes back to a
20 calendar year 2024. My understanding of reading the
21 rule is in the prior 12 months. It does not say
22 calendar. So some of those wells -- well, I take that
23 back, because I was basing it off the 24 months.

24 My recollection as to the Hoover well is
25 it was shut in for 117 days the first half of the

1 year. It was shut in a number of times after that for
2 ongoing issues. I would have to look at that.

3 And again, as yours here shows it, as I
4 indicated there are a couple of wells, the Salbar, the
5 Chaparral, the Ruth 20 Number 1 are wells that don't
6 produce 180 days a year. The Sundance, I believe, is
7 another such well. But they are reported on a 30-day
8 production because they do produce something within
9 that month. So I'm not sure that this data captures
10 that.

11 Q. Well, let's examine a little bit here for a
12 minute?

13 UNIDENTIFIED FEMALE: You have four minutes,
14 Mr. Tremaine.

15 MR. TREMAINE: I got it. Hopefully I'll be
16 two.

17 BY MR. TREMAINE:

18 Q. Mr. Armstrong, do you agree that OCD's
19 production data, which is exported in this sheet, is
20 recorded to OCD by Armstrong Energy Corporation?

21 A. In the manner that the OCD has directed us
22 to do it, yes.

23 Q. Okay. And using that data and filtering
24 that data, we've just came up with two wells. So my
25 question is, do you have any reason to dispute that

1 based off of this data, Armstrong Energy Corporation
2 only has two wells that fall within the definition of
3 marginal?

4 A. Yes. As indicated, there are certain wells
5 that don't, in fact, produce 180 days per year. But
6 there has to be clarity as to what timeframe we're
7 reporting that as. And, again, yours falls under
8 calendar here. And some of them don't, in fact,
9 produce 180 days a year.

10 We report it according to how OCD has
11 directed us, and we confirmed that again last week.

12 Q. We just went through this exercise. So if
13 that was captured, if those wells were producing less
14 than 180 days per year, but produced more than 1,000
15 BOE, they wouldn't be present on the filter that we
16 just did, right?

17 A. That's correct.

18 Q. So I'm asking you about the definition of
19 marginal well in its totality, and your response was
20 that there are wells that produce less than 180 days.
21 So are you saying that those wells also produce less
22 than 1,000 BOE?

23 A. Yes, yes.

24 Q. Okay. But you're saying that's not
25 reflected in the production data that was reported to

1 OCD?

2 A. I am saying we reported production in the
3 manner which we were told to report it. Some of those
4 wells do not, in fact, produce every day. So they
5 would fall under the 1,000 BOE threshold and the
6 180-day threshold, to the best of my knowledge.

7 MR. TREMAINE: No further questions. Thank
8 you.

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

11 Mr. Moore, do you have questions for
12 Mr. Armstrong? Oh, Mr. Biernoff, it appears.

13 MR. BIERNOFF: Yes. Good afternoon, Madam
14 Hearing Officer. I'm in for Mr. Moore. I do have
15 some questions. Thank you for calling on me.

16 CROSS-EXAMINATION

17 BY MR. BIERNOFF:

18 Q. Good afternoon, Mr. Armstrong?

19 A. Good afternoon.

20 Q. You mentioned in your direct testimony that
21 since 2019, you've plugged four wells at an average
22 cost of 120,000 per well; is that right?

23 A. No. And I apologize if I was not clear. We
24 have plugged I believe it was 16 wells since 2019.
25 Not having my piece of paper in front of me, I

1 couldn't tell you it was 14 or 16. We have plugged
2 four wells in the last two years at an average cost of
3 \$120,000.

4 I do not have the data on those prior
5 wells. We didn't consider it to be applicable given
6 cost structures have changed.

7 Q. Okay. Well, let me ask you about that.
8 Cost structures have changed in what way, since those
9 early days, 2019 or so?

10 A. Well, cost in general, I think, as we all
11 know, have gone up, and that includes within the oil
12 field. The state has applied new plugging parameters
13 which require additional plugs and cement to be placed
14 into a wellbore.

15 So where previously we might be able to
16 plug a well in, and I'm just going to throw general
17 numbers out there, two or three days, because of these
18 new intervals, we are required to wait for cement to
19 set before we can go up to the next interval, place a
20 plug and set it. So additional rig days, additional
21 cement, number of different factors.

22 Q. Okay. So you've described costs going up.
23 So let's focus on the four wells that you've plugged
24 in the last few years. I think you said just now
25 average cost of 120,000 per well; is that right?

1 A. That's correct.

2 Q. Okay. Do you remember the approximate
3 actual cost of each of the four jobs?

4 A. I do not. I don't know that there were any
5 major outliers than that; I don't believe so. To the
6 best of my recollection, I don't remember any large
7 reclamation costs associated with those wells. There
8 may have been, but does not come to mind.

9 Q. Okay. So each one of the four wells was
10 around 120,000?

11 A. Well, they average \$120,000, give or take.
12 I could not tell you how much precisely.

13 Q. Okay. You don't remember the range
14 approximately?

15 A. I do not. I will say, to the best my
16 recollection, most of those were deep wells, so we
17 were not dealing with shallow wells that may have been
18 dramatically less from a plugging standpoint.

19 Q. Okay. And that was actually my next
20 question. I was going to ask you if you remembered
21 approximately how deep those four wells were or the
22 range of depth?

23 A. I would say, on average, 9- to 12,000 feet,
24 which within the vertical well world is fairly deep.

25 Q. Okay. And did you testify, did I hear this

1 right, that you have a non-operated interest in around
2 150 wells?

3 A. No. I apologize. I was not speaking very
4 clear. It's roughly 350 wells, and those interests
5 vary in size.

6 Q. Okay. And for those wells in which you have
7 those 350 or so wells where you have a non-operated
8 interest, are you responsible for paying the OCD
9 bonds?

10 A. No.

11 Q. It's the operator who does that?

12 A. Who pays is determined by a joint operating
13 agreement, which may go back some period of time. My
14 understanding of the wells that we're in, we would not
15 be able to -- we're not able to charge that additional
16 cost to the working interest owners.

17 At the time that those would have been
18 set, there would have been essentially a blanket
19 amount and we could charge for overhead, those sorts
20 of costs. Well, one of those costs would have been
21 bonding. That cost of bonding would increase
22 significantly.

23 But under the JOA, that amount that we
24 can charge does not -- it wasn't tied to a changing
25 number, a variable number, if that's making sense.

1 Q. I think so. And so for the 70 or so wells
2 that Armstrong Energy operates, per your testimony,
3 any other interest holders like, like non-operated
4 working interest owners? They're not paying you or
5 contributing to you for bond costs, are they?

6 A. No, they're not. Other than what is kind of
7 defined as a dollar figure within our JOAs, they do
8 not contribute on top of that.

9 Q. Okay. And I think you mentioned,
10 Mr. Armstrong, that your cost estimate, the 120,00
11 cost estimate for the most recent four wells, that
12 that also includes remediation and reclamation costs;
13 is that right?

14 A. That's my understanding, yes.

15 Q. Okay. And is it fair to characterize
16 Armstrong as a good operator?

17 A. I would certainly hope so. We try to meet
18 our obligations and we try and operate in the, first
19 of all, safest way possible. We try to be good
20 stewards of the land that we are allowed to access.
21 So yes, I would say we are a good operator. Not
22 perfect, but...

23 Q. Okay. Fair enough. And I'm certainly not
24 aware of any active compliance violations against
25 Armstrong at the moment. Are you?

1 A. I am not. Or if any are still open, they
2 should have been closed out some time ago, by which I
3 mean they may have not been entered into the system
4 correctly. But we have no ongoing issues that I am
5 aware of, no.

6 Q. Okay. Yeah, me neither. Would it be fair
7 to say, Mr. Armstrong --

8 A. As to our own wells, might be the important
9 clarification there.

10 Q. It's a good one, especially now. So thank
11 you for explaining that further?

12 Do other operators who do have spills at
13 their well sites and who do have open compliance
14 incidents and who do have violations and who are not
15 as good of operators as Armstrong is, would those
16 operators have higher reclamation and remediation
17 costs on average?

18 A. I don't know that I could say on average.
19 Again, we try to be thorough on what we do. So
20 frankly, our costs may, in fact, be a little bit
21 higher than others. But I certainly would recognize
22 that there's the potential for that, yes.

23 Q. Okay. So I think you said that the four
24 wells that Armstrong plugged in the last few years
25 were all -- those sites were all pretty clean, right?

1 A. To the best of my recollection, there was no
2 major remediation costs. I mean, there is always some
3 cleanup that needs to be done. Obviously, the caliche
4 pad has to be picked up, has to be reseeded. But
5 nothing that I would consider a major cost that would
6 have significantly inflated the cost of that \$120,000.

7 Q. Okay. And so if a different operator, not
8 Armstrong, whose site did have a bunch of spills and
9 did have significant remediation to do, you expect the
10 cost of that work to be higher, right?

11 A. I certainly think that is possible.

12 Q. Okay?

13 A. There are operators who, for instance, own
14 their own equipment that may be able to remediate or
15 plug at a lower cost basis, even if the extent of the
16 reclamation is larger. But I'll certainly concede
17 that it could be higher.

18 MR. BIERNOFF: All right. Okay. Well,
19 thank you so much, Mr. Armstrong.

20 Madam Hearing Officer, I'll pass the
21 witness.

22 HEARING OFFICER ORTH: Thank you,
23 Mr. Biernoff.

24 I don't believe we have Ms. Nanasi.

25 Mr. Maxwell, do you have questions of

1 Mr. Armstrong?

2 MR. MAXWELL: No questions. Thank you.

3 HEARING OFFICER ORTH: Thank you.

4 Mr. Rankin?

5 MR. RANKIN: No questions.

6 HEARING OFFICER ORTH: Okay. Let's see.

7 EOG is monitoring.

8 Mr. Suazo.

9 MR. SUAZO: Yes, Madam Hearing Officer, just
10 a few questions.

11 CROSS-EXAMINATION

12 BY MR. SUAZO:

13 Q. Mr. Armstrong, good afternoon?

14 A. Good afternoon.

15 Q. I have to admit most of my motivation for
16 asking you questions is because I'm not sure when I'm
17 going to have the chance to cross-examine another
18 fellow Georgetown Hoya, so that's part of it?

19 A. There seems to be a microphone malfunction
20 at this moment, so we'll see.

21 Q. But the other part of the motivation is that
22 I think, you know, some of your testimony was
23 enlightening, at least to me, in terms of
24 understanding how these proposed rules will operate
25 where the rubber meets the road, or I guess where the

1 proposed rule meets the operator, shall we say.

2 In your testimony, you said that
3 Armstrong has been operating for, I think, 44 years,
4 correct?

5 A. Company was founded in 1977, and I believe
6 the first well we drilled was in 1981. So it had
7 non-operated interests prior to that.

8 Q. And you said that in that time, you have
9 never orphaned a well; is that right?

10 A. That is my understanding. No such incident
11 where we had orphaned a well, don't think that's the
12 case.

13 Q. And despite not ever having orphaned a well,
14 if these bonding rules and thresholds for marginal
15 wells are passed, that would increase your costs,
16 correct?

17 A. That is correct.

18 Q. And those costs would be ongoing annual
19 costs?

20 A. They would be. Operationally, in terms of
21 operational cash flows, it would represent a premium
22 on those bonds, whatever that premium winds up being,
23 in addition to the collateral that we would have to
24 put up and otherwise not be able to access.

25 Q. And have you heard throughout this

1 proceeding the applicant's reference to an LFC report?

2 A. Yes, I have.

3 Q. Okay. And have you heard them discuss what
4 they've dub as the "orphan well problem" facing the
5 State of New Mexico?

6 A. Yes, I have.

7 Q. Okay. And so, with respect to that problem
8 and these increased costs, these increased costs that
9 you would incur, that Armstrong Energy would incur,
10 would have absolutely no effect on the orphan well
11 problem on a going-forward basis, correct?

12 A. Yes, that would be the case, as I understand
13 it.

14 Q. And so, the only way that these increase in
15 bonding amounts would have an effect on orphan wells
16 was it would be if Armstrong itself orphaned a well in
17 the future and did not fulfill its obligations; is
18 that right?

19 A. That would be my understanding, yes.

20 Q. And is it your understanding that this
21 orphan well problem is primarily as the result of
22 legacy wells?

23 A. I would imagine that's accurate to say, is
24 that the vast majority are older, legacy wells. There
25 may be some that are newer, that were drilled and, for

1 whatever reason, not plugged. But I'd imagine that's
2 a smaller portion.

3 MR. SUAZO: Okay. No further questions.
4 Madam Hearing Officer.

5 HEARING OFFICER ORTH: All right. Thank
6 you, Mr. Suazo.

7 Ms. Tripp, do you have any redirect?

8 MS. TRIPP: Yes, Madam Hearing Officer. But
9 very, very briefly.

10 REDIRECT EXAMINATION

11 BY MS. TRIPP:

12 Q. So, Mr. Armstrong, I want to give you the
13 chance -- access to the OCD database. This is the OCD
14 permitting website. And hopefully I'm sharing -- what
15 you see is a website?

16 A. Yes, I can see that.

17 Q. And it's really tiny, but I have to go to
18 expanded well search results. So these are all of
19 Armstrong's plugged site released wells. That was the
20 filter I used to get here?

21 But I just wanted to get this on the
22 record because you mentioned, you know, it was your
23 memory that these were deep wells, the last four wells
24 that you plugged with \$120,000 average cost, all in,
25 including reclamation.

1 And you can see that the measured depth
2 and vertical depth for those last four wells are all
3 greater than \$11,000; is that right?

4 A. That would be my understanding, yes, based
5 on what I see here, yes.

6 Q. Okay. All right. So, deep wells, plugged
7 at -- you know, it's a fraction of the cost, including
8 reclamation work, here on that exhibit?

9 So the last thing I want to do is to
10 kind of put us all in your shoes, as an operator.
11 Because what we're missing, I think, is the
12 practicality of how this rule will work.

13 So with respect to that group of Hoover
14 wells that was shut in for 117 days out of the first
15 180 days of the year. So there you are in June 2025.
16 You're looking at five wells and they've only had the
17 opportunity to produce two months, 60 days. And you
18 only have -- at that point, you would have another 180
19 days to make up the difference. Is that right?

20 A. Yes. That'd be my understanding.

21 Q. Okay. And those wells were shut in because
22 there was a problem with the gathering system; is that
23 also right?

24 A. That is generally correct. There may be
25 instances where a well gets shut in for a workover.

1 We perform routine maintenance on them, things of that
2 nature. But the pipeline shut-in certainly was a
3 major factor on those.

4 Q. Okay. So with five wells and the potential
5 that you'd have to bond them at \$150,000 each, being
6 \$750,000, is there any way that you, as an operator,
7 sitting there on day 181 of the year, with another 184
8 days to go, will know when that pipeline system is
9 going to be available?

10 A. No. We get told when we have to shut them
11 in and we're told when we can open them back up again.
12 But we typically don't receive much -- the information
13 we receive tends to come through the oil field gossip
14 network more than any verifiable information from
15 those midstream companies.

16 Q. Understood. So as an operator who's trying
17 to manage your wells and trying to plan, the fact that
18 there could be a \$750,000 price tag is a very real
19 impact on your operations?

20 HEARING OFFICER ORTH: Ms. Tripp, would you
21 stop leading him, please.

22 A. I'm not sure that I have a question to
23 answer now then.

24 Q. Okay. Let me re-ask that?

25 So from your position as an operator,

1 you can't predict whether you will be able to produce
2 a well necessarily for 180 days out of a remaining 180
3 days in a year?

4 A. That's correct. So from a budgeting
5 standpoint, that does create some challenges.

6 MS. TRIPP: Okay. All right. Thank you for
7 walking through that exercise with me. I don't have
8 any further questions for you, but the Commission may
9 have some.

10 HEARING OFFICER ORTH: Thank you, Ms. --

11 MS. TRIPP: But I believe I already
12 submitted -- I'm sorry, Madam Hearing Officer. If
13 not, I'm submitting Mr. Armstrong's direct testimony
14 and his sort of rebuttal demonstratives. I think I
15 did.

16 HEARING OFFICER ORTH: I believe you did
17 that.

18 MS. TRIPP: All right. Commissioner
19 Armstrong, do you have questions of Mr. Armstrong?

20 EXAMINATION

21 BY COMMISSIONER AMPOMAH:

22 Q. Hello, Mr. Armstrong. William Ampomah,
23 professor from the New Mexico Tech. Thank you for
24 your testimony today.

25 So my first question to you, there was

1 discussion with Mr. Tremaine about the days, the
2 production number of days, for a particular well.

3 Can you tell the Commission how the
4 current production base are documented per OCD's
5 instructions?

6 A. If I'm understanding the question correctly,
7 how are we calculating the number of days we are
8 reporting.

9 Q. The number of days that a well is active or
10 produced, you know, as reported to OCD?

11 A. In consultation with the individual that
12 handles our reporting, I inquired as to how we report
13 a well that may not produce 30 days a month, why is it
14 showing us 30 days a month.

15 She indicated that's how she has been
16 told and trains with the OCD to do it. She followed
17 up last week to inquire if that was still the case, or
18 if we had been doing it incorrectly, and we were told
19 no. If it produces within that 30-day period, report
20 it as 30 days.

21 MR. TREMAINE: Objection. So, Commissioner
22 Ampomah, to clarify, I'm not objecting to your
23 question. It's a good question. I am objecting to
24 the foundation.

25 So, Mr. Armstrong -- so, okay, hearsay

1 comes into these hearings. But Mr. Armstrong is
2 testifying that he heard from somebody who works for
3 him, who talked to somebody at OCD, who told them a
4 particular thing. This is not in the record anywhere
5 else, and I'm getting chatted concerns as to whether
6 this is accurate or not.

