

**STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION COMMISSION**

**IN THE MATTER OF PROPOSED  
AMENDMENTS TO 19.15.2, 19.15.5, 19.15.8,  
19.15.9, AND 19.15.25 NMAC**

**CASE NO. 24683**

---

**OXY USA, INC.'S CLOSING ARGUMENT**

---

Oxy USA, Inc. (“Oxy”) hereby submits these closing arguments jointly with its proposed findings of fact and conclusions of law pursuant to the December 18, 2025 Post-Hearing Order.

Oxy respectfully submits that several key proposed provisions exceed the Commission’s legal authority and conflict with express statutory constraints in NMSA 1978, Section 70-2-14(A). Specifically, Section 70-2-14(A) provides for a blanket financial assurance cap of \$250,000. Applicants’ proposed financial assurance categories are an improper attempt to circumvent that statutory cap, which Applicants deem an impediment to fully protecting the state against a rising tide of orphaned wells. The legislative history of Section 70-2-14(A) confirms that the blanket financial assurance cap applies to all current and future financial assurance categories. The proposed financial assurance categories should be rejected as inconsistent and contrary to Section 70-2-14(A). If the statutory cap is insufficient, or additional legal authority is required to address a growing orphaned well problem, the solution proposed by Applicants requires the Legislature to act first.

In the alternative, in the event the Commission rejects Oxy’s legal arguments, Oxy urges the Commission to adopt the negotiated language in Applicants’ final proposed rules in Exhibits 89-A through 89-E, particularly a core package of negotiated provisions outlined below. Oxy

also urges the Commission to adopt its redline modifications to proposed 19.15.25.13.C(2) NMAC, attached as **Exhibit D**, that would govern public notice for extensions of temporary abandonment status and require parties to have standing to request a hearing or participate in a hearing to extend temporary abandonment status. To the extent the Commission rejects Oxy's legal arguments, Oxy's proposed findings of fact and conclusions of law support adoption of the proposed rules in Exhibits 89-A through 89-E with Oxy's modifications to proposed 19.15.25.13.C(2) NMAC attached as Exhibit D.

### **INTRODUCTION**

This rulemaking addresses important and legitimate regulatory goals: ensuring that operators maintain adequate financial assurance for well plugging and abandonment, protecting New Mexico's environment and natural resources, and preventing the proliferation of orphaned wells. Oxy shares these goals and has actively participated in this proceeding in good faith, including engaging in months of pre- and post-hearing negotiations that produced a Joint Stipulation reflecting substantial common ground created among the parties. As a result of those months-long negotiations, the parties—particularly Applicants,<sup>1</sup> New Mexico Energy, Minerals and Natural Resources Department Oil Conservation Division (“OCD”), and Oxy—reached substantial, but tenuous, agreement/acceptance over numerous modifications to Applicants' proposed rulemaking presented to the Commission over a 15-day hearing. Oxy appreciates the work the parties have undertaken to engage with each other and develop the negotiated rule language that has generated a superior final proposed rule.

---

<sup>1</sup> Applicants are WELC, Citizens Caring for the Future, Conservation Voters New Mexico Education Fund, Diné C.A.R.E., Earthworks, Naeva, New Mexico Interfaith Power and Light, Sierra Club, and WildEarth Guardians. Oxy acknowledges and appreciates that San Juan Citizens Alliance withdrew its status as a party in this proceeding on Friday, March 13, 2026.

As detailed in the Joint Stipulation, Oxy supports the specific amendments listed in Section 6 (Oxy's Positions) as proposed by Applicants, represented by Western Environmental Law Center ("WELC"), and the OCD in Applicants' Exhibits 89-A through 89-E, subject to the agreements and reservations contained in the Joint Stipulation. Among the negotiated provisions that resulted in revisions included in Applicants' final proposed rules in Exhibits 89-A through 89-E important to Oxy and its operations are:

- Agreed-to modifications in the Operator Registration and Change of Operator provisions in 19.15.9.8 NMAC and 19.15.9.9 NMAC, respectively;
- Provisions in 19.15.8.9.D(4), 19.15.8.9.E(2) and 19.15.8.9.G NMAC allowing an operator to furnish all necessary well plugging financial assurance in the form of a single instrument; and
- Agreed-to modifications to Approved Temporary Abandonment requirements in proposed 19.15.25.13 NMAC, subject to Oxy's strongly preferred alternative proposal for 19.15.25.13.C(2) NMAC that would govern public notice for extensions of temporary abandonment status and require parties to have standing to request a hearing or participate in a hearing to extend temporary abandonment status.

Oxy supports these proposed modifications and urges the Commission to adopt them.

In addition, and importantly for purposes of the Commission's consideration and deliberation, Oxy strongly supports the negotiated language in a core package of provisions subject to the parties' separate reservations articulated in the Joint Stipulation. That core package of provisions includes the following negotiated provisions in Applicants' final proposed rules in Exhibits 89-A through 89-E, summarized as follows:

- **19.15.8.9.E**—Agreement to exclude “low producing wells” (formerly “marginal wells”) from the newly proposed operator portfolio financial assurance category, so only inactive wells and pending/approved/expired temporary abandonment status wells are included within this financial assurance category;
- **19.15.8.9.E**—Agreement to increase the criteria threshold to 20 percent (instead of 15 percent) for the newly proposed operator portfolio financial assurance category;
- **19.15.8.9.D(2) & 19.15.8.9.E(1)**—Agreement to delay implementation of the single-well bonding requirements for low-producing wells and the operator portfolio financial assurance categories until May 1, 2029 (instead of January 1, 2028);
- **19.15.8.9.D(1)**—Agreement to maintain the requirement for immediate single-well bonding for low producing wells upon transfer;
- **19.15.2.7.L(6)**—Agreement to maintain the original proposed definition of low producing well, i.e., “means an oil or gas well that produced less than 180 days and less than 1,000 barrels of oil equivalent within a consecutive 12 month period.”
- **19.15.8.9.D(3)**—Agreement to include a low producing well “variance” only for reduced takeaway capacity;
- **19.15.25.9.A and 19.15.25.9.D(2)**—Agreement to maintain the 90 BOE threshold for establishing a rebuttable presumption that a production well is not capable of beneficial use but move the 90-day element from the criteria creating a rebuttable presumption to an element of rebuttal, and further requiring that the subject well

have “effectively produced” and have “no downhole mechanical integrity problem.”

- **19.15.25.9.B and 19.15.25.9.D(2)**—Agreement to maintain the 100 barrel threshold for establishing a rebuttable presumption that an injection well is not capable of beneficial use but move the 90-day element from a criteria creating a rebuttable presumption to an element of rebuttal and further requiring that the subject well have “effectively . . . injected” and have “no downhole mechanical integrity problem.”
- **19.15.25.9.E**—Agreement to delay implementation of 19.15.25.9 by 12 months from the effective date of the rule, except as to operators “substantially out of compliance” with 19.15.7.24 NMAC, 19.15.8.9 NMAC, or 19.15.25.8 NMAC the rule becomes effective immediately.

Notwithstanding its support of the proposed final negotiated language and the foregoing core package of provisions, Oxy maintains its original legal arguments and respectfully submits that several key provisions proposed by Applicants and OCD exceed the Commission’s legal authority under the Oil and Gas Act and conflict with express statutory constraints in Section 70-2-14(A). The Commission must act within its statutory mandate and cannot adopt provisions that exceed its legal authority. Where the proposed rules exceed that mandate, the Commission must decline to adopt them. Specifically, Oxy requests that the Commission decline to adopt new financial assurance categories for low producing wells (formerly marginal wells) in 19.15.8.9.D(1) NMAC and the portfolio operator financial assurance category in 19.15.8.9.F(1) NMAC, which are inconsistent with Section 70-2-14(A). Additionally, Oxy requests that the Commission adopt Oxy’s redline submittal for 19.15.25.13.C(2) NMAC.

In the alternative, in the event the Commission determines the proposed provisions are within its authority to approve and promulgate and the Commission rejects Oxy's legal arguments to the contrary, Oxy urges the Commission to adopt the negotiated language in Applicants' final proposed rules in Exhibits 89-A through 89-E, particularly the core package of negotiated provisions outlined above, without modification except for non-substantive, non-material changes made for clarity. The only exception to this limitation is that Oxy urges the Commission to adopt its redline modifications to proposed 19.15.25.13.C(2) NMAC over the language proposed by Applicants.

### **LEGAL ARGUMENT**

#### **I. Applicants and OCD's Proposals For New Financial Assurance Categories Is Contrary To Section 70-2-14(A).**

The Commission is not authorized to adopt Applicants and OCD's proposal for new financial assurance categories because they exceed the Commission's statutory authority. The Commission's authority is limited by statute, and the Commission cannot adopt regulations that exceed its statutory authority. The Oil and Gas Act lists three categories of financial assurance and establishes applicable statutory caps and restrictions on them. Applicants and OCD propose to create two new categories for financial assurance—the low producing (formerly marginal) well category and the portfolio operator category—that are not authorized by statute and seek to circumvent the statutory caps on blanket bonding set by the Legislature. Because the Commission cannot adopt regulations that exceed its statutory authority, the Commission must reject the new financial assurance categories proposed by Applicants and OCD.

### A. Statutory Framework

The Commission's authority to require financial assurance derives from Section 70-2-14 of the Oil and Gas Act. Section 70-2-14(A). That statute is not an unlimited grant of authority; it expressly limits the Commission's authority in critical respects.

Section 70-2-14(A) has been periodically modified as needed by the Legislature, with the most recent amendments in 2015 and 2018. The 2015 amendment created a category of financial assurance for "temporarily abandonment status wells" and authorized this new category of financial assurance to exceed \$50,000. At the time of this amendment, the statute did not allow financial assurance to exceed \$50,000. This amendment therefore specifically authorized financial assurance for "temporarily abandonment status wells" to exceed the general statutory restriction, which was set at \$50,000 at the time. In 2018, the legislature increased the general statutory restriction on financial assurance by a factor of five, raising the authorized amount from \$50,000 to \$250,000. But \$50,000 remained the minimum financial assurance authorized for "temporarily abandonment status wells."

Today, Section 70-2-14(A) provides for three categories of financial assurance—a blanket plugging financial assurance, a blanket plugging financial assurance for temporarily abandoned status wells, and one-well plugging financial assurance in amounts determined sufficient to reasonably pay the cost of plugging the wells covered by the financial assurance." Section 70-2-14(A). These categories are mandatory and exclusive ("Such categories shall include") and the Commission is not empowered to contravene or circumvent this directive and limitation without legislation.

The Commission may create categories of financial assurance within these three categories, but any new categories created are subject to statutory restrictions and limits. *See*

Section 70-2-14(A). Most significantly, Section 70-2-14(A) caps blanket financial assurance for wells at \$250,000. Section 70-2-14(A). The legislature set this express ceiling deliberately and the amount cannot be raised except by the Legislature.

### **B. Existing Rules**

Current Rule 19.15.8.9 NMAC requires financial assurance for “active wells” (subpart C) and “inactive wells” (subpart D). For “active wells,” current subpart 8.9(C) provides New Mexico operators with two financial assurance options:

- The first option is a one-well financial assurance that starts at \$25,000 plus \$2 per foot of projected depth.
- The second option allows an operator to elect a blanket financial assurance in a graduated amount based on four ranges of active wells managed by the operator (1-5 wells, 11-50 wells, 51-100 wells, and over 100 wells). These existing categories recognize and stay within the \$250,000 statutory cap for blanket financial assurances set forth in Section 70-2-14.

Subpart 8.9(D) addresses the financial assurance for “inactive wells,” which includes wells that “have been in temporarily abandoned status for more than two years.” The existing rule does not apply to wells that have been in approved temporarily abandoned status for less than two years because Section 70-2-14(A) authorizes increased financial assurance only after a well “has been held in temporarily abandoned status for more than two years...” Existing subpart 8.9(D) provides similarly structured increased financial assurance options:

- The first option allows a one-well assurance that commences at \$25,000 plus \$2 per foot of projected depth.

- The second option allows an operator to elect blanket financial assurance in graduated amounts based on four ranges of inactive wells managed by the operator (1-5 wells, 6-10 wells, 11-25 wells, and over 25 wells).

### **C. The New Categories Exceed the Commission's Statutory Authority**

Oxy objects to Applicants' proposal to create two new categories of financial assurance that exceed the statutory restrictions in Section 70-2-14(A).

Applicants seek to create a new definition of "low producing well" (formerly "marginal well") and impose a new financial assurance requirement for these active wells that: (a) removes them from the \$250,000 blanket financial assurance option provided in Section 70-2-14(A), and (b) requires instead a "one-well" financial assurance at \$150,000 "for each low producing well." See Apps' Ex. 89-A at p. 6 (proposing a definition of "low producing well" at 19.15.2.7.L.(6) NMAC) and Apps' Ex. 89-C at p. 2 (proposed 19.15.8.9.D).

Relatedly, Applicants seek to impose a new operator portfolio financial assurance category in 19.15.8.9.E(1) NMAC. Beginning May 1, 2029, per the language negotiated following the hearing, an operator with 20 percent or more of their wells in inactive status, approved temporarily abandoned status, expired temporarily abandoned status, or a combination thereof, would be required to: (a) remove all active wells from the \$250,000 blanket financial assurance option provided in Section 70-2-14(A), and (b) instead obtain a "one-well" financial assurance of \$150,000 for each well registered to the operator until the percentage of the operator's wells in such statuses is decreased below 20 percent (the "operator portfolio financial assurance category"). See Apps' Ex. 89-C at p. 2 (proposed 19.15.8.9.E).

