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

IPANM'S CLOSING ARGUMENT AND PROPOSED FINDINGS AND CONCLUSIONS

The Independent Petroleum Association of New Mexico ("IPANM") submits its Closing Argument, Proposed Findings of Fact, and Conclusions of Law outlining the evidence and authority for the Oil Conservation Commission ("Commission") to reject the Applicants' proposed amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 ("WELC Changes"). As to some of the proposed rulemaking, if the Commission does not reject making changes, it should also adopt IPANM and NMOGA amendments filed contemporaneously herewith.

I. CLOSING ARGUMENT

This rulemaking has centered on Applicants' use of two proxies—incentive and risk—in the absence of actual quantitative analysis establishing causation or the supposed benefits of the WELC Changes. First, Applicants claim that current financial assurance levels fail to "incentivize" plugging and abandonment of wells in New Mexico by operators, thus causing orphan wells.[1] Second, Applicants assert that low producing wells are more "at risk" of being orphaned by otherwise responsible and prudent operators because those wells generate less revenue and therefore cannot self-pay plugging costs on a single well basis. In fact, Applicants' production threshold has nothing to do with well-economics. Instead, it is justified by the June 2025

[1] *See, e.g.*, Testimony of WELC Expert Dwayne Purvis, Tr. 380:4-381:8 (Oct. 21, 2026) (acknowledging but not examining that other incentives exist for operators to plug wells, like avoiding litigation, maintaining authority to transport oil and gas, and authority to continue operating wells). IPANM citations to the record are illustrative, not exhaustive. The complete evidentiary record is comprised of all party submissions, testimony, and public comment in Case No. 24683.

Legislative Finance Committee Spotlight Report on Orphan Wells ("LFC Report"), which evaluated production averages prior to plugging—**not orphaning**.[2] Further undermining Applicants' theories, testimony from witnesses with real-world industry experience, including WELC's operational expert Thomas Alexander[3] and OCD employee Justin Wrinkle, disproves the concept that operators fund decommissioning costs on an individual well basis. Finally, no testimony or evidence in the record supports the assumption that low producing wells are at a greater risk of becoming orphaned.[4]

Regarding Applicants' incentive theory for increasing financial assurance, Applicants assume, without evidence, that a certain pain-point will motivate operators to P&A wells that otherwise would be orphaned. Applicants presented evidence that various states increased financial assurance requirements over the past 20 or so years and New Mexico did so in 2018. Quite tellingly, despite all these potential data points, not a shred of evidence indicates those reforms decreased the rate wells were orphaned or public expenditures on orphaned wells.[5] None of the operators testifying in the rulemaking identified recouping financial assurance as a factor in deciding when to plug wells. Testimony on the subject recounted operators' delay and difficulty in obtaining releases of financial assurance, exacerbating the "double-bind" to pay out of pocket to plug the very well for which the plugging bonds were provided. Operators and financial surety experts explained to the Commission that the exponential increase in bonding levels in the WELC

[2] WELC Exhibit 4 at 0111, LFC Report at 7, Chart 2 (using Enverus data, of 13,134 wells plugged between 2007-2025, averaged 2 barrels per day); *see also id.* at 0113, LFC Report at 9 (OCD has plugged 967 wells since 2002, about 5%, while operators plugged over 16,000 wells during roughly the same time period).

[3] Testimony of WELC Expert Thomas Alexander,Tr.182:22-183:1 (Oct. 20, 2025) (agreeing that a well does not need to be self-sufficient, such that the production threshold from a single well need not generate sufficient revenue to plug and reclaim that well); *Id.* 183:9-14 (agreeing that an operator can manage P&A budget by applying funds from other sources).

[4] No analysis of OCD Exhibit 17, or why the wells listed on OCD Exhibit 17 Master Orphan well Spreadsheet ("MOSS") became orphaned, presented during written or live testimony. *Cf.* Matthew D. Merrill, *Analysis of the United States Documented Unplugged Orphaned Oil and Gas Well Dataset*, U.S.G.S. Publication (February 17, 2023, revised April 6, 2023), *available at* https:///doi.org/10.3133.dr1167 (last accessed 03/16/2026).

[5] Testimony of WELC Expert Dwayne Purvis, Tr. 385:7-386:10 & 390:5-21 (Oct. 21, 2025) (Applicants did not perform any work to quantify "how the taxpayer [is] going to be protected by this rulemaking.").

Changes removes working capital otherwise available to address decommissioning costs and will drive both operators and surety providers out of the state, creating more orphaned wells.[6]

In trying to prevent orphan wells and reduce risk to the state, the WELC Changes exacerbate the very issue Applicants set out to address.. The WELC Changes will accelerate orphaning of wells while imposing unsustainable costs—detrimental to the State and to the backbone of independent operators that sustain an industry responsible for 70% of the State's General Fund. These costs are neither hyperbolic nor speculative. First, WELC's double-bonding of low producing wells and "high risk" operator wells—combined with complete abandonment of the established tiered bonding framework—increases total financial assurance requirements across all operators by over **$750 million**.[7] No evidence in the record establishes that industry or the surety market could meet that demand or that compliance is feasible or expected. Where OCD already identified 113 Operators with 1,213 state and fee wells long out of compliance, it admits that the same will not comply with increased bonding demands.[8] Moreover, out of the 500-plus operators in New Mexico, 75% of orphan wells are concentrated in just ten known bad actors.[9] Second, the Commission need only look across state lines to comprehend the poor outcomes of bonding reform in Colorado, where regulators now face a quadrupling of orphan wells but are hamstrung by decreasing levels of statewide financial assurance.[10]

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[6] Testimony of WELC Expert Dwayne Purvis, Tr. 389:3-14 (Oct. 21, 2026) ("I wrote also that the rulemaking will create pain for some companies…and the orphaning would happen sooner."); *see also id.* at 390:13-21("I have not tried to predict the behavior of every individual company," and that the resulting financial assurance under the WELC changes will result in "much, much less" than the maximum predicted).

[7] OCD Ex. 29, WELC Exs. 40 & 52; *see also* Motion to Reopen, Note 8.

[8] OCD Ex. 33; Hearing Testimony of OCD Deputy Director Brandon Powell, Tr. 129:16-130:24, & 130:25-131:5 (Oct. 27, 2025).

[9] OCD Ex. 17; IPANM Rebuttal Testimony of Jim Winchester at 5:8-12; Winchester, Tr. 28:6-12 (Nov. 3, 2025); IPANM Dem. Ex. 9.

[10] IPANM Trevor Gilstrap, Tr. 167:20-25, 168:1-19 (Nov. 3, 2025); IPANM Direct Written Testimony of Sam Bradley,4:1-9.

Having heard from a wide array of witnesses with both operational and financial expertise, the Commission should reject the WELC Changes which contravene the Commission's "two major duties" under the Oil and Gas Act to prevent waste and protect correlative rights.[11] As demonstrated throughout the record, because of the astronomical increase in bonding and corresponding squeeze on accessible working capital, the WELC changes will lead to one of three outcomes: (1) the premature plugging of viable, active wells where operators cannot comply with FA increases; (2) the accelerated orphaning of low-producing wells, or (3) the production of wells in uneconomic conditions. The latter being the same historical circumstances for which the Oil and Gas Act itself was adopted to address. *See Spindletop, etc.* In sum, the shortsighted WELC Changes introduce an uneconomic and inefficient one-size fits-all bonding approach that punishes responsible operators, ignores future stages of recovery, creates waste, and falls far short of a meaningful response to a 1% issue.[12]

A. THE COMMISSION LACKS STATUTORY AUTHORITY TO REQUIRE BONDS WHICH EXCEED LEGISLATIVE LIMITS

The WELC changes to 19.15.8.9(D), (E) & (F) NMAC exceed the express blanket bonding amount of $250,000 in the financial assurance enabling provision of the New Mexico Oil and Gas Act, NMSA 1978, §§ 70-2-1 to -44 (the "Act"), and legislative direction to consider well characteristics in establishing single well bonding levels. Applicants and OCD argue that the Act provides for unlimited categories of wells which can be stacked and layered relying on Section 70-2-14(A)'s direction that "The oil conservation division shall establish categories of financial

[11] *Santa Fe Explor. Co. v. Oil Conservation Comm'n*, 1992-NMSC-044, ¶ 27, 835 P.2d 819.

[12] *See USGS Orphan Well Report* Figure 4*;* (analyzing the rate of orphaning wells across six decades, and finding the range to at 0.8%-2%, peaking in the 1980s following the nationwide oil and gas shortage, but steadily decreasing in the decades since); *see also* Federal Orphan Well Program Legislative Report (November 2025) (citing that USGS has created methodology to analyze and predict orphan wells, not yet released); see Testimony of Representative Mark Murphy, Tr.194:3-6 (Nov. 4, 2025) (commenting on historical abandonment rate of industry); *Compare* OCD Exhibit 17 (approximately 1,700 orphan wells) *to* OCD Permitting, "Well Search", https://wwwapps.emnrd.nm.gov/ocd/ocdpermitting/Data/Wells.aspx (last accessed 03/30/2026) (showing 123,481 total wells of record in the state, including plugged wells, equating to 1.4%) .

assurance after notice and hearing." Section 70-2-14(A) authorizes three forms of financial assurance: (1) a blanket bond for active wells, (2) a blanket bond for wells in temporary abandoned status greater than two years, and (3) a single well bond linked to the costs of plugging the subject well. In no prior circumstances would these categories overlap: an active well is eligible for either blanket or single well bonding, with an inactive well in temporary abandoned status remaining eligible for a TA blanket bond or a single well bond. Applicants and OCD propose the Commission add new categories of financial assurance for low producing wells and for high-risk operator wells, which are otherwise covered by the active blanket well bond under NMAC 19.15.8.9(B), leading to double-bonding which far exceeds existing financial assurance requirements. *See* WELC Ex.89-C , 19.15.8.9(D)&(E). Further, Applicants propose that all single well bonds, for active, low-producing, and TA wells be set at $150,000 rather than evaluated under any of the factors required by Section 70-2-14(A).[13] There is simply no room under the authority granted by the Act or under Section 70-2-14(A) to effect such sweeping policy changes and concomitant economic results by regulation alone.

The Legislature has considered and rendered policy decisions on financial assurance and reclamation funding. on four occasions in the past decade. Each new category or increase has been expressly authorized. In 2015, the Legislature amended Section 70-2-14(A) to create a specific category for "temporarily abandoned status wells" and to authorize blanket bonding for those wells in amounts exceeding $50,000.[14] In 2018, under Senate Bill 189, the Legislature approved an increase of the blanket plugging bond from $50,000 to $250,000,[15] and revisited FA again in

[13] WELC Ex.89-C , 19.15.8.9(B), (D) & (F).
[14] *See* Laws 2015, ch. 99, § 1 Laws 2015, ch. 79, § 1, https://nmonesource.com/nmos/nmsl/en/item/4457/index.do#c79s1, last accessed September 8, 2025; *see also* OCC Case No. 15314, Order R-13996.
[15] *See* Laws 2018, ch. 16, § 2, available at: https://nmonesource.com/nmos/nmsl/en/item/4477/index.do#c16s2, last accessed September 8, 2025, codified NMSA 1978, §70-2-14(A) (2019); *see also* OCC Case No. 16078.

2024.[16] In the Commission rulemaking which followed SB189 and in the committee debates on House Bill 133, representatives and commissioners were especially sensitive to the adverse economic consequences to the state and to smaller, independent operators created by increased financial assurance levels.[17] For example, under the bonding reforms proposed in HB133, the LFC Fiscal Impact Report estimated an $800 million decrease in revenue to the state, which was admittedly underreported in being limited to future permitted wells.[18] As of March 9, 2026, the Legislature and the Governor approved changes to the Reclamation Fund which will yield $1 billion in funds available for plugging, reclamation and remediation.[19] Thus, the Legislature has demonstrated that when it intends to authorize new categories of financial assurance or increased funding to the Reclamation Fund, it does so expressly.[20] There is no such direction to the Commission here.

Moreover, stripping the active well blanket plugging bond of meaning or effect controverts decades of agency and industry interpretation, understanding, and custom. *See High Ridge Hinkle Joint Venture v. City of Albuquerque,* 1994-NMCA-139, ¶ 45, 888 P.2d 475, 488 ("Courts generally show little deference to an agency's interpretation of its own statute when the interpretation is an unexplained reversal of a previous interpretation or consistent

[16] *See* Legislation Listing "HB133", New Mexico Legislature, available at: https://www.nmlegis.gov/Legislation/Legislation?Chamber=H&LegType=B&LegNo=133&year=24, last accessed September 8, 2025.
[17] *See*, *e.g.*, Case No. 16078, Tr. 16:19-17:25 (July 20, 2018) (noting "quandary" Commission faced in balancing the right of small operators, the "backbone" of New Mexico production and a critical industry component with increasing bonding levels), *see also id.*, Tr. 27:24-25:3 (expressing concern that increasing bonding levels could orphan more wells); 43:19-25 (increasing bonds to put operators out of business compounds the problem); *and id.*, Tr. 50:4-10 (acknowledging outer limit of rule change to $250,000).
[18] *See* IPANM Ex. 41, HB 133, LFC FIR at 3, 4 ("If this legislation negatively impacts production from already permitted wells, the financial costs estimated on page one could increase significantly and commence earlier than indicated.").
[19] *See* HB 80, Laws 2026, ch. 60, §§ 1-2 (to be codified at NMSA 1978, § 7-1-6.21 & 70-2-37).
[20] *See also* History of Amendments to the Oil and Gas Act, discussed in *Joint Reply in Support of Dismissal*, Exhibit A (from enactment, a $10,000 per well plugging bond under Laws of 1935, Ch. 72, Section 10, codified at NMSA 1935, § 97-8101; 1977 amendment introduced blanket plugging bond, single well bond tied to reasonable cost of plugging the well, and "in addition to the blanket plugging bond," a one-well bond on well in TA status more than 2 years; NMSA 1954, § 65-3-1.2 (1977)).

practice….[which] raises genuine doubts regarding whether the Council decision reflected an interpretation…as opposed to a policy decision").

Separately, Applicants' proposal to impose a flat $150,000 single well bond disregards Section 70-2-14(A)'s express directive that financial assurance amounts account for factors such as well depth, production history, and comparable plugging costs to "reasonably pay the cost of plugging the well." NMSA 1978, §70-2-14(A). The WELC Changes one-size-fits-all approach that departs from the statute and precedent falls outside the boundaries of the Commission's jurisdiction. Where the Act requires that one-well plugging bonds be tied to the characteristics of the well, New Mexico is not alone. Nearly every other oil or gas producing state links single-well financial assurance and well characteristics.[21]

Under the rules of statutory interpretation and construction followed by New Mexico Courts, for which agency determinations are afforded little deference, if any,[22] the first principle is to discern and effectuate legislative intent, aided by the canons of construction for plain language, ordinary meaning, and to give effect to every provision. *PRC,* 2007-NMSC-053, ¶ 20. Here the Commission should, considering the history and background of the Act, Section 70-2-14 and its predecessors, seek to read "[a]ll parts of a statute…together to ascertain legislative intent, and we are to read the statute in its entirety and construe each part in connection with every other part to produce a harmonious whole," thereby rendering "no part of the statute...surplusage or

[21] *See*, *e.g.*, Al. Admin Code 400-1-1-.01 thru 400-7-1-.23. For the few producing states with single well bonds in a fixed amount consist, see Alaska ($400,000 1-5 wells); Arkansas ($3,000); North Dakota ($50,000); Ohio ($5,000); West Virginia ($5,000). Summary: State Oil and Gas Bonding Requirements, *National Conference of State Legislatures* (Jan. 26, 2022), available at https://www.ncsl.org/energy/state-oil-and-gas-bonding-requirements (last visited 10/3/2025).

[22] *See Marbob Energy Corp. v. New Mexico Oil Conservation Comm'n*, 2009-NMSC-013, ¶ 7, 206 P.3d 135, 139 ("Nothing in the [Oil and Gas] Act requires the Commissioners to be trained in matters of statutory interpretation. Thus, we conclude that statutory construction is not within the Commission's specialized expertise."); *see also Pub. Serv. Co. of N.M. v. N.M. Pub. Util. Comm'n,* 1999–NMSC–040, ¶ 14, 992 P.2d 860 (statutory construction not a matter within agency expertise); *see also New Mexico Indus. Energy Consumers v. PRC*, 2007-NMSC-053, ¶ 19, 168 P.3d 105, 111–12 (court "troubled" by "legal conclusions of Commission staff with respect to matters of statutory construction as well as the Commission's apparent reliance on those legal conclusions").

superfluous." *Amdor v. Grisham*, S-1-SC-40105, ¶ 30, 2025 WL 718840, at *7 (N.M. Mar. 6, 2025) (slip. op.) (quoting *Grisham v. Romero*, 2021-NMSC-009, ¶¶ 23, 27 483 P.3d 545). Where Applicants' proposed bonding changes render the active well blanket plugging bond and its $250,000 cap superfluous, such changes must be rejected. Statutory interpretation requires the same rejection of Applicants' flat $150,000 plugging bond, WELC Ex. 89-C , 19.15.8.9(B), without reference to well depth, production history, or the costs of plugging similar wells.

Finally, IPANM observes that Applicants and OCD contest the interpretation of Section 70-2-14 advanced by IPANM and other industry participants. If the Commission has some view that it may have the power to enact the proposed financial assurance rules, it should decline to do so. This Commission always has followed the Legislature on FA issues, not taken the lead. In the most recent Session, the Legislature created a funding mechanism to generate a billion dollars that will directly flow to the Reclamation Fund. In contrast, whatever bonds are posted if this rulemaking is adopted will only flow to the Reclamation Fund after three contingencies have occurred: the operator orphans the well after securing bonding, the OCD plugs the well, and the OCD successfully redeems the bond.