7 So, I think this is something that we
8 can try and proffer and answer and something that, if
9 true, would need to be clarified in the future.
10 Right? But I have significant concerns with basing
11 the record on what is based on Mr. Armstrong's
12 testimony here, like three layers of hearsay. Like,
13 we are well down the path on the post office game
14 here, and I've seen this play out before. I'm not
15 going to provide any further commentary on that.

16 But I have some significant concerns
17 with that. So, I would proffer that we would -- I
18 will follow up on this and we can try to provide some
19 answer to the Commission.

20 COMMISSIONER AMPOMAH: Yeah, but you know
21 why I'm asking that, right? Because the deputy
22 director talked about we need to be more concerned
23 and then provide more clarity as to how the days will
24 be documented.

25 So based on what you are saying, I'm

1 like, then there's a huge uncertainty associated with
2 the number of days.

3 MR. TREMAINE: Without testifying on behalf
4 of my client, I don't think I can answer that any
5 further. But I do feel that the record reflects an
6 inconsistency among the opponents to the rule.

7 We've heard in other testimony and
8 rebuttal testimony that operators inaccurately
9 represent that. No one else has said OCD is telling
10 us to report 30 days for every month in which there's
11 production. This is deeply a concerning
12 representation.

13 COMMISSIONER AMPOMAH: Thank you for
14 clarifying, because it was a concern based on the
15 testimony. So I will not ask any further questions
16 on that. So I'll move on. Thank you.

17 BY COMMISSIONER AMPOMAH:

18 Q. Yeah, so, Mr. Armstrong, you've talked about
19 the impact that these rules would have on small
20 pretests, especially you highlighted the 15 percent
21 threshold that has been imposed if this current rule
22 was going to be passed. Are you with me on that one?

23 A. That's correct, based on how I am
24 calculating the 180 days, yes.

25 Q. Yeah. So there has been a lot of

1 discussions, and from where I sit, I want to see some
2 compromise here. So there has been a lot of
3 discussions where there is a little bit of agreement
4 on 30 days threshold -- 30 percent threshold instead
5 of the 50 percent. Would that be something that would
6 be more appealing to prudent operators?

7 A. It would certainly be a move in the right
8 direction. I could certainly see situations where
9 that would be problematic.

10 I believe, as I testified this morning,
11 you know, some of the packages that we have acquired
12 inevitably include a good number of what we consider
13 marginal wells that might take us over to 30 percent.
14 So that would, therefore, prevent us from acquiring
15 that package, reworking those wells if we decided the
16 economics did not work because the additional bonding
17 level or the amount of cash we would have to put up
18 instead. But 30 percent would be an improvement.

19 It still seems to me that applying that
20 single-well bond to the remaining 70 percent will
21 have -- I will speak for myself, but I can see
22 scenarios in which that additional 70 percent is put
23 at risk, which seems to me the opposite of what we're
24 trying to do. In protecting against the most
25 high-risk wells, we're now making productive wells

1 potentially at risk.

2 Q. So there has been a little bit of discussion
3 where Commissioner Bloom was suggesting, based on the
4 discussion about providing some exceptions to the
5 definition of the marginal wells as pertaining to the
6 bond, the 150,000. So some of the exceptions are some
7 of the things that you've listed here?

8 Did you listen to that discussion?

9 A. I don't recall, if I heard that specific
10 discussion. I am aware of creating -- some discussion
11 around creating exemptions for some of the issues that
12 I discussed regarding midstream takeaway capacity.
13 I'm aware those discussions have gone on, yes.

14 Q. So would you be in a position to provide
15 some of these to the Commission for our consideration?

16 A. Some exemptions.

17 Q. Yeah?

18 A. Beyond the ones that I've heard, midstream
19 wells that are part of an enhanced oil recovery
20 project, those certainly make sense to me and seem to
21 be fair. That would prevent additional waste and
22 allow us to maximize the production we can get out of
23 those wells.

24 COMMISSIONER AMPOMAH: Thank you, sir, for
25 your time. I do not have any further questions.

1 HEARING OFFICER ORTH: Thank you.

2 Commissioner Bloom, do you have
3 questions.

4 COMMISSIONER BLOOM: Yes. Thank you, Madam
5 Hearing Officer.

6 EXAMINATION

7 BY COMMISSIONER BLOOM:

8 Q. Mr. Armstrong, thank you for your time
9 today. Just back to what Dr. Ampomah mentioned,
10 regarding the issue of midstream shut-ins. So,
11 Mr. Armstrong, your concern is that a well that would
12 not otherwise be deemed marginal could become marginal
13 if the midstream was shut in and pipelines were not
14 accessible over a certain period of time. Did I get
15 that right?

16 A. Yes. I believe that's true.

17 Q. And last week I offered an initial attempt
18 to get around this. And I swear I had some better
19 language this morning in my head when I woke up, and
20 it's just gone now?

21 But currently we're defining -- the
22 proposed definition of marginal well is, quote,
23 marginal well means an oil or gas well that produced
24 less than 180 days and less than 1,000 barrels of oil
25 equivalent within a consecutive 12-month period, end

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1 quote.

2 And what I might add to that would be
3 the following. After it says within a consecutive
4 12-month period, not including in this period
5 production days lost to midstream shutdowns. So I
6 would hope that that would extend that period out for
7 any period of midstream shutdown and take that out of
8 the count. Would something like that be potentially
9 helpful?

10 A. It certainly would be helpful. And I think
11 it would be a reasonable accommodation for a situation
12 where a well should not otherwise be considered
13 marginal. It doesn't seem to me that that's what --
14 the problem we're trying to solve here.

15 COMMISSIONER BLOOM: Mr. Armstrong, thank
16 you for your time. No further questions.

17 HEARING OFFICER ORTH: Thank you.

18 Chair Chang, do you have questions?

19 CHAIR CHANG: I do not. Thank you for your
20 time. I appreciate it.

21 HEARING OFFICER ORTH: All right. Any
22 reason not to excuse Mr. Armstrong? No.

23 Thank you very much, Mr. Armstrong.

24 MS. TRIPP: Madam Hearing Officer, IPANM's
25 next witness is Mr. Gilstrap and he is on the

1 platform. He's a technical witness so we anticipate
2 going about an hour for his direct and rebuttal.

3 HEARING OFFICER ORTH: All right. So
4 perhaps, then, we should take a break before we hear
5 from him. Let's come back at 2:00.

6 MS. TRIPP: Thank you.

7 (Recess held from 1:51 to 2:00 p.m.)

8
9 HEARING OFFICER ORTH: I believe Ms. Tripp
10 is calling IPANM's next witness.

11 MS. TRIPP: Yes, Madam Hearing Officer. His
12 name is Trevor Gilstrap. If Ms. Apodaca can give him
13 camera and audio permission. All right.

14 HEARING OFFICER ORTH: All right. Thank
15 you.

16 Mr. Gilstrap, if you'll unmute yourself.
17 There you go. Spell your first and last name,
18 please.

19 The WITNESS: Yes, ma'am. Trevor,
20 T-R-E-V-O-R. Last name, Gilstrap. G-I-L-S-T-R-A-P,
21 P as in Paul.

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

24 The WITNESS: Yes, ma'am.

25 HEARING OFFICER ORTH: Thank you.

1 Go ahead, Ms. Tripp.

2 TREVOR Gilstrap,
3 having first been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. TRIPP:

6 Q. Good afternoon, Mr. Gilstrap. We have
7 spoken before. I want to thank you for coming to
8 testify today remotely. If you could introduce
9 yourself to the Commission?

10 A. Yep. My name is Trevor Gilstrap. I'm
11 currently a senior vice president and the national
12 energy practice leader within Assured Partners.
13 Assured Partners is an international insurance broker.

14 Q. And can you tell us a little bit more about
15 your education and your experience?

16 A. Sure. I graduated with a Bachelor of Arts
17 in Psychology. Started my career as a claims adjuster
18 with Farmer's Insurance. Initially worked as a
19 liability claims adjuster and then transitioned to
20 Farmers as dedicated catastrophe team, where I handled
21 large-scale natural disaster claims to insured autos
22 and property holders. Have been with Assured Partners
23 for about 15 years now.

24 Q. And what is it that you do with Assured
25 Partners in the energy practice section?

1 A. So my team provides insurance brokerage for
2 oil and gas companies with operations spread
3 throughout all of the oil and gas-producing basins
4 within the U.S. We are largely focused on domestic
5 operations. We don't really touch much
6 internationally.

7 Q. And so do you have experience in New Mexico,
8 for example?

9 A. Yes, ma'am.

10 Q. And then surrounding states, Colorado or
11 Texas, Oklahoma?

12 A. Correct.

13 Q. Okay. Thank you. And then we're here today
14 on a proposed rulemaking which addresses financial
15 assurance. Have you had a chance to review any of the
16 statutes or regulations in New Mexico?

17 A. Some, yes.

18 Q. Okay. And so I'm going to share my screen
19 here, which I forgot to do in the beginning. And so
20 this statute which is 70-2-14, what is your
21 understanding of the forms of financial assurance that
22 are allowed?

23 A. That there's four of them: irrevocable
24 letter of credit, cash bond, surety bonds, and a
25 plugging insurance policy.

1 Q. Okay. Thank you. And so in terms of kind
2 of your credentials and in your experience, how long
3 have you been with Assured Partners and what kinds of
4 clients do you work with?

5 A. Yeah, so we were acquired -- I've been on
6 this side of insurance for close to 15 years now. We
7 were -- gosh, when did we get acquired? Sorry, I
8 wasn't ready for that. I think we got acquired in
9 2015-ish.

10 So we do property and casualty insurance
11 for oil and gas service contractors, operators,
12 non-operators throughout the U.S. Property and
13 casualty being anything from their liabilities. So
14 general liability control well to the bonding needs
15 they have. The bonding needs vary for contractors and
16 operators, but we're handling start to finish those
17 property and casualty needs for domestic upstream oil
18 and gas contractors and operators in the U.S.

19 Q. And so then with respect to the rules that
20 are at issue here, the regulations, have you reviewed
21 the proposed change by applicants to the financial
22 assurance requirements in New Mexico?

23 A. Yes, ma'am.

24 Q. Okay. What's your understanding of the
25 existing bonding?

1 A. Sorry. Were you scrolling or am I
2 answering.

3 Q. Yeah, I'll let you answer. Go ahead?

4 A. Okay. That it's a blanket bond that's
5 applicable to operators in the state.

6 Q. And that -- go ahead?

7 A. I didn't say anything. I'm sorry.

8 Q. Okay. And the blanket bond, is there
9 another option for a single-well bond or a one-well
10 plugging financial assurance?

11 A. Yes. So once you hit a certain threshold,
12 then it can take over and you can take advantage of
13 the blanket bond as a more cost-effective option, I
14 guess, for your bonding needs.

15 Q. And your understanding of blanket bond is
16 that it covers all wells; is that right?

17 A. Yes, ma'am.

18 Q. Okay. And so what are some of your concerns
19 with the proposed rule change?

20 A. I have a lot. You know, having gone through
21 this in Colorado, bonds are -- it's an incredibly hard
22 market right now for bonds. These changes have the
23 propensity to have substantial ramifications on, I
24 think, operators that are currently active in the
25 state.

1 Some of these proposed changes are going
2 to lead to, as proposed, significant increases in the
3 bond amounts, which is going to lead to really two
4 meaningful changes. One, a pretty precipitous
5 increase in the bond premiums that are being charged
6 to these operators. So the annual premiums they're
7 paying, to have the bond in place, this promise to
8 pay.

9 And I also think that there's going to
10 be some really big ramifications on the collateral
11 tied to those bonds. The surety market is -- again,
12 it's extremely hard. It has been for several years.
13 We're seeing collateral on the rise. So oftentimes
14 you're looking at collateral requirements that are
15 anywhere from 50 to 100 percent of that bond amount.
16 So not only do you have these increased premium
17 charges taking place, you're also getting capex
18 constrained with all the collateral that is also being
19 tied up with those bonds.

20 Q. Okay. And I think in your direct, you
21 provided a few hypotheticals in terms of what would be
22 the effect of the proposed rule for an operator. Let
23 me get there. So in this first scenario, you walk us
24 through this.

25 A. Yeah, so you're looking at an operator that

1 has 150 wells that are above the 15 percent threshold
2 and they need a \$22.5 million bond.

3 So, again, typically we're seeing these
4 increased collateral charges. So oftentimes it's
5 going to be anywhere from 50 percent to 100 percent of
6 that bond amount. Bond amount in this particular
7 example being \$22.5 million. So you take the
8 conservative approach and you say that the surety is
9 going to charge a 50 percent collateral, that's \$11.2
10 million in funds that are tied up.

11 So either the operator is relinquishing
12 those funds that are being held in the form of cash,
13 or they're drawing down a revolver that they might
14 have in place, which they'll get charged for that as
15 well.

16 And then in addition to the collateral,
17 the surety, the bond carrier is going to charge an
18 annual premium. So the way that those annual premiums
19 are calculated is it's based on a percentage of the
20 total bond amount that is being put up.

21 So again, in this situation, if we're
22 looking at a \$22.5 million bond, typical bond ranges
23 in terms of premium for P&A bonds is between two and a
24 half and three and a half percent of that bond amount.
25 So in this particular scenario, we're looking at a

1 collateral of probably north of \$11.2 million, with
2 annual premiums on top of that ranging between 562,500
3 to 787,500.

4 Q. And I think you just testified earlier, but
5 those premium ranges, those aren't set in stone. It's
6 up to the surety to determine them and so they could
7 certainly increase?

8 A. That is correct.

9 Q. And in your opinion, could the effect of
10 these rules drive premium rates up?

11 A. Yeah, 100 percent. You know, this is a
12 larger exposure for bond underwriters. I think we'll
13 probably get into this a bit later on, but bond, it's
14 not a transference of risk. All it is is a promise to
15 pay.

16 So as you're asking sureties to increase
17 the promise that they're making, they are more
18 exposed. They're not taking on that risk; they're
19 simply promising to pay it in the event that bond is
20 called upon.

21 So yes, I think that we could see a
22 fluctuation in these rates, either through
23 uncomfortability within underwriters or a lack of
24 capacity within the existing markets. So yes, they're
25 subject to change.

1 Q. Okay. And in your direct testimony, you
2 provided a second scenario, which is just sort of a
3 larger scale than an operator with 1,000 wells if they
4 were required to single-well bond?

5 Can you just explain, is it the same
6 math or would you change it?

7 A. Yeah, same math. You're still looking at a
8 50 percent collateral. And honestly, you know,
9 sometimes we'll see that the larger amount being
10 required to bond sometimes leads to even higher
11 collateral. Because, again, it's a larger amount that
12 is being exposed.

13 So I would anticipate that, again, it's
14 an absolute minimum of 50 percent collateral that
15 you're going to see in a scenario like this, with,
16 again, the premiums likely being the two and a half to
17 three and a half percent range. Although, given the
18 amount, it is certainly possible that that rate range
19 is subject to change.

20 Q. And when a surety company requires
21 collateral, are you familiar with how an operator or a
22 company satisfies that? Is it typically through a
23 letter of credit or is it a deposit of cash?

24 A. Yeah, it's either of the two. So typically,
25 most sureties will provide the option for cash.

1 Oftentimes when you do, they'll allow you to put those
2 into an investable fund so it can at least grow
3 slightly. But that cash is still tied up.

4 Or it is a letter of credit that is
5 going to -- or drawing down revolver with your banker,
6 whomever your lender is. But they are tying up funds.

7 I have not come across a surety that's
8 willing to take into account collateral, say, on
9 wells. They're looking for the cash to offset that
10 collateral.

11 Q. So an operator couldn't rely on their
12 portfolio or their assets as wells, necessarily, to
13 satisfy any of those collateral requirements?

14 A. To the best of my knowledge that is correct
15 and. I will give you one little asterisk there. Some
16 underwriters will look at and take into account
17 third-party well-reserve reports when evaluating the
18 financial comfortability that they have with any given
19 operator. But no they will not use that to offset
20 collateral in the traditional surety market.

21 Q. So that third-party reserve report, maybe it
22 could be considered in setting of premium rates, but
23 it's not going to be available to demonstrate
24 collateral?

25 A. Correct.

1 Q. Okay. And I'm sorry to jump around, but I
2 neglected to ask you this when we were looking at this
3 statute. One of the forms provided for in the statute
4 is a well-specific plugging insurance policy, pursuant
5 to the provision of the section -- I'm going to scroll
6 a little bit because at Part F, our statute goes into
7 some details?

8 Are you familiar with well-plugging
9 insurance policies?

10 A. Yeah. So, several years ago, a company
11 called OneNexus was created with, really, an intent to
12 provide an alternate and more effective solution to
13 the traditional means of complying with P&A bonding
14 requirements.

15 OneNexus was able to successfully
16 develop an insurance product that's able to comply
17 with the plugging requirements mandated by regulators,
18 but that also allows the operator to transfer some of
19 that cost of those plugging and abandonment expenses
20 to an insurance provider.

21 It's got a very similar arrangement to a
22 traditional surety bond. OneNexus uses what they call
23 an asset retirement agreement, ARA. As there's a
24 three-party agreement between the operator -- if you
25 were on a bond, that would be you as the principal,

1 OneNexus, who would be kind of deemed the guarantor,
2 and the regulator, going to a traditional bond, you'd
3 label the obligee.

4 Payments under that asset retirement
5 agreement are managed by OneNexus' Oklahoma captive
6 corp. It's a protected sale captive insurance company
7 that's regulated by the Oklahoma Insurance Department,
8 OID. And each asset retirement agreement is backed by
9 a CLIP, contractual liability insurance policy, that's
10 issued by the captive with funds that are legally
11 ring-fenced and reserved exclusively for
12 decommissioning obligations.

13 The captive's financial capacity is
14 underwritten by a global insurance carrier called
15 Munich Re. Munich Re is providing capital support to
16 underwrite up to 3 billion in gross decommissioning
17 liabilities.