Applicants' proposal is contrary to the unequivocal restrictions in Section 70-2-14(A) and cannot be adopted by the Commission. "The Oil Conservation Commission is a creature of statute, expressly defined, limited and empowered by the laws creating it." *Santa Fe Expl. Co. v.*

*Oil Conservation Comm'n*, 1992-NMSC-044, ¶ 27, 114 N.M. 103, 835 P.2d 819. As such, the Commission “may not create a regulation that exceeds its statutory authority.” *Marbob Energy Corp. v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013, ¶ 5, 146 N.M. 24, 206 P.3d 135.

The Legislature requires the Commission to provide a “blanket plugging financial assurance” that shall not exceed \$250,000. § 70-2-14(A). However, under Applicants’ proposal, if an operator has active wells that are considered “low producing,” or when an operator’s well portfolio exceeds the 20 percent threshold under the portfolio operator financial assurance category, then that operator is no longer allowed to keep these active wells under the \$250,000 blanket financial assurance. Instead that operator must provide one-well financial assurance in the amount of \$150,000 “for each” well it operates in its portfolio.

When an operator has multiple wells subject to the new categories, an operator’s financial assurance obligations will significantly exceed the \$250,000 statutory restriction. For example, operators with 20 low-producing wells will be required to pay single-well financial assurance on all 20 wells for a total of \$3 million in financial assurance. That is far more than the statutory blanket bond limit of \$250,000. Similarly, if only four of the operator’s 20 wells are in inactive status, approved temporarily abandoned status or expired temporarily abandoned status, or a combination thereof, and the operator’s other 16 wells produce above the limit for “low producing wells,” that operator still would be required to pay single-well financial assurance on all 20 of its wells because it exceeds the 20 percent threshold for the operator portfolio financial assurance category. Under the proposed rule, such operators would be precluded from using the statutorily mandated \$250,000 blanket bond.

The Legislature has not authorized the Commission to take these actions. The Commission may not prohibit operators from electing to obtain financial assurance through the

blanket bond without explicit legislative authority. Unlike in 2015, when the Legislature authorized “temporarily abandonment status wells” to exceed the statutory restriction on financial assurance, the Legislature has not authorized the Commission to exceed this restriction for active “low producing” wells or operators with a certain portfolio of wells. In an effort to circumvent the cap adopted by the Legislature in 2018, Applicants ask the Commission to remove certain active wells—low producing wells and all wells owned by an operator exceeding the 20 percent threshold—from the \$250,000 blanket financial assurance authorized by Section 70-2-14(A) and impose a one-well financial assurance in the amount of \$150,000 “for each” well. While the Commission may create additional categories of financial assurance within the limits imposed by Section 70-2-14(A), the Legislature has not authorized the Commission to work around the \$250,000 blanket financial assurance cap by creating new categories of financial assurance not subject to the blanket cap.

Under Applicants’ interpretation of the statute, the Commission can simply create any number of new categories of financial assurance that require single-well bonding and, to avoid the \$250,000 financial assurance cap, declare them not subject to the statutory blanket financial assurance limit. *See, e.g.*, Hearing Tr. 10/22/25 (Morgan) at 728:19-729:3 (stating that the language in 70-2-14(A) “doesn’t say that [blanket financial assurance is] a catchall to which all wells, other than temporarily abandoned status wells, could qualify. It’s just there has to be a category that checks that box, but it could be a more limited category.”); *id.* Tr. at 735:6-9, 18-23 (“[T]he statute empowers and invites the Commission to create multiple categories of financial assurance, only one of which is a \$250,000 blanket bond.”); *id.* 734:22-25 (“[T]he language . . . invites the creation of any number of categories.”); *id.* 741:22-25 (confirming Applicants’ new financial assurance categories “eliminates the option for [] operators to rely on the blanket

bond[.]”); *id.* 742:12-17 (blanket bond available only to certain operators); *id.* 748:11-15. According to Applicants, “there’s no limitation . . . as to the type of category or number of categories other than the requirement that it go through notice and hearing process[.]” Hearing Tr. 10/22/25 (Morgan) at 749:16-20, “but the statute doesn’t put limitations or specify which wells would be covered under the blanket bond that is available under the statute.” *Id.* 748:11-15. Under Applicants’ approach, the Commission is free to create any number of single-well financial assurance categories not subject to the \$250,000 blanket financial assurance category, as long as the new categories go through a notice and rulemaking process. *See id.* 742:4-17; 736:2-7.

That interpretation is invalid because it would make the statutory language mandating that there be a \$250,000 blanket financial assurance cap on all wells other than temporarily abandoned status wells surplusage. *See State ex rel. Regents of E. N.M. Univ. v. Baca*, 2008-NMSC-047, ¶ 10, 144 N.M. 530, 189 P.3d 663 (courts should refrain from reading statutes in a way that renders provisions superfluous); *see also Cont’l Oil Co. v. Oil Conservation Comm’n*, 1962-NMSC-062, ¶ 11, 70 N.M. 310, 373 P.2d 809 (“The Oil Conservation Commission is a creature of statute, expressly defined, limited and empowered by the laws creating it.”).

Applicants assert, however, that the Legislature is not required to first amend Section 70-2-14(A) to increase the blanket financial assurance cap to accomplish what Applicants seek to through this rulemaking. Hearing Tr. 10/22/25 (Morgan) at 753:21-754:3; 753:21-754:3; 754:18-20 (the Legislative Finance Committee’s determination that a statutory amendment is necessary is a “misapprehension of the limitations placed under the statute”). They assert the Commission has authority “to independently adopt rule changes that would have the same effect” as a statutory amendment to the blanket cap. *Id.* at 669:15-24.

But if that were true, the Legislature would not have had to amend Section 70-2-14(A) in 2015 to increase the statutory limit above \$50,000—the financial assurance cap that was previously in place through 2014—to increase the statutory blanket financial assurance for temporarily abandoned status wells. The Commission could have simply independently adopted a rule change to create a new category to raise the cap or avoid it. The Legislature was required instead to amend the statute to authorize a higher financial assurance cap for temporarily abandoned status wells.

In 2014, the statute limited blanket financial assurance to \$50,000 for all financial assurance categories. See **Exhibit A** (§ 70-2-14 (2014)). But in 2015, the Legislature amended the statute to increase blanket financial assurance only for temporarily abandoned status wells, requiring that they be set by rule at amounts greater than \$50,000. See **Exhibit B** (comparing § 70-2-14 (2015) to § 70-2-14 (2014) with amended language in green). This confirms that the blanket financial assurance category is applicable to all categories of financial assurance, because the Legislature had to carve out a specific exception for temporarily abandoned status wells providing that they shall be set by rule at amounts greater than \$50,000. See *id.* This legislative history directly contradicts Applicants' argument that the \$250,000 blanket financial assurance category is a stand-alone category that does not apply as a limit for any existing or future categories created by rule by the Commission. The opposite is true; it applies to all categories of financial assurance which is why the Legislature was required to amend the statute to authorize a higher blanket financial assurance for the special category of temporarily abandoned status wells.

To increase the blanket financial assurance for all other wells and categories, the Legislature subsequently amended the provision again in 2018, increasing the blanket financial

assurance cap for wells other than temporarily abandoned status wells to \$250,000. See **Exhibit C** (comparing § 70-2-14 (2018) to § 70-2-14 (2015) with new language in green and deleted language in red strikethrough). These legislative amendments to increase the financial assurance caps would not have been necessary if the Commission could have simply enacted a series of rules to create additional single-well financial assurance categories to avoid the mandatory statutory cap, as Applicants contend. But legislative action is necessary to raise the financial assurance limit, which is applicable as a cap to all financial assurance categories, unless expressly excepted as was done in 2015 for temporarily abandoned status wells. See *Cont'l Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, ¶ 11. The fact that it was necessary for the Legislature to increase the statutory limit in 2015 and 2018 confirms legislative action is required to authorize financial assurance in excess of the existing \$250,000 cap as Applicants effectively seek to do here.

If, as Applicants suggest, the Commission can always create additional categories of financial assurance and require one-well financial assurance for active wells created under each new category and disallow wells in that category from falling under the statutory blanket bond limit, then the \$250,000 financial assurance restriction for blanket bonds and the specific one-well financial assurance authority set forth in Section 70-2-14 have no meaning and are rendered superfluous. See *State ex rel. Regents of E. N.M. Univ.*, 2008-NMSC-047 at ¶ 10.

Because Applicants' proposal exceeds the statutory restrictions in the Oil and Gas Act, the Commission must decline to adopt it.

## II. If OCC Rejects Oxy's Legal Arguments, It Should Adopt The Parties' Negotiated Final Submitted Rules in Applicants' Exhibits 89-A through 89-E As Proposed.<sup>2</sup>

During the hearing and at the close of the evidentiary record, the Commission strongly encouraged the parties to work together post-hearing to try to reach agreement and narrow differences in their proposals. *See* Joint Mot. to Extend Submission of Post-Hearing Submittals, filed 12/16/2025, at 1. Starting November 21, 2025 and continuing until February 18, 2026, the parties met twice a week, nearly every week, to negotiate potential agreements and narrow differences over the proposed rule's provisions. While complete agreement was not achieved across the board, differences were narrowed, some agreements were made and, in many instances, modifications to the original proposed provisions were accepted, if not fully agreed to.

Oxy strongly supports the negotiated language in a core package of provisions that have been agreed to or accepted by all parties, subject to their separate reservations articulated in the Joint Stipulation. Subject to Oxy's legal arguments above, Oxy urges the Commission to adopt this core package of proposed rules, as submitted, with the exception that the Commission should adopt Oxy's proposed modifications to 19.15.25.13.C(2) NMAC, attached as Exhibit D. The negotiated core package of provisions are included in Applicants' final proposed rules in Exhibits 89-A through 89-E, summarized above and addressed in more detail with justifications below.

In addition to this core package, Oxy and the parties negotiated additional modifications to other provisions in the proposed rule important to Oxy and its operations that resulted in revisions to Applicants' final proposed rules reflected in Exhibits 89-A through 89-E. Oxy

---

<sup>2</sup> The sole exception is that the OCC should reject Applicants' proposal under 19.15.25.13.C(2) NMAC to require public notice for applications for extensions of temporary abandonment status and to allow "any interest person" to request a hearing and instead adopt Oxy's alternative proposal under 19.15.25.13.C(2) NMAC, attached as Exhibit D.

believes these modifications are superior to the original proposal, will benefit the industry and OCD, and will prevent waste and protect correlative rights while being protective of human health and the environment.

**A. The Parties' Proposed Core Package of Provisions Should Be Adopted as Submitted.**

Applicants stated that the rule proposed was “tailored to directly target” the riskiest wells—low producing wells, inactive wells, and wells in temporary abandonment or expired temporary abandonment status. *See, e.g.*, Apps' Ex. 15 at 32:6-15. In order to address operators with the riskiest well portfolios, Applicants recommended language in the original proposed rule—a new portfolio-level financial assurance category under 19.15.8.9.C(3)(b)—that was overinclusive and missed the mark. *See* Apps' Ex. 1-C.

As originally proposed, that provision would have required an operator to provide \$150,000 single-well financial assurance for each well it operates if more than 15 percent of its wells are considered marginal (now low producing) or inactive or a combination thereof. *Id.* This would have required an operator to pay \$150,000 single-well financial assurance for all its wells, even wells in its portfolio that are not deemed to be low producing or inactive (“risky”), simply because its well portfolio exceeds the 15 percent threshold criteria for marginal/low-producing wells and inactive wells. By way of example, if an operator had 100 wells in its portfolio and 15 of them were some combination of low producing and/or inactive wells (including approved or expired temporary abandonment status wells), that operator would have to obtain \$15,000,000 in financial assurance for its well portfolio (\$150,000 x 100 wells = \$15,000,000). This would have been true even for an operator with a track record of plugging its own wells and never “orphaning” wells for the state or another operator to plug. Hearing Tr. 10/22/25 (Morgan) at 747:6-25.

According to Applicants' testimony, this portfolio-level financial assurance category would have impacted more than 51 percent of operators in the state, 18 percent of wells, and more than 2.3 percent of barrels of oil equivalent (BOE) of production in the state based on 2024 production. *See* Apps' Ex. 52. Looking at 2024 production, that provision would have impacted more than 17 million barrels of oil production equating to more than \$1 billion in production value at \$60 per barrel oil prices, excluding impacts to gas production. *See* Hearing Tr. 10/21/25 (Purvis) at 442:8-443:22. That is not tailored to target the riskiest wells and operators. As originally proposed, the rule would have captured most operators in the state who do not have a history of orphaning wells, as well as a broader set of wells beyond the most at risk for being orphaned. Instead of being tailored, the originally proposed portfolio financial assurance category was over-broad.

Given the concerns raised by industry, as well as Applicants' and OCD's willingness to engage in post-hearing discussions, the parties negotiated and arrived at a delicate agreement where the parties either agreed or accepted a series of inter-related modifications to the original proposed rule, included within a core package of provisions. The modifications are designed to focus the effects of the rule more narrowly on wells Applicants identified as the highest risk—wells that are inactive (including wells in approved or expired temporary abandonment status) and, therefore, not producing. Hearing Tr. 10/22/25 (Morgan) at 727:1-4; FOF 3, 40. The proposed agreed modifications substantially narrow the focus of the portfolio category to the riskiest subset of wells, reducing the original broad impact on operators and production across the state. At the same time, the modifications provide the Division with a more effective and immediate means of requiring operators to plug wells that no longer serve a beneficial purpose

before they become a plugging burden to other operators or the state—compliance powers the Division did not previously have.

