

**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

**INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO'S
SUPPLEMENTAL CLOSING ARGUMENT**

The Independent Petroleum Association of New Mexico (“IPANM”), submits this Supplemental Closing Argument pursuant to the Hearing Officer’s March 30, 2026 decision allowing five additional (5) pages of briefing on the impact or implications of HB80 vis-a-vis Applicants’ Proposed Rules, and that the Commission may take administrative notice of the official analyses of HB80 by TRD, DFA, LFC, and EMNRD. *See* Joint Motion to Reopen as Attachments A-D, respectively.

INTRODUCTION

Applicants’ initial *Application for Rulemaking* filed June 25, 2024, claimed their amendments were necessary to reduce the risk of plugging and remediation costs to the state, citing a billion-dollar funding gap. Thereafter, no single document was referenced or relied upon more by Applicants than the June 24, 2025 LFC *Policy Spotlight: Orphan Wells*,¹ which trumpeted estimated orphan wells liability in the range of \$700 million-\$1.6 billion. WELC Ex. 4 at 1 & 15 (0105, 0119). This rulemaking was litigated on the premise that current financial assurance (FA) levels were insufficient to address the shortfall because the Reclamation Fund could not cover the gap. Setting aside Applicants’ theories and assumptions about operator intent, incentive, and risk-

¹ *See WELC Ex. 4*. Albeit, as discussed by Representative Murphy and WELC expert Adam Peltz, *see* FOF40, the LFC Report was notably biased and excluded industry perspectives, Applicants adopted the LFC Report findings and recommendations without qualification.

proxies, Applicants assert that the State will be responsible for plugging 5% of roughly 60,000 active oil and gas wells, and a Reclamation Fund which grows by \$9-\$10 million per year would never catch up to the looming price tag of \$470 million.² Now signed into law, HB80 creates a Reclamation Fund that will exceed \$1 billion in the next decade, if not earlier. The Commission should dispense with Applicants' fearmongering that funding shortfalls justify exponential increases in FA. In contrast to the attenuated potential recovery of FA (5% orphaning rate multiplied by whatever speculative but low percentage of those wells bonded and further multiplied by an even smaller percentage forfeited), OCD will now have access to hundreds of millions in the Reclamation Fund to plug and remediate orphan wells in the next five years.

The Legislature and the Governor have solved Applicants' concern and the first of Representative Murphy's "three-legged" solution of the orphan well problem: payment. *See* Testimony of Rep. Mark Murphy, Tr. 132:10-16 & 135:16-20 (Nov. 4, 2025). With respect to the remaining "legs"—procurement and process—Applicants' Proposed Rules are either silent or misguided.

ARGUMENT

A. Anticipated Gains to the Reclamation Fund from HB80 Dwarf Estimated Recovery of Financial Assurance Under Applicants' Proposed Rules.

HB80 changes the proportion of Conservation Tax revenue raised from industry on the production of oil and gas in the state allocated to the Oil and Gas Reclamation Fund. Prior to HB80, less than 20% of Conservation Tax revenue was allocated to the Fund: 10.5% when oil prices were below \$70 per barrel; 19.7% when oil prices were above \$70 per barrel. HB80 replaces that

² 62,720 active oil and gas wells x 5% orphan rate = 3,136 wells; 3,136 orphaned wells x \$150,000 FA = \$470,400,000. *See* WELC Ex. 31; *see also* Direct Testimony of Dwayne Purvis, WELC Ex. 30 at 34 (“[h]istorically, 5% of U.S. onshore wells documented as plugged were orphans plugged by State agencies.”)

allocation with the following, regardless of price:

Period	%	Annual Contribution in Millions³	Fund Balance in Millions
April 2025			\$66.7
FY2026	10.5/19.7%	\$9.55 / \$17.87	\$76.25 - \$84.57
FY2027	10.5/19.7%	\$10.32/ \$19.31	\$86.57 - \$103.88
FY2028	50 percent	\$46.5 - \$52.7	\$133.07 – \$156.58
FY2029	75 percent	\$76.5- \$79.58	\$209.57 - \$236.16
FY2030-37	100 percent	\$108.7	\$1,079.2 - \$1,105.8
FY2038+	50 percent	\$43	\$1,122.2 - \$1,148.8