B. APPLICANTS' PROPOSED CHANGES ARE AN INEFFICIENT FUTURE SOLUTION TO HISTORICAL ENFORCEMENT PRACTICES.

No party contests that industry plugs wells more efficiently, more expediently, and at a much lower cost than OCD. Much of that disparity is attributable to three factors: (1) OCD plugs orphan wells according to an internal scoring system which appropriately prioritizes orphan wells presenting a risk to health and safety,[23] (2) the wells that OCD plugs have been inactive for a much longer period of time, due to enforcement lag and other factors;[24] and (3) required pricing

[23] WELC Ex. 4 at 0147, LFC Report at Appx. E (wells with active leaks, history of integrity defects, and without wellhead control entitled to maximum weight).
[24] *See* OCD Rosa Romero, Tr. 74:3-13; Direct Testimony of Rosa Romero, OCD Ex. 10 at 5:9-18; Testimony of Brandon Powell, Tr. 202:24-25 (Oct. 27, 2025).

procedures and limited plugging contractors drive OCD costs up with little oversight, competition, and cost control.[25] In short, OCD plugging costs are not reflective of amounts "sufficient to reasonably pay the cost of plugging the wells," NMSA 1978, § 70-2-14(A), or "the cost of plugging similar wells." *Id.* Rather than rely on anomalous, outlier OCD costs to calculate financial assurance levels, the reasonable plugging bond should derive from industry costs which represent the costs of plugging 95% of similar wells across the state. Moreover, OCD's poster problem-child well, the Buckskin Federal #002, is "an extreme example of difficult well[] to plug,"[26] and Applicants new FA levels would not apply to the federal well.[27]

This means that Applicants' FA reforms assume an excessively high starting point with respect to 95% of wells.[28] On top of that inflated cost, the WELC Changes also incorporate the

[25] *See* WELC Ex. 4 at 0107, LFC Report, *Key Recommendations* (recommending EMNRD require a "company man" on site for well plugging); *id.* at 0117 (reporting state costs have risen 450% in past 5 years, more than 8 times average oilfield inflation rates, and increase in costs equivalent across emergency and nonemergent plugging); *see also id.* at 0128 ("**OCD struggles to control both the cost and quality of state-contracted plugging.**") (emphasis in original).
[26] OCD Exhibit 6 at 28, OCD Witness Loren Diede Slides; WELC Ex. 4 at 0129, 0117 (plugging the Buckskin Federal #002 cost $5.2 million to plug, which is not excluded from the LFC report of $163,000 average per well plugging costs).
[27] *See* NMAC 19.15.8.9(A) (financial assurance requirement applies to state and fee wells). The Buckskin Federal #002 is also excellent example of OCD enforcement delays and the compounding effect of such delays on plugging costs to the state: As a salt water disposal well, the Buckskin Fed #002 last reported injection volumes in February 2012. While no injection was reported thereafter, the well later failed two mechanical integrity tests in 2014, and the operator's authority was revoked in correspondence dated October 2014 and January 2016. Plugging activities did not commence until July 2024. Under today's rules and statute, NSMA 1978, §70-2-31, the OCD could pursue civil penalties against the Buckskin Federal No. 2 as soon as the well was out of compliance.
[28] Direct Testimony of Robert Arscott, Ph.D., IPANM Technical Expert, *In the Matter of Proposed Amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC*, No. 24683, OCC, Aug. 8, 2025, at 2. *See also* Direct Testimony of Daniel Arthur, P.E., NMOGA Technical Expert, *In the Matter of Proposed Amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC*, No. 24683, OCC, Aug. 8, 2025, at 29-30 ("One of the problems with the single well financial assurance approach under consideration, and described above by well type affected, is that it bears no relationship to risk or lived experience. It is true that some wells can be expensive to plug and abandon. It is equally true that some wells – in my view, many wells – can be fully plugged and abandoned for far less than $150,000. The Applicants' proposal (and the OCD proposal) does not reflect this fact. In my experience, the cost of plugging and abandoning an oil and gas well can vary enormously. That is why I think a bonding regime should take experience, risk, well characteristics, and other factors into account. I've witnessed many wells that were plugged and abandoned for $20,000 or even less. A shallow vertical well might be plugged and abandoned for even less than $20,000."). *See also* Direct Testimony of Harold McGowen, P.E., NMOGA Technical Expert, *In the Matter of Proposed Amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC*, No. 24683, OCC, Aug. 8, 2025, at 85 ("Depth correlates so strongly with cost that any logical bonding regime should take it into account, rather than impose a flat figure."), 91 ("Given the wide variability in plugging costs and the importance of well-specific risk factors, it is far more sensible to adopt a flexible financial assurance scheme rather than a 'one-size-fits-all' $150,000 per-well bond. Regulators should establish bond levels according to the assessed risk and clearly documented

novel economic theory of "holdback" promoted by WELC Expert Mr. Dwayne Purvis.[29] First, holdback relies on the same single-well analysis already discussed and dismissed by WELC, OCD, and industry witnesses. Second, and more importantly, it ignores fundamental economic principles concerning the time value of money.[30] This fundamental omission leads to Mr. Purvis incorrectly identifying when an oil and gas well has "no value."[31] Mr. Purvis's holdback theory has never been peer-reviewed.[32] No state has adopted FA reforms based on the concept of Mr. Purvis' holdback theory.[33] There is good reason why New Mexico should not be the first.

New Mexico is not alone in revisiting or adopting financial assurance regulations in the past decade, especially considering the influx of federal funds made available under the IIJA. Applicants point to four states as exemplars: North Dakota, Texas, Colorado, and Arkansas. But for the Commission to rely blindly on that comparison would be a mistake four times over. WELC witness Peter Morgan testified that FA reforms decreased drilling incidents in North Dakota when bonding levels increased from $10,000 per well to $20,000,[34] but the drilling of new wells is so far removed from the concern Applicants attach to low-producing wells or IPANM's concerns about the WELC Changes as to be irrelevant to this rulemaking.[35] With respect to Texas, identified in the Boomhower Study, the 2001 FA reform introduced the concept of blanket bonds ranging from $25,000 to $250,000, but such effects took place before the Permian Basin horizontal

characteristics of specific well categories within an operator's portfolio, thereby ensuring that required securities correspond to actual potential plugging and abandonment liabilities.").

[29] Testimony of WELC Expert Mr. Dwayne Purvis, Tr. 391:19-20 (Oct. 21, 2025) ("…I'm the sole author of the idea [of holdback] in all contexts.")

[30] Rebuttal Testimony of IPANM Expert Robert Arscott at 1-14.[31] *Compare id*. at 4-5 with Direct Testimony of WELC Expert Dwayne Purvis (WELC Ex. 30) at 28-30.

[31] *Compare id*. at 4-5 with Direct Testimony of WELC Expert Dwayne Purvis (WELC Ex. 30) at 28-30.

[32] Testimony of D. Purvis, Tr. 391:15-392:3 (Oct. 21, 2025).

[33] *Id.* at 392:10-15 (acknowledging that no other state has implemented single-well bonding based on holdback).

[34] Testimony of WELC Expert Peter Morgan, Tr. 683:16-684:7 (Oct. 22, 2025).

[35] *See* Direct Testimony of WELC Expert Peter Morgan, WELC Ex. 15, 34:8-18; Testimony of WELC Expert Peter Morgan, Tr. 683:16-684:7 (Oct. 22, 2025); *Cf.* Murphy, Tr. 147:11-21 & 149:8-20 (Nov. 4, 2025); *see also* Murphy, Tr. 161:23-25 & 163:6-9 (Nov. 4, 2025).

revolution.[36] Neither state imposed additional bonding requirements to marginal or low producing wells. In Colorado, WELC's witness explained that less FA is now required under the rules and that the state has seen an increase in wells formally orphaned by operators.[37] Notably, Colorado provided a much more flexible framework for small operators to remain in compliance through annual fee contributions, and still experienced marked increases in orphan well numbers.[38] Anecdotally, the number of operators in Colorado has shrunk from a diverse field to the consolidation of Colorado wells in just a handful of large operators. To put the magnitude of Colorado's effect on scale here, however, New Mexico produces five times the crude oil and twice the amount of natural gas as Colorado.[39]

Finally, the "full cost bonding" trumpeted by Applicants as adopted in Arkansas actually equates to a $30,000 single well bond on gas wells and only on transfer.[40] Moreover, the existing financial assurance levels in Arkansas range from $3,000 to $100,000,[41] where Applicants' proposals easily put single-operator FA requirements in the millions of dollars. And WELC's operational expert witness, Thomas Alexander, whose experience was most recently with Southwestern Energy in Arkansas, responded that he had "nowhere near those kinds of FA requirements" compared to the WELC Changes.[42] Yet, Mr. Alexander's company was a responsible, prudent operator that exceeded regulations—even without the "incentive" of punitive FA levels.[43] In sum, the analogs proffered by Applicants offer no relevant or helpful comparison

[36] *Id.* at 32:20-33:6
[37] *See* Testimony of WELC Expert witness Adam Peltz, Tr. 845:16-23 & 846:8-10 (Oct. 22, 2026).
[38] *See* Testimony of WELC Expert witness Adam Peltz, Tr. 899:12-19 (Oct. 22, 2026).
[39] U.S. Energy Information Administration, Total Energy Production and Consumption by State, U.S. States, https://www.eia.gov/states/overview, last accessed April 1, 2026; *see also* IPANM Ex. 40, EIA Historical NM Field Production of Crude Oil.
[40] Testimony of WELC Expert Adam Peltz, Tr. 900:25-901:9 (Oct. 22, 2025).
[41] WELC Ex. 4 at 0144, LFC Report at Appx B.
[42] Testimony of WELC Expert Thomas Alexander, Tr. 148:18-149:17 (Oct. 20, 2025).
[43] *Compare* Direct Testimony of WELC Expert Thomas Alexander, WELC Ex. 3 at 006:8-17 ("We [SWN] took our corporate responsibilities very seriously. We were exceedingly careful…to timely plug and abandon, remove surface equipment, and restore locations in order to meet and exceed regulations and expectations… [Our] company-wide motto: 'We don't follow or exceed all regulations because we have to, we follow or exceed them because we want

to the scale and scope of FA increases in the WELC changes, either on a strictly numerical, monetary basis or on overall economic effect to the state as a whole. Only Texas outranks New Mexico in terms of oil and gas production, but oil and gas production in Texas comprises a much smaller fraction of the state budget, state GDP, and share of state and local revenue when compared to New Mexico.

C. THE WELC CHANGES CONTRAVENE THE OIL & GAS ACT AND THE COMMISSION's PRIMARY DUTY TO PREVENT WASTE

New Mexico adopted the 1935 Oil and Gas Act in response to events like the Spindletop field and uncontrolled, overproduction which flooded the market to the tune of $0.04/barrel in 1933, reinforcing the need to conserve oil and gas production to prevent both economic and physical waste. Thus, the Commission was originally created with the fundamental purpose it has now, "the conservation of oil or gas in this State," Laws of 1935, Ch. 72 at Section 4, "...to prevent the waste prohibited by this act." *Id.* at Section 9.[44] WELC's expert witness Thomas Alexander agrees that arbitrary production thresholds may create economic waste.[45] WELC's economic expert, Dwayne Purvis, also acknowledges that adoption of the WELC Changes drastically increasing FA will likely force operators into one of three responses: to prematurely plug or TA well, to increase production to avoid single well bonding, or to orphan the well.[46] Therefore, Applicants' proposed rule changes create waste, and as such, falls outside of the Commission's authority to adopt regulations in support of and to enforce the Act.

The Commission, as a creature of statute, must act strictly within the bounds of its enabling

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to.'"), *and* Alexander, Tr. 44:21-45:2 (Oct. 20, 2025) ("repeatedly involved in process of plugging and abandonment wells in…the Arkoma Basin in Arkansas"), *to id.* at 160:7-12 (explaining how Southwestern Energy left Arkansas and did not plug and abandon their wells, but sold to a smaller operator).

[44] Waste, defined under Section 2, included underground waste resulting from dissipation of reservoir energy or lost recovery, loss of beneficial use of gas, crude, or any petroleum product, and production in excess of reasonable market demand. *See* Laws of 1935, Ch. 72, Section 2(a), (b), & (c).

[45] Testimony of WELC Expert Thomas Alexander, Tr. 156:11-25 (Oct. 20, 2025).

[46] Testimony of WELC Expert Dwayne Purvis, Tr. 386:20-387:3 (Oct. 21, 2025).

legislation. *Sims v. Mechem*, 1963-NMSC-103, ¶11, 382 P.2d 183; *see also Public Serv. Co. of N.M. v. N.M. Env't Improvement Bd.*, 1976–NMCA–039, ¶7, 549 P.2d 638. In *Sims*, the Court emphasized that the Commission "must fully comply with its creating law to possess any jurisdiction in a matter." *Id.* Moreover, upon *de novo* judicial review of statutory construction, adopted rules will only be upheld if in keeping with the agency's express statutory authority or fairly implied as necessary to exercise those same powers. *N.M. Mining Ass'n v. N.M. Mining Comm'n*, 1996–NMCA–098, ¶15, 924 P.2d 741; *see also Marbob*, 2009-NMAC-013, ¶7 (concluding "statutory construction is not within the Commission's specialized expertise" and therefore, not entitled to special deference) (citing *N.M. Indus. Energy Consumers*, 2007-NMSC-053, ¶19, 168 P.3d 105).

The same statute which grants the Commission rulemaking authority also sets the outer bounds of that authority. *Gonzales*, 1990-NMSC-024, ¶11; Rule 1-075(R)(3) NMRA; NMSA 1978, § 70-2-12.2(C)(1). Thus, all rules promulgated by the Commission must serve and promote its twin duties to prevent waste and protect correlative rights. Here, the WELC changes, as acknowledged by their own witnesses,[47] create results which run contrary to the Commission's primary purposes, and the New Mexico Supreme Court has soundly rejected prior attempts by the Commission to ignore those mandates. *Marbob*, 2009-NMSC-013, ¶ 24. As in *Marbob*, the specific bonding language of Section 70-2-14, overrules WELC arguments that the Commission has broad powers to take any action which is "reasonably necessary" to enforce the provisions of the Act. *Id*., ¶¶14–15. The WELC Changes which promote waste and endanger correlative rights must be dismissed as *ultra vires* and outside the scope of the Commission's rulemaking authority. *Unite N.M. v. Oliver*, 2019–NMSC–009, ¶ 8, 438 P.3d 343; *see generally Santa Fe Expl. Co.*, 1992-NMSC-044, ¶¶ 26–27.

[47] The WELC Witnesses who were aware of the statutory charge of the Commission.

Finally, the setting of statewide policy is reserved to the Legislature. *Dona Ana Mut. Domestic Water Consumers Ass'n v. N.M. Pub. Regulation Comm'n*, 2006-NMSC-032, ¶ 7, 139 P.3d 166, 169; *State ex rel. Egolf v. N.M. Publ. Reg. Comm'n*, 2020-NMSC-018, ¶ 33, 476 P.3d 896. Previously, the Legislature paused at the devastating $800 million price tag on prior FA reforms under HB133 and elected to act in this session by allocating more of the Conservation Tax to the Reclamation Fund to address any perceived shortfalls in plugging orphan wells. Where Applicants now seek to alter the scheme expressly set forth in the Act, "any enhancements to the Commission's authority must come from the same legislative body that created the Commission in the first instance." *Marbob*, 2009-NMSC-013, ¶ 23.

D. CONCLUSION

On a general basis, most of the remaining regulations proposed increase regulatory burden on industry and the OCD. OCD is staffed by good people who take their jobs seriously. However, this hearing made clear that OCD is unable to fulfill its current duties. Despite public statements to the contrary prior to the hearing, OCD contended that redeeming bonds posted by operators are relatively easy to redeem after OCD plugs an orphaned well. However, in the five fiscal years prior to the hearing OCD barely ever redeemed a bond after plugging an orphan well. It was not until industry submitted its direct testimony pointing out the huge increases in FA were a pointless burden given OCD's historic failure to redeem bonds that OCD sent out letters to a few sureties concerning three of the repeat offenders on the Master Orphan Well Spreadsheet. Thus, even if Applicants and the Division satisfy their burden that portions of the WELC Changes are desirable policy, this Commission must ask whether meaningful enforcement of those WELC Changes is first feasible and at what cost to other Division duties, especially the ramping up that the Division will have to perform in order to be a good steward of the burgeoning Reclamation Fund..

II. PROPOSED FINDINGS OF FACT

A. Definitions under WELC Ex. 89-A ; NMAC 19.15.2.7

FOF 1. WELC seeks to combine definitions of approved temporary abandonment and temporary abandonment into a single definition. WELC Ex. 89-A at 19.15.2.7(A)(13); Ex. 89-A at 19.15.2.7.T(3).

FOF 2. Allison Marks, Director of Oil, Gas, and Minerals Leasing with the New Mexico State Land Office ("SLO") affirmed t her prior testimony in the 2018 FA rulemaking, Case No. 16078, explaining that the definition of temporary abandonment means inactive wells regardless of approved or expired status, and that "approved temporary abandonment" is a different term.[48]

FOF 3. NMSA 1978, § 70-2-14(A) provides for additional FA, in excess of the statutory cap, only for temporary abandoned wells in that status for more than two years. *Id.*[49]

FOF 4. Low producing well[50] is defined to be an oil or gas well that produces less than 180 days and less than 1,000 barrels of oil equivalent within a consecutive 12 month period. Ex 89-A , at proposed NMAC 19.15.2.7(L)(6).

FOF 5. The proposed definition of low producing well does not contain an express economic evaluation or consider whether the well or the lease is producing in paying quantities. *Id.*[51] The definition contains no exceptions for conditions outside of the operator's control in the

[48] *See* Allison Marks Testimony, Tr. 210:19-211:4 (Oct. 27. 2025) (WELC changes could cause great confusion); *id.* 212:25-213:8; *See* Oct. 20. 2025 Joint Exception to Recommendation at Exhibit A, Case No. 16078, Vol I, Tr. 9:7-13 & 10:18-20 (" 'temporary abandonment' is synonymous with the term 'inactive' [while] 'approved temporary abandoned' and 'approved temporarily abandoned status' is a different term."), ("'Temporary abandonment'…simply means that the well is inactive."); *id.* at 27:14-16 & 29:24-30:3 (explaining again that TA is synonymous with inactive, and operators required to post TA bonding after two years).

[49] *See also* Testimony of Oxy witness Tiffany Wallace, Tr. 24:4-25:7 (Oct. 27, 2025) (statute gives wells in initial TA status 2 years to remain under blanket bond); *Id.* at 25:12-25 (proposal to adjust FA levels with CPI can only apply to inactive wells and wells in TA status *more* than two years).

[50] During the hearing, Applicants proposed (and the parties and witnesses all used) the term "marginal well" to have the regulatory definition now proposed as a definition for low producing well. IPANM uses the term "low producing well" in these Findings but notes that the record citations concerning such wells will use the "marginal" terminology.

[51] Alexander, Tr. 156:22-25 (Oct. 20, 2025); Wrinkle, Tr. 195:4-20 (Oct. 24, 2025).

proposed definition of low producing well, and now only a limited and administratively burdensome waiver exists. *Id.*[52]

FOF 6. OCD agrees that the Commission could adopt a lower number of 700 BOE to be consistent with the LFC report. Powell, Tr. 221:19-222:1 (Oct. 24, 2025).