The core package of negotiated provisions summarized above is restated below with justifications for each proposed modification:

- **19.15.8.9.E**—Agreement to exclude “low producing wells” (formerly “marginal wells”) from the newly proposed operator portfolio financial assurance category (“portfolio category”), so only inactive wells and pending/approved/expired temporary abandonment status wells are included within this financial assurance category. FOF 40.
  - **Justification:** Low producing wells should be excluded from the operator portfolio category because they retain their beneficial use as actively producing wells and would be already subject to the \$150,000 single-well bond requirement under 19.15.8.9.D NMAC. Hearing Tr. 10/28/25 (Arthur) at 196:15 – 197:4. Higher financial assurance requirements should be instead triggered by well portfolios with a higher percentage of the riskiest wells—inactive wells, including approved and expired temporary abandonment wells. Hearing Tr. 10/22/25 (Morgan) at 727:1-4. Exclusion of low producing wells from the portfolio category is further justified because under the proposed rule modifications the Division would have new authority to require operators to plug wells within 60 days that are determined to no longer have a beneficial use under a streamlined version of 19.15.25.9 NMAC (addressed below) and 19.15.25.8.B(2) NMAC, while production is still continuing and before

the wells are abandoned. This streamlined early compliance and enforcement process serves as a “safety net” for the Division to effectively target wells for plugging that are identified as being at imminent risk of abandonment while still being operated and produced without the need to broaden protection through the operator portfolio category, and significantly affect operators and state production that is not truly “risky.” See Hearing Tr. 10/27/2025 (Powell) at 155:6-22.

- **19.15.8.9.E**—Agreement to increase the criteria threshold to 20 percent (instead of 15 percent) for the newly proposed operator portfolio financial assurance category.
  - **Justification**: The burden of imposing the \$150,000 single-well financial assurance on all of an operator’s wells is severe and should be reserved for only operators with the riskiest well portfolios—*i.e.*, a high percentage of inactive wells, including approved and expired temporary abandonment wells. Apps’ Ex. 15 at 51:12-15; Hearing Tr. 10/22/2025 (Morgan) at 727:1-4; Oxy FOF 33-34. For similar reasons outlined above that justify excluding low producing wells from the portfolio category in 19.15.8.9.E, the threshold criteria for triggering application of the portfolio category should be increased to a percentage greater than 15 percent so only the riskiest well portfolios are targeted under this provision. This makes sense because the \$150,000 single-well financial assurance requirement remains applicable for all low producing wells and OCD has a more effective, streamlined compliance process in place under 19.15.25.9 NMAC

(addressed below) to target wells for plugging that are identified as being at imminent risk of abandonment before production terminates. Finally, raising the criteria threshold to 20 percent mitigates potentially unintended adverse impacts to a broader category of operators, wells, and substantial production in the state that would be targeted under 15 percent threshold criteria. Hearing Tr. 10/27/2025 (Powell) at 152:19-153:24; *see id.* at 145:13-147:7; Oxy FOF 39-40.

- **19.15.8.9.D(2) & 19.15.8.9.E(1)**—Agreement to delay implementation of the single-well bonding requirements for low-producing wells and the operator portfolio financial assurance categories until May 1, 2029 (instead of January 1, 2028).
  - **Justification:** Delayed implementation of the single-well bonding requirements for low-producing wells and the operator portfolio financial assurance categories will give operators additional time to assess, evaluate, and address low producing and inactive wells in their well portfolios without the additional burden of having to simultaneously meet higher financial assurance requirements. Hearing Tr. 10/24/25 (Powell) at 216:23–217:2; Apps’ Ex. 30 at 64:9-10 (Purvis Direct). This additional time will allow operators to map in capital and supply chain needs to make the appropriate decisions to plug wells with no beneficial use or bring them back to higher production levels before the higher financial assurance requirements become effective. Apps’ Ex. 30 at 64:9-10 (Purvis Direct); Apps’ Ex. 15 at 45:11-13; Hearing Tr. 10/22/25 (Morgan) at

743:19-744:1 (stating that a programmed delay in making the single-well financial assurance requirement for low producing wells gives operators time to return wells to production levels above low producing well status or plug them).

- **19.15.8.9.D(1)**—Agreement to maintain the requirement for immediate single-well bonding for low producing wells upon transfer.
  - **Justification:** To avoid inadvertently incentivizing operators to transfer their riskiest wells to unsuspecting or naïve operators, potentially unaware of the new proposed financial assurance and plugging requirements, this provision ensures that once the proposed rule becomes effective, all low producing wells proposed to be transferred to a new operator will be subject to the new \$150,000 single-well financial assurance requirement. Hearing Tr. 10/21/25 (Morgan) at 562:1-25.
- **19.15.2.7.L(6)**—Agreement to maintain the original proposed definition of low producing well, i.e., “means an oil or gas well that produced less than 180 days and less than 1,000 barrels of oil equivalent within a consecutive 12 month period.”
  - **Justification:** A lower metric was considered for the definition of low producing wells, such as 750 BOE, rather than 1,000 BOE; however, it was determined that by retaining the 1,000 BOE metric a sufficient number of wells will remain in the low producing well category to justify, in combination with other provisions, increasing the threshold criteria for the portfolio category from 15 percent to 20 percent and excluding low-

producing wells while still providing protection for the riskiest wells. *See* Apps' Ex. 30, at 66.

- **19.15.8.9.D(3)**— Agreement to include a “variance” to the low producing well financial assurance category for reduced takeaway capacity.
  - **Justification:** Operators sometimes experience, through no fault of their own, physical impediments entirely out of their control that reduce or foreclose a well’s ability to transmit gas onto a connected gas gathering system. In such circumstances, wells whose production (or days of production) was impacted by such circumstances should be allowed a variance, with the proper demonstrations, from the requirement to obtain single well financial assurance of \$150,000. Hearing Tr. 10/30/25 (McGowen) at 202:23–203:5. A similar exception has been previously recognized by the Commission in 19.15.28.8.D NMAC in the venting and flaring rule.
- **19.15.25.9.A and 19.15.25.9.D(2)**—Agreement to maintain the 90 BOE threshold for establishing a rebuttable presumption that a production well is not capable of beneficial use but move the 90-day element from the criteria creating a rebuttable presumption to an element of rebuttal, and further requiring a demonstration that the subject well has “effectively produced” and has “no downhole mechanical integrity problem.”
  - **Justification:** Days of production reported by an operator can be skewed because a well’s valve may be kept open with little resulting production. *See* Hearing Tr. 10/24/25 (Powell) at 230:11-20. Relatedly, the reporting

of production days can be inconsistent and inaccurate across operators and production reports. Days of production is not something that OCD validates or enforces. *See* Hearing Tr. 10/24/25 (Powell) at 235:15-237:15. In contrast, BOE is generally more accurate and more easily verified by OCD. *See* Hearing Tr. 10/24/25 (Powell) at 236:23-237:7. To allow for a more streamlined compliance process for OCD under 19.15.25.9, the parties agreed (or accepted) to remove the days of production as a criterion for presumption of no beneficial use under 19.15.25.9.A and instead include it as an element of rebuttal under 19.15.25.9.D(2). *See* Hearing Tr. 10/24/25 Tr. (Powell) at 237:8-15 (explaining problems with including days of production). While this change broadens the potential impact, the demonstration (that a well has “effectively produced” for at least 90 days within a 12-month period and has no downhole mechanical integrity problem) will serve as a near-automatic rebuttal to the presumption that it has no beneficial use. *See* 19.15.25.9.D(2). This improvement in the compliance process justifies, in part, removing low producing wells from the operator portfolio financial assurance category and increasing the criteria threshold from 15 percent to 20 percent, because 19.15.25.9 serves as a “safety net” for the OCD to effectively target wells for plugging that are identified as being at imminent risk of abandonment. *See* Hearing Tr. 10/27/2025 (Powell) at 155:6-22.

- **19.15.25.9.B and 19.15.25.9.D(2)**—Agreement to maintain the 100 barrel threshold for establishing a rebuttable presumption that an injection well is not

capable of beneficial use but move the 90-day element from a criteria creating a rebuttable presumption to an element of rebuttal and further requiring that the subject well have “effectively . . . injected” and have “no downhole mechanical integrity problem.”

- **Justification**: The same rationale that justifies moving the 90-day criteria governing production wells to an element of rebuttal discussed above also applies to the same modification to the provision governing injection wells.
- **19.15.25.9.E**—Agreement to delay implementation of 19.15.25.9 by 12 months from the effective date of the rule, except as to operators “substantially out of compliance” with 19.15.7.24 NMAC, 19.15.8.9 NMAC, or 19.15.25.8 NMAC, for whom the rule becomes effective immediately.
  - **Justification**: Removing the 90-day criteria for the presumption of no beneficial use under 19.15.25.9.A and including it instead as an element of rebuttal under 19.15.25.9.D(2) increases the number of wells that are potentially subject to this provision that may be required to rebut the presumption. *See* Hearing Tr. 10/24/25 (Powell) at 237:8-15. Because more wells and operators may be subject to this rebuttable presumption, the parties agreed or accepted that the effective date of 19.15.25.9 should be delayed 12 months after the rule becomes effective. 19.15.25.9.E. This will give operators additional time to assess, evaluate, and address wells in their portfolios producing at or near 90 BOE within a 12-month period before having to potentially respond to a notice of presumption of no

beneficial use while also giving the Division the protection it needs to immediately address operators known to be “substantially out of compliance.”

**B. OCC Should Adopt Applicants’ Proposed Final Rules Addressing (1) Operator Registration and Change of Operator Provisions; (2) Single Financial Instrument For All Necessary Financial Assurance; and (3) Temporary Abandonment Approvals with Oxy’s Alternative Proposal for 19.15.25.13.C(2) NMAC.**

Separate from the negotiated core package of provisions addressed above, the parties negotiated additional modifications to the original rule initially proposed by Applicants. In most instances, the modifications were the culmination of additional feedback and discussions post-hearing between the Applicants, OCD, and the industry parties. In the event the OCC rejects Oxy’s legal arguments, Oxy urges the OCC to adopt these proposed rules as submitted with Oxy’s Alternative Proposal for 19.15.25.13.C(2) NMAC, for the reasons outlined below.

***i. Operator Registration and Change of Operator under 19.15.9.8 & 19.15.9.9 NMAC***

In advance of the rulemaking hearing, Oxy met with Applicants and OCD to raise concerns regarding the proposed requirements and provisions under 19.15.9.8 NMAC and 19.15.9.9 NMAC. As a result of those discussions, Applicants addressed Oxy’s original concerns and made some modifications to the proposed language through its rebuttal testimony. *See* Apps’ Ex. 73 (Alexander Rebuttal) at 3:11-18; Apps’ Ex. 81 (Morgan Rebuttal) at 39:6-42:16. Then, testimony from industry witnesses during the hearing identified additional potential concerns regarding the modifications. *See* Hearing Tr. 10/28/25 (Wallace) at 29:18 – 30:19. Following the hearing, the parties negotiated additional modifications to these provisions highlighted in blue and included in Applicants’ final proposed rule language in Exhibits 89-A through 89-E. Oxy supports these additional modifications as proposed. FOF 44-49.

First, revising the Operator Registration provision to require “a representative designated by the operator” to provide a certification in 19.15.9.8.B NMAC better captures the parties’ intent that the operator itself can designate the appropriate authorized individual to make such certifications to the Division. This modification provides operators—especially large operators—the flexibility needed while still meeting the intent of the proposed regulation to hold operators accountable. *See* Apps’ Ex. 81 (Morgan Rebuttal) at 41:10-12.

Second, Applicants’ proposed final provision includes a timeframe for a lookback period of ten years to determine whether operators are subject to “any final administrative forfeiture demand from any state or federal agency,” and to confirm it “has not been out of compliance with an adjudicated order or settlement agreement for any state or federal violations related to oil and gas laws or regulations in any domestic jurisdiction in which the new operator does business[.]” *See* 19.15.9.8.B NMAC. Similar language is mirrored in 19.15.9.9.B NMAC and 19.15.9.9.C(2) NMAC. Similar to the modifications discussed above, these revisions also better capture the parties’ intent to limit certification to specific and concrete final compliance actions and statuses—i.e., final administrative forfeitures, adjudicated orders, and settlement agreements. *See, e.g.*, Apps’ Ex. 81 (Morgan Rebuttal) at 41:10-42:16. As to the 10-year lookback period, the parties agreed that an open-ended lookback period for certification as originally proposed was unreasonably long but that a 10-year period was fair—with the exception of NMOGA and IPANM, who both prefer a five-year lookback period.

***ii. A Single Instrument for All Well Plugging Financial Assurance***

With the potential adoption of the single-well financial assurance requirement for low producing wells, many operators will likely have a mix of wells, with some under a \$250,000 blanket bond and others requiring \$150,000 single well financial assurance, resulting in operators having to obtain numerous financial well assurance instruments. Having to obtain and track a

multitude of separate financial assurance instruments would create an administrative challenge for many operators, especially large operators like Oxy, with many wells that may be subject to single well financial assurance requirements. Recognizing this, the rule allows operators to obtain a single instrument for all financial assurance obligations, including blanket bonds. *See* 19.15.8.9.D(4); 19.15.8.9.E(2); 19.15.8.9.G; *see also* Apps' Ex. 81 (Morgan Rebuttal) 34:15-36:8; Apps' Ex. 82 (Peltz Rebuttal) at 22:4-15; FOF 41-43.

With several OGRID operators and hundreds of wells under Oxy's corporate umbrella, this provision is important to Oxy and Oxy urges the OCC to adopt it.