18 Part of the reason that this product is
19 so similar to a bond itself is the CLIP. That
20 contractual liability insurance policy provides the
21 same non-cancelable insurance backing that is
22 similarly present in surety bonds. So it is an
23 uncancelable policy.

24 When a claim is made for plugging
25 expense, those payments are made to the principal or

1 operator, with the regulator as beneficiary; thus
2 ensuring that the funds are used as intended.
3 Currently working with Colorado and OneNexus to
4 incorporate this option for Colorado-based operators
5 as well.

6 Actually, I think New Mexico might have
7 met with OneNexus at one point in time. But I'm not
8 sure if that's -- I'm not sure where that conversation
9 went.

10 Q. All right. Thank you. So you're familiar
11 with this OneNexus product. And did you mention that
12 you're already in the process and working in Colorado?

13 A. Yes, ma'am. So ECMC is the group that
14 oversees oil and gas in Colorado. We're working in
15 partnership with ECMC and the attorney general's
16 office to get formal approval here. We are, it seems
17 like, very close to the finish line. We are awaiting
18 the formal thumbs up from the AG's office, at which
19 point in time we'll sit in a formal hearing with ECMC
20 to see if we can get the final layer of approval to
21 implement this here in the state.

22 Q. And will that implementation be available in
23 Colorado for all operators or is it on kind of a
24 one-by-one basis to each operator?

25 A. That is a great question. Our intent is to

1 make it available to all. If we can get the state
2 ultimately comfortable with the product itself, which
3 I wholeheartedly believe, if we can just continue
4 spending time on this, they will be. It is just as
5 broad as a bond, but it will actually transfer the
6 risk. But our intent is certainly to make it
7 available for all and not just to some.

8 Q. Okay. Thank you for diving into that?

9 And so we just talked about insurance,
10 but I believe in your direct testimony you explain
11 kind of at length that bonds are not insurance. So if
12 you could just compare the two for us today.

13 A. Sure. So unlike an insurance policy, a bond
14 is a financial guarantee rather than a risk transfer
15 mechanism. So a bond represents a promise to pay.
16 It's typically backed by either cash or an irrevocable
17 letter of credit from the operator or by a contractual
18 obligation from a third-party guarantor, like a
19 surety.

20 In contrast, insurance involves the
21 transfer of risk. So the policyholder pays a premium
22 to an insurance carrier, which in turn issues a policy
23 outlining the specific terms, conditions and coverage
24 limits under which they'll indemnify the policyholder
25 for covered losses, subject to any deductibles.

1 I guess the key distinction is that with
2 insurance, the financial risk is transferred from the
3 operator to the insurer.

4 With a bond, the risk remains with the
5 operator. The surety only steps in if the operator
6 fails to meet its obligations. And even then, the
7 operator is ultimately responsible for reimbursing
8 that surety.

9 Q. And so the insurance product, like OneNexus,
10 there's actually a shifting of risk there, to where it
11 would cover the entire plugging and reclamation
12 liability for the well, rather than a set amount; is
13 that right?

14 A. Yes and no. So yes, that is right. It is a
15 transfer of risk. You are spot on with that.

16 I guess the delineation is that the
17 insurance amount, the payable amount, is set by the
18 operator. And typically how we envision this
19 happening is it's in partnership between the operator
20 and regulatory body. Right?

21 So if the regulatory agency says that --
22 and I'm going to make up a number -- you need to
23 insure each of these wells for a penal sum of \$10,000,
24 the operator may choose to insure those wells at
25 10,000. They also, however, have the flexibility

1 to -- say the operator perceives their actual
2 plugging costs are 150,000. They could insure each of
3 those wells at 150,000, or 400,000, et cetera.

4 So you get the ability to dictate the
5 amount in which you want to insure them for. If you
6 want to meet regulator compliance and use that amount,
7 you can. If you would like to buy a larger limit of
8 insurance, you could also do that.

9 Q. Thank you for providing that clarification.
10 You mentioned earlier -- so I know you're active in
11 Colorado. Were you also involved in the Colorado
12 rulemaking procedure that changed their financial
13 assurance?

14 A. Yes, ma'am.

15 Q. Can you tell us a little bit about your
16 experience and what you've seen in Colorado?

17 A. Yeah. I mean, it seems like it was a very
18 similar situation. You know, a lot of discussions
19 that were taking place.

20 I can tell you from my perspective, the
21 reform in Colorado wasn't really successful. In fact,
22 I think, if anything, it might have created some
23 unintended consequences that should maybe serve as
24 somewhat of a cautionary tale for New Mexico.

25 You know, ECMC touted its 2022 bonding

1 overhaul as the strongest in the nation. The reality
2 is that the rules have increased financial pressure on
3 operators without meaningfully reducing the orphan
4 well problem. I think there's several key outcomes
5 that sort of highlight the failure of that reform.

6 The new bonding requirements have
7 contributed to operators becoming financially unable
8 to comply. There is an example in Colorado, a group
9 called KT Resources, a small operator here that failed
10 to meet its financial assurance obligations. They
11 received a couple dozen violation notices. As a
12 result, 107 wells they had acquired in 2022 are now
13 expected to be orphaned and transferred to the state
14 for plugging and remediation.

15 Here, at least, the rules allow large
16 operators to use blanket bonds and discretionary
17 financial assurance plans, while small and midsize
18 operators lack the production volumes to fund their
19 own decommissioning, making them more vulnerable to
20 insolvency and orphaning itself.

21 With more wells being orphaned or
22 potentially orphaned, the financial burden is really
23 shifting to the state and taxpayers.

24 Q. Okay. Thanks. And you mentioned earlier,
25 and I think I skipped the slide, but that the surety

1 market is really difficult and that it might -- is it
2 true that it may not be available to every operator?

3 A. Yeah. So we've touched on this a little
4 bit. But most operators are required to post
5 collateral to secure their bonds.

6 In my experience, the collateral
7 requirements can be upwards of 50 to 100 percent of
8 that bond amount that is being required. And it's
9 largely dependent on the operator's financial strength
10 and the size of the bond itself. Generally, the
11 larger the bond, the higher the collateral
12 requirement.

13 In addition to the collateral, sureties
14 do charge an annual bond premium for issuing that
15 bond. So again, in this sector, typical premiums
16 range between two and a half and three and a half
17 percent of the bond amount. That is an annual
18 premium, so it is charged on an annual basis. And the
19 combination of substantial collateral and recurring
20 premium costs can significantly increase the overall
21 operating costs.

22 So for your small to mid-size operators,
23 absorbing these costs is often neither feasible nor
24 sustainable, especially in your more
25 capital-constrained environments.

1 Q. And so for an operator who's not either
2 eligible or it just doesn't make financial sense to
3 get a surety bond, what are the other forms that would
4 be available to them?

5 A. Cash, letter of credit. And it's pretty
6 minimal. Well, I guess now you also have the
7 OneNexus, assuming that we could get a approval of
8 them as an alternate to this.

9 Q. Okay. Thanks. So to summarize, it would be
10 the surety bond, a cash bond, a letter of credit, or
11 possibly a well-plugging insurance policy. Is that
12 the four that you're thinking of?

13 A. Yes, ma'am.

14 Q. And our statute provides for all four of
15 those?

16 A. Yes, ma'am.

17 Q. So you ran through your direct pretty fast
18 here. I do want to give you the chance -- you
19 submitted some rebuttal testimony in this rulemaking.
20 And I know maybe we're beating this over the head, but
21 does a bond insulate or ensure the state in any form?

22 A. No. I would say that it does not insulate
23 or insure the state at all. A bond is a financial
24 guarantee. It's not a risk transfer mechanism. It
25 does not shift financial liability or financial

1 responsibility away from the operator.

2 Instead, it ensures that if the operator
3 fails to meet its obligations, such as plugging and
4 abandoning a well, the state has a mechanism to
5 recover those costs, either through the bond's
6 collateral or by pursuing the surety.

7 However, the recovery is not automatic
8 or comprehensive. The state often engages in a claims
9 process, which can be time-consuming and uncertain.

10 In contrast, insurance is designed to
11 transfer risk from the insured to the insurer. When a
12 covered loss occurs, the insurer is contractually
13 obligated to pay, subject to the policy terms.

14 Bonds don't offer that kind of
15 protection. They are contingent liabilities, not
16 indemnity instruments. So while a bond may provide
17 some financial recourse, it does not insulate or
18 insure the state against the full cost or risk of
19 nonperformance.

20 I think the distinction is critical when
21 evaluating the effectiveness of bonding requirements
22 as a tool for environmental protection and financial
23 assurance.

24 Q. Another argument that's made is that a
25 surety market is just like any other market, you know,

1 just like the car insurance market, and so obviously
2 it will respond. If there's a demand, they'll make
3 that product available?

4 Do you have a response to that position?

5 A. I think it's an unequivocal no. The surety
6 market operates very differently from the traditional
7 insurance market, and especially something like auto
8 insurance.

9 Surety's don't pool risk in the same way
10 that insurers do. They underwrite each bond largely
11 based on the financial strength and credit worthiness
12 of a particular operator. So this means that access
13 to bonding is selective and constrained, especially
14 for your small and mid-size operators or those with
15 limited liquidity.

16 Unlike car insurance, which is broadly
17 available and priced on actuarial risk models, surety
18 bonds often require significant collateral; again,
19 sometimes up to 100 percent of the bond amount, and
20 they're subject to strict underwriting criteria. If
21 an operator doesn't meet those criteria, they could be
22 denied bonding altogether, regardless of their
23 operational track record.

24 Additionally, the surety market is
25 capacity driven. If regulatory changes dramatically

1 increase the demand for bonding, as we've seen in
2 Colorado, sureties may not have the appetite or
3 bandwidth to respond quickly or at scale. That can
4 lead to market bottlenecks, delayed approvals, and
5 even operators being forced out of compliance due to
6 lack of access.

7 Q. I had one more question. Just in terms of
8 the practical effects, the way a bond works, even if
9 there's financial assurance posted for a well, when it
10 comes time to plug that well, is that money available?

11 A. No. And actually, will you -- will you just
12 repeat that again, because I want to make sure that I
13 answer directly what you're asking.

14 Q. Yes. Okay. So, if an operator posts a
15 bond, a single-well bond for a well, and that operator
16 is then ready to plug that well, can the operator
17 access that, the sums that are --

18 A. Yeah.

19 Q. -- for the financial assurance?

20 A. Thank you. Yeah, absolutely not. So,
21 again, there's no transference of risk. This is
22 singularly a promise to pay. So the surety is saying
23 that in the event, operator defaults, these funds are
24 being held in reserve for that scenario.

25 However, as Armstrong, or whomever it

1 is, goes to plug any of their given wells, they're
2 using existing capital for those costs. They do not
3 have the ability to access the penal sum being
4 guaranteed by the surety, any of the collateral that's
5 being used to guarantee that. It is a totally
6 separate bucket that is drawn upon.

7 Q. And so if the state is the beneficiary under
8 the bond or arrangement, can the beneficiary access
9 those funds if the well is orphaned and it falls to
10 them?

11 A. Yes. So in the event that a well is
12 orphaned, the state does have the ability to go after
13 the bucket of money that's available.

14 So in the case of a surety bond, the
15 state must first declare the operator in default and
16 then initiate a formal claims process with the surety.
17 The process can involve documentation of
18 non-compliance, negotiation or dispute resolution,
19 legal proceedings if the surety contests the claim.
20 It can take months, it can take years, during which
21 the wells may remain unplugged.

22 For collateral-backed bonds or letters
23 of credit, the state may still face delays due to bank
24 processing timelines, legal review of drawdown rights.
25 And, again, importantly, these funds are not available

1 for the operator to perform the work themselves.

2 So once the state steps in, the operator
3 is typically out of the picture. The state must
4 manage the plugging and remediation. Often it seems
5 at a higher cost and with limited flexibility than
6 what operators can perform on their own.

7 The financial assurance mechanism does
8 not function like a liquid reserve. They're
9 contingent, reactive tools, not proactive funding
10 sources.

11 Q. Okay. And so one of the things that we've
12 heard in this rulemaking proceeding is that these
13 rules are intended to address risky wells and risky
14 operators. Would increasing financial assurance
15 levels accomplish that objective?

16 A. Not really. I mean, I think that just
17 raising the financial assurance requirements doesn't
18 automatically solve the problem of risky wells or
19 risky operators. It's a blunt tool being used to
20 address a nuanced issue.

21 Higher bonding doesn't prevent risk, it
22 just prices it. It doesn't improve well integrity, it
23 doesn't ensure better operational practices, and it
24 doesn't guarantee the state will be made whole if
25 something goes wrong. In fact, if the bonding

1 requirements are too aggressive, they can lead to more
2 orphaning, not less, because operators who can't meet
3 the new thresholds may walk or go under.

4 Q. And have you seen that occur in Colorado
5 following the Colorado increase to financial
6 assurance?

7 A. Yes.

8 Q. Okay. So, two of WELC's witnesses,
9 Mr. Morgan and Mr. Peltz, both propose that those who
10 benefit from the production of wells should pay for
11 the decommissioning and the reclamation costs. Do you
12 agree with that position?

13 A. I do. I think it makes sense -- I think it
14 makes the most sense for operators who benefit from
15 the entire life of the well to share in costs
16 associated with the decommissioning. But I don't
17 think the proposed rules accomplish this by limiting
18 the additional financial assurance burden to
19 low-producing wells.

20 On the other hand, from what I
21 understand of it, is that the New Mexico oil and gas
22 conservation tax would do that by carving out revenue
23 over the entire production, productive life of that
24 well.

25 Q. And I apologize for jumping around, but I

1 remember the question I needed to ask you?

2 So we've heard a lot of discussion about
3 whether the bonds required by our statute, 70-2-14,
4 are cancelable or whether they're conditioned on the
5 plugging of the well. I'll share that statute again
6 for you. Do you have an opinion as to whether surety
7 can cancel or release a bond prior to a well-being
8 plug?

9 A. Cannot.

10 MS. TRIPP: Okay. Thank you.

11 And so that concludes Mr. Gilstrap's
12 direct and rebuttal testimony. We have some brief
13 surrebuttal testimony to offer.

14 HEARING OFFICER ORTH: Thank you.

15 BY MS TRIPP:

16 Q. So, WELC's expert witness, Mr. Peter Morgan,
17 at page 6, lines 3 through 15, and also at page 8,
18 lines 5 through 11, he asserts that the surety market
19 will respond to the demand that's created by these
20 regulations?

21 Do you have the same opinion?

22 A. No. I think that the surety market is
23 capacity driven. So a sudden surge in demand can very
24 possibly not be met quickly or at scale.

25 I mean, we saw this in Colorado. It's

1 sent absolute ripples through the surety market, had
2 people scrambling to figure out what they were going
3 to do to secure that capacity. So, no.

4 Q. And then Mr. Peltz, which is Exhibit 82 at
5 page 13, he provided this table, Exhibit 84. And the
6 note 3 states that these premium rates are based on
7 surety premiums from the Bureau of Ocean and Energy
8 Management. Is that an accurate -- would you consider
9 that an accurate source for estimating premium rates
10 today in New Mexico?

11 A. No, I would not. I think that they are
12 likely wildly skewed from what we would see for
13 onshore wells. I believe that there was a more recent
14 study that even showed those had increased to nearly
15 \$2 million. It's just a -- we're talking about apples
16 and fruit flies, right? I mean, these are just two
17 totally wildly different scenarios. So, no.

18 Q. Okay. Thank you. And finally, what we've
19 heard a lot, Mr. Morgan, Exhibit 81, Page 26, lines 17
20 through page 27, line 1, that these proposed rules
21 take a risk-based approach to address those wells at
22 the greatest risk of orphaning using the surety
23 company's analysis of risk?

24 Is that your understanding of how a
25 surety evaluates an operator before offering a bond?

1 A. No. So, sureties, it's just not how they
2 work. Because again, there's not a transference of
3 risk. Underwriters, typically within the surety
4 world, look to underwrite to a zero-loss scenario, and
5 that is largely dependent on the cash liquidity and
6 financial stability of that company. So, they're not
7 deep diving into the operational wherewithal.

8 I suppose maybe if you have someone that
9 is consistently showing up in newspaper headlines,
10 that they could be referenced maybe as part of that
11 underwriting process. But no, it is largely driven to
12 underwrite to a zero-loss scenario that is almost
13 exclusively driven by the underwriters comfortability
14 with the financial wherewithal.

15 Q. Okay. And in this slide of your surrebuttal
16 demonstrative, are you familiar with the master orphan
17 well list that the oil conservation Division produced
18 in this matter?

19 A. Somewhat.

20 Q. Somewhat. And then the Oil Conservation
21 Division also produced what's labeled as Exhibit 29,
22 which is a list of all the financial assurance that's
23 on file with the state currently?

24 And so, is there anything you can
25 explain to us about this slide in terms of whether a

1 surety evaluates risk?

2 A. Yeah. So it seems like a good example to
3 emphasize the point that they don't. Eight out of the
4 top ten on here who have orphaned wells in New Mexico
5 were all able to attain surety bonds. So I think that
6 that helps to, if anything, prove the point that
7 that's not what they're in the business of reviewing
8 for underwriting.

9 MS. TRIPP: Okay. The other attorneys will
10 have questions for you as well as the Commission.
11 But this concludes our surrebuttal testimony.

12 And I'll proffer Mr. Gilstrap's direct
13 and rebuttal testimony and the demonstrative
14 surrebuttal slides.

15 HEARING OFFICER ORTH: I'll pause for a
16 moment in the event there are objections.

17 Okay. They're admitted. Thank you.

18 (Admitted: IPANM Gilstrap Direct
19 and Rebuttal Testimony and
20 Demonstrative and Surrebuttal Slides.)

21 HEARING OFFICER ORTH: Ms. Fox or
22 Mr. Tisdell?

23 MS. FOX: No questions today. Thank you for
24 your testimony.

25 HEARING OFFICER ORTH: Mr. Tremaine. Do you

1 have questions?