FOF 7. Under the metrics proposed by Applicants for low producing wells based on 2024 production results, there are 2,200 low producing wells in New Mexico.[53]

FOF 8. WELC concedes that low producing wells contribute $55 million to $1 billion dollars to the state economy on an annual basis.[54]

FOF 9. The LFC Report analyzed production levels of 13,134 wells from 2007-2025 and identified the average production prior to plugging in "recent years" to be "roughly two barrels of oil equivalent (BOE) per day." WELC Ex. 4 at 0111, Chart 2. Production of 2 BOE per day is approximately 730 BOE per year.

FOF 10. Wells can be economical at much lower levels of production than 2 BOE per day, depending on the operator, market conditions, and well performance.[55]

B. Changes to Enforcement and Compliance in WELC Exhibit 89-B, NMAC 19.15.5.9

FOF 11. Applicants propose removing the noncompliance allowance under Part A(4) of 19.15.5.9 NMAC. *See* WELC Exhibit 89-B.

FOF 12. Industry witnesses refer to this change as the "death penalty" provision because removal of the existing allowance is administratively and operationally unworkable.[56]

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[52] Alexander, Tr. 135:9-12, 247:3-6 (Oct. 20,2025); Purvis, Tr. 497:4-498:4; McGowen, Tr. 203:3-24 (Oct. 29, 2025); *see also* WELC Ex. 89-C .
[53] OCD Exhibit 16, WELC Exhibit 40
[54] Purvis, Tr. 396:3 & 397:3-16 (Oct.21,2025); *id.* Tr. 442:16-443:5.
[55] Wrinkle, Tr. 195:4-20 (Oct. 24, 2025); Winchester, Tr. 39:2-16 (Nov. 3, 2025); Murphy, Tr. 156:25-157:7 (Nov. 4, 2025).
[56] Winchester, 26:3-8 (Nov. 3, 2025); Arthur, Tr. 178:1-4, 187:14-188:7, 196:7-197:4 (Oct. 28, 2025).

FOF 13. For example, the presence of just one (1) well that is not in compliance with now stricter provisions of 19.15.25.8 NMAC, *see* WELC Ex. 89-E, renders the operator out of compliance as to all wells.

FOF 14. The rule change leads to the scenario where the status of a single well jeopardizes an operator's entire ability and authority to operate remaining wells.

FOF 15. There is no evidence that operators who have few FA violations but are primarily in compliance with FA requirements are likely to orphan wells.

C. FA Reform in Other States

FOF 16. Applicants point to FA reforms in other states like Texas in 2002, North Dakota in 2010, and Arkansas in 2018, where bonding was imposed or increased.[57]

FOF 17. The Texas *Boomhower* study upon which Applicants rely examined the 2002 initial imposition of bonding levels, in which blanket bonds were enforced for the first time ranging from $25,000 to $250,000.[58]

FOF 18. *Boomhower* concluded that the adoption of initial blanket bonds in Texas did not have a material effect on the statewide amount of production.[59]

FOF 19. While the *Boomhower* article reports a slight decrease in orphaned wells, the underlying data is not publicly available, the methodology has not been applied to New Mexico, the article has not been peer reviewed, and Boomhower's conclusion may be discrete to the initial imposition of plugging bonds and not applicable to the increases in existing FA requirements sought by Applicants in this rulemaking.

[57] Peltz, Tr. 845:16-23 & 846:8-10, 899:12-19 (Oct. 22, 2026).
[58] Peltz, Tr. 900:25-901:9 (Oct. 22, 2025); Morgan, Tr. 304:9-10, 683:10-684:12 (Oct. 21, 2025); Purvis, Tr. 516:25-517:17 (Oct. 21, 2025).
[59] *Id.*

FOF 20. In North Dakota, although bonding increases from $10,000 to $20,000 in 2010 did not have a significant effect on production, that change also occurred at the beginning of large-scale development of the Bakken shale obscuring production offsets.[60]

FOF 21. In Arkansas, the increase in FA applied only to low producing gas wells on transfer and was capped at a cost of $30,000 per well, which is not analogous to FA increases proposed by Applicants.[61]

FOF 22. After Colorado implemented FA increases, the number of orphan wells doubled and then quadrupled and the bonding reforms accelerated the orphaning of wells. Peltz, Tr. 871:22-872:5.

FOF 23. Bonding reforms like Applicants' Proposed Rules enacted in California, Alaska, and Colorado led to delays, early abandonment, businesses exiting California and Colorado, increased concerns regarding insolvency of operators and stranded assets, and consolidation of wells and associated risk into fewer operators. Dan Arthur, Tr. 204:4-25 (Oct. 28, 2025).

FOF 24. Prior to his work in this rulemaking, WELC expert Dwayne Purvis performed "analyses" of California, Colorado, Ohio, Pennsylvania, West Virginia, and Wyoming after those states revised their FAs laws or regulations. Purvis Tr. 392: 4-16 (Oct. 21, 2025).

FOF 25. Applicants' intent in proposing $150,000 single well bonding on certain wells is "to provide [FA] to protect the state." Purvis Tr. at 432:21-23 (Oct. 21, 2025).

FOF 26. There is no record evidence that links imposed or increased bonding requirements for oil and gas wells to increased rates of bond recovery to cover any portion of the state's cost for plugging and abandoning wells in the absence of an operator willing and able to do so.

[60]Morgan, Tr. 683:10-684:12 (Oct. 21, 2025)
[61] Peltz, Tr. 900:21-901:9 (Oct. 22, 2025); Alexander, Tr. 149:2-17 (Oct. 20, 2025).

FOF 27. There is no record evidence for states imposing or increasing bonding requirements for oil and gas wells that experienced a net (or any) decrease in public funds used to plug and abandon orphaned wells and Applicants did not attempt to quantify "how the taxpayer [is] going to be protected by this rulemaking." Purvis Tr. :385-386: 10 & 390: 5-21 (Oct. 21, 2025).

FOF 28. There is no record evidence which supports that states increasing bonding requirements on oil and gas wells experienced a lower incidence of wells abandoned by the operator for the state to plug and abandon. Following the Colorado FA rulemaking, orphan well counts increased from 236 to 941 by 2024, and were reported to approach 1,200 orphan wells in 2025. At the same time, statewide FA fell by $4 million almost immediately, with an additional $70 million still to be refunded to larger operators. Orphaned well sites in Colorado increased after the 2022 rulemaking from 500 to 2,000. Direct Testimony of Sam Bradley, 4:1-9.

FOF 29. The Colorado Rulemaking increased financial pressure on operators without reducing or addressing the orphan well problem. Gilstrap, Tr.178:15-25, 179:1-4 (Nov. 3, 2025).

FOF 30. For example, one small operator in Colorado was not able to comply with the revised FA obligations, which led to violations and revocation of operating authority, and as a result 107 wells will become the responsibility of the State of Colorado for plugging and reclamation. Gilstrap, Tr. 179:8-14 (Nov. 3, 2025).

FOF 31. In Utah blanket bonds are a privilege, rather than a right, which is distinct from New Mexico's FA framework under Section 70-2-14. Peltz, Tr. 878:9-14 (Oct. 23, 2025).

FOF 32. New Mexico competes with Texas and Oklahoma, and many operators testified that their costs to bond and to plug are lower in those states. *See*, *e.g.* Nabors, Tr. 111:2-16 & (Nov. 6, 2025), Harvard, Tr. 71:25-72:6 (Nov. 6, 2025); Mitchell, Tr. 180:23-25 & 182:16-183:16 (Oct. 31, 2025); Murphy, Tr. 207:11-16 , 207:9-16 (Nov. 4, 2025).

FOF 33. Reasonable bonding limits consistent with neighboring states ensures that New Mexico remains a competitive market for development. Murphy, 215:23-216:1 (Nov. 4, 2025).

D. Error to Rely on OCD Cost Basis to set FA levels-

FOF 34. Applicants propose increasing one well plugging FA to $150,000 per well, striking all references which correlate plugging FA to well depth WELC Ex. 89-B at Part C(1) of 19.15.8.9 NMAC,

FOF 35. Applicants propose to strike the existing tiered blanket plugging FA, *see* Parts (C)(2)(a)-(d) of NMAC 19.15.8.9, and increase all blanket plugging bonds to the statutory cap of $250,000.

FOF 36. During the 2018 FA Rulemaking, the Commission was cautious to balance increases in FA with effects on operators.[62]

FOF 37. Applicants rely on the LFC Report and OCD plugging costs[63] of an average $163,000 to plug orphan wells as a reliable indicator of the "amount sufficient to reasonably pay the cost of plugging the well" under Section 70-2-14.

FOF 38. Applicants' expert Adam Peltz assisted and advised the LFC in preparing its report, but no input from industry members was sought or permitted by LFC in drafting or issuing the report. *Compare* Peltz, Tr. 857:13-18, *to* Rep. Murphy, Tr.141:22, 142:16-18 & 161:1-3 (Nov. 3, 2025).

FOF 39. Industry is responsible for 95% of the wells plugged every year in the State of New Mexico. Industry plugs wells at a different point than the wells that become orphaned and experience "years and years of neglect" prior to being plugged by OCD. Powell, Tr. 212:7-15 (Oct.

[62] *See* Joint Motion on Recommendation, Exhibits A-C (transcript of Case No. 16078 hearing and deliberations).
[63] *See* OCD Exhibit 17, Master Orphan Well Spreadsheet (portraying costs for about 300 wells plugged by OCD).

24, 2025); Tr. 69:13-17 (Oct. 27, 2025).

FOF 40. Industry single well plugging costs are much lower than OCD's costs and correlate to well depth. Powell, Tr. 211:23-212:6 (Oct. 24, 2025); Mitchell, Tr. 197:19-198:5 (Oct. 31, 2025) (Longfellow plugs wells for about $30,000); Murphy, Tr. 204:3-8 (Nov. 4, 2025) (Strata plugs and reclaims wells at $100,000 to $120,000); Armstrong, Tr. 98:25-99:11 (Nov. 3, 2025) (Armstrong plugged and reclaimed four wells in the past two years at an average cost of $120,000).

FOF 41. Well depth is a significant factor to plugging costs.[64] Applicants did not consider or analyze plugging costs associated with the depth of a marginal wells in relation to their proposed new bonding requirements, which is a fact required for consideration in setting single well bonds under Section 70-2-14(A). Peltz, Tr. 879:11-22 (Oct. 23., 2025).

FOF 42. The LFC Report cites a lack of oversight, quality, and price competition as contributing to OCD rising plugging costs. WELC Ex. 4 at 0128-132. OCD plugging costs have outpaced regular oilfield inflation by a magnitude of eight times, rising 443% in the past five years to $43.85 per foot.. WELC Ex. 4 at 0117 & 0121. OCD plugging costs likely include extreme outliers like the Buckskin Federal No. 2, which cost $5.2 million to plug, which are not reflective of normal plugging operations.[65]

FOF 43. In comparison, Texas plugging costs average $15.60 per foot, and generally range from $6-$20 per foot in FY2024, excluding emergencies as outliers. WELC Ex. 4 at 0121 & 0146; *see also id.* at 0109 (reporting rising incidence of well emergencies).

FOF 44. One of OCD's examples, the Coll No. 1, was plugged in 1953 in accordance with

[64] Arthur, Tr. 187:14 – 188:7(Oct. 28, 2025); Diede, Tr. 107:14-108:4 (Oct. 23, 2025).
[65] *See* OCD Ex. 17 (line 36) Testimony of Loren Diede, Tr.101:24-102:19 (Oct. 23, 2025) (OCD witness unable to say with certainty whether the $5.2 million cost of plugging the Buckskin Federal No. 2 included in costs used to calculate average of $163,000); *id.*, Tr. 92:4-92:14 & 113:9-113:18 (Oct. 23, 2025); Diede, Tr. 113:19-114:3 (Oct. 23, 2025) (anticipating a "high percentage" of wells plugged by OCD experience less difficulty); Arthur, Tr. 201:14-25. (Oct. 28, 2025).

regulations then in place. Applicants' Proposed Rules will not prevent or address scenarios like the Coll No. 1. Diede, Tr. 98:25-99:13 & 100:4-100:9 (Oct. 23, 2025).

FOF 45. Not all orphan wells are alike. Diede, Tr. 97:21-98:6 (Oct. 23, 2025).

FOF 46. Opinions offered by OCD witnesses regarding environmental remediation costs centered on facilities like tank batteries rather than plugging wells, and relied on extreme outlier examples in the millions. This limited sample size prevents an accurate average cost from being determined. Further, where with past invoices demonstrate overbilling, OCD agrees that further inquiry is needed. Romero, Tr. 38:13-40:18, 63:1-7; 64:3-14 (Oct. 24, 2025)

FOF 47. In opining as to the economics of marginal and low-producing wells, OCD witness Justin Wrinkle did not use or compare average P&A costs by operators. Justin Wrinkle, Tr. 180:14-24 (Oct. 24, 2025).

FOF 48. None of Applicants' witnesses have direct experience operating or plugging wells in New Mexico. *See, e.g.*, Peltz, 856:9-22 (Oct. 23, 2025).

FOF 49. Applicants' Proposed Rules do not address reclamation and remediation costs associated with orphaned tank batteries and facilities. WELC Ex. 4 at 0117; WELC Ex. 89-C .

FOF 50. OCD explained the Division's prioritizing of plugging orphan wells with the biggest "surface impact," Powell, Tr. 68:15-18, but FA is linked by statute to plugging, not reclamation or remediation costs. Surface reclamation costs are not indicative or contribute to downhole plugging costs. Powell, Tr. 68:15-18 (Oct. 27, 2025). Remediation costs are outside the scope of Applicants' proposal and the bond required under the Oil and Gas Act. Romero, Tr. 79:611 (Oct. 24, 2025).

E. FA does not prevent or plug orphan wells.

FOF 51. Neither Applicants nor OCD performed a quantitative analysis examining or

determining the cause of abandonment for wells orphaned and listed on OCD Exhibit 17 ("MOSS").

FOF 52. Applicants' witnesses claim that reforming and increasing FA levels will "incentivize" operators to timely plug and abandon wells, thus "prevent" orphan wells.

FOF 53. Ten (10) operators account for 75% of the orphaned wells on OCD's MOSS.[66]

FOF 54. The two operators with the largest numbers of orphan wells, Ridgeway Arizona and Cano Petro, were in compliance with FA requirements prior to bankruptcy.[67]

FOF 55. Without the "incentive" of punitive increases in FA proposed by Applicants, industry already plugs 95% of wells in the state.

FOF 56. FAs are just one incentive for operators to plug wells. Arscott, Tr. 240:17-241:19; Purvis, Tr. 380:4-8.

FOF 57. OCD does not have a demonstrated history of pursuing FA for orphaned wells. Winchester, Tr. 26:10-28:12(Nov. 3, 2025); OCD Reclamation Reports, IPANM Exs. 11-14 & 43. Over the past 7 years, OCD has only collected $249,722, just 1.67% of the division's total plugging costs. Rebuttal Testimony of Jim Winchester, 5:9-10. OCD Annual Reclamation Fund Reports show that the OCD spent $15 million plugging 193 wells from 2019 to 2024, but recovered only $250,000 from FA forfeitures. WELC Peter Morgan, Tr. 534:111 (Oct. 21, 2025). The LFC Report analyzed reclamation fund reports and found that OCD recovered $0 in FA forfeitures in 3 out of 5 years, and had not successfully redeemed any FA since 2018. WELC Ex. 4; Morgan, Tr. 534:1-11 (Oct. 21, 2025).

FOF 58. EMNRD Deputy Secretary Ben Shelton testified before the Legislative Finance Committee in June 2025 that the "juice just wasn't worth the squeeze." Winchester, Tr. 26:10-

[66] Winchester, Tr 29:9-30.5 (Nov. 3, 2025); IPANM Dem. Ex. 9.
[67] OCD Ex. 29, Gilstrap, 190:20-191:8 (Nov. 4, 2025);Winchester, Tr. 34:25-36:3 (Nov. 3, 2025)

28:12 (Nov. 3, 2025)

FOF 59. OCD witnesses testified to the difficulty in pursuing and recovering forfeited FA from surety companies, which can only occur after the costs of plugging have been incurred.[68]

FOF 60. WELC admits that, as a consequence of Applicants' Proposed Rules, more small operators who cannot afford increased bonding requirements will abandon marginal wells, accelerating the amount of orphan wells in New Mexico.[69]

FOF 61. OCD assumes that increased FA levels will "deter undercapitalized operators" because operators who comply with new FA requirements will be better prepared to P&A wells. OCD Witness Rosa Romero, Tr. 60:4-61:9 (Oct. 24, 2025).

FOF 62. When operators acquire well packages with mixed age-assets, wells are evaluated for plugging. Harvard, Tr. 83:13-20 (Nov. 6, 2025) (plugged three wells after acquiring package).

FOF 63. Operators have the best information to judge if a well is economic and the demonstrated preference of operators for wells that have become uneconomic is to plug. Harvard, Tr. 85:16-86:11 & 88:4-15(Nov. 6, 2025); Nabors, Tr. 109:8-24 (Nov. 6, 2025).

FOF 64. Operators generally plan a year or more in advance to budget, allocate capital reserves, and manage cash flows to plug wells. Oxy has an entire department of people dedicated to evaluating lower-producing wells. Wallace, Tr. 123:15-124:12 & 125:3-8 (Oct. 28, 2025); Harvard, Tr. 86:12-20 & 87:7-23(Nov. 6, 2025).

FOF 65. SLO has successfully pursued lessees of record to P&A wells through its accountability and enforcement programs. Allison Marks, Tr. 221:19-222:19 (Oct. 27, 2025).At the time of the hearing, the SLO had required lessees of record to P&A 746 state wells, and that many of those cases are resolved without pursuing a lawsuit. Marks, Tr. 222:1-22 (Oct. 27, 2025).

[68] Powell, Tr. 42:5-22 (Oct. 27, 2025).
[69] Peltz, Tr. 842:13-843:16 (Oct 22, 2025).

FOF 66. OCD does not hold the opinion that Applicants' proposal will result in more or easier recovery of FA, just that ***if*** forfeiture of FA pursued potentially more funds flow into Reclamation Fund. Justin Wrinkle, Tr. 192:310 (Oct. 24, 2025).