***iii. Temporary Abandonment with Oxy's Alternative Language for  
19.15.25.13.C(2) NMAC***

One of the most important provisions with potential consequences for Oxy is Applicants' proposal to adjust the process and requirements for placing wells in approved temporary abandonment status. From the outset, Oxy made clear that it does not oppose Applicants' proposal to require operators to explain the purpose of the request, the future use of the well, the period needed for that future use and related information. *See, e.g.,* Oxy Ex. B (Wallace Direct) at 13, ¶ 57. However, Oxy does oppose adding unnecessary mandatory requirements, eliminating the Division's inherent discretion and authority to approve temporary abandonment, and especially limiting temporary abandonment approvals to no more than eight years. *See generally,* Oxy Ex. B (Wallace Direct) at 13-17, ¶¶ 57-74; FOF 59-63. During the hearing, the already small gap between Applicants' position and Oxy's position on what should be required for temporary abandonment closed substantially. By the end of the hearing, witnesses for both Applicants and OCD agreed that additional temporary abandonment terms beyond eight years would be appropriate under certain circumstances and with the proper limitations. Hearing Tr. 10/20/25 (Alexander) at 71: 24 – 72: 6; Hearing Tr. 10/27/25 (Powell) at 156: 9-14.

During post-hearing negotiations, Applicants, OCD, and Oxy, effectively negotiated—with input from NMOGA and IPANM—a revised temporary abandonment provision that lays out a reasonable process for initial approvals, two-year renewals, and a more fulsome review and approval process for additional five-year extension terms. *See* 19.15.25.13 NMAC. Oxy believes the negotiated modifications achieve the proper balance and should be adopted with Oxy's alternative language for 19.15.25.13.C(2) NMAC. *See* **Exhibit D**, attached hereto.

The only remaining area of disagreement between Oxy and Applicants is whether the rule should require operators to provide public notice for applications for five-year temporary abandonment term extensions under 19.15.25.13.C NMAC and allow “any interested person” to request a hearing. *See* Apps' Ex. 89-E (19.15.25.13.C(2)) (requiring operators applying for five-year extensions to provide 30 days' notice of its application in a newspaper of general circulation” and providing that “any interested person” may request a hearing on the extension application before OCD). A public notice requirement is not appropriate in this context and allowing “any interested person” without legal standing to request, and participate in, a hearing on temporary abandonment extensions is not supported by rules and administrative laws governing standing and requires a method of notice that is burdensome and not effective to the public or the intent for which it was drafted. FOF 59-63.

***(1) A Public Notice Requirement for TA Extensions is Unwarranted***

Oxy urges the OCC not to impose the unusual burden of requiring public notice for administrative applications seeking five-year extensions for wells in temporary abandonment status. *See* Apps' Ex. 89-E (19.15.25.13.C(2)). Commission rules only require an operator to provide public notice in a newspaper of general circulation in five limited circumstances:<sup>3</sup>

---

<sup>3</sup> 19.15.4.12.B NMAC (Under the general provision governing notice for hearing, only when an applicant is unable to locate persons entitled to specific and personal notice after reasonable

- **19.15.4.12.B NMAC** – Under the general provision governing notice for hearing, only when an applicant is unable to locate persons entitled to specific and personal notice after reasonable diligence is an applicant required to provide notice by publication. Such notice is not directed at the public generally, nor is it an invitation for “any interested person” to participate in such hearings; it is only for purposes of providing constructive notice to a person entitled to notice who cannot be located. 19.15.4.12.B NMAC.
- **19.15.17.15.B(4) NMAC** – Under the regulations governing pits, closed-loop systems and below-grade tanks, when operators seek one of the specific exceptions allowed by 19.15.17 NMAC, operators are required to issue public notice “in a newspaper of general circulation in the county where the pit, or proposed alternative, is, or will be located.” The exceptions requiring public notice solely relate to when the operator seeks to locate proposed pits or a proposed alternative within specified setbacks required under the rule. *See* 19.15.17.10.A(2), 19.15.17.10.A(4), 19.15.17.10.A(5)(g), 19.15.17.10.A(6), 19.15.17.10.C(2). The setbacks relate to depth to groundwater; distances to continuously flowing watercourses, wetlands, and floodplains; occupied permanent residences, schools, hospitals, and churches; incorporated municipal boundaries or defined municipal fresh water well fields; and subsurface mines and unstable areas. *See* 19.15.17.10.A(1)(a)-(i) NMAC.

---

diligence); 19.15.17.15.B(4) NMAC (Proposed pits or a proposed alternative within specified setbacks) ;19.15.26.8.C NMAC (injection authorized under the Safe Drinking Water Act); 19.15.30.15 NMAC (Stage 1 and stage 2 surface and subsurface water pollution abatement plans); 19.15.36.9.C(2) NMAC (surface waste management facilities).

- **19.15.26.8.C NMAC** – In the rules governing injection authorized under the Safe Drinking Water Act, applicants are required to provide public notice in a newspaper of general circulation in the county where the proposed injection well is located. *See* 19.15.26.8.C(1) NMAC.
- **19.15.30.15 NMAC** – In the rules addressing surface and subsurface water pollution abatement, applicants seeking approval for stage 1 and stage 2 abatement plans are required to give public notice “in a newspaper of general circulation in the county in which the release occurred, and in a newspaper of general circulation in the state” that provides an overview of the release, proposed abatement, and other details. *See* 19.15.30.15.B NMAC. This requirement simply mirrors the requirement for public notice under the Water Quality Control Commission (“WQCC”) regulations governing pollution abatement for waters of the state. *See* 20.6.3.300.B(1)(b)(iii) NMAC (mirroring 19.15.30.15.B NMAC). The OCC is a constituent agency of the WQCC under the Water Quality Act. *See* NMSA § 74-6-2(E)(4).
- **19.15.36.9.C(2) NMAC** – In the rules governing approval of surface waste management facilities, applicants receiving Division notice of a proposed decision to approve a proposed facility are required to publish public notice of the proposed decision in a newspaper of general circulation in the county where the facility is or will be located. 19.15.36.9.C(2) NMAC.

In every instance where Division rules require public notice, the application involves a new proposed project or facility that seeks an exception to a rule (19.15.17.15.B(4) NMAC); implicates Safe Drinking Water Act protections and the state’s primacy to oversee the federal

Class II Underground Injection Control Program (19.15.26.8.C NMAC); involves proposed remediation plans for already-polluted water sources that the OCC governs under the Water Quality Act as a constituent agency to the WQCC (19.15.30.15 NMAC); involves approval of proposed surface waste management facilities designed to handle exempt oil and gas wastes (19.15.36.9.C(2) NMAC); or is an application for hearing in the limited circumstance persons entitled to specific and personal notice are unlocatable after reasonable diligence (19.15.4.12.B NMAC).

Approval of a five-year extension for temporary abandonment status for wells that have previously met the technical requirements for initial approval and renewal by OCD simply are not in the same category as those types of applications that justify and require public notice. Under the proposed rule no party is entitled to notice, so constructive notice is not an issue, and a five-year extension of temporary abandoned status also does not implicate Safe Drinking Water Act requirements, nor does it rise to a comparable hazard level inherent in any of the other types of applications that require public notice. The OCC should reject Applicants' proposal to require public notice here. It is simply not warranted. FOF 59-63.

***(2) Only Persons with Legal Standing Should be Permitted to Request or Participate in a Hearing.***

In concert with the proposal to require public notice, Applicants also propose to allow “any interested person” to request (or, by implication, participate in) a hearing on an application for a five-year extension for temporary abandonment status. *See* Apps' Ex. 89-E (19.15.25.13.C(2)). This would be an unprecedented loosening of the legal limits governing party status in OCD hearings and should be rejected. FOF 59-63.

Under OCD's existing rules, only a “person with standing” can request a hearing. 19.15.4.8.A NMAC. *See Deutsche Bank Nat'l Tr. Co. v. Johnston*, 2016-NMSC-013, ¶ 13, 369

P.3d 1046 (“courts have generally required that a litigant demonstrate injury in fact, causation, and redressability to invoke the court’s authority to decide the merits of a case”). Only a person “entitled to notice” or who has legal “standing” may be a party to a hearing. 19.15.4.10.A(2) NMAC and 19.15.4.11.A NMAC. The proposal to allow “any interested person” to request a hearing—and by implication to participate in a hearing—on a highly technical issue regarding whether a well meets the requirements for a five-year extension is contrary to the Division’s existing rules governing adjudications and even every other Division rule where public notice is a requirement.

For example, under 19.15.17 NMAC, governing pits and closed-loop systems where public notice is a requirement, the rule allows members of the public to submit comments to the director, but only a “person with standing” is permitted to request a hearing and contest the application. 19.15.17.15.B(6) NMAC. Similarly, only persons with standing can request a hearing on a proposed approved surface waste management facility. *See* 19.15.36.9.G NMAC (if a request for hearing is made “by persons the division determines lack standing” the proposed approval becomes final (emphasis added)).

The only exception to the general rule governing party status under rule 19.15.4 is the allowance for members of the public to request a hearing on proposed abatement plans under 19.15.30 NMAC. But even then, a hearing is held only “if the director determines that there is significant public interest or that the request has technical merit.” 19.15.30.15.C NMAC. And, as noted above, this rule, unlike any other rule promulgated pursuant to the Oil and Gas Act, is unique because it implicates the OCC’s status as a constituent agency of the WQCC under the Water Quality Act. *See* NMSA § 74-6-2(E)(4). Therefore, it mirrors what is required under the WQCC’s regulations. *See* 20.6.3.300.B(4) NMAC. Given the narrow scope of the temporary

abandonment provision, limited to a common, standardized oil and gas operation, there is no need to import WQCC provisions into more general Division regulations and procedures.

Finally, opening oil and gas proceedings to general public comment that are by nature purely technical by eliminating the legal standing requirement appears to serve no technical purpose that will further the goals of the Oil and Gas Act. It will instead likely increase the administrative burden on the Division and its public hearing docket, which are already regularly beyond capacity. FOF 59-63. The Division currently has only one hearing docket per month. The vast majority of hearing dockets receive more than the maximum number of applications for a docket—limited to 60 cases—which means that many are deferred to the next month’s hearing docket, further constraining available hearing dates for cases that go to the core of the Division’s statutory mission and obligation necessary to prevent waste and protect correlative rights—compulsory pooling. FOF 59-63.

If the OCC is somehow swayed that members of the public without standing can contribute to the technical determination of whether a particular well should be permitted a five-year extension for temporary abandonment, it should consider at most allowing the public to submit comments for consideration by the director, similar to what is provided for in the Pit Rule under 19.15.17.15.B(6) NMAC. Beyond that limited level of participation, there is no legal or factual basis to allow a member of the public, with no legal standing, to request a hearing on a standard temporary abandonment extension, let alone to participate in one.

### **III. Conclusion**

Oxy shares the Commission’s commitment to ensuring that operators maintain adequate financial assurance for well plugging and abandonment, that inactive wells are properly managed, and that New Mexico’s oil and gas resources are developed responsibly.

At the same time, the Commission must act within its statutory authority. Provisions that exceed the limits of Section 70-2-14 of the Oil and Gas Act—however well-intentioned—are unlawful and will not withstand judicial scrutiny. The Commission should decline to adopt any provision that conflicts with the Legislature’s express direction.

Where the Commission determines that proposed provisions are within its authority, Oxy urges the Commission to adopt the negotiated language agreed to by Applicants, OCD, and Oxy. That language represents a reasonable compromise that advances the regulatory goals of this rulemaking while respecting the legitimate operational needs of responsible operators.

Specifically, Oxy requests that the Commission:

**Decline to adopt** new financial assurance categories for low producing wells in 19.15.8.9.D(1) NMAC and the portfolio operator financial assurance category in 19.15.8.9.F(1) NMAC, which is inconsistent with Section 70-2-14(A); or

**In the alternative**, adopt the negotiated language submitted by Applicants’ with Oxy’s redline submittal for 19.15.25.13.C(2) NMAC.

Oxy thanks the Commission for its careful consideration of this complex and important rulemaking.