2 MR. TREMAINE: Thank you. Ms. Fox has
3 thrown me a curve ball there.

4 CROSS-EXAMINATION

5 BY MR. TREMAINE:

6 Q. All right. Good afternoon, Mr. Gilstrap.
7 My name is Jesse Terrain. I'm the legal director for
8 the Oil Conservation Division. I just have a couple
9 questions for you?

10 On your recent slide that you were going
11 over with Ms. Tripp, you were talking about some of
12 the operators on the mass orphan spreadsheet and
13 indicating that the -- I believe you indicated that
14 the existence or the fact that they were able to
15 obtain financial assurance or sureties indicated that
16 they were not assessed according to their relative
17 risk. Is that a fair statement?

18 A. I believe that they weren't assessed based
19 on their operational risk.

20 Q. Okay. And do you have any knowledge of when
21 the operators on that list that you showed provided or
22 acquired their respective financial assurance?

23 A. I do not. But I can elaborate on that some,
24 if you'd like to just talk about generally what
25 happens with the underwriting process for existing

1 bonds.

2 Q. Okay?

3 A. So typically when a bond is first in place,
4 put in place, there is a robust review of the
5 financial stability of that organization. And
6 different sureties vary. Some of them review those
7 financials on a quarterly basis to ensure continued
8 financial wherewithal. Some of them do it on an
9 annual basis. That can fluctuate largely based on
10 commodity price.

11 So, for example, during COVID, we saw a
12 much higher scrutiny over those bonds. Because we saw
13 such a precipitous decrease in the commodity prices,
14 underwriters, surety underwriters, were really getting
15 more into the weeds of the finances of the companies
16 that they were providing those bonds for.

17 So it really does vary. Sureties do
18 have the ability to change collateral throughout the
19 course of that bond as well, because these are
20 un-cancelable. So, for example, a surety could put a
21 bond in place, and I'll use Armstrong because I caught
22 the tail end of Armstrong's presentation. If
23 Armstrong has a bond in place right now that has a
24 50 percent collateral tied to them and for some
25 reason, they had a slip in their financial

1 wherewithal, the surety company, upon review of those
2 finances, either in a quarterly, semiannual or annual
3 basis, would have the ability to increase the
4 collateral they're requiring of Armstrong.

5 Q. Mr. Gilstrap, thank you for that. Do you
6 have any personal knowledge of the terms or conditions
7 of the financial assurance associated with any of
8 those companies that you referenced?

9 A. Do not.

10 Q. Okay. A couple of questions here. You
11 know, a lot of hay is being made in this hearing
12 distinguishing sureties from insurance. And I think
13 that my understanding is that the real primary
14 distinction is that sureties don't shift risk?

15 In the event that OCD plugs and orphaned
16 well, and OCD then calls the bond on that well, and
17 the surety pays out the bond, the reason -- tell me if
18 you agree with this. The reason you're saying that a
19 financial assurance instrument does not shift risk is
20 because, according to the agreement, the surety can go
21 after the operator for that money.

22 A. Not can, but will.

23 Q. Will. Okay. What happens when, once you go
24 after the operator, they don't have any money left?

25 A. So it's part of the reason that we see such

1 high collateral requirements from these sureties, is
2 there's not a ton of recourse.

3 So the surety can certainly try and sue
4 them for the assets that they have. They will
5 certainly take the collateral that has been made on
6 hand. But sureties underwrite to a zero-loss
7 scenario.

8 So when a surety is sitting here
9 evaluating whether or not they want to provide terms
10 to any given operator, they're going to do so if they
11 feel comfortable that in the event this operator did
12 default, that they, surety, would be able to collect
13 100 percent of the funds being promised.

14 Does that answer your question.

15 Q. It does. Thank you. You testified to an
16 increase in collateral, and this has come up a couple
17 times in discussing Colorado and the increased
18 proposed increase in FA. Mr. Gilstrap, why
19 specifically have sureties increased their collateral
20 or premium demands of operators in recent years?

21 A. So I think as penal sums continue to
22 increase, so it is the exposure for the surety.
23 Again, a surety is not a transfer of risk; it is
24 simply a promise to pay. And sureties, like all other
25 companies, are in the business of making money.

1 So as these exposures continue to
2 increase, they look to offset their exposure as well,
3 which is why we're continuing to see those rise.

4 Q. So, Mr. Gilstrap, I'm going to paraphrase.
5 I understood that to be insurance speak for sureties
6 have had to pay out bonds. So you're starting to
7 charge more for bonds. Is that right?

8 A. I think it's twofold. Sureties like -- yes,
9 sureties have paid bonds before. Absolutely.
10 Companies have gone under, sureties have had to pay
11 those bonds, as the intent of putting them in place.

12 But, again, they're not actually
13 transferring risk. Their intent is to never have a
14 paid and unclaimed balance of that amount paid. So as
15 we continue to see rising penal requirements, penal
16 sum requirements or bonding requirements throughout
17 states, underwriters are looking to offset their
18 exposure by requiring more collateral from companies
19 to ensure that in the event of a default, they are not
20 left out to dry.

21 Q. Okay. And in your understanding, observing
22 this trend in the insurance and surety industry, those
23 change in terms have resulted from sureties having to
24 pay out on a significant number of surety instruments,
25 correct?

1 A. Again, I think it's largely due to rising
2 requirements in this space. But I think that there's
3 a larger exposure for these surety companies.

4 Is the increase being driven singularly
5 due to losses, I think is what you're asking. I don't
6 think that's accurate. I think it's being driven due
7 to a higher increase or exposure for losses due to
8 rising increases to these bond amounts.

9 Q. I'm not asking you if it was singularly
10 driven by losses. I'm asking you if losses are
11 contributing to those changes of terms?

12 A. Very possible. Admittedly, I'm not a surety
13 underwriter, so I don't know that I can answer that
14 any better than I have. Sorry.

15 Q. I'll move on. Thank you?

16 Mr. Gilstrap, you made two statements
17 that I want to follow up on at your direct and
18 rebuttal today. First, you indicated that the terms
19 or that sureties will look at the financial strength
20 and credit worthiness of individual operators.

21 And then you made a statement that
22 higher bonding doesn't address risk. It just prices
23 it.

24 So am I understanding your testimony
25 correctly that sureties will require more collateral

1 and/or higher premiums for operators who the surety
2 deems have less financial strength or lower credit
3 worthiness?

4 A. Will you, without repeating everything, just
5 repeat that last question, the last sentence? I'm
6 sorry.

7 Q. Would you agree that sureties require more
8 collateral or higher premiums if they are looking at
9 an operator that the surety deems has either less
10 financial strength or lower credit worthiness?

11 A. Yes.

12 Q. Okay. Does it not stand to reason that an
13 operator with less financial strength and lower credit
14 worthiness represents a greater risk of orphaning
15 their wells?

16 A. I'm not sure that I'm the right person to
17 respond to that. You know, I'm just an insurance guy.
18 I'm not an operator.

19 But my mind goes to companies that are
20 operate stripper wells or some of those marginal
21 wells. You know, I think that they've got much
22 tighter financial constraints and cash flows, and I
23 don't know that that necessarily makes them a greater
24 risk.

25 If anything, I think that those folks

1 can be beneficial to the state. As you see some of
2 the super majors looking to diverse some of those,
3 from their perception, crummier your assets, I think
4 it's great you have companies out there that that is
5 largely their focus. And I don't know that just
6 because their revenues are lesser than some of their
7 peers that are drilling newer, bigger, better wells, I
8 don't know that it makes them a worse risk in terms of
9 their operational efficiencies.

10 Q. So in that hypothetical, a surety is looking
11 at an operator that they deem has less financial
12 strength and that's the reason why the surety is going
13 to require either additional collateral or higher
14 premiums. But you're stating that that does not mean
15 those operators are higher risk? I just want to be
16 clear?

17 A. Yeah, I don't think that just because they
18 don't have the same sort of margins means that they're
19 more exposed or at risk for going under.

20 But I think from the sureties
21 perspective, it means that those folks, should they go
22 under, holistically, have much less access to cash
23 flows to pay out the penal sum that is being promised.

24 As such they're required to put up more
25 collateral and/or potentially pay a higher premium,

1 because in the event they go under, they might not
2 have the same sort of cash flow as one of their larger
3 peers with those higher revenue efficiencies.

4 HEARING OFFICER ORTH: Five minutes,
5 Mr. Tremaine.

6 MR. TREMAINE: I think I have one more.

7 BY MR. TREMAINE:

8 Q. Mr. Gilstrap, in your direct and in your
9 rebuttal, you talk at some length about sureties, the
10 process by which -- any given surety's reluctance to
11 pay out or potentially their opposition to that. So
12 on your rebuttal testimony, page 3, line 7, you state,
13 "Under most commercial surety or indemnity agreements
14 underlying a bond, the surety also retains the power
15 to negotiate or settle calls on bonds, which all
16 sureties enforce zealously?"

17 You then state that OCD is familiar with
18 this dynamic, with over \$700,000 in bonding by Cano
19 Petro and having collected just over 161,000 four
20 years later.

21 Mr. Gilstrap, are you implying that the
22 bond payout related to the Cano Petro was a negotiated
23 sum?

24 A. I admittedly don't know definitively. My
25 assumption is yes, it was.

1 Q. Okay. If I told you it absolutely was not,
2 would that cause you to alter your testimony at all?

3 A. Is that an opinion or is that fact that it
4 was not a negotiated amount.

5 Q. I don't get to testify, but I'm telling you
6 if you accepted the premise that that was not a
7 negotiated amount, would that change your testimony?

8 A. In terms of surety carriers having the
9 ability to negotiate those final payouts, no, it would
10 not change the testimony.

11 Q. Have you looked into or been advised by any
12 legal counsel as to the State of New Mexico's ability
13 to negotiate --

14 A. I have not.

15 Q. -- bond payouts?

16 Okay. Thank you. And just to wrap, I
17 just want to make sure it's quick for the record, so
18 you don't have any personal knowledge of the Cano
19 Petro bond forfeiture or any specific forfeitures that
20 have been pursued by the Oil Conservation Division,
21 correct?

22 A. That is correct.

23 MR. TREMAINE: Okay. Mr. Gilstrap, thank
24 you very much for your time. I had no further
25 questions.

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

3 Mr. Moore, do you have questions of
4 Mr. Gilstrap?

5 MR. BIERNOFF: Madam Hearing Officer, it's
6 Ari Biernoff. No questions for Mr. Gilstrap.

7 HEARING OFFICER ORTH: Thank you.

8 Let's see, Mr. Nanasi I don't believe is
9 with us.

10 Mr. Maxwell, do you have questions?

11 MR. MAXWELL: No questions. Thank you.

12 HEARING OFFICER ORTH: Thank you.

13 Mr. Rankin, any questions?

14 MR. RANKIN: None from me. Thank you.

15 HEARING OFFICER ORTH: All righty. EOG is
16 monitoring. Mr. Suazo, any questions?

17 MR. SUAZO: Yes, Madam Hearing Officer.
18 Just a couple of questions.

19 CROSS-EXAMINATION

20 BY MR. SUAZO:

21 Q. Good afternoon, Mr. Gilstrap?

22 A. Good afternoon.

23 Q. I want to ask you a couple of questions
24 about this OneNexus insurance policy that you
25 explained to the Commission. Is that the only

1 one-well plugging insurance policy on the market that
2 you're aware of?

3 A. It is the only one that I am aware of,
4 correct.

5 Q. And do you know what states it's available
6 in?

7 A. I believe that it just was put in place in
8 West Virginia. I believe I saw an article from the
9 governor touting -- I think Diversified Energy just
10 did a deal in West Virginia. I believe it is now
11 available in California. And I believe that OneNexus
12 is nearing the finish line of a product for Wyoming as
13 well.

14 Admittedly, it's very possible they're
15 in other states, but I do not know definitively.

16 Q. So then it's safe to say that that is not
17 available as an option in New Mexico; is that correct?

18 A. I'm not sure that I agree with that. I
19 don't know if it has been used in New Mexico, but
20 based on the way that the rules are written, it looks
21 as though New Mexico currently allows for an insurance
22 product to meet the bonding obligations.

23 So without being an expert on the
24 New Mexico laws, my perception is that it would be an
25 acceptable product to meet the existing requirements

1 and/or proposed new requirements.

2 Q. Now, in these other states where you are
3 sure that it is available, did that type of insurance
4 policy have to obtain approval from whoever
5 administers their insurance overstate?

6 A. I do not know the answer to that. I can
7 tell you in Colorado, the answer is yes. And the
8 reason being, it seems like one of the biggest
9 differences, at least from my knowledge between how
10 compliance with these requirements are written, is
11 that Colorado's wording does not include an insurance
12 policy as a viable alternative. Therefore, it's
13 required approval from ECMC.

14 Q. So then in order for an insurance policy for
15 the, the plugging of wells to be available in
16 New Mexico, is it your understanding that it would
17 have to be approved by, I guess, the New Mexico
18 Superintendent of Insurance?

19 A. If it wasn't -- I guess I'm not sure how to
20 answer that. As is, I don't believe so. Because
21 based on at least the wording that I've seen, it seems
22 to -- the rules seem to already allow for an insurance
23 product to be utilized.

24 If the regulatory agency took the
25 position that that wasn't the intended wording, then

1 I'm sure it would require additional clarification.
2 But my assumption is it would be accepted.

3 MR. SUAZO: No further questions.

4 HEARING OFFICER ORTH: Thank you.

5 Ms. Tripp, do you have any redirect?

6 MS. TRIPP: No, I do not.

7 Thank you, Mr. Gilstrap. The
8 commissioners may have questions for you.

9 HEARING OFFICER ORTH: All right.
10 Commissioner Ampomah, do you have questions of
11 Mr. Gilstrap?

12 COMMISSIONER AMPOMAH: Yes, I do.

13 EXAMINATION

14 BY COMMISSIONER AMPOMAH:

15 Q. So I'm looking at the numbers that you put
16 up as part of your testimony discussing, let's say,
17 scenario 1 and scenario 2. So with your scenario 1,
18 you're looking at operators with 150 wells and also
19 the 15 percent threshold needs. And they are required
20 to pay, if the premium that you are providing here,
21 let's say, 2.5 to 3.5, you know, to the high of about
22 \$787,500 a year?

23 I mean, so I'm just still thinking about
24 for smaller -- for small operators, is there a way
25 where we can have, let's say, financial assurance that

1 would test the states and also does not necessarily
2 cripple these companies?

3 A. That's a great question. And honestly, I
4 don't know that I'm in a position to help find a
5 solution. I was brought in to comment on what was
6 being proposed.

7 What I will say, Commissioner, is I do
8 think that acceptance of a OneNexus product will help
9 in this. It's at least a transference of risk. To be
10 clear, though, the OneNexus, it comes with a premium
11 as well, right? We're going to see similar premiums
12 with an insurance product.

13 I guess the biggest difference is that
14 you're essentially using those premiums to pre-fund
15 future costs, which is a huge differentiator between
16 an insurance product and a bond. Because those
17 premiums that you're referencing, that 562,000 to
18 787,000, those are sunk unrecoverable costs that
19 aren't going towards future plugging expenses.

20 I'm sorry, that probably wasn't as
21 direct a response as you wanted.

22 Q. Yeah, so maybe this might be similar to that
23 of the insurance that you are discussing. But don't
24 you also believe that there could be a way where we
25 can pass a minimum FA requirement for these wells, and

1 then also probably something in there like a cost per
2 barrel basis to build up the cost to plug the wells,
3 where OCD can have access to that amount?

4 So instead of a company, the small
5 operator putting up \$150,000 per well, but they can
6 put up some and then also more or less charge on a per
7 barrel basis to really build up the cost to that
8 amount to plug the well, just in case that operator
9 defaults. But if the operator plugs their well, then
10 they have access back to their money. Can you comment
11 on that?

12 A. I am very in favor of alternatives to just
13 singularly increasing the financial assurance
14 obligations. I think that the idea of some sort of
15 pre-funding pool is fantastic. You know, again,
16 haven't certainly seen anything, an outline, to be
17 able to comment on it specifically. But yes, I love
18 the idea of creative options outside of singularly
19 just increasing financial assurance levels.

20 Q. So the pre-funded pool you just mentioned,
21 has it been implemented in any other states?

22 A. I'd have to go through and look to tell you
23 that. I'm not sure off the top of my head.

24 COMMISSIONER AMPOMAH: Thank you, sir, for
25 your testimony. No further questions.

1 The WITNESS: Thank you.

2 HEARING OFFICER ORTH: Thank you.

3 Commissioner Bloom, do you have
4 questions?

5 COMMISSIONER BLOOM: Thank you, Madam
6 Hearing Officer. Yes.

7 EXAMINATION

8 BY COMMISSIONER BLOOM:

9 Q. Good afternoon, Mr. Gilstrap. Just a couple
10 questions?

11 We've heard contradictory testimony
12 during this hearing about whether bonds can be
13 cancelled if a well were to leave this newly created
14 marginal status. The OCD says yes. You said no,
15 correct?

16 A. Yes, correct. Bonds are a non-cancellable
17 product. The only time the bond is canceled is when
18 they are released by the regulatory body or called
19 upon.

20 Q. So, if a well were to be bonded because it
21 was marginal and that it increases production,
22 couldn't the state be obligee, then release that bond?

23 A. So the -- I guess the state could release a
24 bond whenever they want to. My assumption is that in
25 that particular situation, the state wouldn't release

1 the bond. If anything, they might change the amount
2 of the bond.

3 So if there's a higher amount required
4 for a marginal well, then there is a high-producing
5 well, presumably it would be a stair step down in the
6 bond requirement, but not a release thereof, because
7 it's still a well that has a, at some point in time,
8 end of life expected and will need to be reclaimed.