FOF 67. OCD does not bond federal or tribal wells, such that Applicants' and OCD's alleged number of affected wells by the Proposed Rules is likely significantly less, because federal and tribal wells are exempted from potential increases in FA. Powell, Tr. 43:16-44:15 (Oct. 27, 2025).

FOF 68. Strata Production Company has operated wells in New Mexico since the 1980s and has plugged 38 wells, and 100% of their own wells. Murphy, Tr. 131:7-8 & 132:21 (Nov. 4, 2025).

FOF 69. At the end of the day, bonds do not plug wells, operators and contractors plug wells, either by industry directly or with industry monies in the Reclamation Fund, or rarely, as forfeited and recovered FA. Murphy, Tr. 132:5-8 & 135:21-22 (Nov. 4, 2025). There was no evidence presented that bonding protects the taxpayer. Increasing bond levels creates hardship only for compliant operators. Winchester, 28:6-12 (Nov. 3, 2025).

FOF 70. Applicants' increases in FA levels will increase the annual premium amounts for some operators in the range of $3-$5million, resulting in more capital spent on maintaining surety bonds, rather than plugging wells. Murphy, 220:8-222:16 (Nov. 4, 2025).

FOF 71. Increasing FA alone will not "prevent" orphan wells. FA potentially offsets OCD's costs if an operator does not plug a bonded well. Armstrong, Tr. 151:7-19 (Nov. 3, 2025).

FOF 72. Bonds do not shift risk, they function as a financial guarantee. But the guarantee is not automatic or comprehensive, typically the state must initiate a claims process after plugging the well which can be time-consuming and uncertain. Gilstrap, 182:2-15 (Nov. 3, 2025).

FOF 73. In the case of a surety bond, the state must first declare the operator in default and then initiate a formal claims process with the surety. The process can involve documentation of non-compliance, negotiation or dispute resolution, legal proceedings if the surety contests the claim. It can take months, years, during which the wells may remain unplugged or the state is out-of-pocket on funds already expended. Gilstrap, 185:14-21 (Nov. 3, 2025).

FOF 74. Increases in bonding amounts can lead to more orphan wells, like in Colorado, because operators who cannot meet new thresholds may walk or go under. Gilstrap, 186:25, 187:1-7 (Nov. 3, 2025).

FOF 75. Comparing OCD Exhibit 17 to OCD Exhibit 29, demonstrates why a surety's evaluation cannot function as a proxy for risk of orphaning: Eight of the top ten operators of orphan wells were able to obtain surety bonds. OCD Ex. 17, OCD Ex. 29, Gilstrap, 190:24-5, 191:1-5 (Nov. 3, 2025).

FOF 76. Annual premiums of $562,000 to $787,000 on a $22.5 million bond are sunk costs that never go to future plugging expenses. Insurance-based products like One-Nexus use premiums to pre-fund plugging costs. Gilstrap, 206:13-19 (Nov. 3, 2025).

FOF 77. Insurance based products also allow an operator to contribute over time to future plugging expenses on a per-barrel rather than lump sum basis, which better protects the state in the event the operator defaults. Gilstrap, 207:4-9 (Nov. 3, 2025).

F. WELC Expert Theory of "HOLDBACK" Should be Disregarded.

FOF 78. No state has adopted Mr. Purvis's holdback methodology as a basis for setting levels of FAs for plugging. Purvis, Tr. 392:4-16.

FOF 79. Applicants' economic rationale for the FAs portion of the rulemaking—Mr. Purvis's holdback methodology of which he is the "sole author"—has never been peer reviewed. Purvis, Tr. 391:15-392:3 (Oct. 21, 2025).

FOF 80. Applicants presented no evidence and performed no analysis to determine the "reduction in ultimate recovery" of oil and gas as a result of the financial burdens imposed on operators by the proposed rulemaking. Purvis, Tr. 445:18-24 & 446:14–447:1.

FOF 81. Applicants did not seek to determine, and there is no record evidence, "whether any potential reduction in ultimate recovery or financial impacts on operators would be offset by any potential economic benefits derived from the increased FA." Purvis, Tr. 447: 7-16.

FOF 82. Applicants performed no analysis and presented no evidence that, given the net reduction in ultimate recovery the proposed rulemaking would create, the rulemaking would prevent waste. Purvis, Tr. 449:13-19.

G. Applicants' Proposed Rules Disproportionately Affect Smaller Operators without Economic Basis.

FOF 83. The costs of the rulemaking will primarily fall on smaller companies. Purvis, Tr. 481:13-25; 484:8-18; WELC Ex. 30 (Purvis) at 44; Peltz, Tr. 834:19-835:1 & 836:23-837:9 (Oct. 22, 2025).

FOF 84. New Mexico's current bonding requirements for Longfellow's 100 wells is already 2.5 times that of its 1,300 Texas wells. David Mitchell, Tr. 182:22-183:16 (Oct. 31, 2025).

FOF 85. Under Applicants' proposed increases, however, Longfellow anticipates bonding to increase by $3.5 million for marginal wells, and around $15 million under the "high risk portfolio" requirement. Mitchell, Tr. 189:23-190:23 (Oct. 31, 2025).

FOF 86. Where total increases in FA anticipated to exceed $15 million, an additional capital expenditure of $15 million would disproportionately affect small operators. Alexander, Tr. 148:18-22; 149:2-10; & 185:1-186:3 (Oct. 20, 2025). Applicants are unable to say how many companies the proposed rulemaking will drive out of business or simply out of New Mexico to

invest and operate elsewhere.[70] Although they admit the proposed rules will drive companies out of business, Applicants' have not introduced data or performed an analysis regarding how many wells or what volume of production might result under implementation of the Proposed Rules. Alexander, Tr. 226:18-227:2 (Oct. 20, 2025). Applicants' changes to FA are "unworkable," Arthur, Tr. 196:7-197:4 (Oct. 28, 2025), and will unnecessarily increase bonding for wells that pose the least risk and are most prevalent, resulting in "driv[ing] business and tax revenue out of the state." *Id.*; *see also id.* at Tr. 199:3-13 (predicting "devastating impact").

FOF 87. Applicants are unable to predict how many wells would be required to bond at $150,000 each, or what the cumulative burden under Applicants' proposed rules would be on operators. Alexander, Tr. 252:4-17 & 226:18-227:2 (Oct. 20, 2025).

FOF 88. A reduction in the production threshold of low producing wells, from 1,000 BOE to 750 BOE, would reduce the impact on production by from 2.3% to 0.6%. Tiffany Wallace, Tr. 48:19-49:15 (Oct. 28, 2025); *see also* WELC Exhibit 52.

FOF 89. Applicants offered no explanation why otherwise active, compliant wells should be bonded at an additional $150,000 under the operator portfolio, especially when 50% of the state's operators will be affected. Peltz, Tr. 35:12-38:18 (Oct. 23, 2025).

FOF 90. Applicants recommend that affected operators just "plug this one," even though prematurely plugging wells will create waste when proceeding to waterflood recovery and later stages of recovery will require drilling additional wells at each production profile in the life of the field. Peltz, Tr. 40:15-41:13 (Oct. 23, 2025).

FOF 91. Oxy anticipates increases in bonding requirements under Applicants' changes for low producing wells by $50 to $60 million, and under the portfolio FA, would be required to pay

[70] Purvis, WELC Ex. 30 at 44, Armstrong, Tr. 105:6-106:18 (Nov. 3, 2025) Hanagan, 215:11-19, 217:16-18 & 221:16-19 (Oct. 31, 2025).

another $22 to $23 million in bonding. Wallace, Tr. 52:17-56:23 (Oct. 28, 2025).

FOF 92. The SLO has proposed a new rule requiring additional bonding on state leases, which could lead to double-bonding on state wells. Allison Marks, Tr. 213:9-214:4 (Oct. 27, 2025).

FOF 93. Because New Mexico plugging bonds are non-cancellable and conditioned on the plugging of the well, funds securing bonds are not available until the well has been plugged, remediated, inspected, and released by OCD. Alexander, Tr. 151:13-24. Non-cancellable bonds magnify the risk of exposure to the surety, tie up more operational capital for operators, and leave less for operations and plugging. NMOGA Emerick, Tr. 121:10-124:3 (Oct. 29, 2025).

FOF 94. Applicants' proposed increases in FA would require the company to reevaluate wells on an economic basis and higher FA levels will consume capital and thereby limit development, workovers, restoration of production, and even plugging plans. Mitchell, Tr. 191:13-192:4 (Oct. 31, 2025); Nabors, Tr. 111:2-16 (Nov. 6, 2025).

FOF 95. Small and medium-sized operators are most likely to experience collateral requirements, which will only increase under FA levels proposed by Applicants. Emerick, Tr. 127:14-127:17 (Oct. 29, 2025); Armstrong. Tr. 105:6-106:18 (Nov. 3, 2025).

FOF 96. Applicants propose that the increased one-well plugging FA of $150,000 is effective immediately as to low producing wells on change of operator or transfer. WELC Ex. 89-C at Part D(1) of 19.15.8.9 NMAC.

FOF 97. Applicants have also proposed changes that require bonding to be in place prior to acquiring wells. WELC Ex. 89-C at Part A of 19.15.8.9 NMAC.

FOF 98. Raising FA amounts on marginal or low producing wells will impact transfers and changes of operators. Dan Arthur, Tr. 192:13-23 (Oct. 28, 2025).

FOF 99. Many smaller operators acquire wells in packages from larger companies that no longer want to operate the wells for a myriad of reasons. Jeff Harvard, Tr. 72:21-74:1 (Nov. 6,

2025); Kyle Armstrong, Tr. 99:12-100:25, 101:1-20, & 110:21-111:25 (Nov. 3, 2025).

FOF 100. While wells in these packages may not be economically viable for larger or "major" companies to operate, independent operators can take over, rework or recomplete the wells, and keep the wells operating and profitable. Harvard, Tr. 72:21-74:1 (Nov. 6, 2025); Armstrong, Tr. 101:1-20 (Nov. 3, 2025).

FOF 101. Purchasers of low producing wells can significantly increase production, increasing revenues in taxes to the State of New Mexico and increasing royalties for interest owners. Harvard, Tr. 74:2-75:8 & 75:9–76:21(Nov. 6, 2025); Armstrong, Tr. 101:1-20 (Nov. 3, 2025). Conversely, the premature plugging of those marginal wells will result in losses of revenue to the State, private mineral owners, and working interests partners in the well. Armstrong, Tr. 104:10-105:5 (Nov. 3, 2025).

FOF 102. Under Applicants' proposed changes, some wells in such packages will require single well bonds prior to acquiring the wells, which will significantly increased the acquisition cost of the package. Mitchell, Tr. 186:5-187:17 (Oct. 31, 2025); Harvard, Tr. 77:19-78:7 (Nov. 6, 2025). Operators report already experiencing a chilling effect on transactions because of Applicants' rulemaking, discouraging buyers from acquiring packages. Arthur, Tr. 212:13-20 (Oct. 27, 2025); McGowen, Tr. 24:5-9 (Oct. 28, 2025); Ezzell, Tr. 50:17-51:1 (Nov. 4, 2025); Hanagan, 216:5-15 (Oct. 31, 2025). Mitchell, Tr. 186:5-187:17 (Oct. 31, 2025).

FOF 103. Applicants' proposed changes to Part A of NMAC 19.15.8.9 would turn the Oil Conservation Division into a "gatekeeper" over oil and gas acquisitions and transactions in the state; leading to increased legal review, delays closing deals, higher overhead for operators, and expanded internal compliance staffing, which will reduce access to capital for small and mid-size operators. Andrea Felix, Tr. 61:5-15 (Oct. 31, 2025); Dan Arthur, Tr. 203:6-204:3 (Oct. 29, 2025).

FOF 104. Applicants' proposed changes to Part A of 19.15.8.9 requiring bonding prior to

acquisition does not adequately address transactions where more than one entity is acquiring a well or package of wells. Dan Arthur, Tr. 56:3-58:1 (Oct. 29, 2025).

FOF 105. Applicants' proposals requiring bonding prior to acquisition or transfer will discourage participation in asset acquisition, farmout agreements, and result in premature plugging because small operators are squeezed out of the picture. Arthur, Tr. 203:6-204:3 (Oct. 29, 2025).

FOF 106. As small operators are eliminated, larger operators are not going to be able to convert low-producing assets because of their larger overhead, which result in viable wells being plugged with recoverable hydrocarbons. Arthur, Tr. 203:6-204:1 (Oct. 29, 2025); Armstrong, Tr. 104:10-105:5 (Nov. 3, 2025).

FOF 107. OCD Deputy Director was surprised that one of the smaller, responsible operators like Merrion Oil & Gas with a high reputation in the industry and community would be adversely affected by the Proposed Rules, an example of an unintended consequence of adopting arbitrary production thresholds. Powell, Tr. 35:12-17. In fact, because Merrion has been diligent in taking care of its low-producing and marginal wells, it has not needed to plug any wells in the past 3-4 years. Powell, Tr. 38:22-39:6 (Oct. 27, 2025).

FOF 108. Increase bonding amounts at that level would likely force Armstrong Energy to stop operating in New Mexico, after almost a half-century of stewardship and prudent, responsible operation. Armstrong, Tr. 105:6-106:18 (Nov. 3, 2025). At a minimum, the impact on cash flow and capital would require Armstrong cut jobs. Tr. 106:19-107:13 (Nov. 3, 2025).

FOF 109. Applicants' Proposed Rules will discourage or eliminate small operators from acquiring marginal wells due to the prohibitive bonding costs, especially with the looming portfolio effect. Armstrong, Tr. 110:21-111:25 (Nov. 3 2025).

FOF 110. WELC Expert Dwayne Purvis' dismissal of the role of small operators, and the impact of those companies on the state and local communities, demonstrates reckless disregard for

the livelihoods of thousands of New Mexicans. Armstrong, Tr. 121:12-122:9.

FOF 111. Smaller and independent operators are responsible for maintaining the infrastructure during down times and remain active in the state when majors exit. Fifteen years ago, at least 7 of the 8 majors had little to presence in New Mexico. Again, in the late 1980s and early 1990s, all the major companies like Chevron and Exxon left New Mexico, and only returned after independent field discoveries introducing the shale boom. Murphy, Tr. 147:11-21 & 149:8-20 (Nov. 4, 2025); *see also* Murphy, Tr. 161:23-25 & 163:6-9 (Nov. 4, 2025) (explaining that the 97% of statewide production would not exist without the small operator discovering the play).

H. Applicants' Ignore that "Low-Producing" Wells have Value and fail to demonstrate that Low-Producing Wells at greater risk of becoming orphan wells.

FOF 112. Applicants' reliance on arbitrary production thresholds to determine beneficial use ignores operational value, regulatory infrastructure-related functions, leasehold maintenance, reservoir management, and environmental compliance purposes that a low producing well may serve. Dan Arthur, Tr. 185:8-15 (Oct. 28, 2025).

FOF 113. Low producing wells do not experience releases or environmental compliance issues at a higher frequency than other active, producing wells. Romero, Tr. 40:19-41:4 (Oct. 24, 2025).

FOF 114. OCD's position that remediation and reclamation noncompliance act as a predictor of orphan wells was based on one staff member's experience from 2022-2025, but not on a comprehensive review of OCD data, operator history, the MOSS, or enforcement actions. Romero, Tr. 71:16-72:12 & 70:11-71:6.

FOF 115. The number of reported incidents is even across all categories of wells, including low producing and No Beneficial Use wells. Romero, Tr. 68:15-68:21. Further, OCD analysis of incidents does not review severity of the incident or release with respect to well category. Romero,

Tr. 97:20-98:13 (Oct. 24, 2025).

FOF 116. Marginal inactive wells tend to be low risk and can be managed without environmental incident. Arthur, Tr. 220:4-12 (Oct. 28, 2025). TA wells can be reactivated and have less risk than active producing wells. Marginal, inactive, and TA wells have future benefit beyond production or injection in primary recovery. Arthur, 220:4-12 (Oct. 28, 2025).

Evaluating the value and future potential of a well "really, really depends on a – on a well by well basis." Wrinkle, Tr. 195:4-20 (Oct. 24, 2025); Winchester, 38:3-8 (Nov. 3, 2025). Many factors are in play in evaluating the benefits and use of a well, including well location, field, reservoirs and stacked plays, age of the well, condition of the well. Alexander, Tr. 194:2-11 (Oct. 20, 2025). In evaluating wells, capital expenditures and operating expenses are distinct, with allocation affecting the average lease expense and resulting economics on a well basis. Wrinkle, Tr. 179:25-80:7.

FOF 117. Many of the $1,900 costs OCD Witness Justin Wrinkle relied on were lease operating expenses shared across many or several wells, and some expenses are not common to most wells. Winchester, 38:3-8 (Nov. 3, 2025). IPANM members reported monthly well cost figures ranging from $600 to $1300 per month for marginal wells, because smaller and independent operators have less overhead and more expertise in lower-producing wells, and can therefore operate a marginal well more efficiently. Winchester, 39:2-16 (Nov. 3, 2025); Justin Wrinkle, Tr. 167:20-168:9 (Oct. 24, 2025).

FOF 118. Lease operating expenses are highly dependent on a well's characteristics: kind, age, kind of gas, oil. Wrinkle, Tr. 168:20-24 (Oct. 24, 2025).

FOF 119. Even assuming OCD Witness Justin Wrinkle's operating expense figures, at $65 per barrel, less a $1.35 barrel marketing fee, a one (1) barrel-per-day well still breaks even. Winchester, 39:2-16 (Nov. 3, 2025).

FOF 120. Operators regularly plan to recomplete and/or workover "low producing" wells. Jeff Harvard, Tr. 84:11-85:6 (Nov. 6, 2025). OCD agrees that "[A]nything is possible with technology advances" including the ability for industry to rework and produce from wells that are 50-100 years old. Diede, Tr. 120:5-13 (Oct. 23, 2025).

FOF 121. OCD knows that low producing wells may be maintained while new wells are drilled, and after new wells are online and producing, it is common for the operator to go back and plug—not orphan—the older well. Justin Wrinkle, Tr. 164:1-24 (Oct. 24, 2025).

FOF 122. New Mexico recently adopted the Well Repurposing Act for carbon and other energy storage, which Applicants' proposal did not consider. Alexander, Tr. 174:12-15 (Oct. 20. 2025); *see also* NMSA 1978, §71-9A-1 *et seq*.