Respectfully submitted,

/s/ Adam Rankin

Michael H. Feldewert

Adam G. Rankin

Paula M. Vance

HOLLAND AND HART, LLP

110 N. Guadalupe, Suite 1

Santa Fe, NM 87501

(505) 988-4421

mfeldewert@hollandhart.com

agrarkin@hollandhart.com

pmvance@hollandhart.com

Aaron B. Tucker

HOLLAND AND HART, LLP

555 17th Street, Suite 3200

Denver, CO 80202

(303) 295-8369

ABTucker@hollandhart.com

**ATTORNEYS FOR OXY USA, INC**

**CERTIFICATE OF SERVICE**

I hereby certify that on April 3, 2026, a true and correct copy of the foregoing Oxy USA, Inc.'s Closing Arguments was served to counsel of record by electronic mail to the following:

Tannis Fox  
Morgan O'Grady  
Western Environmental Law Center  
409 East Palace Avenue, #2  
Santa Fe, New Mexico 87501  
ogrady@westernlaw.org  
fox@westernlaw.org

Kyle Tisdell  
Western Environmental Law Center  
208 Paseo del Pueblo Sur, #602  
Taos, New Mexico 87571  
tisdell@westernlaw.org

Matt Nykiel  
Western Environmental Law Center  
224 West Rainbow Boulevard, #247  
Salida, Colorado 81201  
nykiel@westernlaw.org

*Attorneys for Applicants*

Andrew J. Cloutier  
Ann Cox Tripp  
Hinkle Shanor LLP  
P.O. Box 10  
Roswell, New Mexico 88202-0010  
acloutier@hinklelawfirm.com  
atripp@hinklelawfirm.com

*Attorneys for Independent Petroleum Association of New Mexico*

Miguel A. Suazo  
James Martin  
James Parrot  
Jacob L. Everhart  
Beatty and Wozniak, P.C.  
500 Don Gaspar Avenue  
Santa Fe, New Mexico 87505

msuazo@bwenergyllaw.com  
jmartin@bwenergyllaw.com  
jparrot@bwenergyllaw.com  
jeverhart@bwenergyllaw.com

*Attorneys for New Mexico Oil and Gas Association*

Jennifer L. Bradfute  
Matthias Sayer  
Bradfute Sayer P.C.  
P.O. Box 90233  
Albuquerque, New Mexico 87199  
jennifer@bradfutelaw.com  
matthias@bradfutelaw.com

Jordan L. Kessler  
EOG Resources, Inc.  
125 Lincoln Avenue, Suite 213  
Santa Fe, New Mexico 87501  
Jordan\_kessler@eogresources.com

*Attorneys for EOG Resources, Inc.*

Mariel Nanasi  
422 Old Santa Fe Trail  
Santa Fe, New Mexico 87501  
mnanasi@newenergyeconomy.org

*Attorney for New Energy Economy*

Nicholas R. Maxwell  
P.O. Box 1064  
Hobbs, New Mexico 88241  
inspector@sunshineaudit.com

Air Biernoff  
General Counsel  
Christopher Graeser  
Richard H. Moore  
Associate Counsel  
New Mexico State Land Office  
P.O. Box 1148  
Santa Fe, New Mexico 87504-1148  
abiernoff@nmslo.gov  
cgraeser@nmslo.gov  
rmoore@nmslo.gov

*Attorneys for Commissioner of Public Lands  
and New Mexico State Land Office*

Felicia Orth  
Hearing Officer  
New Mexico Energy, Minerals, and  
Natural Resources Department  
Wendell Chino Building

1220 South St. Francis Drive  
Santa Fe, New Mexico 87505  
Felicia.l.orth@gmail.com

*Oil Conservation Commission Hearing  
Officer*

Zachary A. Shandler  
Assistant Attorney General  
New Mexico Department of Justice  
P.O. Box 1508  
Santa Fe, New Mexico 87504  
zshandler@nm DOJ.gov

*Oil Conservation Commission Counsel*

Sheila Apodaca  
New Mexico Energy, Minerals, and  
Natural Resources Department  
Wendell Chino Building  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505  
occ.hearings@emnrd.nm.gov

*Oil Conservation Commission Clerk*

/s/ Adam Rankin  
Adam Rankin

37300975\_v13

# EXHIBIT A

## 2014 N.M. Stat. Ann. § 70-2-14

2014 New Mexico Code Archive

*Michie's TM Annotated Statutes of New Mexico > Chapter 70 Oil and Gas > Article 2 Oil Conservation Commission; Division; Regulation of Wells*

### **70-2-14. Requirement for financial assurance.**

---

A. Each person, firm, corporation or association who operates any oil, gas or service well within the state shall, as a condition precedent to drilling or producing the well, furnish financial assurance in the form of an irrevocable letter of credit or a cash or surety bond or a well-specific plugging insurance policy pursuant to the provisions of this section to the oil conservation division of the energy, minerals and natural resources department running to the benefit of the state and conditioned that the well be plugged and abandoned in compliance with the rules of the oil conservation division. The oil conservation division shall establish categories of financial assurance after notice and hearing. Such categories shall include a blanket plugging financial assurance in an amount not to exceed fifty thousand dollars (\$ 50,000) and one-well plugging financial assurance in amounts determined sufficient to reasonably pay the cost of plugging the wells covered by the financial assurance. In establishing categories of financial assurance, the oil conservation division shall consider the depth of the well involved, the length of time since the well was produced, the cost of plugging similar wells and such other factors as the oil conservation division deems relevant. In addition to the blanket plugging financial assurance, the oil conservation division may require a one-well financial assurance on any well that has been held in a temporarily abandoned status for more than two years. All financial assurance shall remain in force until released by the oil conservation division. The oil conservation division shall release financial assurance when it is satisfied the conditions of the financial assurance have been fully performed.

B. If any of the requirements of the Oil and Gas Act [[70-2-1 NMSA](#) 1978] or the rules promulgated pursuant to that act have not been complied with, the oil conservation division, after notice and hearing, may order any well plugged and abandoned by the operator or surety or both in accordance with division rules. If the order is not complied with in the time period set out in the order, the financial assurance shall be forfeited.

C. When any financial assurance is forfeited pursuant to the provisions of the Oil and Gas Act [[70-2-1 NMSA](#) 1978] or rules promulgated pursuant to that act, the director of the oil conservation division shall give notice to the attorney general, who shall collect the forfeiture without delay.

D. All forfeitures shall be deposited in the state treasury in the oil and gas reclamation fund.

E. When the financial assurance proves insufficient to cover the cost of plugging oil and gas wells on land other than federal land and funds must be expended from the oil and gas reclamation fund to meet the additional expenses, the oil conservation division is authorized to bring suit against the operator in the district court of the county in which the well is located for indemnification for all costs incurred by the oil conservation division in plugging the well. All

## 70-2-14. Requirement for financial assurance.

funds collected pursuant to a judgment in a suit for indemnification brought under the provisions of this section shall be deposited in the oil and gas reclamation fund.

**F.** An operator required to file financial assurance for a well pursuant to this section is considered to have met that requirement if the operator obtains a plugging insurance policy that includes the specific well and that:

- (1) is approved by the insurance division of the public regulation commission;
- (2) names the state of New Mexico as owner of the policy and contingent beneficiary;
- (3) names a primary beneficiary who agrees to plug the specified wellbore;
- (4) is fully prepaid and cannot be canceled or surrendered;
- (5) provides that the policy continues in effect until the specified wellbore has been plugged;
- (6) provides that benefits will be paid when, but not before, the specified wellbore has been plugged in accordance with rules of the oil conservation division in effect at the time of plugging; and
- (7) provides benefits that are not less than an amount equal to the one-well financial assurance required by oil conservation division rules.

**G.** If, subsequent to an operator obtaining an insurance policy as provided in this section, the one-well financial assurance requirement applicable to the operator's well is increased, either because the well is deepened or the rules of the oil conservation division are amended, the operator is considered to have met the revised requirement if:

- (1) the existing policy benefit equals or exceeds the revised requirement;
- (2) the operator obtains an amendment increasing the policy benefit by the amount of the increase in the applicable financial assurance requirement; or
- (3) the operator obtains financial assurance equal to the amount, if any, by which the revised requirement exceeds the policy benefit.

## History

---

1953 Comp., § 65-3-11.2, enacted by Laws 1977, ch. 237, § 3; 1978, ch. 117, § 1; 1986, ch. 76, § 2; 2000, ch. 12, § 1; [2006, ch. 59, § 1](#).

Michie's TM Annotated Statutes of New Mexico

Copyright © 2026 by Matthew Bender & Company, Inc. a member of the LexisNexis Group. All rights reserved.

---

End of Document

# EXHIBIT B

Comparing: Archived 2015 and Archived 2014

## 2015 N.M. Stat. Ann. § 70-2-14

2015 New Mexico Code Archive

*Michie's TM Annotated Statutes of New Mexico > Chapter 70 Oil and Gas > Article 2 Oil Conservation Commission; Division; Regulation of Wells*

### 70-2-14. Requirement for financial assurance.

- A. Each person, firm, corporation or association who operates any oil, gas or service well within the state shall, as a condition precedent to drilling or producing the well, furnish financial assurance in the form of an irrevocable letter of credit or a cash or surety bond or a well-specific plugging insurance policy pursuant to the provisions of this section to the oil conservation division of the energy, minerals and natural resources department running to the benefit of the state and conditioned that the well be plugged and abandoned in compliance with the rules of the oil conservation division. The oil conservation division shall establish categories of financial assurance after notice and hearing. Such categories shall include a blanket plugging financial assurance in an amount not to exceed fifty thousand dollars (\$50,000), **except for a blanket plugging financial assurance for temporarily abandoned status wells, which shall be set by rule at amounts greater than fifty thousand dollars (\$50,000),** and one-well plugging financial assurance in amounts determined sufficient to reasonably pay the cost of plugging the wells covered by the financial assurance. In establishing categories of financial assurance, the oil conservation division shall consider the depth of the well involved, the length of time since the well was produced, the cost of plugging similar wells and such other factors as the oil conservation division deems relevant. ~~In addition to the blanket plugging financial assurance, the~~ **The oil conservation division may shall** require a one-well financial assurance on any well that has been held in a temporarily abandoned status for more than two years **or, at the election of the operator, may allow an operator to increase its blanket plugging financial assurance to cover wells held in temporarily abandoned status.** All financial assurance shall remain in force until released by the oil conservation division. The oil conservation division shall release financial assurance when it is satisfied the conditions of the financial assurance have been fully performed.
- B. If any of the requirements of the Oil and Gas Act ~~[70-2-1 NMSA-1978]~~ or the rules promulgated pursuant to that act have not been complied with, the oil conservation division, after notice and hearing, may order any well plugged and abandoned by the operator or surety or both in accordance with division rules. If the order is not complied with in the time period set out in the order, the financial assurance shall be forfeited.
- C. When any financial assurance is forfeited pursuant to the provisions of the Oil and Gas Act ~~[70-2-1 NMSA-1978]~~ or rules promulgated pursuant to that act, the director of the oil conservation division shall give notice to the attorney general, who shall collect the forfeiture without delay.
- D. All forfeitures shall be deposited in the state treasury in the oil and gas reclamation fund.
- E. When the financial assurance proves insufficient to cover the cost of plugging oil and gas wells on land other than federal land and funds must be expended from the oil and gas reclamation fund to meet the additional expenses, the oil conservation division is authorized to bring suit against the operator in the district court of the county in which the well is located for indemnification for all costs incurred by the oil conservation division in plugging the well. All funds collected pursuant to a judgment in a suit for indemnification brought under the provisions of this section shall be deposited in the oil and gas reclamation fund.

N.M. Stat. Ann. \_ 70-2-14\_(Archived2015ToArchived2014)

F. An operator required to file financial assurance for a well pursuant to this section is considered to have met that requirement if the operator obtains a plugging insurance policy that includes the specific well and that:

- (1) is approved by the ~~insurance division of the public regulation commission~~ office of superintendent of insurance;
- (2) names the state of New Mexico as owner of the policy and contingent beneficiary;
- (3) names a primary beneficiary who agrees to plug the specified wellbore;
- (4) is fully prepaid and cannot be canceled or surrendered;
- (5) provides that the policy continues in effect until the specified wellbore has been plugged;
- (6) provides that benefits will be paid when, but not before, the specified wellbore has been plugged in accordance with rules of the oil conservation division in effect at the time of plugging; and
- (7) provides benefits that are not less than an amount equal to the one-well financial assurance required by oil conservation division rules.

G. If, subsequent to an operator obtaining an insurance policy as provided in this section, the one-well financial assurance requirement applicable to the operator's well is increased, either because the well is deepened or the rules of the oil conservation division are amended, the operator is considered to have met the revised requirement if:

- (1) the existing policy benefit equals or exceeds the revised requirement;
- (2) the operator obtains an amendment increasing the policy benefit by the amount of the increase in the applicable financial assurance requirement; or
- (3) the operator obtains financial assurance equal to the amount, if any, by which the revised requirement exceeds the policy benefit.

## History

---

1953 Comp., § 65-3-11.2, enacted by Laws 1977, ch. 237, § 3; 1978, ch. 117, § 1; 1986, ch. 76, § 2; 2000, ch. 12, § 1; 2006, ch. 59, § 1; 2015, ch. 79, § 1; 2015, ch. 99, § 1.

Michie's TM Annotated Statutes of New Mexico

Copyright © 2026 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved.

---

End of Document

# EXHIBIT C

Comparing: Current Effective and Archived 2015

## N.M. Stat. Ann. § 70-2-14

\*\*\* Current through Acts Chapter 1-7 of the 2026 Second Regular Session of the FiftySeventh Legislature. \*\*\*

Michie's <sup>TM</sup> Annotated Statutes of New Mexico > Chapter 70 Oil and Gas (Arts. 1 - 13) > Article 2 Oil Conservation Commission; Division; Regulation of Wells (§§ 70-2-1 - 70-2-39)

### 70-2-14. Requirement for financial assurance.

A. Each person, firm, corporation or association who operates any oil, gas or service well within the state shall, as a condition precedent to drilling or producing the well, furnish financial assurance in the form of an irrevocable letter of credit or a cash or surety bond or a well-specific plugging insurance policy pursuant to the provisions of this section to the oil conservation division of the energy, minerals and natural resources department running to the benefit of the state and conditioned that the well be plugged and abandoned in compliance with the rules of the oil conservation division. The oil conservation division shall establish categories of financial assurance after notice and hearing. Such categories shall include a blanket plugging financial assurance, which shall be set by rule in an amount not to exceed two hundred fifty thousand dollars (~~\$50~~\$250,000), ~~except for~~ a blanket plugging financial assurance for temporarily abandoned status wells, which shall be set by rule at amounts greater than fifty thousand dollars (\$50,000), and one-well plugging financial assurance in amounts determined sufficient to reasonably pay the cost of plugging the wells covered by the financial assurance. In establishing categories of financial assurance, the oil conservation division shall consider the depth of the well involved, the length of time since the well was produced, the cost of plugging similar wells and such other factors as the oil conservation division deems relevant. The oil conservation division shall require a one-well financial assurance on any well that has been held in a temporarily abandoned status for more than two years or, at the election of the operator, may allow an operator to increase its blanket plugging financial assurance to cover wells held in temporarily abandoned status. All financial assurance shall remain in force until released by the oil conservation division. The oil conservation division shall release financial assurance when it is satisfied the conditions of the financial assurance have been fully performed.