9 Q. Okay. Thank you. I mean, this is an
10 essential matter here. Because one of the things that
11 this proposed rulemaking would do is really push
12 operators to either plug their wells or increase their
13 production so that they don't have to be bonded, so
14 they don't go into marginal status, so they come out
15 of marginal status. And we have a disagreement among
16 the parties as to whether bonds are cancellable or if
17 there's a way to drop a bond on a well that was once
18 marginal. I'm not quite sure how we're going to work
19 this out. Anything else you can add?

20 A. I can say that plugging and abandonment
21 bonds are non-cancelable. It's part of the reason
22 that you see such high collateral and premium
23 requirements tied to them in such scrutiny over the
24 financial liquidity of that particular operator.
25 Because once put in place, the surety cannot cancel

1 that bond. The only way they're getting off that bond
2 si if released by the regulatory agency that's
3 requiring the bond.

4 Q. Yes. Okay in response to your question from
5 NMOGA, you mentioned Diversified Energy, which in some
6 ways, I don't know if it's instructive or not, but
7 that's a company that has 20,000 wells across, I'm
8 thinking, like West Virginia, Kentucky, Pennsylvania,
9 Ohio, that area, 20,000 wells and 2,600 of them are
10 considered abandoned. I think originally they were
11 going to plug -- P&A 580 of those over the next nine
12 or ten years. And now they've agreed to do five times
13 more, about 2,600 wells?

14 Any takeaways from that?

15 A. I think that the biggest takeaway I guess
16 would be that regulators in the State of West Virginia
17 resonated with the OneNexus product and found it as a
18 viable tool to help insulate them and taxpayers from
19 that exposure. And so they gave it a thumbs up and
20 felt that -- and, again, this is opinion. You know,
21 obviously I don't know definitively. But felt that it
22 was a better tool to help insulate them from that
23 exposure as opposed to traditional surety.

24 COMMISSIONER BLOOM: Okay. Mr. Gilstrap,
25 thank you so much for your time. No further

1 questions.

2 The WITNESS: Thank you.

3 HEARING OFFICER ORTH: Thank you.

4 Chair Chang, do you have questions?

5 CHAIR CHANG: Sure. Just a couple.

6 EXAMINATION

7 BY CHAIR CHANG:

8 Q. Is it your understanding, Mr. Gilstrap, that
9 sureties are a more common and preferred financial
10 assurance instruments in the oil and gas context than
11 insurance policies?

12 A. I would say common definitively. But I
13 think that's largely driven by the fact that an
14 insurance product to potentially displace the need for
15 a bond hasn't existed until recently.

16 Q. I see. Okay. Because the follow-up
17 question that I had was whether you could help me
18 understand why insurance policies aren't as popular or
19 may not be popular. But it sounds like it's just not
20 been on the market for as long?

21 A. Yes.

22 CHAIR CHANG: That's all I have. Thank you.

23 HEARING OFFICER ORTH: All right. Thank you
24 Mr. Chair.

25 Any reason not to excuse Mr. Gilstrap?

1 Thank you very much, Mr. Gilstrap, for
2 your testimony.

3 The WITNESS: Thank you.

4 MS. TRIPP: Madam Hearing Officer, I believe
5 Mr. Cloutier will be calling our next witness.

6 MR. CLOUTIER: IPANM calls Calder Ezzell to
7 the stand. And for housekeeping purposes, Madam
8 Hearing Officer, I think it's very likely that his
9 direct, rebuttal and surrebuttal will take longer
10 than the hour we have until public comments.

11 So if you want to flag for me where a
12 decent stopping point is, I'll try and wrap up a
13 topic before public comment.

14 HEARING OFFICER ORTH: Is it to disruptive
15 to ask that you find a breaking point around 3:30,
16 3:40, somewhere in there?

17 MR. CLOUTIER: No. I'll look for one.
18 Thank you.

19 HEARING OFFICER ORTH: Thank you.

20 Mr. Ezzell, would you spell your first
21 and last name, please, for the transcript.

22 The WITNESS: Calder, C-A-L-D-E-R,
23 E-Z-Z-E-L-L.

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

1 The WITNESS: I do.

2 HEARING OFFICER ORTH: Thank you.

3 Go ahead, Mr. Cloutier.

4 CALDER EZZELL,

5 having first been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. CLOUTIER:

8 Q. Would you please introduce yourself to the
9 Commission?

10 A. My name is Calder Ezzell. I'm an attorney
11 with the Hinkle Shanor firm in Roswell, New Mexico.

12 MR. CLOUTIER: Move to slide 2, please,
13 Mr. Everhart.

14 BY MR. CLOUTIER:

15 Q. If you'd describe your legal background in a
16 little more detail, please, Mr. Ezzell?

17 A. Well, I went to undergraduate and law school
18 at Washington Valley University in Lexington,
19 Virginia, graduated with my JD in 1977, and joined the
20 Hinkle firm that summer, and have hung on this long.

21 I'm a transactional lawyer. I do title
22 opinions, JOAs, farm-outs, contract negotiations. I
23 did have an OCD practice years ago, but that was
24 before the firm had a Santa Fe office, and once we
25 opened a Santa Fe office, we transitioned that work up

1 here because it wasn't economical for them to pay me
2 to drive to Santa Fe. And I miss it. I really liked
3 my OCD practice.

4 Q. And all of the transactions that you
5 described, those are oil and gas industry specific,
6 Mr. Ezzell?

7 A. Yeah. You can throw in two or three solar
8 contracts and things like that. I'm also a rancher,
9 and I have lots of ranching friends that have need for
10 free attorneys a lot.

11 Q. Yes sir?

12 A. I seem to remember an auto mechanic, too,
13 one time. But that's true, we won't bring up firm
14 management issues here in the Commission.

15 Q. Would you describe to the Commission your
16 background in the oil and gas industry, in addition to
17 what you've described in your legal career?

18 A. Well, I have been an individual non-op
19 investor in oil and gas wells for over 40 years. As a
20 result of one of those investments, actually a couple,
21 an operator who was a friend of mine and a client got
22 in over his head because he also had a trucking
23 company and a drilling company and that didn't work
24 out very well in the early '80s, and when he was
25 forced into bankruptcy and resigned as operator of all

1 the wells his company had, I was in three of those
2 wells and so I assumed operations at the company,
3 called Polo Oil and Gas.

4 And I operated those wells, operated in
5 air quotes. I didn't do any of the field work. All
6 of the physical stuff was done by two of the former
7 operator's employees. One was a geologist and one was
8 his engineer. And so they took care of all the field
9 stuff. And I got bonded and sent out the bills and
10 paid the checks, wrote the checks, and kept those
11 three little wells going until my friends, the
12 geologist and engineer, got enough backing to where
13 they could start their own company, and I turned the
14 operations back over to them.

15 I take it back. I did get frisky once
16 as an operator and tried a re-entry, which was an
17 abysmal failure. I was advised never to name an oil
18 well after your dog.

19 Q. Thank you, Mr. Ezzell. You submitted direct
20 and rebuttal testimony to the Commission in these
21 proceedings, correct?

22 A. Yes.

23 Q. Okay. Any changes or corrections? And if
24 you could pull the mic a little closer to you. I
25 don't mind you leaning back, but you're just a little

1 bit...

2 A. I am embarrassed to say that I have
3 corrections. On my direct testimony, page 11, line
4 23, the first word "of" should be "or."

5 Page 13, line 21, out in the middle, the
6 word "reservation" should be "resignation." I don't
7 know how that happened.

8 Page 28, second word in line 18 should
9 be "joint" account instead of "direct" account.

10 This one is a little more material, page
11 29, line 6, I am of the opinion that the operator can,
12 the word "not" was omitted. So I am of the opinion
13 that the operator cannot charge for that bond.

14 Page 30, line 10, second to the last
15 word is "pass," and it should be "post." I can't
16 imagine that painful it would be to pass a cash bond.

17 Page 54, line 15, the word "negotiating"
18 should be "negotiated," past tense.

19 Page 57, Line 2, third the last word,
20 "payor" should be "prior."

21 Now to the big one. In my rebuttal
22 testimony, page 4, line 6, incorrectly quotes the
23 statute by saying that the \$50,000 bond amount was the
24 maximum, when, in fact, it is the minimum. And I do
25 not know -- so the words "not to exceed" should be

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1 "greater than." I do not know how that happened. I
2 wish I had an associate or a paralegal or ChatGTP to
3 blame, but I don't. So since I'm under oath, that one
4 is on me. I do not know how I missed that mistake.

5 So that would mean that page 7, line 19,
6 sixth word, "highest" should be "base." Conversely,
7 on the next page, 8 in 6 and 12, the word "maximum"
8 should be "minimum."

9 End of mea culpa, except for the fact
10 that I appreciate having been advised of that prior to
11 getting in this chair. So whoever did that, my faith
12 in trial lawyers is partially restored.

13 Q. Thank you. You still have to live with me?

14 Any other changes or corrections that
15 you wish to make? And that's just to be sure that --

16 A. I see one on the slide.

17 Q. All right. Thank you?

18 MR. CLOUTIER: Madam Hearing Officer, with
19 those changes, we offer the direct and rebuttal
20 testimony of Mr. Ezzell, the slides. And I'm sorry,
21 I had the exhibit numbers pulled up and -- that
22 Mr. Ezzell is sponsoring, and then closed out of
23 them. Here we go, just a second. Mr. Ezzell is
24 sponsoring IPANM Exhibit Numbers 14 through 19, 20
25 through 26, and 41.

1 HEARING OFFICER ORTH: I'll pause for a
2 moment in the event there are objections.

3 MR. HALL: We do object, or at least want to
4 bring the Commission's attention to the fact that the
5 analysis, based upon the statute that doesn't exist
6 that Mr. Ezzell spoke of, that entire line of
7 analysis that follows that is based upon that reading
8 of the statute.

9 And so he pointed out a couple of words,
10 but we object to really all that testimony as
11 extremely misleading and fails to accurately cite the
12 statute that he claims to be analyzing.

13 MR. CLOUTIER: Madam Hearing Officer, that's
14 fair enough. So why don't I ask Mr. Ezzell how the
15 changes would affect his analysis and I'll reoffer
16 after Mr. Ezzell testifies.

17 HEARING OFFICER ORTH: Thank you.

18 BY MR. CLOUTIER:

19 Q. Could you explain to the Commission how it
20 changes your analysis in the rebuttal testimony,
21 Mr. Ezzell?

22 A. Well, given the changes of maximum to
23 minimum and highest to base, it does not change my
24 analysis at all. It is -- the fact that you would
25 have a \$150,000 bond as opposed to a bond in some

1 amount greater than \$50,000 for a well that, at least
2 the applicants say, is much more likely to be a
3 problem or an orphan doesn't make sense.

4 Well, we're going to talk about the
5 Commission's authority later, but the statute is what
6 the statute is and it's been corrected and we're going
7 from the actual language of the statute.

8 MR. CLOUTIER: So, Madam Hearing Officer, I
9 reoffer Mr. Ezzell's direct and rebuttal testimony,
10 the demonstrative exhibits supporting that and his
11 surrebuttal, Exhibits 14 through 19, 20, 26, and 41.

12 HEARING OFFICER ORTH: All right.

13 Mr. Hall, I'm going to invite you to
14 offer your arguments in the closing argument.

15 MR. HALL: Thank you, Madam Hearing Officer.

16 HEARING OFFICER ORTH: Are there other
17 objections? No? Their admitted.

18 (Admitted: IPANM Ezzell direct,
19 rebuttal testimony, demonstratives,
20 surrebuttal, and Exhibits 14 through
21 19, 20, 26, and 41.)

22 MR. CLOUTIER: Thank you.

23 BY MR. CLOUTIER:

24 Q. Could you move to slide 3. We have some
25 slides about the Commission's hearing authority. How

1 would you like to handle your testimony on that
2 authority, Mr. Ezzell? This is your testimony, I
3 would say. You tell me, what would you like to do
4 with slides 3 through 9?

5 A. Well, I can't tell what --

6 Q. Let's go ahead and talk about it?

7 A. All right, go ahead.

8 Q. We'll talk about it briefly?

9 MR. CLOUTIER: Go ahead, Mr. Everhart.

10 BY MR. CLOUTIER:

11 Q. So slide 4, any testimony for the
12 Commission?

13 A. Oh, they're enumerated. Okay. I didn't see
14 a number on the --

15 Q. Sorry. When I ask you a question about the
16 slide number, I've already verified that Mr. Everhart
17 has the right slide up?

18 A. Oh, okay. Just the quoted language is the
19 quoted language. The Oil Conservation Commission is a
20 creature of statute and expressly defined, limited,
21 and empowered by the laws creating it?

22 And that's been recognized by the
23 New Mexico Supreme Court in the Continental case?

24 Q. All right. Thank you. And next slide,
25 please. We've spoken about this power at some length,

1 and I think you've -- let me ask you this question
2 before we get to this?

3 Have you listened in on these
4 proceedings, Mr. Ezzell?

5 A. Not in their entirety, but often.

6 Q. All right. And we've had some legal
7 argument and testimony about this. And if I could,
8 I'd like to spare the Commission more testimony about
9 it. So if you see something on one of these slides
10 that you don't think the Commission has heard or you
11 don't know that the Commission has heard, please call
12 it to the Commission's attention. Otherwise we can
13 just move to the next slide?

14 A. I would point out -- yeah, I apologize if
15 this has been already discussed, but a lot of the
16 legal arguments have been is there express language in
17 70-2-14 that grants the Commission the authority to do
18 this. And there's been arguments back and forth.

19 I know -- and this is kind of backdoor,
20 but 70-2-14G deals with operators who magically have
21 one of those illusory insurance policies. And it
22 says -- and it's a single-well bond. In the event the
23 one-well financial assurance requirement is increased,
24 either because the well is deepened or because the
25 rules of the OCD are amended, that it provides what

1 they need to do with their insurance policy.

2 And that tells me two things. One, that
3 the depth of a well is paramount in considering its
4 cost, because you can't increase the bond unless you
5 do what? Deepen the well. And then the OCD can come
6 increase the bond.

7 The other thing it tells me is that the
8 OCD's ability to increase a bond is limited to the
9 single-well bond. That dash G makes reference to it,
10 and there is no reference made to increasing any other
11 bond.

12 I would also argue that that reference,
13 and I think everybody's already argued this, that the
14 statutory maximum on the blanket bond would be the
15 maximum on any single bond as well. And I hope that
16 hasn't been brought out before. Thanks.

17 Q. That's perfect?

18 MR. CLOUTIER: And why don't we go ahead and
19 skip to slide 10, Mr. Everhart.

20 BY MR. CLOUTIER:

21 Q. All right. Your next area of opinions that
22 you'd like to talk about is what?

23 A. Waste.

24 Q. Okay. What is waste?

25 A. The prevention of waste is why we have the

1 Commission. And this is statutory again. Waste
2 includes underground waste which occurs when operating
3 are producing -- whoops.

4 Q. Sorry about that. I just realized I skipped
5 slide 9. So what was the point you want to make to
6 the Commission on slide 9. And that's my fault?

7 A. Well, again, the Continental Oil case says
8 that the prevention of waste is the paramount power of
9 the OCC because the protection of correlative rights
10 is such an integral part of the prevention of waste.

11 Q. Okay. And now we'll cease pulling the rug
12 out from under you, Mr. Ezzell, and put up slide 10
13 again. And you were discussing waste with the
14 Commission?

15 A. And as the quoted language says, that's what
16 constitutes underground waste, operating or producing
17 of any well or wells in a manner to reduce or tend to
18 reduce the total quality of crude petroleum oil or
19 natural gas ultimately recovered from any pool.

20 What the applicant's proposed amendments
21 do is exactly the opposite of the Commission's
22 mandate. It, by their own definitions, will promote
23 waste.

24 Q. Do you have an opinion as to whether there's
25 a legally permissible amount of waste that the

1 Commission is allowed to permit under its rulemaking
2 authority?

3 A. Zero.

4 Q. Thank you.

5 A. And I know there was a lot of testimony
6 that, you know, given this set of wells or that set of
7 wells, it's going to be less than 3 percent or
8 .2 percent or whatever of the state's production. But
9 that's not the issue. The issue is the prevention of
10 waste.

11 The other issue, in my opinion, is that
12 3 percent or less than 2 percent, or whatever it is,
13 could also be 100 percent of the business of many of
14 our small businesses.

15 Q. Thank you, Mr. Ezzell. And at the next
16 slide, would you explain to the Commission, based on
17 your legal and industry experience, how the adoption
18 of the proposed rulemaking would affect the protection
19 of waste?

20 A. Well, I think Mr. Armstrong covered that
21 pretty well. But even if you -- if just only have one
22 well and it's making three barrels a day, you're
23 feeding your family and probably making a living. And
24 a \$150,000 bond will make you sell it, plug it or walk
25 away from it. And any time that there is recoverable

1 oil left in the ground, that constitutes waste or gas.

2 Q. How does the rulemaking, in your view,
3 affect correlative rights and the protection thereof?

4 A. Well, the premature plugging of wells will
5 affect the correlative rights of all of the owners and
6 working interest owners and royalty interest owners of
7 the wells that are prematurely abandoned.

8 And that takes me back to my old OCD
9 practice days, where we would -- the last question we
10 would ask our expert is, "In your opinion, does the
11 application protect correlative rights, avoid the
12 issue of waste, and avoid the drilling of unnecessary
13 wells?" And that was in the OCD bible back then.

14 Because one of the main purposes of the
15 OCD to protect correlative rights was to prevent the
16 economic waste caused by drilling of unnecessary
17 wells. That's where we ended up getting pooling
18 agreements, communitization agreements, units, because
19 that gave all of the owners an equal opportunity to
20 produce their resource.

21 Q. Thank you. Moving to the next slide,
22 please. The next area of your testimony, would you
23 just get the headline to the Commission?

24 A. Large-scale single well bonding does not
25 work with standard industry contracts.

1 Q. And have you detected sort of an underlying
2 assumption in some of the testimony about operators
3 that you've been hearing in this perceiving that --

4 A. Yeah. Everybody assumes that the operator
5 owns 100 percent of the well. I think Mr. Armstrong
6 made it clear earlier this afternoon, that that is
7 rarely the case, especially with members of the
8 Independent Petroleum Association of New Mexico.