FOF 123. Energy capture, carbon storage, produced water disposal, geothermal energy production, and bio-fuel disposal are all viable, beneficial uses for marginal, low producing, and possibly orphan wells. Alexander, Tr. 175:5-7 (Oct. 20, 2025); Wrinkle, 199:8-201:14 (Oct. 24, 2025); Arthur, 268:22-3 (Oct. 28, 2025); and, id. at 298:24-269:2.

FOF 124. It is more economic to use existing, drilled wells that test safely than to drill new wells. OXY witness Tiffany Wallace, Tr. 22:23-23:4 (Oct. 28, 2025). Once a well is plugged, that resource is permanently lost. Rebuttal Testimony of Mike Cantrell, 2:20-3:8. Premature plugging eliminates future and alternate uses for vertical wells, like carbon capture, injection, and energy storage and generation. Armstrong, Tr. 112:16-113:17 (Nov. 3, 2025).

FOF 125. Marginally producing wells contribute a meaningful share of national production and significant portions of New Mexico's oil and gas portfolio and are not necessarily at end-of-life. NMOGA Dan Arthur, Tr. 193:1-15)(Oct. 28, 2025). Low producing wells are low-risk, high-option value assets that contribute $14 million in tax revenue, 3,160 jobs, and $30 million in royalties in New Mexico. Cantrell Rebuttal Testimony, 4:14-17 & 9:7-22.; Murphy, Tr.

141:2-22 (Nov. 4, 2025)

FOF 126. In FY2024, industry contributed 49%, about $7.4 billion, to the State of New Mexico general fund and a significant portion derived from marginal wells, over a billion dollars. Arthur, Tr. 85:21-26:6 & 195:13-19 (Oct. 28, 2025).

FOF 127. Longfellow Energy's Loco Hills project started by acquiring 45 low producing vertical wells, and in a year drilled 40 horizontal wells and increased production from 200 barrels to 6, 000 barrels per day. David Mitchell, Tr. 181:17-182:10 & 183:17-184:2 (Oct. 31, 2025).

FOF 128. Spur Energy individually evaluates a marginal well at least twice before coming to the decision to plug the well: first, by examining fluid levels and determining if a workover is economic. Second, a closer review of remaining reserves in place and for potential uphole development for recompletion. Johnny Nabors, Tr. 109:8-24 (Nov. 6, 2025).

FOF 129. Spur Energy is evidence that just because a small operator has marginal wells in its portfolio, the Division cannot assume that the small operator will orphan marginal wells. Nabors, Tr. 110:12-111:1 (Nov. 6, 2025).

FOF 130. Operators can and do take a full field development approach when viewing marginal wells future potential, and "marginal wells play a very important role in an operator's development program." Wallace, Tr. 39:3-40:2 (Oct. 28, 2025).

FOF 131. Operators consider a variety of factors in deciding to rework or recomplete wells, to include: the availability of marginal wells, oil pricing, economics, new technology, and rig proximity and availability. Wallace, Tr. 39:3-40:2 (Oct. 28, 2025).

FOF 132. The performance of three Oxy wells classified as marginal under Applicants' proposals based on 2024 production evidence the unintended consequences of arbitrary production thresholds and days of production: the Harroun #91, the FNR 35 Fed 3H, and the Cedar Canyon 15 2H (the "three Oxy Wells"). Wallace, Tr. 40:10-44:6 (Oct. 28, 2025).

FOF 133. After refracking, installing artificial lift optimization, and recompletion with additional fracks, each of the three Oxy Wells were increasing in production during 2025. Wallace, Tr. 40:10-44:6 (Oct. 28, 2025).

FOF 134. If Oxy had been forced to choose between bonding or plugging the three Oxy Wells, that production would have been lost and created waste. Wallace, Tr. 44:7-24 (Oct. 28, 2025).

FOF 135. Oxy is heavily involved and invested in enhanced oil recovery ("EOR") projects, like the Hobbs unit that converted 49 TA wells to production or injection. Oxy witness Kelley Montgomery, Tr. 139:3-19 (Oct. 28, 2025). But that process can take a long time with economics, regulatory hurdles, infrastructure concerns and timelines. Montgomery, Tr. 139:9-19 (Oct. 28, 2025).

FOF 136. WELC experts agree that it makes sense for extended TA status for marginal wells for CO2 EOR projects and other potential uses. *See*, *e.g.*, Peltz, Tr. 930:17-931:21 & 932:13-933:12.

FOF 137. At present in the shale boom of primary production, wells will decline in production in the future being in a naturally tight reservoirs, recovering less than previous reservoirs. In turn, even greater amounts of oil will remain in place at the end this phase, leaving an even larger potential resource during secondary. Murphy, Tr. 140:3-10 (Nov, 4, 2025). However, if operators are forced to plug marginal wells, rather than preserve the well bores in place, that will destroy future potential and value of the wells. Murphy, Tr. 140:23-25.

FOF 138. If wells are plugged prematurely at the end of their primary phase of production, the economic viability of secondary and tertiary recovery projects is diminished because the operator will have to re-drill those wells to establish the best pattern for efficiency and recovery from the field. This makes low producing and inactive wells long term assets, not liabilities,

because these wellbores provide key, strategic access to discovered reserves. Murphy, 211:8-25 (Nov. 4, 2025).

FOF 139. Armstrong Energy Corporation has operated marginal and low-producing wells for 44 years and never orphaned a well, which undercuts Applicants' assumption that marginal well operators or portfolios with a higher percentage of low producing wells are high risk. Armstrong, Tr. 101:21-102:25 (Nov. 3, 2025).

I. Applicants' Proposed Rules do not individually Evaluate Wells for Risk of Abandonment.

FOF 140. OCD's Master Orphan Well list, Exhibit 17, includes federal, state, and private wells. Both the Bureau of Land Management and the State Land Office have adopted a recent approach of seeking out every owner of an interest in the lease to plug abandoned wells, which includes operators, working interest owners, record title owners and lessees of record.[71] When a party other than the operator plugs an abandoned well, the process is referred to as "forced plugging."

FOF 141. There are likely many wells on OCD's MOSS, Ex. 17, which have been plugged by industry parties as forced plugging incidents, but it is not clear that OCD tracks those numbers. Loren Diede, Tr. 123:25-124:5 (Oct. 23, 2025). It is undisputed that not every abandoned well is plugged by OCD.

FOF 142. There are many factors that go into determining and evaluating production on a lease basis than reported volumes alone. Marks, Tr. 219:25-220:18 (Oct. 27, 2025).

FOF 143. Applicants' proposal relies on proxies of production levels to assign risk to active wells rather than a "risk-based framework" which is critical to targeted reform. McGowen,

[71] *See*,*e.g.*, LFC Report, WELC Ex. 4 at Table 17, page33 ("Trailing Liability"); Marks, Tr. 222:1-22 (Oct. 27, 2025) (746 forced plugging of wells).

Tr. 181:18-188:25 (Oct. 30, 2025). Applicants concede they could have proposed a risk-based FA structure, rather than relying on production levels as a proxy for risk. Peltz, Tr. 830:2-19 (Oct. 22, 2025).

FOF 144. The transfer or assignment of a low producing well is not a step towards orphaning, and if an operator cannot sell a well, the operator plugs the well. Wrinkle, Tr. 181:12-182:4 (Oct. 24, 2025).

FOF 145. Not every orphan well is a problem well and many states are making advances to repurpose or convert the wells for other uses. Arthur, Tr. 268:17-269.

FOF 146. WELC expert Tom Alexander erroneously assumed that Applicants performed an engineering or reservoir analysis in support of the Proposed Rules, but added that if he was an operator he would look at production numbers, decline curve, a "P over Z plat" based on the type of reservoir, pressure, geology, offset operators, other stacked horizons, other opportunities, potential for EOR, in order to determine viability and value of a well. Alexander, Tr. 209:13-211:4.

FOF 147. Low producing wells may produce at a low level because of market conditions and midstream constraints stemming from compression problems, both of which are outside of an operator's control. Johnny Nabors, Tr. 108:11-109:7 (Nov. 6, 2025). Neither midstream constraints nor market conditions are a reliable indicator of a well's future ability to produce or likelihood of being orphaned. Nabors, Tr. 108:11 - 109:7 (Nov. 6, 2025). Production levels for a well can vary due to market, seasonal, and infrastructure factors, to include pipeline takeaway capacity and gas plant downtime. Dan Arthur, Tr. 176:24-177:8 (Oct. 28, 2025).

FOF 148. An operator could be forced to bond a well experiencing prolonged, constrained takeaway issued due to delays in infrastructure, corrosion issues in the pipeline, and shutdown pipelines. Powell, Tr. 119:4-15 (Oct. 27, 2025). There may be circumstances outside of an operator's control that affect production and revenue from a well. Justin Wrinkle, 154:3-154:9

(Oct. 24, 2025).

FOF 149. Operators may elect to produce by exception for force majeure purposes. Wrinkle, Tr. 155:6-8 & 176:24-177:8 (Oct. 24, 2025).

FOF 150. Armstrong Energy's experience demonstrates the unreliability of the inflexible 180 days requirement in the propose low producing well definition is not is flawed as it had five wells where the midstream company could not transport gas for a period of 117 days out of 180 days. As an operator, there was no way to predict whether the pipeline would be available again, and whether he would be able to produce those five wells 180 days out of the remaining 180 days. Testimony of Kyle Armstrong, Tr. 109:1-21 153:13-155:5 (Nov. 3, 2025).

FOF 151. Pipeline repair and maintenance, contract disputes between the midstream company and a third parties, and other events entirely outside of the operator's control can lead to curtailment and production restrictions for a certain operator or even certain fields and areas. Armstrong, Tr. 109:22-110:20 (Nov. 3, 2025).

FOF 152. Applicants assert that temporary abandoned status wells are at a very high risk of becoming orphaned wells. Alexander, Tr. 62:14-18 , 83:3-5 & 98:3-5 (Oct. 20, 2025)..

FOF 153. A well in temporary abandoned status must pass pressure and mechanical integrity tests and satisfy re-tests periodically during the TA period. NMAC 19.15.25.12 (current). Wells that are placed in TA status are monitored and controlled. NMAC 19.15.25.12 (current).

FOF 154. WELC Expert witness Tom Alexander did not review records of wells remaining in TA status beyond five (5) years for mechanical integrity failures, yet deemed these wells the highest risk to the State. Alexander, Tr. 137:8-11 (Oct. 20, 2025).

FOF 155. Applicants could not point to data or analysis to demonstrate that the current TA rules, which require OCD approval, mechanical integrity testing, and pressure monitoring, are insufficient to protect against risks or have otherwise failed to reduce risks. Alexander, Tr. 133:21-

134:1 (Oct. 20, 2025).

FOF 156. As Representative Murphy explained, the initial pressure test ensures the mechanical integrity of well being placed in TA, which are typically wells with very low to zero bottom hole pressures. Murphy, 210:9-211:2 (Nov. 4, 2025). At those pressures, fluid can only migrate a short distance, maybe 300 or 400 feet, and never get to the surface. Once the well is placed in TA status, everything is sealed which preserves future potential of the wellbore much better than plugging. Murphy, 210:9-211:2 (Nov. 4, 2025).

FOF 157. Applicants had not determined how many of the TA wells portrayed in WELC Exhibits 61 (Wells in Expired TA Status) and Exhibit 62 (TA Wells by time since last production), had been reactivated or plugged. Peltz, Tr. 862:22-863:18 (Oct 23, 2025).

FOF 158. OCD Exhibit 23 identifies all inactive wells in TA status as of August 8, 2025. OCD Ex. 23.OCD Exhibit 33 identifies operators with unreported production for a period of 12 months or more. Almost all the operators on MOSS are on OCD's Exhibit 33. Powell, Tr. 31:14-16 (Oct. 27, 2025).

FOF 159. Of the 1,366 orphan wells belonging to the to the top ten offending operators on MOSS, including those like Cano Petro, Canyon E&P, Ridgeway Arizona, Acacia Operating, Energy Acumen, Remnant Oil, and Northern Pacific Oil & Gas, orphan wells placed in temporary abandonment status account for 1.4%. *Compare* OCD Ex. 17 *to* OCD Ex. 23. Compared to Applicants; proffered 5% orphan rate across all wells, TA wells are significantly less likely to be orphaned.

FOF 160. Well over 100 out of 113 operators on OCD's Ex. 33 appear on OCD's inactive well lists (OCD Exhibits 21, 22, and 23) and are responsible for 1750 inactive wells, or roughly 2/3 of inactive wells. There are 30 common operators on MOSS that appear on OCD's Ex. 33 and collectively account for 952 inactive state wells with no reported production for greater than 12

months, which is 78% of the state wells reported on OCD Ex. 33. *Compare* OCD Ex. 17 *to* OCD Ex. 33.

FOF 161. OCD will not recover additional FA from operators that are already out of compliance. Winchester, 69:25; 70:1-4 (Nov. 3, 2025)Comparing the top 19 companies on OCD's orphan and inactive well exhibits, there is a combined quarter billion dollars that will never be realized as additional FA to the State, because the capacity of those operators is simply not there. Winchester, 35:4-9 (Nov. 3, 2025).

FOF 162. The top ten operators by well count on OCD's Exhibit 33, for failing to report production for 12 months or more, account for just 26 TA wells. OCD Ex. 33, OCD Ex. 23.

FOF 163. Those top ten operators on OCD's Ex. 33 are responsible for over 1,440 wells, which means that just 1.8% of their wells were ever placed in TA status.

FOF 164. In contrast, the operators with the most TA wells, like Hilcorp, are considered to be responsible, prudent operators. Brandon Powell, Tr. 85:17-24 (Oct. 27, 2025). Hilcorp has over 140 TA wells, OCD Ex. 23, and although it is a great example of a responsible operator reworking and transforming old wells into individual success stories and actively plugging wells—they are low-risk yet the Proposed Rules would impose an additional $15 million in bonding. The Proposed Rules do not make sense to saddle good operators with a solid plugging and repurposing track record with excessive bonding costs. OCD Ex. 23, Winchester, 32:4-21 & 35:4-9 (Nov. 3, 2025).

FOF 165. Oxy witness Tiffany Wallace pointed out to the Commission that in order to place a well into temporary abandoned status, the operator must prove to the division that the well protects against waste and protects correlative rights by providing data about a number of factors, including casing, cement, and mechanical integrity of the well. Tr. 24:4-25:7 (Oct. 29, 2025).

FOF 166. OCD Deputy Director Brandon Powell does not expect that any of the operators

on OCD Ex. 33 will comply with bonding increases or contribute additional funds to FA accessible by the state upon orphaning of their wells. OCD Brandon Powell, Tr. 99:7-13 (Oct. 27, 2025). Powell expected that, of the 51% of operators affected by the high-risk portfolio Proposed Rule, at least 25% are not going to pay for additional bonding, and that "maybe 26%" would comply with additional bonding requirements. Powell, Tr. 129:16-130:24, & 130:25-131:5 (Oct. 27, 2025).

FOF 167. Therefore, even if Applicants' proposals adopted, it would be unreasonable to expect noncompliant operators to contribute additional FA. At a minimum, the 952 wells likely requiring single well bonds of $150,000, will not result in expected $143 million in additional FA.

FOF 168. WELC Expert Adam Peltz did not verify or examine the proposed 180 days of production for marginal, now low-producing, wells as reasonable or economically supported. Peltz, Tr. 868:20-869:2. In contrast, each well has its own personality which can determine maximum beneficial production days for ultimate recovery to avoid waste. Murphy, Tr.157:1-22 (Nov. 4, 2025).

FOF 169. OCD proposed a days of production component to low-producing well definition to identify wells operating as "full capacity" under the belief that a limited number of days of production, even with high barrel of oil equivalent output, could indicate "an issue with the well." OCD did not support this theory with specific examples of individual wells or perform a quantitative comparison between wells with low days of production and wells which become orphaned. Testimony of Brandon Powell, Tr. 215:13-23 (Oct. 24, 2025).

FOF 170. OCD Deputy Director pointed to Hilcorp, who operates a substantial number of TA wells, as a "great example" of an operator in the Northwest that is "doing a strong re-complete process…perforating other zones." Powell, Tr. 85:17-24 (Oct. 27, 2025).

FOF 171. Applicants' Proposed Rules, rather than "showing what's at risk, [ ] show[] what's already failed." Powell, Tr. 143:12-144:4. Applicants' FA proposals "wouldn't pick up

very many additional companies that are failing, it more identified those companies that already failed." Powell, Tr. 143:12-144:4 (Oct. 27, 2025).

FOF 172. Applicants' speculation that the state may have an orphan well problem in the future, but that is contradicted by one hundred years of industry history which indicates somewhere between 2-5% of wells that are abandoned. Murphy, Tr. 194:3-6 & 208:7-18 (Nov. 4, 2025).

FOF 173. Applicants' Proposed Rules will increase costs on all operators, including those with decades of responsible compliance history that have never orphaned a well. Armstrong, Tr. 150:13-17 (Nov. 3, 2025); Murphy, 131:4-8 (Nov. 4, 2025).

FOF 174. Applicants' portfolio provision which requires single-well bonding on all active and low-producing wells may aim or claim to protect the state against the most high-risk wells by the riskiest operators, but has not accounted for the follow-on effect of putting otherwise 85-70% of productive wells at risk of abandonment. Armstrong, Tr. 158:18-160:1.

FOF 175. According to MOSS, ten operators account for almost 75% of total orphan wells in the state. Winchester, 28:6-12 (Nov. 3, 2025).

FOF 176. There no reasonable basis to think that those ten operators will contribute or comply with increased bonding levels. Picking just five of those operators eliminates over $150 million from anticipated FA increases under the Proposed Rules. Winchester, 31:3-18 (Nov. 3, 2025).

FOF 177. Applicants and OCD present no evidence that operators of the wells most likely to be orphaned will comply with any new FA requirements.

FOF 178. Compliance with new FA requirements will be by operators with established records of compliance with rules, including plugging and abandoning, adding unnecessary cost to their operations and/or premature plugging of wells to avoid those costs.

FOF 179. The costs of the proposed new FA requirements would fall most heavily on the

smallest operators, likely driving some into bankruptcy thereby orphaning wells. Arscott, Tr. 265:18- 266:2 (Nov. 4, 2025); and Tr. 30:1-11 (Nov. 5, 2025); Winchester, 70:13-17 (Nov. 3, 2025)..

J. Applicants' Proposed FA Increases will negatively influence Surety Market in New Mexico.

FOF 180. IPANM witness David Mitchell, of Longfellow Energy, LP, explained that although it currently obtains surety bonds at 3%, if FA demands increased to $15 million as predicted under Applicants' changes, Longfellow would expect both its premium rate to increase to 10% and to be required to post cash collateral. Mithcell, Tr. 205:1-205:14 (Oct. 31, 2025).