B. If any of the requirements of the Oil and Gas Act [Chapter 70, Article 2 NMSA 1978] or the rules promulgated pursuant to that act have not been complied with, the oil conservation division, after notice and hearing, may order any well plugged and abandoned by the operator or surety or both in accordance with division rules. If the order is not complied with in the time period set out in the order, the financial assurance shall be forfeited.

C. When any financial assurance is forfeited pursuant to the provisions of the Oil and Gas Act or rules promulgated pursuant to that act, the director of the oil conservation division shall give notice to the attorney general, who shall collect the forfeiture without delay.

D. All forfeitures shall be deposited in the state treasury in the oil and gas reclamation fund.

E. When the financial assurance proves insufficient to cover the cost of plugging oil and gas wells on land other than federal land and funds must be expended from the oil and gas reclamation fund to meet the additional expenses, the oil conservation division is authorized to bring suit against the operator in the district court of the county in which the well is located for indemnification for all costs incurred by the oil conservation division in plugging the well. All funds collected pursuant to a judgment in a suit for indemnification brought under the provisions of this section shall be deposited in the oil and gas reclamation fund.

N.M. Stat. Ann. \_ 70-2-14\_(EffectiveMay16,2018ToArchived2015)

F. An operator required to file financial assurance for a well pursuant to this section is considered to have met that requirement if the operator obtains a plugging insurance policy that includes the specific well and that:

- (1) is approved by the office of superintendent of insurance;
- (2) names the state of New Mexico as owner of the policy and contingent beneficiary;
- (3) names a primary beneficiary who agrees to plug the specified wellbore;
- (4) is fully prepaid and cannot be canceled or surrendered;
- (5) provides that the policy continues in effect until the specified wellbore has been plugged;
- (6) provides that benefits will be paid when, but not before, the specified wellbore has been plugged in accordance with rules of the oil conservation division in effect at the time of plugging; and
- (7) provides benefits that are not less than an amount equal to the one-well financial assurance required by oil conservation division rules.

G. If, subsequent to an operator obtaining an insurance policy as provided in this section, the one-well financial assurance requirement applicable to the operator's well is increased, either because the well is deepened or the rules of the oil conservation division are amended, the operator is considered to have met the revised requirement if:

- (1) the existing policy benefit equals or exceeds the revised requirement;
- (2) the operator obtains an amendment increasing the policy benefit by the amount of the increase in the applicable financial assurance requirement; or
- (3) the operator obtains financial assurance equal to the amount, if any, by which the revised requirement exceeds the policy benefit.

## History

---

1953 Comp., § 65-3-11.2, enacted by Laws 1977, ch. 237, § 3; 1978, ch. 117, § 1; 1986, ch. 76, § 2; 2000, ch. 12, § 1; 2006, ch. 59, § 1; 2015, ch. 79, § 1, effective April 8, 2015; 2015, ch. 99, § 1, effective April 8, 2015; 2018, ch. 16, § 2, effective May 16, 2018.

Michie's <sup>TM</sup> Annotated Statutes of New Mexico  
Copyright © 2026 All rights reserved.

---

End of Document

## EXHIBIT D

## OXY'S FINAL PROPOSED AMENDMENTS TO 19.15.25.13.C NMAC

## 19.15.25.13 APPROVED TEMPORARY ABANDONMENT:

**C. Extension.**

(1) Prior to the expiration of a renewal of an approved temporary abandonment, the operator shall return the well to beneficial use under a plan the division approves, permanently plug and abandon the well and restore and remediate the location, or apply for an extension to continue to place the well in temporary abandonment for a period of up to five years.

(2) To obtain an extension, the operator shall apply to the division to extend temporary abandonment status. The division shall provide at least 30 days' notice of the application for extension on its website and to the division mailing list, and the operator shall provide at least 30 days' notice of the application for extension in a newspaper of general circulation. The operator, division, or any interested other person with standing may request a hearing on the application for extension before the division. Any such hearing shall be conducted pursuant to the procedures for adjudicatory proceedings in 19.15.4 NMAC, except that in any such adjudicatory proceeding any interested person may intervene under 19.15.4.11.A NMAC. If a hearing is not requested, the division shall proceed with processing the application for extension.

(a) (3) To obtain an extension, the operator shall demonstrate to the division that the well has future beneficial use.

(b) The application for extension shall include:

(i) a plan of development for the well that includes documentation that the plan is technically feasible and financially viable;

(ii) a description of any work completed and in progress under the plan of development;

(iii) documentation demonstrating why the well was not brought back to beneficial use as had been proposed or plugged and abandoned during the prior period of temporary abandonment;

(iv) a plan that describes the ultimate disposition of the well including the time frame for that disposition; and

(v) documentation demonstrating the well's casing and cementing meet the requirements Sections 19.15.25.14 and -15 NMAC and that monitoring procedures are in place to ensure such requirements will be met and maintained during the period of temporary abandonment.

(c) The operator shall provide any other relevant information requested by the division including engineering information, geological information, financial information, and applicable contracts that support the future beneficial use.

(4) An operator may reapply for an extension for periods of up to five years under the same terms and conditions as provided for in this Subsection. If the division denies a request for extension, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

37499343\_v1

**STATE OF NEW MEXICO  
ENERGY, MINERALS, AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION COMMISSION**

**IN THE MATTER OF  
PROPOSED AMENDMENTS TO  
19.15.2, 19.15.5, 19.15.8, 19.15.9,  
AND 19.15.25 NMAC**

**CASE NO. 24683**

**OXY USA INC'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Oxy USA, Inc. ("Oxy"), by and through its undersigned counsel, hereby submits its Proposed Findings of Fact ("FOF") and Conclusions of Law ("COL") to support adoption of certain provisions in the final amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC.

**Proposed Findings of Fact**

**I. Witnesses.**

1. During the hearing, Oxy presented two technical experts, Tiffany Wallace and Kelley Montgomery, both of whom pre-filed testimony prior to the initial phase of the hearing. *See generally* **Oxy Exhibit B, Oxy Exhibit C**. Both Ms. Wallace and Ms. Montgomery adopted their pre-filed testimony at the hearing. **Hearing Tr. 10/28/25** at 16:5-15; **Hearing Tr. 10/28/25** at 137:1-5.
2. Ms. Wallace and Ms. Montgomery also presented technical testimony during the rebuttal phase. *See generally* **Oxy Rebuttal Exhibit B; Oxy Rebuttal Exhibit C**.

**II. GENERAL PURPOSE OF THE PROPOSED AMENDMENTS**

3. The general purpose of the rules proposed by Applicants is to protect the State against those operators who are most at-risk. The Applicants' proposals are focused on those operators who are operating at the very margins—whose wells are producing so little that they are

not paying in sufficient quantities to fund future liabilities for plugging and abandonment and site remediation. **Apps' Ex. 3** at 10:12-16; **Hearing Tr. 10/20/25 (Alexander)** at 48:16-2. The Applicants' proposals are designed to protect the State, its taxpayers, surrounding communities, and the environment against the most serious risks while nonetheless allowing small operators who operate prudently and responsibly to continue to operate profitably. **Apps' Ex. 3** at 10:18-20.

4. Marginal and inactive (including wells in approved and expired temporary abandonment) wells “present the most immediate risk of orphaning to New Mexico and, thus, a need for greater financial assurance. **Apps' Ex. 30** at 6:19-23; *see also* **Apps' Ex. 57** at 5:19-21.

### **III. PART TWO - NMAC 19.15.2. Definitions**

#### *A. Beneficial Purposes and Beneficial Use*

5. Applicants propose to create new definitions of “beneficial purposes” and “beneficial use” at 19.15.2.7 (B)(7). **App. Ex. 89-A** at 2. Applicants propose to define the terms “beneficial purposes” and “beneficial use” as to mean “an oil or gas well that is being used in a productive or beneficial manner including production, injection or monitoring.” **Apps. Ex. 89-A** at 2.
6. Historically, OCD has defined “beneficial purposes” as when “a well is engaged in some form of productive, regulatory, or operational activity such as production, monitoring, lease maintenance, or on-lease fuel use, even when that activity does not meet specific volumetric thresholds.” **NMOGA Exhibit C** at 112-115.
7. Similarly, the term “beneficial use” has historically been extended “beyond volume-based thresholds or narrowly defined productive activities.” **Hearing Tr. 10/28/25 (Arthur)** at 181:4-12 (“OCD has recognized the various variety of beneficial uses” including “using

on-lease fuel, equipment power, et cetera. But many of these functions are essential to field development and compliance and are not speculative.”).

8. Industry witnesses testified that there is not a need to define “beneficial purposes” or “beneficial use” and that leaving the term undefined will allow the Division and Operators flexibility when addressing a notice of no beneficial use from the Division under proposed 19.15.25.9 NMAC. **Oxy Exhibit B** at ¶ 53; **Hearing Tr. 10/28/25 (Wallace)** at 18:14-23.
9. Applicants’ original definition of “beneficial purposes” and “beneficial use” included a speculative purposes exclusion. **Apps’ Ex. 1-A** at 2 (“and does not include use of a well for speculative purposes”). Applicants removed the speculative purposes exclusion from the definitions in their Post-Hearing Proposed Amendments to 19.15.2. NMAC. **Apps. Ex. 89-A** at 2.
10. The speculative purposes exclusion should be removed from the definitions of “beneficial purposes” and “beneficial use” because the “[i]nclusion of the term speculative as a disqualifying factor, without definition, introduces so much subjectivity and regulatory uncertainty.” **Hearing Tr. 10/28/25 (Arthur)** at 181:15-16; *See also* **NMOGA Exhibit B** at 50-55 (“Further, WELC’s language prohibiting uses deemed “speculative” would impose limitations based solely on the subjective judgment of the Commission or the New Mexico Oil Conservation Division (“OCD”)...This effectively conditions the permissible use of wells on whether regulators believe a use is “speculative,” without providing clear or objective criteria.”); **NMOGA Exhibit D** at 188-189.
11. Industry witnesses testified that “oil and gas exploration inherently involves some level of speculation, and such speculation, so long as there is a corresponding plan, should be protected in line with the correlative rights of those who have made investments

underwritten by the ability to speculatively test scientific theories.” **NMOGA Exhibit E** at 4; *see also* **Hearing Tr. 10/29/25 (McGowan)** at 212:9-24; **Hearing Tr. 10/30/25 (McGowan)** at 33:6-14; *Id.* at 33:23-34:10.

12. The speculative purpose exclusion could be interpreted as “excluding enhanced oil recovery (EOR) projects, geothermal, monitoring, injection, seismic, and other regulatory or reservoir management uses.” **NMOGA Exhibit D** at 189-191. Additionally, other “legitimate and beneficial activities— such as holding a well pending pipeline construction, deferring production during price downturns, using a well for pilot projects, reservoir monitoring, secondary recovery, or lease retention—could all be misclassified as ‘speculative.’” **NMOGA Rebuttal Testimony of Dan Arthur** at 993-996. Retaining the speculative purpose exclusion “would likely result in misclassification of viable wells” as well as “increased plugging obligations, associated loss of production and tax revenue.” **Hearing Tr. 10/28/25 (Arthur)** at 181:15-16.

13. The term beneficial use is a legal term of art that is also used in New Mexico water law. The Commission should clarify that the term beneficial use in this rulemaking is only being used in the oil and gas context and is altogether separate from beneficial use in water use. **Hearing Tr. 10/30/25 (Sporich)** at 219:8-16.

*B. Low Producing Well*

14. Applicants propose to create a new definition of “Low producing well” (previously Marginal well) at 19.15.2.7(L)(6). **App. Ex. 89-A** at 6. This definition would establish the criteria by which wells would be subject to the new financial assurance category for low producing wells. Applicants propose this definition to target “a category of well that is at

greater risk of becoming orphaned and therefore merits increased financial assurance to protect the state.” **Apps’ Ex. 57** at 35 :6-7 (Peltz)

15. Applicants propose to define the term “Low producing well” as “an oil or gas well that produced less than 180 days and less than 1,000 barrels of oil equivalent within a consecutive 12 month period.” **App. Ex. 89-A** at 6.
16. Low producing wells are active producing wells. Applicants’ proposal would remove low producing wells from the existing blanket bond financial assurance. **Oxy Exhibit B** at ¶¶ 9-10.
17. Industry parties opposed the definition of low producing wells because it violates the Oil and Gas Act by removing active producing wells from being subject to the existing blanket bond financial assurance in order to exceed the blanket bond limit established by statute. **Hearing Tr. 10/28/25 (Wallace)** at 18:24–19:4; **Oxy Exhibit B** at ¶ 10.
18. The proposed definition of low producing well “is only relevant to this rulemaking if the commission concludes that it has authority under existing statutes to mandate single well financial assurances for low producing wells. If ... the commission lacks such authority, then the proposed definition is unnecessary.” **Hearing Tr. 10/30/25 (Sporich)** at 248:5-11; **NMOGA Exhibit E** at ¶40; *see also* **Hearing Tr. 10/30/25 (Sporich)** at 248:16-19 (“Moreover, potential conflicts with statutory language and the current common law framework -- framework could create legal uncertainty and invite future litigation.”); **NMOGA Rebuttal Testimony of McGowen** at ¶¶ 141 to 147.