9 Q. How much can an operator own in a well?

10 A. He can own it all.

11 Q. And how little?

12 A. Anything above zero.

13 Q. Why do you think this assumption is
14 important, or challenging this assumption?

15 A. Well, having been an investor in oil and gas
16 projects, being proposed by small independents in
17 southeastern New Mexico, the standard deal that you
18 would see 40 years ago was a geologist had an idea, he
19 sold his idea to somebody that could operate it. The
20 operator hit the street to either existing partners or
21 new partners. New partners were affectionately called
22 "shoe clerks," because I was one.

23 And the deal would be on a third per
24 quarter basis, meaning the investors would pay all of
25 the costs, and the operator would be carried for a

1 25 percent interest. So if I took a third interest,
2 then the operator would get a quarter.

3 And so that's how most of these wells --
4 and when we're talking about older wells, that's how,
5 I'm sure, a large, large number of them were drilled.
6 And so those operators would never have had as much as
7 half.

8 Q. Thank you. And because the Commission and
9 people in this room may not be so familiar with the
10 term "carried" or "carried to the tanks," how long
11 would the investors carry the operator in a typical
12 deal?

13 A. Until payout of whatever event was in the
14 agreement that was made before going into it. And the
15 two most likely would be carried through the tanks.
16 That means the operator never put a dime of his own
17 money into it until the well was completed and
18 producing into the newly acquired tank.

19 The other one would be the carrying
20 interest would go until the casing point election.
21 The casing point election is a creature of a joint
22 operating agreement, which is -- well, get those
23 later. But at any rate, when a well is drilled to the
24 casing point, then a joint operating agreement makes
25 the operator notify all of the non-ops that total

1 depth has been reached and he is electing to run
2 casing and make a completion attempt.

3 And each of the non-operators has the
4 ability at that point to say, "Nope, I don't want to
5 do it, I don't like the looks of the logs," whatever,
6 and they don't have to participate in those costs.
7 Then it gets a little more complicated if somebody
8 doesn't want to do that. Then his interest gets
9 spread to everybody else, unless somebody else doesn't
10 want it. Then it tumbles down. At any rate, then the
11 well gets completed.

12 Q. So, if we can move to the next slide, what
13 are the, what are the form contracts or agreements
14 that you wanted to describe to the Commission?

15 A. Well, the most common one was the one we
16 just mentioned, and that would be a joint operating
17 agreement.

18 When I first came to work, most of the
19 older wells in New Mexico had been drilled under a
20 form that was developed after years and years of
21 production. But the American Association of Petroleum
22 Landmen realized that every state had their own quote,
23 unquote, standard kind of deal, and they thought it
24 would be a good idea to bring uniformity to it.

25 And so they came up with a form joint

1 operating agreement in 1956, and that was very
2 prominently used in New Mexico until later.

3 Q. And we'll get to the developments of that in
4 a minute. But that'll say on this slide, the AAPL
5 Form 610 Operating Agreement Form?

6 A. Yes. 610 has been left. Yes, there it is.

7 Q. I believe next you wanted to testify about a
8 common attachment to that form?

9 A. Once there was a joint operating agreement
10 in place, in order to compensate the operator for the
11 costs that he would incur, there was an agreed-upon
12 overhead rate. And years and years ago, it was common
13 to see a \$5,000 per month drilling overhead rate and a
14 \$500 a month producing overhead rate. And that
15 overhead charge would be what was supposed to cover
16 the operator's costs in getting the well drilled and
17 going.

18 Obviously, they -- it used to be on
19 shallow wells in southeast New Mexico. You could
20 almost bet on 500 and 5,000 the overhead rates.

21 Q. And where is this overhead rate found in the
22 contracts between the operators and the non-operators?

23 A. It is found in an agreement called a COPAS,
24 C-O-P-A-S, which is the Council on Petroleum, what,
25 C-O-P, Accounting Societies.

1 Q. Let's go to the next slide. In the COPAS
2 form, where would you find the COPAS form agreement
3 between parties, typically?

4 A. It'd be attached as Exhibit B or C to the
5 JOA.

6 Q. So you had mentioned the '56 form agreement.
7 And you expand on that for the Commission?

8 A. Well, as technology improved and people had
9 better ideas, the AAPL ended up revising its form JOA
10 several times. The 1956, 1977. There's a typo, 1981
11 should be a 1982. 1989 and then a couple in 2016. I
12 don't really know that we need to spend a lot of time
13 on any of them except maybe the '56 and the '77
14 because all of these, all of the wells that we're
15 talking about, in my opinion, will have been drilled
16 long before the publication of these other JOAs.

17 Q. And tell the Commission if once a new JOA
18 form came out from the American Association of
19 Petroleum Landmen, would you expect that no more joint
20 operating agreements would be used under the old form
21 and the new form would be adopted?

22 A. You would use the old form until you ran out
23 of copies so you wouldn't have to buy any of the new
24 ones. The forms provided -- I mean, if there were --
25 if there was something specific to a particular

1 operator, he'd just plug it in even by hand in Article
2 15, which is other provisions. And so if there was
3 something somebody didn't like about a '77 form,
4 they'd just fix it themselves.

5 Q. Let's cover the evolution of the COPAS forms
6 on the slide and then let the hearing officer know
7 that we're ready for a break?

8 A. Okay. As with the JOAs, the COPAS -- the
9 accounting people kept improving theirs, '62, '72,
10 '84, '95, 2005 and then a new one in to 2021. They
11 are better marketers of their product than the AAPL.
12 So when they came out with a subsequent COPAS form
13 they stopped selling the earlier ones and they forced
14 people to buy the new ones.

15 Q. And is there a form or draft that you would
16 expect to see more commonly in New Mexico of the COPAS
17 in vertical well production that --

18 A. Again, I would say the '74 form would be the
19 most -- in my experience, the most commonly used
20 COPAS.

21 MR. CLOUTIER: Thank you.

22 Madam Hearing Officer, we're at a
23 breaking point. It's 3:35, according to my computer.

24 HEARING OFFICER ORTH: Great. Thank you so
25 much. We'll come back at ten of 4:00 and then we'll

1 take public comment.

2 (Recess held from 3:36 to 3:50 p.m.)

3 HEARING OFFICER ORTH: Mr. Cloutier, if you
4 would lead Mr. Ezzell through approximately another
5 10 minutes.

6 MR. CLOUTIER: Thank you, Madam Hearing
7 Officer. Happy to do so. We're still on the same
8 slide.

9 BY MR. CLOUTIER:

10 Q. Mr. Ezzell, on the COPAS agreement, which do
11 you find to be most common in vertical wells in
12 New Mexico in your experience? And explain to the
13 Commission why that is?

14 A. I would say the 1974 form, as I stated,
15 because of the age. It's also getting to the point
16 where people started using computers and they would
17 put the form on their computer and not have to buy
18 anymore. And then they could incorporate all of that
19 company's little pet changes in Article 15.

20 There was actually, years ago, a famous
21 story about an operator that got good enough with
22 their computer that they actually changed the wording
23 of the forms, but did it in the same size font and
24 with the same type to lead their non-ops into thinking
25 that it was just a printed form. But I'm sure that's

1 just apocryphal.

2 Q. Other than that particular change, would you
3 see changes to these types of forms, and how would
4 they be done?

5 A. Well, by negotiation.

6 Q. Right?

7 A. Anything from take it or leave it if you
8 want to be in this well, or between two larger
9 companies that are working on a joint development and
10 sharing, you know, "you operate the east half, I'll
11 operate the west half, and we'll do it on the same
12 form."

13 Q. I know we can't be absolute, but you're
14 going to testify to the Commission about certain
15 provisions under each of these forms. Would it be
16 common to see material changes in the provisions that
17 we're going to be talking with the Commission about?

18 A. Some, yes, and some, no.

19 Q. Okay. Good, if you'd highlight those when
20 you could?

21 Moving to the next slide, please. How
22 does the plugging and abandonment of a well work under
23 a standard form joint operating agreement? And I know
24 I'm inviting a lengthy answer, but please explain.

25 A. There are two principal ways. One, it's

1 abandonment of a well that is not produced, and the
2 other is abandonment of the one that has produced.

3 Q. Why don't we focus on one that has produced
4 here for our purposes, since I don't think
5 non-production ever is particularly relevant to this
6 proceeding?

7 A. On a well that is produced, as I think I
8 said earlier, it cannot be plugged without the consent
9 of 100 percent of the parties. A 1 percenter can say,
10 "No, I don't want to plug it," and then they will be
11 required to take over operations.

12 Q. Assuming everybody does consent, what is the
13 operator typically allowed to do with respect to the
14 costs of plugging and abandonment with the
15 non-operators?

16 A. There is a provision in the JOA that puts a
17 limitation on the operator's right to spend joint
18 account money with a dollar amount. And so if the
19 plugging operation is going to exceed that,
20 technically the operator would have to circulate an
21 AFE showing the costs of the plugging job and have all
22 of his non-ops, the consenting non-ops to the
23 plugging, sign off on it. Then he could bill them in
24 advance, or he could bill them as the plugging was
25 happening, or he could bill them 30 days later.

1 Q. Okay. And I think we've heard the term
2 "AFE" once in this proceeding. I'm not sure it was
3 clearly defined?

4 A. Authorization for expenditure.

5 Q. All right. What is your opinion as to an
6 operator's ability to bill the non-ops under the
7 plugging and abandonment provisions of the joint
8 operating agreement for a bond to cover the cost of
9 plugging and abandoning a well?

10 A. There is absolutely no precedent for it.

11 Q. Traditionally as a working interest investor
12 in oil and gas wells, how have you seen the cost of
13 bonding handled in billings to you as a non-operating
14 working interest owner, as you're referring to it, a
15 non-op?

16 A. I have never seen any bond cost passed on to
17 me.

18 Q. Next slide. What is your opinion about an
19 operator's ability to charge for single-well bonding
20 to its non-ops under the standard form COPAS, Exhibit
21 B's or C's, to operating agreements?

22 A. I do not think they can. Fixed overhead.
23 We touched on it earlier. Fixed overhead basically is
24 the income that the operator is going to get to
25 conduct his business. And so that's why operators

1 like to have lots of wells, because they generate an
2 income stream that will hopefully help pay staff and
3 office rent and things like that.

4 The only things you get to bill under
5 the standard forms are direct expenses for the
6 operations conducted under the agreement.

7 Q. And I believe in your direct testimony that
8 you testified that -- well, strike that?

9 Are you aware of any case law or other
10 legal authority that would support the idea that
11 single-well bonding could be billed to non-operating
12 working interest owners under a JOA or COPAS
13 agreement?

14 A. No. The only thing I could possibly think
15 of would be a dispute that arose over someone's
16 attempt to put it -- to add it to the agreement. But
17 as far as the printed forms are concerned, it's just
18 never been an issue.

19 Q. Next slide, please. So would you explain
20 the purpose to the Commission the reasons for
21 testifying to the Commission about these standard
22 forms of oil and gas agreements, the JOA forms and the
23 COPAS forms?

24 A. Well, it's because that's what governs the
25 operations of all these wells that this proposed

1 rulemaking will affect. Everybody agrees that the
2 cost of bonding, if this rule is adopted, will
3 increase dramatically. And the question is, who's
4 going to pay it.

5 MR. HALL: Objection. That mischaracterizes
6 the evidence. Not everyone agrees it will increase
7 it dramatically.

8 The WITNESS: My bad.

9 HEARING OFFICER ORTH: Mr. Cloutier.

10 BY MR. CLOUTIER:

11 Q. Without adjectives or adverbs, Mr. Ezzell,
12 would you explain to the Commission the purpose of
13 your testimony?

14 A. As we touched on earlier, there seems to --
15 it's just one size doesn't fit all. There are
16 operators that will not operate unless they have 75,
17 80 bump, huge percentage of the well. There are
18 operators that operate with much less.

19 If it, in fact, is under the COPAS
20 agreement to be a cost of doing business that you're
21 bonded, then operators that have lower working
22 interests in the well will be incentivized to
23 prematurely abandon or to resign as operator.

24 And then the resignation of operator,
25 that's governed under the JOAs. And under the

1 standard language there, the operator could resign
2 without permission from anybody, and the non-ops have
3 to select another operator. But if they don't, they
4 can require, not ask but require, that the resigned
5 operator stay on and conduct the operations.

6 So if that well in that hypothetical
7 becomes subject to \$150,000 bond, who's going to pay
8 it? The operator, that's not the operator, but who is
9 being forced to act as the operator? I don't have an
10 answer for that?

11 MR. CLOUTIER: Madam Hearing Officer, I
12 believe we're at public comment time and so a good
13 place to stop.

14 HEARING OFFICER ORTH: Thank you so much,
15 Mr. Cloutier.

16 I don't see anyone in the room,
17 Mr. Ezzell, so you can stay where you are. I believe
18 all of our commenters are on the platform.

19 This is a comment period in which we
20 have an interpreter. Amelia, if you would unmute
21 yourself and say something about your ability to
22 provide interpretation for this comment period in
23 Spanish, please.

24 THE INTERPRETER: Yes. Hearing Officer, can
25 everybody hear me okay?

1 HEARING OFFICER ORTH: Yes, thank you.

2 THE INTERPRETER: Perfect. My name is
3 Amelia Cardena. I'm a Spanish interpreter and I will
4 be available to interpret for anybody who wants to
5 provide their comment in Spanish.

6 (The Interpreter repeats
7 statement in Spanish.)

8 HEARING OFFICER ORTH: Thank you very much,
9 Ms. Cardena.

10 Let's see. Sheila has pulled up Marc
11 Nonnenkamp.

12 There are just a few things about public
13 comment. I will ask you to spell your first and last
14 name for the transcript. I will ask you to swear or
15 affirm to tell the truth, pursuant to the
16 Commission's requirement.

17 And I'll ask you to keep your comments
18 to three minutes. In the event you have more to say,
19 please submit those comments in writing to Sheila
20 Apodaca, the Commission administrator.

21 So, Mr. Nonnenkamp, can you unmute
22 yourself? Hello? It appears you're on mute.

23 MR. NONNENKAMP: Okay. Yeah, my name is
24 Mark Nonnenkamp. It's M-A-R-C, first name. Last
25 name is N-O-N-N-E-N-K-A-M-P.

1 HEARING OFFICER ORTH: Do you swear or
2 affirm to tell the truth?

3 MR. NONNENKAMP: I do.

4 HEARING OFFICER ORTH: Thank you. Go ahead.
5 I'll start your time.

6 MR. NONNENKAMP: Hello, my name is Marc
7 Nonnenkamp. I've lived in New Mexico for 23 years.
8 I have an undergraduate degree from the University of
9 California at Berkeley and a master's degree in
10 business administration from the College of William &
11 Mary in Virginia.

12 I'm retired from the State of
13 New Mexico, where I worked for 20 years; the majority
14 of which was with the tax and revenue department,
15 audit and compliance Division. I first worked with
16 oil and gas compliance and then with the federal
17 royalty audit bureau as an auditor.

18 I know that a financially strong oil and
19 gas industry is very important to the State of
20 New Mexico as it provides such a major portion of our
21 government's revenue, which, in turn, flows down to
22 local governments on the county and city level,
23 funding education, health care, fire departments,
24 police departments and public libraries.

25 New Mexico is a relatively less-affluent

1 state, with a smaller population. And a strong local
2 oil and gas industry also provides many good-paying
3 jobs, which, in turn, supports the local economy and
4 our tax base. The success of the oil and gas
5 industry contributes to the success of New Mexico.

6 I thank you for all of your hard work in
7 state government in helping to make New Mexico work
8 and function well for all New Mexicans.

9 I hope that the agencies of state
10 government do not impose regulations on the industry
11 which will in any way diminish what the industry has
12 provided and continues to provide to the State of
13 New Mexico and all of its stakeholders.

14 I encourage you to continue to help keep
15 the oil and gas industry strong in New Mexico so that
16 it will continue to benefit all New Mexicans. And I
17 do thank you for your time.

18 HEARING OFFICER ORTH: Thank you,
19 Mr. Nonnenkamp:

20 We'll move next to Aurea Kasberg.
21 Ms. Kasberg, if you would unmute yourself.

22 MS. KASBERG: I am unmuted.

23 HEARING OFFICER ORTH: Hello. Would you
24 spell your first and last name for the transcript,
25 please.

1 A. Yes, it's A-U-R-E-A, then Kasberg,
2 K-A-S-B-E-R-G.

3 HEARING OFFICER ORTH: Do you swear of
4 affirm to tell the truth?

5 MS. KASBERG: I do.

6 HEARING OFFICER ORTH: Thank you. I'll
7 start your time.

8 MS. KASBERG: Good afternoon, Commissioners.
9 My name is Aurea Kasberg and I serve as the deputy
10 energy team director at Earthworks where I oversee
11 our team of field advocates and certified
12 thermographers across the country who document oil
13 and gas pollution using optical gas imaging
14 technology.

15 Since I joined Earthworks in 2022, I've
16 been on field trips to the New Mexico Permian Basin
17 and to the Four Corners region to document otherwise
18 invisible pollutants coming from the oil fields.

19 Each visit leaves me deeply unsettled.
20 You don't just see the problem, you smell it, you
21 feel it. The air burns your nose, the gas clings to
22 your clothes, and the headaches hit within minutes.

23 I wish I could give you those headaches
24 just for a moment so you'd understand what residents
25 near these declining oil fields live with every day.

1 Our field team sees this in every oil
2 producing region of the country. Aging wells,
3 leaking tanks, neglected sites, but it's especially
4 severe here in New Mexico, where tens of thousands of
5 wells are nearing the end of their productive life.
6 Many of them have little or no financial assurance
7 for cleanup.