FOF 181. Under the above, Longfellow would pay $1.5 million to the surety just to meet the new bonding requirements, which is $1.5 million that Longfellow would otherwise put toward plugging old wells and developing new wells. Mitchell, Tr. 205:15-206:11 (Oct. 31, 2025).

FOF 182. Surety companies would more likely exit New Mexico under the Proposed Rules, because meeting such increased bonding regulations would be difficult, such that only very large companies could obtain bonding, which in turn would "decimate the—[ ] smaller companies…the mom and pops that are really the local..heroes of their small communities." Mitchell, Tr. 206:12-207:8

FOF 183. Applicants' assumed premium rates of 1% based on a study of offshore surety bonds, which are $2 million per well. WELC expert Peltz, Tr. 907:8-19 (Oct. 22, 2025).

FOF 184. When total bond amounts dramatically increase, as proposed by Applicants, a surety may refuse to write additional bonds for the operator. NMOGA expert Emerick, 120:11-24 (Oct. 29, 2025).

FOF 185. A surety company looks not only to the operator principal, but also to the state as obligee in setting premium rates and requiring cash collateral. A state regulatory environment

that is onerous or adverse to development will result in higher collateral demands. Emerick, Tr. 121:6-7 (Oct. 29, 2025).

FOF 186. The form of bond required in New Mexico combined with the increase FA levels proposed by Applicants will reduce the number of sureties willing to write bonds. Emerick, 125:10-12 (Oct. 29, 2025).

FOF 187. Regulatory risk, like the adverse operational environment introduced by Applicants' Proposed Rules, can drive surety rates higher.

FOF 188. According to the current FA report, OCD Exhibit 29, there are 1,097 surety bonds in place in the State of New Mexico, securing $95 million in FA, representing 80% of statewide FA. OCD Exhibit 29.

FOF 189. Applicants' proposal jeopardizes future and existing surety bonds. Emerick, Tr. 125:10-12 , 140:10-13, 141:17-24 (Oct. 29, 2025).

FOF 190. None of Applicants' witnesses had any surety underwiring experience. Emerick, Tr. 151:16-18. No input or analysis from the surety industry was consulted in drafting Applicants' rules.

FOF 191. The surety market has contracted in recent years as has surety providers "appetite," such that only the largest operators will be eligible to obtain surety bonds at the level Applicants' propose. Comment of the Surety and Fidelity Association of America (Nov. 7, 2025).

FOF 192. Applicants' Proposed Rules will introduce additional risk and transaction costs to the surety market, while requiring additional collateral even for good operators with a long-standing relationship with surety companies. Armstrong, Tr. 103:1-22 (Nov. 3, 2025).

FOF 193. Under the existing bond form promulgated by OCD and the requirements of Section 70-2-14(A) which condition release of the bond on the plugging of the well, operators and surety experts are concerned that once a low-producing single well bond is in place, a surety will

not release the bond unless the well is plugged. Armstrong, Tr. 106:19-107:13 &107:14-108:17 (Nov. 3, 2025).

FOF 194. The surety market is not just tighter or more difficult for small operators, it is mostly unavailable. Therefore, a small operator is mostly limited to cash bond options which tie up 100% of the capital associated with the level of the bond during the entirety of that well's operational life. Winchester, 84:1-5 & 84:16-17 (Nov. 3, 2025).

FOF 195. IPANM Witness Trevor Gilstrap was the only witness with surety and bonding experience in New Mexico from the side of the surety company as a broker. Gilstrap, 164:10-12, 164:22-23, 165:7-9 (Nov. 3, 2025).

FOF 196. His experience is in obtaining and locating bonding for oil and gas service contractors, operators, and nonoperators involved in domestic production. Gilstrap, 166:14-18 (Nov. 3, 2025).

FOF 197. Mr. Gilstrap was also involved in the Colorado bonding rulemaking in 2022, which has created an incredibly hard current market for bonds, both in increased premiums up to and beyond 3.5% and increased collateral requirements up to 50-100% of the bond. Gilstrap, 167:20-25, 168:1-19 (Nov. 3, 2025).

FOF 198. His concern is that Applicants' Proposed Rules push bond amounts so high, that operators will experience severe constraints on available capital. Gilstrap, 167:20-25, 168:1-19 (Nov. 3, 2025).

FOF 199. For example, an operator with 150 wells requiring single-well bonds of $150,000 under Applicants' Proposed Rules, will need a $22.5 million bond, which equates to $11.5 million in collateral at 50%, plus annual premium fees of $787,500. Gilstrap, 169:1-10:21-25, 170:1-10 (Nov. 3, 2025).

FOF 200. Applicants' Proposed Rules increasing bonding level will drive premium rates

even higher. Gilstrap, 170:9-11 (Nov. 3, 2025).

FOF 201. All bond collateral requirements tie up funds for an operator, often by depositing cash in an investable fund with a de minimus growth rate, but those monies are inaccessible to the operator. Gilstrap, 171:20-25, 172:1-6 (Nov. 3, 2025).

FOF 202. The surety market is not like a demand-responsive market like car insurance. In fact, increased demand generally has the opposite effect, because the surety market is capacity-driven. For example, sureties may not have the appetite, bandwidth, or interest to respond quickly or at scale with regulatory changes which dramatically increase the demand for bonding, which Gilstrap has experienced in Colorado. Gilstrap, 182:24-25, 183:1-5 Nov. 3, 2025); Gilstrap, 183:24-25; 184:1-3 (Nov. 3, 2025); Gilstrap, 188:22-24 (Nov. 3, 2025).

FOF 203. Applicants' use of surety premium rates for offshore wells is not an accurate basis to predict costs under the Proposed Rules FA increases for New Mexico onshore oil and gas wells. Gilstrap, 189:7-17 (Nov. 3, 2025).

FOF 204. Plugging bonds are noncancellable, which is part of the reason you see higher premium and collateral requirements. Gilstrap, 209:20-24 (Nov. 3, 2025).

K. Applicants' have not demonstrated that Proposed Rules can be implemented with any degree of expected certainty or success.

FOF 205. There is no evidence in the record that OCD is equipped or staffed to administer another complex evaluation like the presumption against beneficial use proposed under 19.15.25.9 NMAC. *See* WELC Ex. 89-E . The rebuttal demonstration imposes excessive and burdensome documentation requests. Dan Arthur, Tr. 188:19-189:1 (Oct. 28, 2025).

FOF 206. WELC expert witness Tom Alexander was unfamiliar with OCD's current regulatory hearing docket, how many hearings are scheduled each month, availability for new applications, and limited hearing capacity. Alexander, 224:13-225:6 (Oct. 20, 2025).

FOF 207. Applicants did not analyze any of the administrative burdens, in terms of personnel, man-hours, or costs, imposed by their Proposed Rules. Alexander, 179:12-14 (Oct. 20, 2025).

FOF 208. If the Proposed Rules were to be adopted, OCD would need to devote staff to enforcing those rules including staff time spent reviewing low producing well reporting and resulting changes to FA; looking for NBU wells and pursuing the operator to comply; reviewing TA renewals; and, reviewing the complex information to be provided on well transfer and new operator applications. No evidence was presented to inform the Commission what staff resources that OCD will need to reallocate to enforce the Proposed Rules and, after any such reallocation, what OCD tasks will have less staff resources.

FOF 209. OCD's Environmental Bureau Chief Rosa Romero, was not aware that OCD had taken authority for the Reed Estate No. 1 wellsite (API 30-025-07258), OCD had taken over the well and plugged it in 2015, but did not commence remediation efforts until late 2023.Romero, 74:3-13; Direct Testimony of Rosa Romero, OCD Ex. 10 at 5:9-18.

FOF 210. Ms. Romero was not surprised that the first NOV issued with respect to the Reed Estate No. 1 well was back in July 2008. Romero, Tr. 74:17-75:19.

FOF 211. OCD witness Loren Diede was not aware that the Buckskin Federal No. 2 well was subject to an ACOI and OCD approved two operator transfers for the well. Diede, Tr. 109:4-16.

FOF 212. OCD witness Justin Wrinkle testified that OCD already has the expertise and background at current staffing levels to evaluate the value and beneficial use of wells on a case by case assessment. Wrinkle, Tr. 197:2-198:2 (Oct. 24, 2025).

FOF 213. While the State has existing $118 million in FA, the total FA sum is not a "bucket" that OCD can use to plug every well which is orphaned. FA is tied to specific operators

and not all operators will orphan wells. OCD Brandon Powell, Tr. 220:222-221:7 (Oct. 24, 2025).

FOF 214. The OCD has not recovered many plugging bonds and there is nothing in the current or proposed rules that requires OCD to pursue or recover a plugging bond. OCD Brandon Powell, Tr. 73:11-13 & 74:2-7 (Oct. 27, 2025).

FOF 215. OCD enforcement does not support pursuing plugging bonds on an individual bases, because "the juice is not worth the squeeze" and OCD would not consider pursuing individual well bonds until packaged, because "pursuing them individual[ly] doesn't make any sense." Powell, Tr. 97:15-25 (Oct. 27, 2025).

FOF 216. Based on OCD's current docket capacity, OCD Deputy Director agrees that the first five years of TA status should be determined administratively. Powell, Tr. 156:15-157:9.

FOF 217. Operators are likewise concerned that with current levels of staffing, OCD will not be able to keep pace and track the thousands of new bonds under Applicants' Proposed Rules, given existing administrative burdens. Armstrong, Tr. 107:14-108:17 (Nov. 3, 2025).

FOF 218. Applicants' witnesses provided no testimony how the Proposed Rules would effect the vast number of wells subject to Joint Operating Agreements and other contractual arrangements, which provide for certain designated costs to be billed to the non-operating working interest onwers but not bonding costs. *Cf.* Armstrong, Tr. 115:14-117:7 (Nov. 3, 2025); *See generally* Ezzell Direct Testimony, 11:1-18:16.

FOF 219. An operator with little or no interest in a well has no incentive to pay a single well bonding cost. More often than not, the registered operator of a well owns a percentage working interest, and is responsible to several other parties, including non-operating working interest owner, nonparticipating royalty interest owners, and royalty owners. Ezzell, Tr. 226:1-12 Nov. 3, 2025).

FOF 220. The relationship between working interest owners is typically governed by a

Joint Operating Agreement (JOA), of which there are several widely adopted forms. Ezzell Direct Testimony, 7:19-22. But as to the ability of an operator to recoup increased FA under Applicants' Proposed Rules, the specific version is immaterial. *See generally* Ezzell Direct Testimony, 11:1-18:16.

FOF 221. JOAs contractually allocate certain costs of operation and provide the procedures for operation of the well. Ezzell Direct Testimony, 6:11-17. Under the most relevant provisions of a JOA (abandonment, expenses, force majeure, and resignation), none provide a clear path for an operator to share increased FA costs proportionally with other working interest owners in the well. Ezzell Direct, 12:8-9, 14:21-15:2, & 18:9-10. New Mexico case law does not support a different result. Ezzell, Tr. 236:9-18.

FOF 222. Under the accounting form included with most JOAs, the 1974 COPAS, an operator may not pass increased bonding costs along to non-ops unless expressly agreed as a direct charge. Ezzell Direct Testimony, 23:1-19; *id.* 25:14-26:19 (same conclusion under 1962 and 1984 COPAS).

FOF 223. Applicants' Proposed Rules do not contemplate or work under existing industry contracts or practice. Ezzell, Tr. 225:24-25 (Nov. 3, 2025).

FOF 224. Applicants' Proposed Rules which encourage premature plugging of wells, or uneconomic production create waste, endanger correlative rights, and expose operators to liability and lawsuits brought by those interests owners. Ezzell, Tr. 225:2-7 (Nov. 3, 2025); Ezzell Direct Testimony, 37:7-10 (production during low pricing to avoid bonding low-producing well places operator "at legal peril").

FOF 225. Applicants' Proposed Rules do not account for common terms of oil and gas leases, and that the lease is extended as long as a well is capable of production. During a maintenance or recompletion period, it is not unusual for a well to be down six months before

production is restored, if not longer due to the constraints on rigs, crews, and contractors. Ezzell Direct Testimony, 33:5-34:14.

FOF 226. Applicants' Low-Producing well definition fails to consider that leases also provide for shut-in royalty payments on gas wells for wells capable of production, but lacking infrastructure or during low market price conditions. Ezzell Direct Testimony, 34:17-35:18.

FOF 227. Under Applicants' proposed increases in FA, operators with lower working interests will be incentivized to abandon wells or resign entirely, forcing inexperienced non-op owners to take over. Ezzell, Tr. 237:19-238:10 (Nov. 3, 2025).

FOF 228. Where the OCD was created in part to prevent the drilling of unnecessary wells, Ezzell Tr. 225-14-17 (Nov. 3, 2025), Applicants' proposal plugs low-producing wells and removes wellbores from available inventory to economically accomplish secondar and tertiary recovery units. Ezzell, Tr. 256:18-257:10 (Nov. 3, 2025).

FOF 229. Restrictions on takeaway capacity in the Permian are not just limited to gas wells, because if there is no market or capacity for oil wells producing low amounts of casinghead gas, the operator will be forced to shut in the well entirely. Ezzell, Tr. 260:7-262:8.

FOF 230. As drafted, the definition of low-producing well and the corresponding bonding requirement does not give OCD discretion to make exceptions in periods of low commodity prices, in contrast to state trust land policy to delay revenues in those environments to avoid economic waste. Ezzell, Tr. 113:3-115:3. (Nov. 4, 2025).

FOF 231. Current rules in Rule 19.15.5.9(A)(4) and 19.15.25 NMAC recognize reality of lapses in time between determining need to plug and proceeding with approved plugging activities, due to constraints on resources and services like availability of plugging crews, service companies, and processing and approval of plugging plans. Applicants' Proposed Rule eliminates any

tolerance for compliance. Testimony of Jim Winchester, 23:23-25; 24:1-25 (Nov. 3, 2025).

FOF 232. By adopting a "one strike" framework under the Proposed Rules, which severely restricts an operators authority and eligibility to operate wells, the Proposed Rules will create orphan wells. Winchester, 26:3-8 (Nov. 3, 2025).

FOF 233. Because the State Land Office has proposed competing bonding rules on a lease and possibly well basis, it would be wise for the Commission to consider the cumulative effect of both proposed rule changes on operators of state leases and wells. Winchester, 78:11-22 (Nov. 3, 2025).

L. Applicants' Proposed Rules Create Waste and fail to protect Correlative Rights.

FOF 234. Applicants' and OCD's proposed presumption against beneficial use characterizes all wells that produced less than 90 BOE as without beneficial use or purpose. WELC Ex. 89-E , 19.15.25.9 NMAC.

FOF 235. The presumption will have a disproportionate impact on smaller operators, discourage incremental development, disrupt unit agreements, and cause possible loss of leasehold rights. NMOGA Dan Arthur, Tr. 184:20-185:7.

FOF 236. The presumption will promote premature plugging of viable wells, which creates waste. NMOGA Dan Arthur, Tr. 184:20-185:7.

FOF 237. SLO witness Allison Marks agrees that there are many factors that go into determining and evaluating production on a lease basis and that reporting volumes alone are not determinative. Marks, Tr. 219:25-220:18 (Oct. 27, 2025).

FOF 238. Applicants' proposal relies on proxies of production levels rather than a "risk-based framework" which is critical to targeted reform.

FOF 239. A substantial percentage of hydrocarbons can be recovered in secondary and tertiary recover within the lifecycle of a field or reservoir, but it takes a long time to develop a

secondary recovery unit because it is very complicated and "Unitization can take forever." Alexander, Tr. 16117-162:13 (Oct. 20, 2025); Murphy, Tr. 136:1-7 & 137:20-24 (Nov. 4, 2025) (some projects take up to and over 15 years).

FOF 240. Oxy witnesses testified that, based on their experience, a 500-well EOR project requires constant re-evaluation of spacing, wells included, project economics, and how to best develop the resource. "It takes a very long time to understand how that program is going to work." Oxy Tiffany Wallace, Tr. 37:20-21 & 37:10-38:1 (Oct. 28, 2025).

FOF 241. Applicants' proposed rules not only accelerate the timeline to plug wells, but also constrain an operator's ability to keep wells in TA status while making it significantly more expensive to do so. WELC Ex. 89-E at19.15.25.9 & 19.15.25.13, and WELC Ex. 89-C at Part F of 19.15.8.9 NMAC.

FOF 242. IPANM witness Representative Mark Murphy explained how plugging wells following primary production restricts and limits an operators ability to develop waterflood and secondary recovery because of spacing and design in a field. Rep. Mark Murphy, Tr.136:23-137:24 (Nov. 4, 2025).

FOF 243. At the end of primary production, 60-80% of the original oil remains in place in the reservoir, Murphy, Tr. 136:23-25, and the formation and operation of secondary recovery projects has resulted in hundreds of millions, if not billions, of revenue to the state. Murphy, Tr. 138:16-139:4.

FOF 244. Producing a well at a low commodity prices to meet arbitrary production thresholds causes losses and creates waste. WELC Tom Alexander, Tr. 156:11-17 (Oct. 20, 2025).

FOF 245. Applicants' proposed changes incentivize operators to produce wells in excess of economic limits, which creates waste. Alexander, Tr. 156:22-25 (Oct. 20, 2025); Powell, Tr.

147:14-17 (Oct. 27, 2025).

FOF 246. Applicants' proposed definition of low producing well does not directly consider economic factors. Alexander, Tr. 158:1-3 (Oct. 20, 2025).

FOF 247. No witness on behalf of Applicants or the Division analyzed the effect or impact of Applicants' proposed rules on waste or correlative rights. Alexander, Tr. 228:4-12 (Oct. 20, 2025). Applicants admit and acknowledge that many parties may own an interest in a well, however, Applicants' proposals have not considered or evaluated impact on correlative rights. WELC expert witness Adam Peltz, Tr. 902:6-24; 904:7-15 (Oct. 22, 2025).

FOF 248. Applicants' witnesses could not explain how the proposed rules account for or consider various cycles in the typical petroleum process or a typical oil field, to include tertiary recovery. Alexander, Tr. 243:7-244:3, 245:3-5, & 249:11-21 (Oct. 20, 2025).

FOF 249. WELC expert witness Tom Alexander limited an operator's ability to pursue secondary and tertiary recovery under the proposed rules to "nearby fields in a particular reservoir that have been successful after primary into secondary and tertiary," which eliminates or fails to account for new discoveries or technology. Alexander, Tr. 246:7-22 (Oct. 20, 2025).