**IV. PART FIVE – NMAC 19.15.5 Enforcement and Compliance –****A. 19.15.5.9. Compliance: Inactive wells**

19. Applicants originally proposed to change the definition of “inactive well” to be a well that shows no production for 13 months, rather than 15 months as provided in the current rule. **Apps’ Ex. 1-B** at 1-2.
20. Industry parties testified that the sixty-day change would be a big change in process for operators. **Hearing Tr. 10/28/25 (Wallace)** at 19:9–25.
21. Applicants revised the timeline to 14 months in their Post-Hearing Proposed Amendments to 19.15.2. NMAC. **Apps’ Ex. 89-B** at 1-2.

**V. PART EIGHT – NMAC 19.15.8 Financial Assurances****A. 19.15.8.9 (C) – Active Wells;**

22. Applicants propose replacing the current one-well financial assurance based on well depth with a flat amount of \$150,000. **Apps’ Ex. 89-C** at 2. The proposed one-well financial assurance bond amount of \$150,000 approximates the average cost to plug a well by OCD. **Apps’ Ex. 57** at 39:8-14. According to state data, the current average cost for OCD to plug a single well is between \$163,000 and \$167,000. **Apps’ Ex. 57** at 39:8-9. \$150,000 is a conservative number, accounting for the fact that some wells may cost less to plug. **Apps’ Ex. 57** at 39:17-40:1. The \$150,000 per well figure may still result in a gap between financial assurance amounts and actual plugging costs, but the significantly smaller scale of this gap can be addressed through the use of the Reclamation Fund. **Apps’ Ex. 15** at 42:6-9.
23. Applicants propose replacing the current tiered blanket bond amount based on the number of wells with a flat amount set at the statutory limit of \$250,000. **Apps’ Ex. 89-C** at 2. The

prior tiered amounts for the blanket bond are outdated in light of the current cost to the state to plug more than one well. **Apps' Ex. 57** at 40:4-11.

*B. 19.15.8.9 (D) - Low Producing Wells*

24. Applicants propose to create a new financial assurance category for low producing (previously marginal) wells with a flat amount of \$150,000. **Apps' Ex. 89-C** at 2. Low producing wells would no longer be subject to the blanket financial assurance. *Id.* The new category is designed to target high risk wells that generate only marginal or negative profits from operations. **Apps' Ex. 30** at 13-17.
25. Applicants' proposal would remove low producing wells from the blanket bond financial assurance. **Apps' Ex. 89-C** at 2. Applicants' witness testified that allowing blanket plugging financial assurance for high-risk wells dramatically increases the likelihood that the state will be compelled to redirect general funds to cover the costs of well plugging and that eliminating the blanket bond for high-risk wells protects the state. **Apps' Ex. 15** at 52:2-5.
26. Industry parties object that Applicants' proposal exceeds the Commission's statutory authority by carving out "marginal" wells (now low producing wells) from the blanket bond and statutory restriction on financial assurances. **Oxy Exhibit C** at ¶¶ 9-10.
27. Industry parties also dispute that low producing wells should be a concern because they "remain marketable with yearly production fluctuations based on the price of oil, the cost of operations, and timetables for production enhancement workover activities." **Oxy Ex. B** at ¶ 11; **NMOGA Rebuttal Testimony of McGowen** at ¶¶ 191-194 (Legacy wells with low production "retain significant latent potential that can unlocked through re-stimulation techniques such as hydraulic fracturing and recompletions, as well as through lower-cost

workover operations including acid treatments, artificial lift installation, and gas-lift optimization.”). **Hearing Tr. 10/28/25 (Arthur)** at 196:15-197:1-4 (will unnecessarily exponentially increase the bonding requirements for wells which post the least risk that are most prevalent in New Mexico and will drive business and tax revenue out of the state).

28. The new financial assurance category for low producing wells could have the unintended consequences of creating economic waste if operators are forced to drill new wells instead of being able to utilize wells already in existence. **Hearing Tr. 10/28/25 (Wallace)** at 20:15–21:12.
29. There is no need to adopt a new category of financial assurance that is inconsistent with Section 70-2-14(A) when an alternative method (the presumption of no beneficial use provision in proposed 19.15.25.9) exists in the proposed rule for the Division to address any concerns with low producing wells. **Oxy Exhibit B** at ¶ 12 (WELC’s proposal to carve out “marginal” wells from the statutory restriction on financial assurances is not authorized by the legislature).
30. Applicants revised Section 19.15.8.9.D in their Post-Hearing Proposed Amendments to provide a variance when there is physical impediment limiting the well’s midstream take-away capacity. NMAC. **Apps’ Ex. 89-C** at 2. Industry witnesses testified that wells can be “shut-in for many months simply because there were either capacity, mechanical problems or infrastructure problems suffered by the midstream company that, for whatever reason, the midstream company did not fix for a long period of time.” **IPANM Kyle Armstrong Testimony** at 6: 5-12; **Hearing Tr. 11/3/25 (Armstrong)** at 109:1-21; *Id.* at 110:5-20. Operators should not be penalized for days of production lost to a midstream shutdown for

purposes of determining whether a well would qualify as low producing well and be subject to the one-well financial assurance. **Hearing Tr. 10/30/2025 (Sporich)** at 202:7-203-5.

31. Applicants revised Section 19.15.8.9.D in their Post-Hearing Proposed Amendments to delay implementation of the low producing well financial assurance until May 1, 2029. NMAC. **Apps' Ex. 89-C** at 2. A phased-in approach of multiple years “gives operators with existing marginal well inventories currently covered under blanket financial assurances time either to plug these wells or secure individual-well financial assurances. **Apps' Ex. 15** at 45:11-13; **Apps' Ex. 30** at 64:9-10 (delaying implementation “allow[s] companies time to adapt to the change.”).

C. **19.15.8.9(E) – Portfolio Category**

32. Applicants propose to create a new financial assurance category for operators whose portfolio of wells contains a certain threshold of high-risk wells. **Apps' Ex. 89-C** at 2; **Apps' Ex. 57** at 41:13-15. Applicants originally proposed a category of financial assurance for operators “with 15 percent or more of their wells in marginal or inactive well status or a combination thereof.” **Apps' Ex. 1-C**. Operators in this category would be required to “provide a one well plugging financial assurance in the amount of \$150,000 for each well registered to the operator until the percentage of the operator’s marginal and inactive wells is decreased below 15 percent. *Id.*
33. The purpose of the rule is to protect the state from the operators most at risk of orphaning their wells. **Hearing Tr. 10/20/25 (Alexander)** at 48:16-23
34. As originally proposed, the new portfolio operator category would affect more than half (51%) of the corporate entities and 2.3% of production in the state based on 2024 production data. **Apps' Ex. 15** at 67:18-21; **Apps. Ex 52**; **Apps' Ex. 74** at 42:5-6 (15%

threshold affects 18% of wells in the state). Applicants' original proposal would affect approximately 17 million barrels of oil production a year with a value of over one billion dollars. **Hearing Tr. 10/21/2025 (Purvis)** at 442:10-443:22.

35. Industry parties objected that the 15 percent “threshold is arbitrary and lacks a risk-based foundation.” **NMOGA Exhibit B** at 670-671; **NMOGA Exhibit B** at 292-295 (15 percent threshold “for triggering mandatory one-well bonding of all well types is arbitrary, not grounded in empirical risk modeling or tied to actual well performance. It also penalizes operators solely on portfolio composition, not actual compliance behavior or plugging risk.”); **NMOGA Exhibit E** at ¶ 83.
36. Industry parties also objected to the inclusion of low producing or marginal wells in the portfolio operator category because it would penalize operators “who responsibly acquire and manage distressed assets—including marginal wells with ongoing utility or redevelopment potential—...simply because of their portfolio mix.” **NMOGA Exhibit B** at 671-673. The inclusion of marginal wells in the portfolio operator financial assurance category could “discourage asset transfers and consolidation of liabilities by better-capitalized, more responsible parties, thus undermining environmental and policy goals.” **NMOGA Exhibit B** at 674-676; *see also* **Hearing Tr. 11/5/25 (Arscott)** at 36:20-23 (“And so to the extent that the 15 percent rule discourages operators from incorporating marginal wells into larger portfolios. I think this may have the opposite of the intended effect.”); **Hearing Tr. 11/5/25 (Arscott)** at 118:23-25 (“The real issue here is that this 15 percent threshold triggers an increase on the remaining bonds, which are not in marginal status.”).

37. Industry parties also objected that Applicants' proposal exceeds the Commission's statutory authority by carving out active wells from the statutorily mandated blanket bond and statutory restrictions governing financial assurances. **Oxy Exhibit C** at ¶¶ 9-10.
38. Applicants revised the portfolio operator category in their Post-Hearing Proposed Amendments to target operators with 20 percent or more of wells in inactive status, approved temporarily abandoned status or expired temporarily abandoned status, or a combination thereof. **Apps' Ex. 89-C** at 2.
39. The higher threshold would help alleviate some of the potential concerns posed by the portfolio operator category; **Hearing Tr. 10/29/2025 (Arthur)** at 90:4-10; **Hearing Tr. 10/29/2025 (Emerick)** at 154:10-13; **NMOGA Exhibit E** at ¶ 83. A higher threshold in the portfolio category results in a smaller impact to fewer companies. **Hearing Tr. 10/21/25 (Purvis)** at 453:5-25; *Id.* at 460:6-17 (Applicants' witness Purvis testifying that "[S]omething between 15 and 25 percent would be a reasonable number based on my experience and knowledge of operations in the industry."); *Id.* at 493:2-11. A 20 percent threshold would also affect less than half of the corporate entities in the state and only 13% of wells. **Apps' Ex. 52; Apps' Ex. 74** at 42:13-14.
40. Removing marginal wells from the portfolio operator category is consistent with the goal of updating 19.15.8 NMAC "to have increased financial assurance for inactive and approved and expired temporarily abandoned wells—wells that are at a very high risk of orphaning—to properly reflect the financial risk they pose to the state." **Apps' Ex. 57** at 5:19-21. Inactive and idled wells are at significantly increased risk for orphaning since they do not produce any revenue. **Apps' Ex. 57** at 67:1-2; **Apps' Ex. 30** at 70:2-3 ("Inactive and TA wells are not generating any revenue at all, but still require small ongoing costs to

monitor, insure, and maintain the wells.”). Additionally, inactive wells have a higher incidence of difficulties, and the longer a well stands idle, the more likely it is to suffer some sort of mechanical deterioration and failure. **Hearing Tr. 10/29/2025 (Purvis)** at 357:1-6. Risks from wells with marginal production can be addressed by single well bonding rather than being included in the portfolio operator financial assurance category. **Hearing Tr. 11/5/25 (Arscott)** at 117:21-24 (“[A]n individualized well by well bond amount makes more sense if you’re trying to address the specific concerns with these very low producing wells.”); *Id.* at 118:1-4 (“[A] policy prescription that addresses those specific wells makes more sense ... than imposing a large financial assurance cost on a large portfolio of wells.”).

*D. 19.15.8.9(G): Single instrument FA*

41. Applicants revised Section 19.15.8.9 in their Post-Hearing Proposed Amendments to provide that operators may file financial assurance in the form of a single instrument to cover multiple one-well plugging financial assurance requirements. **Apps’ Ex. 89-C** at 3.
42. Under the single instrument approach, the total amount of financial assurance required is calculated, including both eligible blanket financial assurance amounts and one-well financial assurance amounts, and then the operator secures a bond or other financial assurance instrument for that combined figure. **Hearing Tr. 10/21/25 (Morgan)** at 575:17–23.
43. Allowing operators to furnish a single financial assurance to satisfy multiple one-well financial assurance requirements maintains “administrative efficiency.” A single financial instrument lets operators avoid the need to negotiate and secure multiple separate bonds, while still protecting the state. **Apps’ Ex. 15** at 48:21-49:13.

**VI. PART NINE – NMAC 19.15.9 Well Operator Provisions**

44. Oxy supports rule revisions designed to ensure new operators seeking authority to operate, and existing operators acquiring new assets in New Mexico, do not have a history of financial assurance forfeitures in other states. **Oxy Ex. B.** at ¶ 26; **Hearing Tr. 10/28/25 (Wallace)** at 26:12-15 (“So we support the revisions to ensure that operators seeking authority are operating properly and do not have a history of ... repeat offenses.”).
45. Applicants, OCD, and Oxy worked together to develop revised language to address concerns that the original language was too broad and administrative challenges of large operators. **Hearing Tr. 10/28/25 (Wallace)** at 26:18-24.
46. Applicants revised the well operator provisions in their Post-Hearing Proposed Amendments to address further concerns of industry. **Apps’ Ex. 89-D.**
47. The well operator provisions were changed to allow a “representative designated by the operator” to make the forfeiture and compliance certification for operator registration and change of operator. **Apps’ Ex. 89-D** at 1-2. Operators should have discretion to determine who they deem best fit to be held accountable for these certifications. **Hearing Tr. 10/28/25 (Wallace)** at 27:8-15.
48. The well operator provisions were changed to base certification and denial of registration on “final administrative forfeiture demands.” **Apps’ Ex. 89-D** at 1-2.
49. The well operator provisions were changed to include a look-back period of 10 years for denial of registration on “final administrative forfeiture demands.” **Apps’ Ex. 89-D** at 2.