8 This isn't just a New Mexico problem,
9 but New Mexico has an opportunity to lead on this
10 issue. The state can show what responsible modern
11 oil and gas regulation looks like by requiring
12 companies to post realistic cleanup bonds before they
13 drill. This isn't radical, it's common sense.

14 Right now, the system doesn't come close
15 to covering the true cost of plugging and restoring
16 wells, which means the burden falls to the taxpayers
17 and communities already living with pollution. We
18 need holistic solutions that reflect the full
19 lifecycle of oil and gas, from drilling to cleanup,
20 and that protect people, water and air along with it.

21 When I return to the Permian in 2026, I
22 hope to see a region where companies are finally held
23 accountable for the mess they've made.

24 Thank you for your time and your
25 consideration in these critical rule updates.

1 HEARING OFFICER ORTH: Thank you,
2 Ms. Kaasper0.

3 Next, we'll hear from Katherine Harris.
4 Ms. Harris, can you unmute yourself?

5 MS. HARRIS: Yes. Hi. Catherine,
6 C-A-T-H-E-R-I-N-E. Harris, H-A-R-R-I-S.

7 HEARING OFFICER ORTH: Do you square our
8 firm to tell the truth?

9 MS. HARRIS: Yes, I do.

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

12 MS. HARRIS: Thank you for allowing me the
13 time to speak before the New Mexico Oil Conservation
14 Committee today. My name is Katherine Harris and I
15 have lived in New Mexico for over 65 years.

16 My husband and I have raised our family
17 here in San Juan County where we've built our lives
18 and contribute to our community. My husband has
19 worked in the oil and gas industry for more than 50
20 years. We also have family members who continue to
21 live and work in this area and like so many others in
22 this area are directly tied to and rely on the energy
23 industry.

24 Oil and gas has long been the backbone
25 for the New Mexico economy. The state receives over

1 35 to 40 percent of its revenue direct from the
2 industry and additional revenue from adjacent
3 businesses that support the oil and gas industry. So
4 that takes the revenue over 50 percent.

5 These funds are essential to New Mexico
6 public services, such as education, health care,
7 emergency response systems, streets and roads, et
8 cetera.

9 Our schools, in particular, rely heavily
10 on this funding. As a lifetime New Mexican and a
11 grandmother who care deeply about the future of our
12 children, I am concerned about what reducing revenue
13 by imposing more restricted policies and imposing
14 more regulation, what that would mean to our schools
15 and our community.

16 The oil and gas industry has not only
17 provided jobs and opportunity, but also helps support
18 the various system that makes our state thrive. As
19 you consider future energy policies, I urge you not
20 to impose more restrictions and regulation, but
21 remember the families and schools in the community
22 who depend on the stability of this industry.

23 Again, thank you for your time and for
24 listening to me, a voice from San Juan County.

25 HEARING OFFICER ORTH: Thank you very much,

1 Ms. Harris.

2 Let's see, is this Nancy Martinez? Can
3 you unmute yourself? The only Nancy I had sign up.
4 Let's see, is that you, Ms. Martinez? Hello.

5 MS. MARTINEZ: I'm here. I see if I can get
6 my camera on.

7 HEARING OFFICER ORTH: All right.

8 MS. MARTINEZ: Okay. There I am. So my
9 name is Nancy Martinez. It's N-A-N-C-Y,
10 M-A-R-T-I-N-E-Z.

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

13 MS. MARTINEZ: I do.

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

15 MS. MARTINEZ: Thank you. Good afternoon.
16 I live with my husband in Farmington, San Juan
17 County. Years ago, my father Merle Williams, who was
18 a World War II veteran and was at Pearl Harbor the
19 morning that it was bombed, moved back to Abilene,
20 Texas, after the war, and he began working in the oil
21 and gas industry.

22 In 1956, when I was five years old, he
23 brought his growing family of seven children to
24 Farmington during the New Mexico oil and gas boom.
25 His employment provided a lucrative job with a good

1 living wage, enabling him to provide a home and all
2 the necessities of raising his large family.

3 In time, I married my husband, Larry
4 Martinez, who began his career in the oil and gas
5 industry at the age of 18. His employment in the
6 exploration of oil and gas took him all over the
7 United States and two different countries. But his
8 home and his home base was always here in Farmington.

9 We raised our eight children here. We
10 bought our home here. We sent our children to school
11 here, supported our community, and paid our taxes
12 here. He retired after 50 years in the oil and gas
13 industry at the age of 70.

14 We have seen firsthand how much the oil
15 and gas industry in New Mexico provides for our
16 families here in this state. It provides employment
17 with livable wages and economic security for our
18 community. It supports our educational system
19 through tax dollars.

20 Farmington has a community college that
21 we've witness grow over the years: San Juan College.
22 And many of the oil and gas companies in our region
23 have provided grants to our area students who are
24 either not able to afford to go away to college or
25 don't desire to leave their families in this area.

1 It also has provided jobs for the outlying
2 reservations, the Navajo Reservation, the Ute
3 Reservation, the Apache Reservation. These people
4 have worked in the oil and gas industry alongside of
5 us.

6 These companies have also donated their
7 time and dollars to our nonprofit organizations, such
8 as Child Haven and the Boys and Girls Club, both
9 organizations who provide resources for the families
10 and children in our community.

11 Last year I had to travel six and a half
12 hours away to Colorado Springs for a medical
13 procedure that two years ago I could have had done
14 here in Farmington. We're losing our medical
15 personnel in this area. The tax dollars from this
16 industry go to support Medicare and Medicaid.

17 Recently a law passed providing for
18 childcare in the state. The funds from our oil and
19 gas industry are contributing to this. If these new
20 regulations pass, where will New Mexico and our
21 families be? How will we survive without the funds
22 from this industry?

23 We need a stronger, not weaker oil and
24 gas industry going forward. Not only for the local
25 families here in Farmington, but for our whole state.

1 I'm urgently asking this Commission to
2 consider these issues, the economy and the welfare of
3 the people of the State of New Mexico. I truly
4 appreciate your attention to these details and for
5 listening to me this afternoon. And the attention
6 that you give to these concerns. Thank you.

7 HEARING OFFICER ORTH: Thank you,
8 Ms. Martinez.

9 Let's see, Dudley Jones.

10 MR. JONES: Yes, I'm here. Hello.

11 HEARING OFFICER ORTH: Would you spell your
12 first and last name, please.

13 MR. JONES: First name Dudley, D-U-D-L-E-Y.
14 Last name Jones, J-O-N-E-S.

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

17 MR. JONES: I do.

18 HEARING OFFICER ORTH: Thank you. I'll
19 start your time.

20 MR. JONES: Good afternoon, Commissioners.
21 Thank you for taking the time to listen to our
22 comments today.

23 As I said, my name is Dudley Jones. I
24 am a 35-year resident of Carlsbad, New Mexico. While
25 I've lived here, I've had the privilege of working in

1 various industries during my time. From 2008 to
2 2014, I was the manager of the Carlsbad Irrigation
3 District, one of the senior surface water right
4 holders on the Pecos River.

5 During that time, we, as a district,
6 were highly aware and seriously concerned with the
7 safety and timely mitigation of the brine well
8 located very near the south line of Carlsbad and very
9 near our main canal, which provided water to the
10 majority of the district.

11 As things often go when dealing with
12 corporations, corporate responsibility often
13 evaporates in a crisis and the state is left to clean
14 it up and to pay the bill, which, in this case, was
15 millions of dollars. The fact is, what you don't
16 know can hurt you and will cost a lot of money to
17 remedy.

18 Situations are far too common in the oil
19 in gas industry, and that is why I believe it is
20 prudent to hold the industry accountable. It is
21 unjust to allow state and local resources to be put
22 at risk so that the oil and gas industry can profit.
23 They are stockholders in a corporation with a primary
24 goal of making money. But the citizens of New Mexico
25 are the stakeholders. We are the ones left holding

1 the bag after the corporation has already left town
2 with their money.

3 This is why we need your help to
4 represent us, the citizens, the real stakeholders of
5 New Mexico. I want to go on record in support of the
6 increased bonding requirements, which really, in the
7 cost of doing business for the oil industry is a very
8 small portion, in spite of what you may hear from
9 other testimony.

10 Current and future generations deserve
11 to have the environment that is preserved and
12 protected for them. Thank you again for your time
13 and attention to this critical matter.

14 HEARING OFFICER ORTH: Thank you, Mr. Jones.

15 Next, Sandra Jones. Can you unmute
16 yourself, Ms. Jones?

17 MS. JONES: Yes. Hello. I believe I'm
18 unmuted.

19 HEARING OFFICER ORTH: Great. Thank you.
20 Would you spell your first and last name for the
21 transcript.

22 MS. JONES: Yes. First name is Sandra,
23 S-A-N-D-R-A. Last name is Jones, J-O-N-E-S.

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

1 MS. JONES: I do.

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

4 MS. JONES: Thank you. Good afternoon. My
5 name is Sandra Jones, and I'm speaking in strong
6 support of the proposed bonding rule changes. I grew
7 up at Carlsbad and I've lived here almost 55 years.
8 I am a retired employee of the waste isolation pilot
9 program.

10 As a lifelong resident of southeast
11 New Mexico, I've seen the changes in the environment
12 and air quality with increased oil and gas drilling.
13 Also, I was living here when the brine well sinkhole
14 in Carlsbad had to be remediated at taxpayer expense
15 because the business owner at the site went bankrupt,
16 and state and taxpayers were left paying the bill.

17 The current bond of \$250,000 required of
18 oil and gas companies to clean up and plug abandoned
19 wells does not come close to the actual cost of
20 cleanup, which was found by the legislative finance
21 committee to average \$163,000 per well with some
22 costing up to \$700,000. This leaves the public to
23 pay for plugging wells to prevent them from releasing
24 toxins into the air and water.

25 These proposed rule updates are an

1 opportunity to ensure that the corporations profiting
2 from New Mexico lands are also fully responsible for
3 plugging their wells. If bonding is not set high
4 enough now, there may not be enough money left for
5 cleanup at the end of the boom.

6 Please vote to adopt stronger bonding
7 rules. Thank you for your time and for the
8 opportunity to express my concerns.

9 HEARING OFFICER ORTH: Thank you very much,
10 Ms. Jones.

11 Is there anyone else on the platform who
12 would like to offer comment during this comment
13 session? We will have another one tomorrow morning
14 at 9:00 a.m. If you have dialed in using your
15 telephone, you can raise your hand by pressing star
16 5. Anyone at all? All right. Thank you.

17 Let's return to the technical case.
18 Mr. Cloutier, by my count, you're 43 minutes into the
19 hour.

20 MR. CLOUTIER: Thank you, Madam Hearing
21 Officer.

22 BY MR. CLOUTIER:

23 Q. Moving to the next area, what's the next
24 area that you wish to talk to the Commission about?
25 Okay. We're going to skip -- is your microphone on

1 there? The middle button.

2 A. My mic went away.

3 Q. We've gotten some clarity on an issue that
4 you testified regarding to?

5 MR. CLOUTIER: Skip the next two slides
6 please, Mr. Everhart. And next one. Okay. And next
7 one. All right.

8 BY MR. CLOUTIER:

9 Q. You've got a number of areas you want to
10 talk about, the definition slide, I believe. It's the
11 headlines, so if we can move to the next slide and
12 start talking about your first topic, which is
13 Mr. Ezzell?

14 A. Secondary recovery unit.

15 MR. CLOUTIER: Slide please.

16 BY MR. CLOUTIER:

17 Q. So if you could explain to the Commission.
18 They've heard some testimony from witnesses from Oxy,
19 but can you describe your experience briefly in
20 secondary and tertiary recovery units in New Mexico
21 and their significance?

22 A. Well, I got a client that was putting
23 together three different San Andres secondary recovery
24 units, and I learned -- I felt like I got an education
25 from the engineers at the petroleum recovery and

1 research center at New Mexico Tech. They were
2 wonderful. But they were consulting on the deal.

3 But it's a huge task, and one of the
4 things that I learned from the PRCC engineers is
5 primary recovery, especially as to the San Andres
6 Formation, is likely to get 30 percent of the original
7 oil in place. An effective waterflood is likely to
8 get 20 or 25 percent of the 70 that's left.

9 So if you are interested in putting
10 capital into a project, especially one involving
11 hydrocarbons, why wouldn't you want to go where you
12 know that there is porosity, permeability and oil in
13 place? Those are the three things you have to have.

14 And you know that with a secondary
15 recovery unit because the science tells you that the
16 wells have not been depleted. What the problem is, is
17 the technology hadn't caught up. And that's why it is
18 such an interesting subject, though.

19 In order to do one, even if you've got a
20 4,000-acre unit put together that may have taken you
21 two or three years to put together, you don't have a
22 unit operator until all of the working interest owners
23 and all the operators that have contributed wells to
24 the unit agree to who is going to be the unit
25 operator. Then you have to decide on the formula for

1 allocation of production, which on some waterfloods
2 can get really wild.

3 But the real problem is you think it's
4 going to work, but you don't know it's going to work.
5 And so you might put together an 80- or a 160-acre
6 pilot program, and your engineers are going to tell
7 you, "Okay. Let's try a five-spot pattern," and a
8 five-spot pattern is like the dots on a dice. There
9 is one dot in the middle; that would be the production
10 well, and the four dots on the corner would be the
11 injection wells, and then there'd be another five spot
12 next to it so that the dots on the corner -- you can't
13 make the water just go to the center of the 40, so you
14 do this.

15 If you get a response, then you can go
16 ahead and institute full field development. But the
17 bottom line is, it's incredibly expensive to do, it
18 takes a lot of time, and without the existing
19 wellbores, it's not economic.

20 Q. Describe your thoughts -- next slide,
21 please -- on the likely consequences of the adoption
22 of the proposed rules on the formation of the
23 secondary recovery units?

24 A. I think it will be an economic barrier to
25 anybody ever wanting to try a secondary recovery unit

1 again.

2 Q. And why is that?

3 A. Just because of the cost of bonding all of
4 those wells until they are converted to injection.
5 Obviously, if they stay a production well, they would
6 have the bond, but it takes a lot of wellbores, all of
7 which are -- none of which are already injection wells
8 Because the unit hadn't been formed. So you're going
9 to have to bond every one of those wells in order to
10 go forward with a plan.

11 Q. And when you're talking about this testing
12 of the hypothesis essentially, with a single set of
13 injector wells in a production well, what's happening
14 with the other wells in the unit at that point?

15 A. If they can make anything, they're making
16 anything, they're making it. But otherwise, they're
17 probably TA.

18 Q. And in your experience with those three, the
19 secondary recovery units that you had so much
20 involvement in, I take it you probably would not be
21 able to rattle off the production figures of every
22 well in that unit sitting here today?

23 A. No. That was a long time ago.

24 Q. Do you have a sense of where they would fall
25 in the definition of marginal or not marginal under

1 these rules and beneficial use --

2 A. Prior to utilization?

3 Q. Yes, sir?

4 A. I would say the vast majority would qualify
5 as marginal wells.

6 MR. CLOUTIER: Next slide, please
7 Mr. Everhart.

8 BY MR. CLOUTIER:

9 Q. So we have to take a quick step back. I
10 realize that this is moving fast. But In a typical
11 oil and gas lease in New Mexico, what's the term and
12 how is it different if you establish a gas well
13 production versus an oil well production?

14 A. Well, most oil and gas leases allow you to
15 to -- are for oil and/or gas. They have a term of
16 years. And after a discovery is made, then the lease
17 is perpetuated for as long as the oil or gas is
18 capable of being produced in paying quantities.

19 The distinction between oils wells and
20 gas wells lies in the fact primarily that you can't
21 load up a tanker truck with gas; you have to have a
22 pipeline to take it away. And if you have drilled in
23 a new area of a basin and you make a highly prolific
24 gas well and then there's no pipeline to take away the
25 gas, you have to avail yourself of what's called the

1 "shut-in royalty clause."

2 The shut-in royalty clause is applicable
3 to gas production only. And if gas is capable of
4 being produced but can't be for any of those reasons,
5 lack of a market, that would apply to constraint take
6 away as well if you did have a pipeline, then you can
7 shut the well in and pay the lessor the agreed-upon
8 shut-in royalty payment that will keep the lease in
9 effect.

10 Q. Thank you. And moving to the next slide,
11 you talked about constrained takeaway. What are the
12 reasons why an operator might take advantage of the
13 shut-in royalty clause and refuse to produce a well
14 that's productive and hooked up to a midstream
15 gathering system?

16 A. Because it might -- in a low price
17 situation -- because the price of gas fluctuates
18 vastly more than the price of oil. It used to be --
19 before the stepping away from coal and using natural
20 gas for electricity generation, it used to be that you
21 could almost plot the price of gas as to what the
22 natural gas -- what it was going to be during the
23 winter heating months, as compared to what it's going
24 to be in the summer, when it's hot. Because the bulk
25 of the gas was used for heating.

1 In that low-production environment, it
2 would be economic to shut in the well, pay the shut-in
3 royalty and wait for prices to improve, and that would
4 benefit not only you and your working interest, owners
5 but also the royalty owners, whether they be federal,
6 state or fee?

7 Q. You mentioned historically. Have we seen
8 periods of low prices in New Mexico gas productions
9 for reasons other than the seasonal fluctuation more
10 recently?

11 A. Yes. The takeaway capacity. That was a
12 huge issue a couple of years ago. In many cases, you
13 had to pay the gathering system to take your gas. It
14 had a negative value, but if you had been drilling
15 horizontals, Bone Springs, Wolfcamp, whatever wells
16 that made oil and gas, you had to do something with
17 the gas, because otherwise you'd have to shut in a
18 highly productive oil well.

19 So you would pay the freight to have one
20 of the gathering systems or midstreams take your gas
21 off your hands so you could produce your oil.

22 Q. So what would a prudent operator of a gas
23 well, historically producing gas well, do in those
24 low-price environments.

25 A. Especially when it's negative, the

1 prevention of waste would dictate that you shut it in.