FOF 250. A low-producing well with access to a reservoir with remaining, recoverable reserves in primary production could maintain substantial value for the remainder of primary production, and also for future EOR and secondary recovery. OCD Justin Wrinkle, Tr. 195:4-6 (Oct. 24, 2025).

FOF 251. Applicants have not considered the inefficiencies in requiring a well to proceed automatically from primary recovery to water injection. Peltz, Tr. 38:24-39:18 (Oct. 23, 2025).

FOF 252. The failure to consider secondary and tertiary stages of recovery by Applicants' proposal will result in waste, because operators will be required to plug marginal wells, and drill new wells at each production profile in the life of an oil field. Peltz, Tr. 41:4-10 (Oct. 23, 2025).

FOF 253. It is unclear in Applicants' analysis of wells in temporary abandoned status and return to activity, whether the sample size of wells analyzed encompasses secondary and tertiary recovery process. WELC Tom Alexander, Tr. 249:11-249:21 (Oct. 20, 2025); *see also* WELC Ex. 13 (bar chart based on a "sample of wells that reactivated following 12+ months of no production, using production data from 2010-2024)

FOF 254. WELC witness Tom Alexander's testimony regarding temporary abandoned status wells was based on data and analysis performed by Environmental Defense Fund staff, none of whom were made available for examination during the hearing. Alexander, Tr. ___: __ (Oct. 20, 2025).

FOF 255. Applicants' rules will result in premature abandonment of wells that have significant remaining, recoverable hydrocarbons depriving the state of additional royalties, tax revenues, and significantly increased production from the wells. Jeff Harvard, Tr. 98:10-99:10 (Nov. 6, 2025).

FOF 256. A significant amount of concern has been expressed by small operators that they will not be able to comply with the new FA levels, and they will either go out of business or exit operating in New Mexico. Harvard, Tr. 99:20-102:16 (Nov. 6, 2025).

FOF 257. Without a market of available smaller operators to take over marginal wells, those wells will be plugged instead of managed or recompleted, creating waste. Armstrong, Tr. 112:1-15 (Nov. 3, 2025).

FOF 258. Fluctuations in commodity prices can make it reasonable and economic for an operator to idle a well instead of plug, but the Applicants' Proposed Rules do not allow for operational flexibility or exception. For example, an operator will not rework and develop uphole formations on a marginal well while prices are low, because discovery would lead to uneconomic production and waste. Armstrong, Tr. 113:18-115:13 & 120:22-121:11 (Nov. 3, 2025).

FOF 259. Under the proposed Rules, "all an operator has to do is produce for 181 days" regardless of the market conditions or impact on well performance to avoid low producing well status. Powell, Tr. 215-24-216:6 (Oct. 24, 2025).

FOF 260. Powell agreed that the Proposed Rules may force some operators to abandon wells sooner, Tr. 135:23-136:22 (Oct. 27, 2025), or to prematurely plug wells, but the Division has not analyzed or evaluated the anticipated impact. Tr. 137:7-21.

FOF 261. Neither the Applicants nor the Division attempted a comprehensive analysis of the Proposed Rules on waste. Powell, Tr. 1381-139:5 & 139:6-13, 152:24-153:10 (Oct. 27, 2025) To the extent the Commission wanted to conduct its own analysis, the available data is limited to production from a single calendar year. Powell, Tr. 139:18-140:11.

FOF 262. When faced with WELC expert Dwayne Purvis's estimate that the Proposed Rules would capture 51% of operators and 2.3% of production at 17 million barrels, which excludes otherwise active, producing wells that must be double-bonded under the high-risk operator provision of the Proposed Rules, OCD Deputy Director testified that he was "hoping actually it's not that high." Tr. 140:19-142:25.

FOF 263. OCD's orphan well program monitors methane or natural gas emissions from orphan wells and found that 60% of orphan wells are leaking methane. Powell, Tr. 177:25-178:6. However, as presented in the October 2025 Water and Natural Resource Committee meeting, the New Mexico Environment Department Report on oil and gas greenhouse emissions for methane and carbon dioxide in 2023 from inactive oil and gas wells was so low, the level was not even graphed. Testimony of Rep. Murphy, Tr. 228:19-229:17 (Nov. 4, 2025).

M. Commission without Authority to adopt FA levels Exceeding Oil and Gas Act.

FOF 264. WELC expert Tom Alexander understands the blanket plugging bond not to exceed $250,000 set by NMSA 1978, § 70-2-14 applies to all active and inactive wells. Alexander, Tr. 201:24-201:11 & 202:18-21 (Oct. 20, 2025).

FOF 265. WELC Expert Adam Peltz was also involved in 2024 proposed legislation to increase bonding requirements which the legislature rejected. Peltz, Tr. 911:13-17 (Oct. 22, 2025).

FOF 266. No witness in support of Applicants' proposal was a licensed New Mexico attorney offering a legal opinion on the interpretation of Section 70-2-14 based on the Commission's primary duty under the Oil and Gas Act or its authority as interpreted by New Mexico courts. *See,e.g*, Peltz, 915:12-916:10 (not an expert in NM law).

FOF 267. Each prior change in FA promulgated by the Commission followed amendments to the Oil and Gas Act by the Legislature.[72]

FOF 268. WELC witness Adam Peltz agreed that Utah interprets its blanket plugging bond differently than New Mexico. WELC Adam Peltz, Tr. 878:9-14 & 917:18-918:3(Oct. 23, 2025).

FOF 269. Applicants' theory of authority to exceed bonding levels set in Section 70-2-14(A) and require new FA for low-producing and high-risk operator wells relies entirely on the phrase "shall establish categories." WELC Peter Morgan, Tr. 572:14-20 (Oct. 21, 2025), Morgan, Tr. 657:16-25 (Oct. 22, 2025).

FOF 270. Representative Murphy identified the need for direction from the Legislature prior to acting on Applicants' Proposed Rules and highlighted the constraints early leadership in New Mexico adopted under the Oil and Gas Act as indicative of how important oil and gas is the statewide economy. Murphy, Tr. 196:14-21 & 197:21-25.

[72] *See Joint Industry Reply* (October 10, 2025), Exhibit A.

N. HB80 and the Reclamation Fund Better Address funding source for Orphan Well Plugging.

FOF 271. The Reclamation Fund both plays and pays into the solution of the orphan well problem. Winchester, 95:19-25; 96:1 (Nov. 3, 2025).

FOF 272. NMSA 1978, §70-2-37 (2010) establishes the Oil and Gas Reclamation Fund and appropriates "all funds" to the Energy, Minerals and Natural Resources Department for use by the Oil Conservation Division. Powell, Tr. 176:25-177:8 (Oct. 27, 2025).

FOF 273. Section 70-2-38 of the Oil and Gas Act permits expenditures of reclamation funds for the plugging, restoration, and remediation of abandoned well sites and mandates the OCD director "reclaim and properly plug all abandoned wells and shall restore and remediate abandoned well sites and associated production facilities" as funds become available.

FOF 274. Under HB80, the New Mexico Legislature has allocated increasing percentages of the Oil and Gas Conservation Tax to the Reclamation Fund.[73]

FOF 275. As of July 2025, the Reclamation Fund was reported to be $72.2 million.[74]

FOF 276. Under HB80 Fiscal Impact Reports, the Reclamation Fund is anticipated to reach $261 million by 2031.[75]

FOF 277. By FY2028, the annual contributions to Reclamation Fund will likely exceed $100 million, such that total funding by 2037 is anticipated to exceed $1 billion.[76]

FOF 278. Based on average plugging rates and the OCD's Annual Reclamation Fund

[73] HB80, available at: https://www.nmlegis.gov/Sessions/26%20Regular/final/HB0080.pdf (last visited March 30, 2026).
[74] Fund Balance Projection (FY 2026), New Mexico Department of Finance and Administration, p. 104. https://www.nmdfa.state.nm.us/wp-content/uploads/2026/01/DFA-FY26-Fund-Balance-Projections-FINAL.pdf
[75] General Fund Consensus Revenue Estimate, December 2025, pp. 20-21. Available at: https://www.nmlegis.gov/Entity/LFC/Documents/Revenue_Reports/General_Fund_Revenue_Forecast/2025/Dec%2025%20Consensus%20Revenue%20Brief%20Compiled.pdf
[76] Ezzell, Tr. 102:1-5 (Nov. 4, 2025); Murphy, Tr. 153:20-24 (Nov. 4, 2025); *see also* EMNRD HB 80 Agency Bill Analysis dated January 27, 2026, available at https://www.nmlegis.gov/Legislation/Agency_Analysis?chamber=H&legType=B&legNo=80&year=26 (last accessed March 30, 2026).

report, the OCD plugged 360 wells between FY19 and FY24, and expended $46.4 million, averaging $128,888 per well and 72 wells per year.[77] At this rate, it would take close to a decade for OCD to address only the wells which OCD already has plugging authority. *Id.* ; Murphy, 178:25-179:6 (Nov. 4, 2025).

FOF 279. Available state and federal funds far exceed OCD capacity to plug and remediate orphan wells and well sites. *Id.*

FOF 280. Using the LFC Report average of $163,000 per well, in ten years under HB80, the Reclamation Fund will provide a funding source to plug an additional 6,250 wells, which would take OCD approximately 87 years. LFC Report, WELC Ex. 4; *see also* LFC Fiscal Impact Report for HB80, *supra*; Murphy,Tr. 178:19-23 (Nov. 4, 2025).

FOF 281. Incorporating the LFC Report's assumption of $83,000 reclamation costs per well or wellsite, making total plugging and reclamation costs $246,000, the anticipated $1 billion Reclamation Fund provides for over 4,000 wells. LFC Report, WELC Ex. 4; *see also* LFC Fiscal Impact Report for HB80, *supra*; *see also* ENMRD Annual Reclamation Fund Reports, IPANM Ex. 10-14, & 43.

FOF 282. WELC expert Dwayne Purvis anticipates that 5% of the currently active wells in New Mexico will need to be plugged, being just over 3,000 wells.[78]

FOF 283. Rationally, if Mr. Purvis is correct, many if not most of the wells that will be orphaned will not have any of the additional FA contemplated by the Proposed Rules. See FOF ____, supra. (at least 952 wells will be orphaned without single wells bonds).

FOF 284. HB80's contribution to the Reclamation Fund far surpasses anticipated plugging

[77] *See LFC Fiscal Impact Report HB 80* (dated Jan 26, 2026, updated Feb. 5, 2026), available at: https://www.nmlegis.gov/Sessions/26%20Regular/firs/HB0080.PDF (last accessed Mar. 30, 2026).

[78] *See* WELC Exhibit 31 for Mr. Purvis's estimate of unplugged wells in the State (reporting 62,720 "unplugged" a.k.a. active wells in New Mexico); *see also* Direct Testimony of Dwayne Purvis, P.E., WELC Exhibit 30, 34:14-15. ("Historically, 5% of U.S. onshore wells documented as plugged were orphans plugged by State agencies."). Therefore, 5% x 62,720 = 3,136 wells.

and remediation needs of the State proposed by Applicants.

FOF 285. Prior to HB80, WELC Expert Peter Morgan claimed: "There's simply not enough money in the Reclamation Fund to cover the shortfall between existing FA levels and the current and anticipated inventory of orphaned wells." Direct Testimony of Peter Morgan WELC Exhibit 15, 65:20-21.[79]

FOF 286. Because the Reclamation Fund derives from the Oil and Gas Conservation Tax, the cost of plugging abandoned wells is borne equally across all operators and other oil and gas industry participants on a per-barrel basis, regardless of whether that barrel of oil equivalent produced from a marginal, 50 year old vertical well or a newly drilled 3 mile lateral. LFC Report, WELC Ex. 4, see also LFC Fiscal Impact Report for HB80 (explaining history of Conservation Tax and Reclamation Fund).

FOF 287. WELC Expert Adam Peltz agreed that "solving the orphan well problem will require a lot of money from industry" but that Applicants' rulemaking on FA could not provide a framework to better "socialize...cost across industry." Rebuttal Testimony of Adam Pelz , WELC Exhibit 82, 16:5-10.

FOF 288. HB80 and the increased contributions to the Oil and Gas Reclamation Fund adequately address perceived "shortfall" in funding to address abandoned and orphan well plugging liability. *Compare* LFC Report, WELC Ex. 4 (estimating liability in range of $700 million to $1.6 billion) *to* LFC Fiscal Impact Report for HB80 (reflecting anticipated growth of Reclamation Fund from $67 million to $261 million in five years, and over $1billion in the next decade).

FOF 289. HB 80 solves the orphan well crisis without any of the disruption and burden of

[79] *See also id.*, Morgan, 67:3-6 ("Indeed, all of the funds in the Reclamation Fund will not be sufficient to plug even the existing inventory of orphaned wells, even assuming the availability of additional federal funding. Additional orphaned wells will only add to this burden to the state.").

the Proposed Rules.

III. MIXED FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. The Oil and Gas Industry is the Primary Driving Force of New Mexico's Economy and has been for over 100 years.

F/C 1. Oil and gas industry contributes over $13 billion in total revenue to State of New Mexico annually, with $7.4 billion to the State General Fund, and responsible for over 100,000 direct and indirect jobs. FOF 126.

F/C 2. Over 50% of New Mexico's budget tied to oil and gas, with $2.4 billion of industry dollars funding education in the state. FOF 126.

F/C 3. Although low-producing wells may account for a smaller amount of total production and revenue, 2.3% and $17 million, smaller operators responsible for low-producing wells have an outsized-effect on communities, local employment, and maintenance of industry infrastructure. FOF 125, FOF 88, FOF 101& **Error! Reference source not found.**, FOF 125, **Error! Reference source not found.**.

F/C 4. New Mexico has experienced several cycles of development in its hundred-year history with oil and gas. While all wells decline in production gradually during primary recovery, operators respond to decreasing primary production by discovering of new trends, redeveloping underdeveloped fields, and implementing enhanced recovery projects in existing, older fields. FOF 248.

F/C 5. Throughout this boom-bust cycle, independent operators have been at the forefront of discovery and development. FOF 111.

F/C 6. Existing, available wellbores are critical to secondary and enhanced recovery projects which target the remaining 60-70% of reserves after primary production. **Error! Reference source not found.**, FOF 109, FOF 120.

F/C 7. Although horizontal drilling and advances in hydraulic fracturing have increased statewide production by a factor of 10 from 2010 to 2020, and doubled that again in the last five years, those increases are driven by notoriously "tight" formations, leaving 80-90% of the original oil in place remains after primary recovery. FOF 136- FOF 138.

F/C 8. Adopting rules which introduce uncertainty to the New Mexico regulatory landscape may drive operators out of New Mexico, leading to more orphan wells. FOF 60 & FOF 61.

F/C 9. Adopting rules which impose unnecessary financial burdens on responsible operators may drive operators out of New Mexico, leading to more orphan wells. FOF 60, FOF 74.

F/C 10. Applicants' Proposed Rules target and disproportionately impact smaller, independent operators. FOF 83- FOF 111.

F/C 11. Applicants' Proposed Rules will lead to the premature plugging of wells. *Id.*; *see also* FOF 234-FOF 261.

F/C 12. If adopted, Applicants' Proposed Rules will reduce both the inventory of available wells for secondary and enhanced recovery, as well as the roster of small, independent operators responsible for the discovery new trends, redeveloping underdeveloped fields, and initiating secondary projects. *See* FOF 111, FOF 136- FOF 138.

F/C 13. Without either, New Mexico will be poorly positioned to meet the next phases of development and Applicants' Proposed Rules will in drastic consequences for the State's economy. FOF 242-FOF 243; FOF 239.

F/C 14. Applicants target low-producing wells and temporary abandoned wells as the wells most "at risk" of orphaning. Applicants freely admit that the removal of these 3,400 wells

from production will remove anywhere from $55 million to $1 billion in revenue to the state. FOF 7, FOF 8.

F/C 15. The kind of dire economic consequences and wide deviations in policy objectives resulting from Applicants' Proposed Rules are best left to New Mexico's elected representatives, not the appointed members of the Commission.

IV. CONCLUSIONS OF LAW

A. All Commission authority derives from the Oil and Gas Act.

COL 1. The Oil Conservation Commission was created by the New Mexico Legislature under the Oil and Gas Act (the "Act") for the purpose of conserving oil and gas, preventing waste, and protecting correlative rights. NMSA 1978, §§ 70-2-4 & 70-2-11. As a creature of statute, its exercise of rulemaking powers is circumscribed by the express delegation of authority, not implied. Ezzell Rebuttal Testimony, 2:16-22; *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, ¶ 11.

COL 2. The Commission is empowered with concurrent authority to make rules "[t]o that end" of preventing waste and protecting rights to "carry out the purpose" of the Act. *Id.* §§ 70-2-11(A) & -11(B). Waste and all acts that result in waste are prohibited. *Id.* 70-2-2.

COL 3. The Act defines "Waste" to include underground waste in the form of inefficient use or dissipation of reservoir energy or the operation of wells in a manner which reduces the total quantity ultimately recovered, *id.*, § 70-2-3(A); surface waste resulting from the production of oil or gas in excess of reasonable market demand, *id.*, § 70-2-3(B), or any other production in excess of reasonable market demand. *Id.*, §§ 70-2-3(C) & (E).

COL 4. The Commission may adopt rules for the safe drilling, operating, and production of wells and "to identify the ownership of oil or gas producing leases, properties, wells," and other facilities. *Id*., § 70-2-12(B)(7) & (8).

COL 5. The Commission may adopt rules "to spend the oil and gas reclamation fund and do all acts necessary and proper to plug dry and abandoned oil and gas wells…." *Id.*, § 70-2-12(B)(18).

COL 6. Pursuant to Section 70-2-12(B)(1) of the Act, the Commission may make rules to require abandoned wells to be plugged and to require FA ("FA") pursuant to Section 70-2-14, conditioned for the performance of plugging wells.

COL 7. Section 70-2-14(A) of the Act requires the Commission include three categories of plugging bonds: (i) a blanket plugging FA set by rule not to exceed $250,000; (ii) a blanket plugging FA for temporarily abandon status wells set by rule at amounts greater than $50,000, and (iii) a one-well plugging FA "in amounts determined sufficient to reasonably pay the cost of plugging the wells covered by the FA." *Id.*

COL 8. In establishing categories of FA, the Commission "shall consider the depth of the well involved, the length of time since the well was produced, the cost of plugging similar wells," and other relevant factors. *Id.*

COL 9. New Mexico adopted the Oil and Gas Act in response to market depression caused by overproduction and as part of an interstate cooperative to conserve resources responsibly, recovering the greatest amount of resources for the greatest economic gain..

