

**STATE OF NEW MEXICO
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

APPLICANTS' SUPPLEMENTAL BRIEFING ON HB 80

Preliminary Statement

House Bill 80 (“HB 80”) does not change the critical need for regulatory reform, as proposed by Applicants and the Oil Conservation Division (“OCD”). While HB 80 increases funding to the Oil and Gas Reclamation Fund (“Reclamation Fund”)—a means of last resort for the state to plug orphan wells—Applicants’ proposed rules remain necessary to **prevent** orphan wells and their impacts to public health and the environment in the first place. The regulatory reforms before the Oil Conservation Commission (“Commission”)—that incentivize operators to timely and more cost-effectively plug their own wells—are required. The Legislative Finance Committee (“LFC”) agrees: “In New Mexico, the goal should be to structure policies that motivate operators to plug wells before they become OCD’s responsibility and leverage the industry’s capacity to do the work faster and likely at lower cost.” Apps’ Ex. 4 at 0136.

I. THE LEGISLATURE CAN AMEND OR REPEAL HB 80 AT ANYTIME

The Reclamation Fund receives revenue generated by the Oil and Gas Conservation Tax, a 0.18% tax on oil and gas products. The tax was originally established to finance enforcement of the Oil and Gas Act, Apps’ Ex. 4 at 0145, but over the past six decades, the legislature redirected most of the tax revenue to the General Fund. Apps’ Ex. 4 at 0145; 10/31/25 Tr. at 176:12-16.

While HB 80 directs some tax revenue to the Reclamation Fund over time,¹ the legislature can revert all or part of the revenue back to the General Fund at any time for any reason including future economic downturns or emergencies. There is no certainty whatsoever that HB 80 will generate the revenue estimated in the fiscal impact reports (“FIR”)² the New Mexico Oil and Gas Association and Independent Petroleum Association of New Mexico (“Industry Parties”) claim will be available for years to come. *See, e.g.*, Apps’ Exs. 45-50 (production decline trajectories).

Moreover, estimated revenues may not come close to meeting the “the state’s current and near-future liability for well plugging and site remediation . . . estimated [by LFC] at \$700 million to \$1.6 billion.” Apps’ Ex. 4 at 0105. The Energy, Minerals and Natural Resources Department estimates that, between FY26 and FY30, HB 80 will add roughly \$207 million more to the Reclamation Fund than it would have received. EMNRD Agency Bill Analysis at 2 (Jan. 27, 2026) [Ind. Mot., Att. D]. Projections further out become increasingly speculative because revenues depend on unknown future oil and gas prices and production levels.

Fundamentally, increases alone to the Reclamation Fund—even if substantial—fail to resolve New Mexico’s orphan well problem. Just as a similar influx of federal funding from the Infrastructure, Investment and Jobs Act did not solve New Mexico’s orphan well problem, throwing more money at orphan well plugging fails to address the crux of the issue—**preventing** wells from becoming orphaned in the first place.

Preventing operators from orphaning wells and associated infrastructure requires a multipronged policy approach, like that offered by Applicants and OCD. 10/20/25 Tr. 31:23 to

¹ The new distribution rates to the Reclamation Fund are: 50% in FY28, 75% in FY29, 100% from FY30 to FY36, and 50% in FY37 and thereafter. *See* HB 80 LFC Agency Bill Analysis – 2026 Regular Session at 2 (Jan. 28, 2026) [Ind. Mot., Att. B].

² *See* HB 80 Bill Analysis and FIR, Taxation and Revenue Department at 1 (Feb. 2, 2026) [Ind. Mot., Att. A]; HB 80 LFC FIR at 1 (Feb. 2, 2026) [Ind. Mot., Att. C].

32:10. The Reclamation Fund serves as a backstop to address instances where bad actors flout the rules or where well-intentioned operators nevertheless become insolvent and become unable to pay for their decommissioning liabilities.

II. THE RECLAMATION FUND DOES NOT ERRADICTE THE PUBLIC HEALTH AND ENVIRONMENTAL IMPACTS OF ORPHAN WELLS

The Reclamation Fund was created in 1977, and nearly five decades later New Mexico's orphan well problem persists. *See* 10/23/25 Tr. at 43:5 to 44:14. Simply depositing more money into this fund will not solve the problem—wells must be prevented from becoming orphaned in the first place, which is the primary purpose of Applicants and OCD's proposed rules. Applicants presented extensive evidence explaining how the proposed rules incentivize operators to promptly plug their wells, thereby preventing well orphaning, and the host of problems orphan wells create. Apps' Ex. 15 at 0303-04. These problems include:

- Orphaned wells emit methane, a powerful greenhouse gas; can contaminate groundwater with toxic chemicals; and can negatively impact nearby communities' health and economy. Apps' Ex. 57 at 0847.
- Orphaned wells and the surrounding sites are more likely to be severely degraded and require more extensive work, costs, and time to clean up. 10/23/25 Tr. at 65:13-17, 67:15 to 68:6, 92:15-20. OCD staff and contractors plug orphan wells at great risk to their lives and safety. *Id.* at 67:5 to 69:18; 143:13 to 144:21.
- Even with a robust Reclamation Fund, existing and expected orphan well infrastructure will linger unaddressed and further deteriorate on New Mexico's landscape for decades based on OCD's annual plugging and reclamation rates. Apps' Ex. 4 at 0119, 0123.
- Unplugged wells have roughly 100 times higher average emissions than plugged wells. Apps' Ex. 15 at 0310. Indeed, over 60% of the orphaned wells OCD plugs leak methane. 10/24/25 Tr. at 214:4-10; OCD Ex. 13 at 0004.
- Historic spills at well sites can seep into—and pollute—subsurface drinking water reservoirs. Without effective plugging, additional oilfield fluids, including natural gas, oil, and oilfield brine, can potentially move through the open borehole to fresh groundwater zones, the surface, or the atmosphere. Apps' Ex. 30 at 0702.

The Reclamation Fund, in fact, creates a negative incentive and moral hazard for

operators that may lead to well deterioration and orphaning. If operators know OCD will use the Reclamation Fund rather than recover plugging costs from operators, this creates a powerful incentive for operators to continue and even increase the practice of neglecting and orphaning wells. An operator who knows its competitors are avoiding the cost of plugging would have little reason to choose to bear those costs itself. Apps' Ex. 15 at 0355.

Nothing in the Oil and Gas Act suggests the Legislature intended OCD's primary duties to revolve around orphan well plugging and reclamation. OCD was not designed to act as a large-scale plugging contractor. Apps' Ex. 4 at 0128. Yet, plugging and reclamation now represent a significant share of the OCD's workload and contractual services spending. Apps' Ex. 4 at 0111; 10/24/25 Tr. at 111:24 to 112:15. Relying on the Reclamation Fund to address the orphan well problem absent regulatory reforms that prevent orphan wells would further divert the agency's limited resources away from its other obligations under the Oil and Gas Act.

III. THE RECLAMATION FUND DOES NOT ADDRESS THE PROBLEM THAT CURRENT LEVELS OF FINANCIAL ASSURANCE ARE NOT SUFFICIENT TO MAKE OCD FORFEITURE COST EFFECTIVE

The current levels of financial assurance furnished by operators are generally too low to make it cost-effective for the OCD to pursue bond forfeiture in cases where operators have failed to satisfy their plugging and abandonment obligations. IPANM Ex. 28 at 62:17 to 63:9, 63:20 to 64:7; Apps' Ex. 15 at 0306. In other words, OCD's well plugging costs typically far exceed the bond amounts posted by operators. Apps' Ex. 23 at 22. Applicants' proposed rules address this dilemma by increasing operator bonding obligations, making it cost-effective for OCD to seek bond forfeiture. Apps' Ex. 81 at 1153. Increasing the Reclamation Fund without increasing financial assurance levels would leave this problem unresolved.

Conclusion

As LFC, the State Land Office, and OCD all recognize, New Mexico faces an orphan well crisis.³ It's a complex crisis that requires a multi-pronged policy approach to address. There is no silver bullet, as Industry Parties would have the Commission believe. While HB 80 increases the revenue in the Reclamation Fund, the bill does not come close to sufficiently addressing New Mexico's orphan well problem. Plugging orphan wells without preventing orphan wells is incomplete. Applicants and OCD's proposed rules prevent wells from becoming orphaned in the first place by requiring full-cost financial assurance for high risk wells and high risk operators to incentivize operators to timely plug; strengthening transfer rules to prevent transfer of wells to high risk operators likely to abandon their wells; and ensuring that low producing and inactive wells that have no beneficial use are promptly plugged and don't linger unattended to for years or even decades.

For the foregoing reasons, Applicants' request the Commission to adopt Applicants' and OCD's final proposals.

Respectfully submitted,

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³ Apps' Ex. 4 at 0105-04; Center for Applied Research, *An Analysis of the Adequacy of Financial Assurance Requirements for Oil and Gas Infrastructure Located on State Trust and Private Lands in New Mexico*, April 30, 2021; Vertex Resources Services, Ltd. (2021). *New Mexico Oil and Gas Liability Assessment*. Sherwood Park, Alberta Canada: Vertex Resources Services, Ltd.; OCD Ex. 13 at 3; 10/23/2025 Tr. at 52:5 to 53:12.

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Certificate of Service

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