2 Q. And what effect would this rulemaking, in
3 your view, have on those sorts of decisions?

4 A. I think, as Mr. Armstrong touched on, you
5 don't know -- when you shut a well in, you don't know
6 how long it's going to be shut in.

7 And the whole proposed amendments focus
8 on lines in the sand, X number of barrels of
9 equivalent, X number of days. And that just doesn't
10 work unless, unless you -- well, it needs to be on a
11 case-by-case basis because it doesn't work even just
12 comparing marginal oil wells to marginal gas wells,
13 even though you've got the conversion rate, because
14 they are different animals.

15 And I think Mr. Armstrong touched on
16 this, too. Gas wells rely on the pressure from the
17 formation to get the gas out of the wellbore. And in
18 a low-production gas well, many operators have found
19 that if they shut it in for a day and then come back a
20 week later and open it back up, the pressure has built
21 up enough to deliver as much or more gas than it would
22 have made if you just left it on for the whole week.

23 And so that is another area where the
24 prevention of waste would dictate that a prudent
25 operator shut in a gas well.

1 Q. And you were here for Mr. Armstrong's
2 testimony about constraint takeaway resulting from
3 maintenance or problems with the midstream company?

4 A. Exactly. Because if midstream goes down,
5 you don't know how long it's going to be down.

6 Q. And how much control does an operator have
7 over the midstream company?

8 A. Zero.

9 MR. CLOUTIER: If we can move ahead. It's
10 going to slide 31 to reworking and re-completion.
11 One more. There we got.

12 BY MR. CLOUTIER:

13 Q. Would you explain to the Commission the
14 difference between reworking and re-completion?

15 A. Well, they always find themselves in a
16 sentence together with an ampersand, but they're
17 totally different animals.

18 Reworking is going back into the well to
19 the productive zone that you have already established
20 and doing something, either mechanical or chemical or
21 something, in order to increase the production from
22 that zone. It can be a newly designed frac job, a
23 refrac, or just a hot oil job, or a chemical
24 stimulation.

25 Q. Let's move on to --

1 A. On the other hand, a re-completion is when
2 you go out of the zone that you have been producing
3 into another zone, generally uphole, but it doesn't
4 have to be, and read it as though it's an initial
5 completion. You perforate it, you acidize it, you
6 frac it if you want to. And if you're lucky, it
7 produces as well as the zone you've left, and so you
8 pull your bridge plug and produce them both together.

9 Q. How do you accomplish these activities under
10 standard JOA that we talked about?

11 A. It is a well -- again, depending on the
12 cost. Because, as we've established, the JOAs have
13 that cost ceiling beyond which the operator can't
14 spend the non-ops' money without their consent. But
15 if it is an expensive one, it would circulate AFEs,
16 and the JOA would give each of the parties 30 or 60
17 days, 30 in most cases, to elect whether to consent to
18 the operation or not. And then you would go out and
19 find the service companies to do whatever the proposed
20 operation was.

21 MS. JONES: Mr. Cloutier, you've got about
22 four minutes.

23 MR. CLOUTIER: I've got this one and one
24 more issue on direct, and then I've got a very short
25 rebuttal and some surrebuttal.

1 BY MR. CLOUTIER:

2 Q. Tell the Commission briefly how a prudent
3 operator might approach reworking or re-completion
4 without this rulemaking and how the rulemaking would
5 affect it?

6 A. Well, reworking and re-completing,
7 especially wells that are toward the end of their
8 apparent initial life, is a gamble. Because if it
9 doesn't work, then you're going to have to either plug
10 the well or bond the well.

11 If the proposed rules are adopted, that
12 decision is going to be taken out of the operator's
13 hands in most cases, because he won't be able to
14 afford the bond in order to keep the well, to try to
15 do a re-completion and rework.

16 Mr. HALL: Objection, Madam Hearing Officer.
17 I think that the financial assurance and who can
18 afford what is way outside of the scope of any
19 provided direct or rebuttal testimony.

20 HEARING OFFICER ORTH: Mr. Cloutier.

21 BY MR. CLOUTIER:

22 Q. You can certainly reword the last bit in
23 light of that objection, Mr. Ezzell? What is the risk
24 to the State of New Mexico, not for all operators, but
25 for some.

1 A. Premature abandonment of wells, which is
2 waste?

3 Q. All right. We've heard in this Commission
4 hearing, and you've testified a little bit about the
5 production in paying quantities doctrine. And this is
6 the last issue I want you to talk about?

7 What is it and how does this rulemaking
8 affect it?

9 A. Basically, the rulemaking, if adopted, would
10 conflict with long-established common law principles
11 on the validity of oil and gas leases. The test is
12 whether a well is capable of production.

13 And there's a famous case, the Clifton
14 case, in Texas, that has been adopted in New Mexico
15 more than once, that says the test of production in
16 paying quantities is, is the well capable of
17 production in paying quantities over a given period of
18 time.

19 The Clifton court said at least 12
20 months, but possibly up to many, many times that. And
21 that is because between price fluctuations and
22 technological advances, the production is not a
23 straight line. Here's how many dollars you're going
24 to get for a 12-month period. It fluctuates based on
25 production and the price of the product.

1 Q. And so this reasonable period of time could
2 be longer than 12 months under that?

3 A. Yes. I think the court said up to dozens of
4 years, tens of years.

5 MR. CLOUTIER: That concludes Mr. Ezzell's
6 direct testimony, Madam Hearing Officer. We'll move
7 to some brief rebuttal and then surrebuttal.

8 HEARING OFFICER ORTH: Thank you.

9 BY MR. CLOUTIER:

10 Q. All right. Mr. Ezzell, you testified in
11 rebuttal. I think there's been some changes to the
12 rulemaking, but you testified concerning your concerns
13 about the approval of new operators or acquisitions?

14 Can you indicate to the Commission what
15 your remaining concerns are after reading applicant's
16 37? 72, I mean.

17 A. The quoted language says it all, "Unresolved
18 adjudicated orders and unresolved settlements for any
19 state or federal violation."

20 Well, first of all, I don't know that we
21 have the authority to make other states divulge their
22 violation history. Or some states might consider that
23 to be an invasion of individual or corporate privacy
24 laws. But what does unresolved -- first of all, what
25 does adjudicated mean? Is it a hearing? Does it have

1 to go to a state director appeal? What does it take?
2 And I can enter into a settlement for a violation with
3 or without it being deemed adjudicated.

4 And if I am performing under that
5 settlement, the violation is still unresolved, but
6 it's like getting a deferred sentence on a speeding
7 ticket, if you don't do it again in six months, you're
8 good. And so what would we do if another state had an
9 operator that wanted to come here that was in that
10 situation, had made a mistake, had had a violation and
11 was in the process of fixing it and wanted to come
12 here?

13 MR. CLOUTIER: We could move two more
14 slides, please, Mr. Everhart.

15 BY MR. CLOUTIER:

16 Q. We focused on this this morning. I don't
17 think you were here with Mr. Winchester. But there's
18 a proposal to amend Rule 19.15.8.9A and got the quoted
19 language up there. What are your concerns with this
20 language?

21 A. Well, first of all, "...proceed with any
22 proposed... acquisition," that's probably going to be
23 activity that isn't occurring in New Mexico anyway, or
24 at least one of the parties isn't.

25 And it also causes a problem for me

1 because a big part of the business right now is
2 mergers and acquisitions. And if this proposed rule
3 gets enacted, I think we've heard testimony that it's
4 likely to have a lot of operators want to quit being
5 operators, and so they're going to want to sell their
6 inventory.

7 And that is done in a number of ways,
8 either a private party transaction or the operator
9 that has assets for sale or the entirety of his
10 assets, gets a broker to come in, digitize all of his
11 records, set up a virtual data room and then open it
12 to bids, which needed to be submitted by such and such
13 date.

14 Now, a strict interpretation of the
15 proposed language would mean every prospective bidder
16 would have to establish financial assurance before
17 they could bid on that package. And nobody would do
18 that. Again, promoting waste.

19 MR. CLOUTIER: Thank you, Mr. Ezzell.

20 Madam Hearing Officer, now we'll move to
21 some surrebuttal slides that were uploaded and served
22 this morning.

23 HEARING OFFICER ORTH: Thank you.

24 BY MR. CLOUTIER:

25 Q. Mr. Ezzell, I'm going to run through these

1 with you. First of all, concerning Mr. Alexander's
2 definition of the term "speculative?"

3 A. I was actually listening on the Teams
4 meeting to that, and when I heard that and the
5 definition was something like, "Done based on a guess
6 instead of information," and he had said, you know,
7 "We just went to the straight dictionary definition."
8 I went, what dictionary would have used that
9 definition for speculative? And so I started Googling
10 it.

11 I quit watching the team's meeting and
12 started Googling dictionary.com and found Merriam
13 Webster dictionary and his definition as the first
14 definition. And the second definition was bought or
15 done to make a profit in the future.

16 And I'm going, okay, there is absolutely
17 no profit margin in one definition of -- motive in one
18 definition. And it is only a profit motive in the
19 other definition of speculative. And yet speculative
20 plays a pretty big part in this proposed rulemaking.

21 Q. All right. Next slide, please. Next
22 concerning Mr. Alexander's testimony regarding
23 inactive wells generally being put back in use within
24 eight years. What comments do you have regarding that
25 testimony?

1 A. Well, if -- I think he focused on high
2 demand -- or decline curves on horizontal wells. And
3 this kind of goes back to my testimony on secondary
4 and tertiary recovery, is when all the shale horizons
5 have done their best, producers and operators are
6 going to want to go back to the old vertical fields
7 and go back to recovering the oil that they know is
8 there.

9 And hopefully the technology will
10 advance that will make it easier to get greater
11 ultimate recoveries out of these old vertical
12 formations.

13 Q. And what effect do you think that has on the
14 testimony that Mr. Alexander Crawford?

15 A. I don't know what he based that on. But I
16 think it could go much longer, in my view.

17 Q. That's the one I was looking for. Thank
18 you, Mr. Ezzell?

19 Next slide, please. Mr. Morgan
20 commented regarding the collateral requirements for
21 financial assurances, and I think that Mr. Gilstrap
22 today testified concerning basically sureties wanting
23 either cash or letters of credit.

24 How would a standard operator, in your
25 experience, be able to obtain a letter of credit and

1 what effects would that have on the operations?

2 A. If the operator had to increase the cost of
3 bonding drastically, he would have to either access
4 his line of credit, which, by the way, is almost
5 guaranteed to have been already pledged to securitize
6 that line of credit, and then go try to get a surety
7 that would either agree to be in second position on
8 the same collateral or that would top his bank in
9 being in the second position on the same collateral.
10 And that's not going to happen.

11 Q. And what would happen to the operator's line
12 of credit if the bank issued a, say, irrevocable
13 letter of credit on that line of credit? What would
14 happen? What effect would that have on an operator?
15 Why do they have a line of credit and what would
16 happen reducing it with a --

17 A. Well, then you wouldn't have the cash on
18 hand to do any development that he would be required
19 to do in order to keep the wells that he just bonded
20 from becoming more marginal.

21 Q. Thank you. Next slide, please. This is a
22 two-part slide, but we're showing the portions of
23 applicant's Exhibit 72 concerning the changes to
24 19.15.8.9E. And in particular, the strikeout language
25 beginning on the third line of E, what do you

1 understand the effect of that strikeout to be on the
2 inactive wells and approved and expired temporary
3 abandoned status wells?

4 A. Well, it looks like, just by reading it,
5 that the federal wells would no longer be excluded
6 from the proposed rulemaking.

7 MR. CLOUTIER: And if you'd show the next
8 slide.

9 BY MR. CLOUTIER:

10 Q. Explain to the Commission why you believe
11 that. And call your attention to the language just
12 before the red in Subparagraph A of the same
13 rulemaking?

14 A. And that is if it is covered by a federally
15 required bond. But they are not allowed to proceed
16 with any proposed drilling until it's furnished the
17 financial assurance. And that looks like it's asking
18 for it twice.

19 Mr. HALL: Objection. I know we're at the
20 end here, but what is he rebutting?

21 MR. CLOUTIER: This is the testimony that
22 federal wells are exempt from the rulemaking.

23 Mr. HALL: Well, then optional completeness.
24 I would ask the part that says "unless the well is
25 covered by federally required financial assurance" be

1 read into the record.

2 MR. CLOUTIER: And that's the language we're
3 focusing on.

4 BY MR. CLOUTIER:

5 Q. And what is the effect of striking the
6 reference to this subsection and the prior section,
7 Mr. Ezzell?

8 A. If that subsection is stricken, it's not in
9 the regulation anymore.

10 Q. As to those wells covered by Subsection 8?

11 MR. CLOUTIER: If we can move to slide
12 number 7 here.

13 BY MR. CLOUTIER:

14 Q. Mr. Purvis and Mr. Morgan offered testimony
15 about single-well bonds or using a single instrument
16 if the operator's portfolio increased to this 15
17 percent threshold that you heard Mr. Armstrong
18 testifying about. What observation do you have about
19 that testimony?

20 A. Well, if you are required to have
21 single-well bonds and you find a surety that will do
22 it for you and put it all under one instrument, that
23 makes it a blanket bond.

24 Q. Thank you. There was a question, next
25 slide, posed by Commissioner Bloom to a witness about

1 the use of the permanent fund to plug in abandoned
2 wells. Do you have any additional color to add to
3 that?

4 A. It can't be.

5 Q. Why not?

6 A. Well, the permanent fund is constitutionally
7 created, and the beneficiaries and the amounts that
8 they get are constitutionally dictated. And it would
9 take a constitutional amendment. And I know we're
10 happy to do those every once in a while, but it would
11 take another constitutional amendment to raid the
12 permanent fund again for this purpose.

13 Q. Thank you. Next slide. Mr. Powell offered
14 commentary that the rulemaking would prevent waste by
15 forcing operators to plug low-producing wells to
16 either they or a different operator develop other
17 horizons. What do you think about that theory of the
18 rulemaking preventing waste?

19 A. I think they're looking pretty hard for a
20 pig to hang. We prevent waste, too. If the
21 low-producing well can be produced economically, it
22 needs to be produced until it can't. And it may be a
23 part of the plan that those wells are holding lease
24 for the same operator to come in and do that
25 development. But it's that operator's property right.

1 And if they're using that well to hold the lease,
2 that's their contractual right to do.

3 Q. What happens to the oil and gas in place in
4 a different horizon if there is any, while the
5 operator is producing the low-producing well from
6 another horizon?

7 A. It's still there.

8 Q. Does it disappear over the course of time?

9 A. No. If the other well gets plugged, it
10 might get left in the ground. And I know that's a
11 term we don't like to use.

12 Q. Next slide, please. Mr. Powell offered a
13 very similar theory about protecting correlative
14 rights by allowing the other owners of the interests
15 in the minerals to have their other minerals
16 developed. Do you have any comments on that?

17 A. Well, the non-op can propose operations just
18 like the operator can. And if it's drilling a new
19 well, a non-op can propose the drilling of a new well.
20 If the operator doesn't want to drill it, then the
21 consenting non-ops can make him drill it for him.

22 Much like a plugging, they can force
23 additional development, and especially if they've got
24 a mineral owner saying he might not be producing them
25 in quantities anymore.

1 Q. And let's say we've got a fee mineral owner
2 and there's other horizons that are developable. Is
3 there a market mechanism in the oil and gas industry
4 in which an operator who may be holding on to a well
5 too long and producing it uneconomically can be forced
6 out?

7 A. Yes. It's called a top lease. A top lease
8 is a lease that is taken from the same lessor covering
9 the same lands, with a date that is before the
10 expiration date of the base lease, the bottom lease,
11 that provides for the top lease to go into effect only
12 upon the expiration of the bottom lease.

13 So if I top lease somebody that's
14 producing a marginal well, I will either call up the
15 royalty owners and say, "You need to start writing
16 demand letters to this guy to increase production, or
17 if you want me to, I'll take care of it and demand
18 that they either produce more or release the lease or
19 at least release the lease as to part of the lands for
20 failure to reasonably develop." That is the most
21 likely time that top leases are used.

22 Q. Thank you, Mr. Ezzell. Last bit of
23 surrebuttal, and it came up again with Mr. Gilstrap?
24 But Mr. Morgan testified and there's been other
25 testimony about the OCD releasing a single-well

1 marginal bond if the production is brought up so that
2 it's no longer in marginal status. What is your view
3 of that as a New Mexico lawyer?

4 A. Well, the way I am reading it, it can't be
5 done. I agree with Mr. Gilstrap that those
6 instruments are un-cancelable.

7 Q. Thank you. And you're talking about the OCD
8 form of surety bond that's on their website?

9 A. Yes. Looking at it, it does not look like
10 either party can get out of it absent the fulfillment
11 of the act that is being bonded.

12 Q. And what is the act that's being bonded?

13 A. The acceptance by the OCD of the plugging
14 and abandonment of the well. It's not just the
15 plugging and abandonment of the well, because, like a
16 baseball umpire with balls and strikes, a well isn't
17 plugged until the OCD says it is.

18 MR. CLOUTIER: All right. That concludes
19 Mr. Ezzell's surrebuttal testimony, Madam Hearing
20 Officer.

21 HEARING OFFICER ORTH: Thank you very much,
22 Mr. Ezzell and Mr. Cloutier. You got us exactly to
23 5:00 p.m. So we'll begin with your questions
24 immediately following public comment in the morning.

25 By the way, speaking of public comment,

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

10 (Proceedings adjourned at 5:00 p.m.)
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AFFIRMATION OF COMPLETION OF TRANSCRIPT

I, Kelli Gallegos, DO HEREBY AFFIRM on November 3, 2025, a hearing of the New Mexico Oil Conservation Commission was taken before me via video conference.

I FURTHER AFFIRM that I did report in stenographic shorthand the proceedings as set forth herein, and the foregoing is a true and correct transcript of the proceedings to the best of my ability.

I FURTHER AFFIRM that I am neither employed by nor related to any of the parties in this matter and that I have no interest in the final disposition of this matter.



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