B. Applicants' Proposed Rules Will not Prevent Orphan Wells.

COL 10. No party presented a risk-based framework to evaluate wells for the potential, statistical probability that a well is likely to be abandoned. FOF 51.

COL 11. Instead, Applicants' rely on average daily production of a well as a "proxy" for evaluating risk of abandonment, based on the assumption that an uneconomic well is unable to "pay for itself" under Mr. Purvis' "holdback" theory. FOF 4 - FOF 10. There was no evidence presented to the Commission that operators budget and plan for well plugging on an individual

well, self-pay basis. FOF 62-FOF 64; **Error! Reference source not found.**. Nor was evidence presented in the record that the ten operators responsible for 75% of the orphan wells on OCD Exhibit 17 abandoned their wells because those wells produced below a certain number of days or barrels equivalent in a year.

COL 12. Applicants' and OCD witnesses admitted that well economics are highly individualized and that many low producing wells are economical at just 1 BOE per day. FOF 119.

COL 13. The Commission heard from several operators, both large and small, that wells are plugged only after the operator has evaluated all other alternatives or additional development and production established. The Commission also heard credible testimony that operators plan a year or more in advance to plug wells, outside of emergency circumstances. FOF 62-FOF 64, **Error! Reference source not found.**& FOF 94, FOF 99-FOF 102, **Error! Reference source not found.** - FOF 135.

COL 14. The Act has required operators post a plugging bond since the 1970s, and always provided enforcement mechanisms to plug wells, but there are an estimated 1700 orphan wells for which OCD has plugging authority, such that the existence of both FA and penalties has not wholly prevented wells from being abandoned.

COL 15. Applicants' theory that increasing FA will prevent orphan wells is based on a series of assumptions about well economics, which if true are prohibited by the Act: First, Applicants assume at lower levels of production a well cannot self-fund plugging costs; Second, an operator cannot justify paying higher premiums or meeting higher collateral demands resulting from Applicants' proposed FA levels on low-producing wells; Third, faced with keeping a low-producing well active or prematurely plugging, the operator will plug the low-producing well, "prevents" the well from being abandoned but at the cost of creating waste.

COL 16. If the Commission were to adopt Applicants' "self-funding" theory of plugging wells, testimony from IPANM and OCD confirms that wells are economic at 1 BOE per day or less. FOF 119. Therefore, the asserted purpose of Applicants' Proposed Rules defining a low-producing well is still met at the lower production threshold of 365 BOE per year or less.

COL 17. Of the ten operators which account for over 75% of currently orphaned wells, all were able to obtain FA, and the presence of FA did not prevent the Operator from orphaning those 952 wells. FOF 52- FOF 55.

C. Applicants' Proposed Rules will not Plug Existing or Future Orphan Wells.

COL 18. The OCD cannot use funds from forfeited FA until the OCD has first initiated and completed enforcement actions to obtain plugging authority over the subject well, and second, actually plugged the well to satisfy the condition precedent under Section 70-2-14.

COL 19. There are numerous reasons why the OCD enforcement process is delayed, to include insufficient staffing and funding, but the result is that the wells which OCD plugs have been abandoned, inactive, and unmonitored for many years. FOF 37- **Error! Reference source not found.**; **Error! Reference source not found.**- FOF 46; **Error! Reference source not found.**- **Error! Reference source not found.**- **Error! Reference source not found.**.

COL 20. In contrast, the wells plugged by operators are very different in integrity and production history, leading to lower plugging costs overall and higher efficiency in plugging wells in comparison to Division-plugged wells. FOF 39, FOF 40, **Error! Reference source not found.**- **Error! Reference source not found.**.

COL 21. To fund plugging activities, the operator must draw on alternate capital or cash flow, because like OCD, the funds secured by plugging FA, which are non-cancelable, are not available for release and return until after the well is plugged.

COL 22. Therefore, neither OCD nor the Operator may access plugging FA to accomplish the plugging of wells in accordance with 19.15.25 NMAC, and the presence of FA—and even higher levels of FA under Applicants' Proposed Rules—does not plug wells.

COL 23. In addition, while the OCD has not historically pursued or recovered FA for abandoned wells, funding for plugging orphan wells has never been the limiting factor. FOF 53-FOF 59. The recent influx of federal funding and new state funds allocated under HB80 to plug orphaned wells will far exceed historical and current OCD capacity to plug wells.

COL 24. At current and anticipated levels of funding in the Reclamation Fund and OCD well-plugging capacity, there exists funding for almost 80 years to plug Applicants predicted 5% of active wells that are likely to be abandoned.

COL 25. Whether OCD spends funds from the Oil & Gas Conservation Tax or from recovered FA, neither of these sources are "taxpayer" money as claimed by Applicants' and that concern is rejected as valid support for Applicants' Proposed Rules.

COL 26. It is undisputed that industry plugs 95% of wells on an annual basis, but as explained above, none of the operators plugging those 95% of wells relies on FA to plug wells.

COL 27. Increasing FA amounts under Applicants' Proposed Rules will reduce available capital for the 95% of wells currently plugged by industry, and will therefore reduce the capability of operators to plug additional wells, such that Applicants' Proposed Rules may lead to less wells plugged statewide on an annual basis.

COL 28. Under Applicants' Proposed Rules, the Division does not anticipate that operators substantially out of compliance, identified on OCD Exhibits 17 and 33, will contribute any additional FA. Therefore, the only operators which OCD anticipates complying with new FA levels are compliant operators who are already responsibly plugging their own wells and are the *least* likely to orphan wells. FOF 232 - **Error! Reference source not found.**.

COL 29. If the only increased FA under Applicants' Proposed Rules is provided by compliant operators who are least likely to orphan wells, then the OCD will not have the opportunity to forfeit the increased FA, because those operators are unlikely to default. The only party anticipated to receive more funding under Applicants' Proposed Rules will be surety providers recouping grossly inflated annual premiums. FOF 180 - FOF 204.

D. Commission cannot exceed $250,000 blanket bond for active wells.

COL 30. Section 70-2-14(A) has historically provided for three (3) types of plugging FA: a blanket plugging bond for active wells, an additional blanket bond for wells in TA status more than two years, and a single-well bond. Applicants' Proposed Rules introduce two new categories of single-well bonds that will apply to active, producing wells: the single-well bond for Low-Producing wells at Subpart D of 19.15.8.9 NMAC and the High-Risk Operator Portfolio Well at Subpart E of 19.15.8.9 NMAC. But the Act provides the blanket plugging bond as a right to operators and caps the blanket plugging bond at $250,000. COL 31- **Error! Reference source not found.**; **Error! Reference source not found.**.

COL 31. Section 70-2-14 requires that "one-well plugging FA" be set "in amounts determined sufficient to reasonably pay the cost of plugging the wells covered by the FA." Section 70-2-14 also mandates that in establishing FA, the 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."

COL 32. In establishing new categories of FA, the Act requires the Commission to consider the factors of depth, age, and cost of plugging similar wells, but neither Applicants' Low-Producing single well bond nor their High-Risk Operator Portfolio single well bond does

not account for depth, age, or the cost of plugging similar wells. FOF 34- FOF 35; Ezzell Rebuttal, 6:2-4 & 6:15-18.

COL 33. Under Section 70-2-14, only the one-well plugging FA is tied to amounts sufficient to reasonably pay the cost of plugging well covered by the FA. Section 70-2-14 directs the division to adopt a blanket plugging FA not to exceed $250,000.

COL 34. Section 70-2-14(A) clearly contemplates individual well considerations by reference to depth, age, and the reasonable cost of plugging similar wells. Ezzell Rebuttal, 7:6-11. Applicants' universal single well bond of $150,000 denies operators the substantive opportunity to demonstrate a reasonable or similar plugging costs. *Id*

COL 35. In the 2018 rulemaking which increased FA levels from $50,000 to tiered levels approaching $250,000, the Commission was cognizant of impermissibly "double-bonding" wells and carved out federal wells from Part A of 19.15.8.9 NMAC. **Error! Reference source not found.**. Here, where Applicants' seek to double-bond additional categories of wells but do not consider or account for mandatory factors, **Error! Reference source not found.**, FOF 35,& FOF 37, Applicants' Proposed Rules to adopt Low-Producing and High-Risk Operator single well plugging FA do not comport with the Act.

COL 36. Where the Legislature declined to increase FA and well transfer oversight in 2024 under HB133, the Commission has its answer that it remains without authority to do so by rule. IPANM Exhibit 41, Ezzell Rebuttal, 9:10-21, LFC Report, WELC Ex. 4 at 32.

COL 37. The Commission does not have the power to adopt Applicants' Proposed Rules at Parts D and E of 19.15.8.9 NMAC to the extent changes would require operators to bond active wells in amounts greater than $250,000, the statutory cap set by the Legislature in Section 70-2-14(A).

COL 38. Section 70-2-14(A) provides that the Commission shall require a one-well bond on any well that has been held in temporary abandoned status for more than two years. Applicants' proposal to amend and combine the definitions of temporary abandonment and approved temporary abandonment unnecessarily limits the Division's ability to require additional bonding for inactive wells that are inactive greater than two years. FOF 1 – FOF 3.

COL 39. Reflecting on the adopted and proposed changes to the Oil and Gas Act over the past two decades, Ezzell Rebuttal, 2:5-7, the Legislature has only approved **additional** single well bonding for wells in temporary abandoned status greater than two years. NMSA 1978, § 70-2-14(A); Ezzell Rebuttal, 7:12-18. This reflects the Legislature's balanced decision that while unproductive wellbores retain value, industry should provide additional bonding after two years in amounts which reasonable reflect the cost of plugging the well, currently keyed to depth under Part C of 19.15.8.9 NMAC. Ezzell Rebuttal, 7:13-8:6.

COL 40. Where the Commission previously adopted rules to enforce civil penalties in conflict with then existing statute, it was without authority to do so. *Marbob Energy Corp. v. N.M. Oil Conservation Comm'n,* 2009-NMSC-013, ¶8; Ezzell Rebuttal, 3:1-13. There, as here, the remedy lies with the Legislature and amendment of the Oil and Gas Act. NMSA 1978, § 14-4-5.7(A).

COL 41. The Commission does not have authority to repeal, circumvent, or render sections of a statute moot through rulemaking. Ezzell Rebuttal, 8:13-15; NMSA 1978, § 14-4-5.7(A) ("No rule is valid or enforceable if it conflicts with statute. A conflict between a rule and a statute is resolved in favor of the statute.").

E. Applicants' Proposed Rules create Waste and threaten Correlative Rights; The Act prohibits Waste or the adoption of rules which permit Acts of Waste.

COL 42. While the Commission has concurrent authority under the Act to adopt rules which promote the primary purpose of the Act, it does not have authority to require acts which

create or permit waste by reducing total recovery through inefficient operation or production in excess of reasonable market demand.

COL 43. Applicants' definition of Low-Producing well encourages operators to create waste through one of three options: prematurely plug low-producing wells to avoid punitive, new FA levels; produce the wells in a manner which is inefficient to meet arbitrary days or volume threshold; or produce the well at low market prices in excess of reasonable demand (again to meet arbitrary thresholds proposed by Applicants).

COL 44. Applicants' argument that emissions from orphan wells represent waste should be rejected. The insignificant volumes of leaked methane, Murphy, Tr. 228:19-229:17 (Nov. 4, 2025); is dwarfed by the demonstrated waste of 70-90% remaining recoverable reserves left in the ground as a result of Applicants' Proposed Rules. Ezzell Rebuttal, 10:2-11:5.

COL 45. The same choices are also raised by Applicants' and OCD' proposed presumption against beneficial use for wells producing less than 90 BOE per year. In either scenario a plugged well is removed from all future secondary or tertiary recovery projects because of New Mexico's stringent formation isolation requirements which makes re-entry prohibitive. Therefore, plugging wells that do not otherwise demonstrate a risk to health or safety limits—if not forecloses completely—future methods of recovery and access to reservoirs. This reduces total recovery by inefficient operation of wells and creates waste.

COL 46. On the other hand, in the scenario where operators elect to produce wells to exceed Applicants' arbitrary thresholds in disregard of well performance profiles or market economics, that qualifies as operation in a manner that either dissipates reservoir energy inefficiently or results in production in excess of market demand, which also create waste.

COL 47. Applicants direct the Commission's attention to FA reforms enacted by other states, FOF 16 - **Error! Reference source not found.**, but none provide direct analogs in

terms of scale or economic cost to the reforms proposed by Applicants. Further, the Commission remains far from convinced that the increase in orphan well counts and elimination of small operators experienced in Colorado will not also result from Applicants' changes. FOF 22-FOF 30.

COL 48. There are many interest owners in a well to which the operator is responsible: non-operated working interests, royalty interests, and overriding royalty interest owners. FOF 218. The Commission is charged with the duty of protecting all correlative rights by ensuring the proportionate share of recoverable oil and gas without waste, and to a similar share of reservoir energy. Applicants' Proposed Rules unnecessarily constrain an operator's duty to interest owners in each well and endangers owners' correlative rights. The Commission is without authority to adopt rules which fail to protect correlative rights and rejects Applicants' Low-Producing Well definition, the Low-Producing single well FA, and High-Risk Operator Portfolio single well bonding proposals.

F. Applicants' Zero-Tolerance Proposal is Unnecessary and Operationally Ill-Advised.

COL 49. Applicants strike allowances under the Part A(4) of 19.15.85.9, which OCD asserts is necessary to close the "inactive well" loophole. FOF 11 - FOF 14. Section 70-2-14(A) already provides for additional FA for wells greater than 2 years inactive, and the Commission may set blanket TA bonds not *less* than $50,000. **Error! Reference source not found.**. This additional FA, combined with OCD's increased enforcement and penalty violations of up to $200,000 per well, undercuts any need to tie operator standing to "absolute" compliance. Applicants' proposed "zero tolerance" amendments do not allow the Division discretion and flexibility for responsible operators and regulators to adjust to changing circumstances, which are often outside of either parties' control. FOF 218-FOF 232. The Commission finds that sufficient

tools are available under the current rules to allow the Division to prosecute noncompliant operators for inactive wells and to protect the state from wells inactive greater than two years.

COL 50. Although within its authority to adopt rules regarding the operation of wells, the Commission declines to adopt Applicants' changes to Part A(4) 19.15.5.9 presented in WELC Exhibit 89-B .

COL 51. The policy of the State of New Mexico requires looking at potential uses for non-productive oil and gas wells. NMSA 1978, §71-9A-1 *et seq.*

V. CONCLUSION AND REQUESTS FOR RELIEF

For the foregoing reasons, IPANM respectfully requests that the Commission enter a Final Order that:

A. Declines to adopt Applicants' proposed changes to the following:

1. Proposed definition of temporary abandonment and inactive wells. 19.15.2.7(I)(4) & 19.15.2.7(T)(13) NMAC

2. Proposed deletion of OCD discretion as to well allowances. 19.15.5.9(A)(4) NMAC.

3. Insertion of intervention in TA procedures without standing or injury requirement, as proposed in 19.15.25.13(C)(2) NMAC.

B. Rejects the following proposed provisions as exceeding the Commission's and Division's statutory authority under the Oil and Gas Act, and identifies in the Final Order the specific statutory basis for each rejection:

1. Proposed 19.15.8.9(D) NMAC: "low producing well" one-well FA category exceeding the $250,000 active well blanket bond cap and creating waste. NMSA 1978, §§ 70-2-3, 70-2-14(A).

2. Proposed 19.15.8.9(E) NMAC: "high-risk portfolio" one-well FA category exceeding the $250,000 active well blanket bond cap and creating waste. NMSA 1978, §§ 70-2-3, 70-2-14(A).

3. Proposed 19.15.8.9(F) NMAC: elimination of the two-year TA threshold. NMSA 1978, § 70-2-14(A).

4. Proposed 19.15.8.9(A): "acquisition" pre-approval language. NMSA 1978, §§ 70-2-6, 70-2-14(A).

5. Proposed 19.15.9.9(B), 19.15.9.9(C)(6), 19.15.9.9(D), and 19.15.9.9(E) NMAC to the extent they impose unauthorized transfer-screening, asset retirement obligation-based denial, or FA-based transfer restrictions. NMSA 1978, § 70-2-14(A).

6. Proposed 19.15.25.9(D)(4) NMAC: P&A plan as condition of beneficial use rebuttal. NMSA 1978, § 70-2-14(A).

7. Proposed 19.15.9.9(D) and (E) NMAC: transfer restrictions based on FA compliance. NMSA § 70-2-14(A).

C. Adopts the following modifications proposed by IPANM and NMOGA:

1. Broaden the "beneficial use" and "inactive well" definitions in proposed 19.15.2.7(B)(7) and (I)(4) NMAC to include "but not limited to" production, injection, monitoring, enhanced oil recovery, water flooding operations, regulatory compliance, and participation in reservoir management, pressure maintenance, or infrastructure optimization programs for the prevention of waste, and to exclude wells subject to compliance or final order.

2. Waive FA under 19.15.8.9(A) NMAC for operators with ongoing or planned P&A programs, or wells to be plugged upon acquisition.

3. Except federal and state-bonded wells from additional FA requirements under 19.15.8.9(A).

4. Replace or otherwise revise the flat $150,000 single-well bond amount in proposed 19.15.8.9 and any related provisions to comply with Section 70-2-14(A)'s individualized inquiry requirement. *See* NMSA § 70-2-14(A).

5. Delay implementation of additional FA on transfer of low producing wells for compliant operators and provide path for operators to remain in good standing if unable to satisfy escalated FA requirements. 19.15.8.9(D), 19.15.8.9(E)(2).

6. Reduce the lookback period in operator registration or change of operator provisions to time at point of transfer or five years, consistent with the existing regulatory framework. 19.15.9.8(B), 19.15.9.8(C)(2), 19.15.9.9(B), and 19.15.9.9(C)(2) NMAC.

7. Clarify in proposed 19.15.25.9(D) that OCD may extend the 30-day rebuttal period and revise proposed 19.15.25.9(D)(1) to recognize that a well may "produce or operate" in an economically beneficial manner.

D. Specifies in the Final Order that the Joint Stipulation is non-precedential and non-evidentiary as to any future proceeding, consistent with paragraph 9 of the Joint Stipulation.

E. Retains jurisdiction to address any implementation issues arising from the adoption of the Final Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served to counsel of record by electronic mail this 3rd day of April 2026, as follows:

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