The re-allocation of Conservation Tax revenue to the purpose for which it was established significantly increases the funds available to OCD for plugging and remediation of orphan wells. Using Conservation Tax projections from the LFC’s December 2025 estimates, the amount allocated to the Fund over the next five years is expected to well exceed \$200 million.⁴ **In ten years, the Fund will be more than \$1 billion.** As Representative Murphy testified before the Commission, the problem is not funding, but the ability of the Division to deploy the Reclamation Fund to economically, expediently, and efficiently plug abandoned wells. Murphy, Tr. 134:14-22 & 143:9-13 (Nov. 4, 2025). The LFC Fiscal Impact Report for HB80 and the LFC Spotlight Report echo those same concerns, citing that OCD spent \$46.4 million in five years from FY19-24 to plug just 360 wells, “indicating that available state and federal funds exceed the division’s near-term capacity to deploy [funds] through plugging and remediation activities.” Att. C to Joint Mtn. to Reopen at 3; WELC Ex. 4 at 32 (0136) (recommending goal of rulemaking and policy changes should be to keep plugging in industry hands because of OCD’s poor cost control and oversight). It is immensely counterproductive to adopt Applicants’ proposals that add to OCD’s administrative

³ Contribution numbers reflect ranges cited by TRD, DFA, LFC, and EMNRD in Agency Bill Analyses for HB80, Attachments A-D to the Joint Motion to Reopen.

⁴ 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%202025%20Consensus%20Revenue%20Brief%20Compiled.pdf

burdens but do nothing to address the gargantuan OCD workload needed to ensure responsible stewardship of the HB80 funds.

In contrast to the certainty of available Reclamation Funds under HB80, Applicants' Proposed Rules which increase FA and add new categories of FA suffer from known and admitted deficiencies. First, the ability of an operator to obtain a surety bond bears little relationship, if any, to an operator's tendency to orphan or abandon wells. *Compare* OCD Exhibit 17 Orphan Wells to OCD Exhibit 29 Financial Assurance, FOF93. Second, OCD's Deputy Director agreed that noncompliant operators are unlikely to post additional FA if Applicants' Proposed Rules adopted estimating that of the 51% of operators targeted by Applicants' high-risk category, "maybe" 26% would comply. Powell, Tr. 129:16-130:24, & 130:25-131:5 (Oct. 27, 2025); FOF212. IPANM Executive Director Jim Winchester explained that of the millions in additional FA Applicants' hoped to generate, \$216 million was highly unlikely to materialize. Winchester Rebuttal Testimony, 6:20-7:1. Third, of the additional FA collected from responsible, compliant operators—those are the same operators who are least likely to abandon a well. Under the proposed rules, increased FA will be financially painful to many responsible operators who will plug in any event, drive some responsible operators into insolvency thereby orphaning their wells, and do nothing for wells "operated" by thinly capitalized bad actors who were never going to plug.

At the end of a two-year rulemaking, it is telling that not a single witness for Applicants or the Division could predict whether statewide financial assurance levels would increase under Applicants' Proposed Rules, and at what level. Even if the Commission were to assume 100% compliance under Applicants' proposal, such that each low-producing and high risk well was individually bonded at \$150,000, and OCD recovered 100% of corresponding financial assurance, recovery contributions to the Reclamation Fund result in just 1/10th of the anticipated funds

available under HB80 and just 40% if significantly more orphaning occurs:⁵

Type of Well	Number	Historic Orphan Rate	Maximum Potential Recovered FA
Low Producing	2,200	5%	\$16,500,000
High Risk	11,290	5%	\$84,672,000
			\$101,172,000
<i>compare to</i>			
Type of Well	Number	Quadrupled Orphan Rate	Maximum Potential Recovered FA
Low Producing	2,200	20%	\$66,000,000
High Risk	11,290	20%	\$338,688,000
			\$404,688,000

However, the Commission cannot assume perfect compliance because OCD has already admitted that at least 25% of affected operators will not post additional financial assurance.

CONCLUSION

HB 80 fundamentally changes the landscape of this rulemaking and directly addresses Applicants' motivating concern that current FA levels are insufficient to meet estimated orphan well liabilities. HB80 solves the payment problem. As much as Applicants rely on the LFC Spotlight Report, they willfully ignore its most salient recommendation regarding process, which calls out this very rulemaking, explaining that Applicants' proposed changes "have the potential to simply replicate...existing problems." WELC Ex. 4 at 32. IPANM encourages the Commission to heed the Legislature's decision on how to provide the money needed to address orphan wells, but also to compare the positive outcome worked by HB80 to the drastic economic consequences of Applicants' proposals to small and independent operators. The Commission and Division should focus on spending the HB 80 funds prudently and efficaciously.

⁵ See WELC Ex. 40 (scatterplot by WELC expert witness Dwayne Purvis based on 2024 production, reporting 2,200 low producing wells); WELC Ex. 52, High Risk Portfolio Analysis (showing 51% of operators and 18% of wells captured at 15% threshold, 18% x 62,720 wells = 11,290 "high risk" wells); WELC Ex. 31 (62,720 active wells in New Mexico).

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CERTIFICATE OF SERVICE

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