**VII. PART TWENTY-FIVE: 19.15.25 Plugging and Abandonment****A. 19.15.25.8 – Wells to Be Properly Abandoned (subsection B)**

50. Applicants propose a new exception in 19.15.25.8 for wells that have been drilled and cased by not completed for less than 18 months and wells completed but not produced for less than 18 months to account for batch drilling. **Apps' Ex. 1-E.**
51. Applicants proposed to reduce the current 90-day timeline in 19.15.25.8.B. NMAC to either plug and abandon a well or place the well in approved temporary abandonment to 30 days. **Apps' Ex. 1-E.**
52. Industry witnesses testified that the 30-day timeline is unreasonable and “demonstrates a fundamental misunderstanding of operational, logistical, and contractual realities of the upstream oil and gas business.” **NMOGA Exhibit D** at 1154-1156; *see also* **Hearing Tr. 10/29/25 (McGowan)** at 224:24-225:6; **Hearing Tr. 10/31/25 (Felix)** at 58:10-19. “30 days is not enough to: schedule and complete MITs, assemble TA paperwork, mobilize rigs, or evaluate recompletion/workover alternatives.” **NMOGA Rebuttal Testimony of Andrea Felix** at 1200-1202; **NMOGA Rebuttal Testimony of Dan Arthur** at 2903-2904 (“More than 30 days are needed to prepare and submit a complete application for temporary abandonment.”). If the timeframe is reduced to 30 days, “operators will default to P&A to avoid timing risk, even where a well is a viable candidate for return to service.” **NMOGA Rebuttal Testimony of Andrea Felix** at 1202-1203;
53. Applicants revised the well operator provisions in their Post-Hearing Proposed Amendments to provide a 60-day timeline to either plug and abandon a well or place the well in approved temporary abandonment. **Apps' Ex. 89-E** at 1.

54. Applicants in their Post-Hearing Proposed Amendments retained the requirement that the one-year period of inactivity be continuous. **Apps' Ex. 89-E**. Retaining the word continuous “strikes the proper balance between ensuring that long-idle wells are addressed and preserving operator flexibility to manage wells responsibly. Removing “continuous” would create arbitrary abandonment triggers disconnected from risk and contrary to the Act’s conservation mandate.” **NMOGA Rebuttal Testimony of Dan Arthur** at 2955-2958. Eliminating “the “continuously” qualifier creates compliance obligations that are disproportionate to actual environmental or mechanical risk, introduces legal ambiguity, and imposes timelines for abandonment that do not reflect how field operations work.” **NMOGA Exhibit D** at 1268-1270; **Hearing Tr. 10/28/25 (Wallace)** at 32:2-13. Intermittent inactivity is common and often prudent in oil and gas production. Market shut-ins, facility outages, seasonal conditions, lease-retention strategy, or planned recompletions can result in intermittent production activity. Counting non-continuous downtime toward a 12-month trigger penalizes responsible portfolio management and invites premature plugging. **NMOGA Rebuttal Testimony of Andrea Felix** at 1206-1209.

*B. 19.15.25.9 – Presumptions of No Beneficial Use*

55. Applicants propose to create a new presumption of no beneficial use in 19.15.25.9 for wells that have not produced at least 90 barrels of oil equivalent in a consecutive 12 month period. **Apps' Ex. 1-E**.

56. The presumption of no beneficial use is “an efficient way to address wells whose level of activity or production raises concerns about whether those wells continue to serve a potentially beneficial purpose.” **Oxy Ex. B** at ¶ 49.

57. Industry witnesses testified that the original documentation requirements were not applicable in every circumstance and that the Division should have more flexibility to address a variety of circumstances. **Oxy Ex. B** at ¶¶ 50-52.

58. Applicants revised the documentation requirements in their Post-Hearing Proposed Amendments to provide the Division with more flexibility as to the documentation requirements and also delayed implementation of the presumption by one year. **Apps' Ex. 89-E** at 2.

*C. 19.15.25.13 – Approved Temporary Abandonment*

59. Applicants propose to revise rules governing approved temporary abandonment. **Apps' Ex. 1-E**.

60. Applicants' original proposal specified an extensive list of documentation required to demonstrate that the well should remain in temporary abandonment status. **Apps' Ex. 1-E** at 3. Industry witnesses testified that the Applicant's originally proposed documentation requirements were burdensome and lacked a clear standard for adequacy. **Oxy Ex. B** at ¶¶ 58-61; **Hearing Tr. 10/29/25 (McGowan)** at 251:10-15; **NMOGA Exhibit B** at 791-792; **NMOGA Exhibit D** at 583-585. The extensive documentation requirements would likely impose "significant administrative challenges" on OCD and could potentially lead to "regulatory delays, legal disputes over trade secret protection and data sufficiency, and decreased investment in marginal fields and older infrastructure where long-term planning is critical." **NMOGA Exhibit B** at 791-797; **NMOGA Exhibit D** at 586-590. Another concern with the original proposal was that much of the required documentation was "proprietary, commercially sensitive, or not readily available in a standardized form" **NMOGA Exhibit B** at 791-797.

61. Applicants revised the documentation requirements in their Post-Hearing Proposed Amendments to provide the Division with more flexibility as to the documentation requirements. **Apps' Ex. 89-E** at 3-4.
62. Applicants' proposal that the Commission impose a mandatory adjudicatory hearing for requests to extend already approved temporary abandonment status is unnecessary and inefficient. The Division's docket is at capacity for both adjudicatory hearings and order issuance, creating potential compliance issues for wells awaiting hearings and decisions. **Oxy Ex. B** at ¶ 65. Continuing to evaluate extension requests via administrative applications allows the Division to efficiently and effectively address those requests without burdening its docket and allows it the discretion to move an administrative hearing to an adjudicatory hearing should occasion demand. *Id.* at ¶ 66.
63. Similarly, Applicants' proposal that the Commission eliminate the requirement that an interested party demonstrate "standing" to request a hearing or to intervene in an adjudicatory hearing is unnecessary, inappropriate, and will further burden the Division's crowded hearing docket. **Oxy Ex. B** at ¶ 67; **NMOGA Exhibit E** at ¶ 57 ("There is no clarification that the public at large has standing or a vested interest in any particular request."). There is nothing unique about a request to extend temporary abandonment status that warrants Applicants' request to deviate from traditional "standing" requirements. **Oxy Ex. B** at ¶ 68.
64. Applicants' original proposal limited the Division's authority to extend temporary abandonment status to no longer than two years and limited the eligibility of wells to be temporary abandonment status to only those that have been inactive for less than three years. **Apps' Ex. 1-E** at 3-4.

65. Industry witnesses objected to the arbitrary limitations on temporary abandonment status and argued that the Division should retain discretion over which wells are eligible for temporary abandonment temporary abandonment status and the length of time for approved temporary abandonment status to accommodate known and unknown present and future development situations. **Oxy Ex. B** at ¶¶ 69-74. Mandating a short limit on the time-period for approved temporary abandonment would negatively impact existing and planned enhanced oil recovery projects in New Mexico. Enhanced oil recovery projects encompass large blocks of land and take years to fully develop due to the necessary infrastructure, the need to study reservoir behavior and changing economics. **Oxy Ex. C** at ¶¶ 5-15; **Hearing Tr. 10/28/25 (Montgomery)** at 138:30-139:19; *Id.* at 144:4-21 (explaining that 45% of wells in Hobbs Unit has been in TA status for more than eight years and 21 had been in TA status for more than ten years).
66. Applicants revised the approved temporary abandonment provision in their Post-Hearing Proposed Amendments to allow operators to apply for five-year extensions of temporary abandonment and to require existing wells that are inactive or three years or more to apply for an extension of temporary abandonment status. **Apps' Ex. 89-E** at 3-4.

### **Proposed Conclusions of Law**

1. N.M.S.A. § 70-2-14(A) provides that “[t]he oil conservation division shall establish categories of financial assurance after notice and hearing.”
2. Section 70-2-14(A) then specifies that “such categories shall include a blanket plugging financial assurance, which shall be set by rule in an amount not to exceed two hundred fifty thousand dollars (\$250,000), a blanket plugging financial assurance for temporarily abandoned status wells, which shall be set by rule at amounts greater than fifty thousand dollars (\$50,000), and one-well plugging financial assurance in amounts determined sufficient to reasonably pay the cost of plugging the wells covered by the financial assurance.” N.M.S.A. § 70-2-14(A).
3. N.M.S.A. § 70-2-14(A) only sets out three categories of financial assurance (blanket plugging financial assurance, a blanket plugging financial assurance for temporarily abandoned status wells, and one-well plugging financial assurance) and expressly caps the amounts. **NMOGA Sporich Rebuttal Testimony** at ¶ 38; **Hearing Tr. 10/30/25 (Sporich)** at 248:20-249-5.
4. Applicants’ proposal to establish a new financial assurance category for low producing wells in 19.15.8.9(D)(1) NMAC and the portfolio operator financial assurance category in 19.15.8.9(F)(1) NMAC violates the Oil and Gas Act because it seeks to circumvent the express financial assurance provisions in the statute by removing active wells from the blanket plugging financial assurance. **NMOGA Sporich Rebuttal Testimony** at ¶¶ 38-40; **Hearing Tr. 10/30/25 (Sporich)** at 248:20-249-5; **Hearing Tr. 10/30/25 (Sporich)** at 249:12-250:7.

WHEREFORE, Oxy USA, Inc. respectfully requests the Commission decline to adopt new financial assurance categories for low producing wells in 19.15.8.9.D(1) NMAC and the portfolio operator financial assurance category in 19.15.8.9.F(1) NMAC, which is inconsistent with Section 70-2-14(A), or in the alternative, adopt the negotiated language with Oxy's redline submittal for 19.15.25.13.C(2) NMAC because the proposal is supported by the Findings of Facts and Conclusions of law articulated herein.

Respectfully submitted,

/s/ Adam Rankin

Michael H. Feldewert

Adam G. Rankin

Paula M. Vance

HOLLAND AND HART, LLP

110 N. Guadalupe, Suite 1

Santa Fe, NM 87501

(505) 988-4421

[mfeldewert@hollandhart.com](mailto:mfeldewert@hollandhart.com)

[agrankin@hollandhart.com](mailto:agrankin@hollandhart.com)

[pmvance@hollandhart.com](mailto:pmvance@hollandhart.com)

Aaron B. Tucker

HOLLAND AND HART, LLP

555 17th Street, Suite 3200

Denver, CO 80202

(303) 295-8369

[ABTucker@hollandhart.com](mailto:ABTucker@hollandhart.com)

**ATTORNEYS FOR OXY USA, INC**

**CERTIFICATE OF SERVICE**

I hereby certify that on April 3, 2026, a true and correct copy of the foregoing Oxy USA, Inc.'s Closing Arguments was served to counsel of record by electronic mail to the following:

Tannis Fox  
Morgan O'Grady  
Western Environmental Law Center  
409 East Palace Avenue, #2  
Santa Fe, New Mexico 87501  
ogrady@westernlaw.org  
fox@westernlaw.org

Kyle Tisdell  
Western Environmental Law Center  
208 Paseo del Pueblo Sur, #602  
Taos, New Mexico 87571  
tisdell@westernlaw.org

Matt Nykiel  
Western Environmental Law Center  
224 West Rainbow Boulevard, #247  
Salida, Colorado 81201  
nykiel@westernlaw.org

*Attorneys for Applicants*

Andrew J. Cloutier  
Ann Cox Tripp  
Hinkle Shanor LLP  
P.O. Box 10  
Roswell, New Mexico 88202-0010  
acloutier@hinklelawfirm.com  
atripp@hinklelawfirm.com

*Attorneys for Independent Petroleum Association of New Mexico*

Miguel A. Suazo  
James Martin  
James Parrot  
Jacob L. Everhart  
Beatty and Wozniak, P.C.  
500 Don Gaspar Avenue  
Santa Fe, New Mexico 87505

msuazo@bwenergyllaw.com  
jmartin@bwenergyllaw.com  
jparrot@bwenergyllaw.com  
jeverhart@bwenergyllaw.com

*Attorneys for New Mexico Oil and Gas Association*

Jennifer L. Bradfute  
Matthias Sayer  
Bradfute Sayer P.C.  
P.O. Box 90233  
Albuquerque, New Mexico 87199  
jennifer@bradfutelaw.com  
matthias@bradfutelaw.com

Jordan L. Kessler  
EOG Resources, Inc.  
125 Lincoln Avenue, Suite 213  
Santa Fe, New Mexico 87501  
Jordan\_kessler@eogresources.com

*Attorneys for EOG Resources, Inc.*

Mariel Nanasi  
422 Old Santa Fe Trail  
Santa Fe, New Mexico 87501  
mnanasi@newenergyeconomy.org

*Attorney for New Energy Economy*

Nicholas R. Maxwell  
P.O. Box 1064  
Hobbs, New Mexico 88241  
inspector@sunshineaudit.com

Air Biernoff  
General Counsel  
Christopher Graeser  
Richard H. Moore  
Associate Counsel  
New Mexico State Land Office  
P.O. Box 1148  
Santa Fe, New Mexico 87504-1148  
abiernoff@nmslo.gov  
cgraeser@nmslo.gov  
rmoore@nmslo.gov

*Attorneys for Commissioner of Public Lands  
and New Mexico State Land Office*

Felicia Orth  
Hearing Officer  
New Mexico Energy, Minerals, and  
Natural Resources Department  
Wendell Chino Building  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505  
Felicia.l.orth@gmail.com

*Oil Conservation Commission Hearing  
Officer*

Zachary A. Shandler  
Assistant Attorney General  
New Mexico Department of Justice  
P.O. Box 1508  
Santa Fe, New Mexico 87504  
zshandler@nm DOJ.gov

*Oil Conservation Commission Counsel*

Sheila Apodaca  
New Mexico Energy, Minerals, and  
Natural Resources Department  
Wendell Chino Building  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505  
occ.hearings@emnr.d.nm.gov

*Oil Conservation Commission Clerk*

/s/ Adam Rankin  
Adam Rankin