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

WESTERN ENVIRONMENTAL LAW CENTER, ET AL. **CASE NO. 24683**

APPLICANTS.

NEW MEXICO OIL AND GAS ASSOCIATION'S CLOSING BRIEF WITH PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The New Mexico Oil and Gas Association ("NMOGA"), through undersigned counsel, submits its *Closing Brief with Proposed Findings of Fact and Conclusions of Law*, explaining the basis for the New Mexico Oil Conservation Commission ("Commission" or "OCC") to amend, reject, or adopt Applicants' (led by the Western Environmental Law Center ("WELC") and collectively referred to as "Applicants") proposed amendments to the New Mexico Oil Conservation Division's ("Division" or "OCD") regulations codified at 19.15.2 NMAC (definitions); 19.15.5 NMAC (compliance); 19.15.8 NMAC (plugging financial assurance); 19.15.9 NMAC (operatorship); and 19.15.25 NMAC (abandonment) ("Proposed Amendments" or "Proposed Rules"), with negotiated changes now reflected in Applicants' Exhibit 89-A, 89-B, 89-C, 89-D, and 89-E, respectively, before this Commission and jointly adopted by OCD and OXY USA, Inc. ("OXY").[1] Applicants' Exhibits 89-A-E reflect negotiated changes in blue that the Parties to this rulemaking came to through sixteen (16) post-hearing discussions following the

[1] Except that OXY opposes Applicants' Proposed Amendments in 19.15.25.13(C) NMAC: requiring operators to provide newspaper notice for 5-year Temporary Abandonment extension requests; and allowing "any interested person" to request a hearing or intervene. Apps. Ex. 89-E. As reflected in NMOGA Closing Ex. 5 and reiterated herein, NMOGA supports and adopts OXY's suggestion to strike the newspaper notice requirement and replace the references to "any interested person" with "person with standing." OXY Closing Ex. D (prop. 19.15.25.13(C) NMAC).

rulemaking hearing, which was conducted by the Commission from October 20 through November 6, 2025, in OCC Case No. 24683 ("Hearing").

NMOGA, IPANM, and OXY accepted those negotiated changes—some with suggested modifications[2]—for purposes of waiving substantial evidence claims (provided the provisions are not materially or substantially altered at adoption), and memorialized in the Joint Stipulation filed with the OCC on April 3, 2026. This Closing Brief contains *NMOGA's Closing Arguments ("CA")* on the statutory limits of this Commission's enabling legislation that confines OCC and OCD rulemaking, enforcement, and financial assurance ("FA") authority, NMSA 1978 §§ 70-2-1 to 70-2-38 ("OGAct"), followed by NMOGA's Proposed Findings of Fact and Conclusions of Law for the Commission's forthcoming final written order in this rulemaking, all supporting either "refusing to adopt the proposed rule change, or adopting the proposed rule change in parts," and which "shall include in the [Final Order] the reasons for the action taken." 19.15.3.13(C) NMAC. NMOGA respectfully avers the Commission need not look further than its own enabling act, where its plain language and limits are clear.

I. CLOSING ARGUMENTS

A. The Joint Stipulation Reflects Good Faith Engagement and Narrows the Issues Before the Commission

In the words of Commission Chair Chang on Day 10 of this rulemaking, the Commission must ultimately decide "what the boundaries of the statute are." Tr. 49:11-12 (Oct. 31, 2025). The

[2] Parties that accepted or accepted but modified certain Proposed Amendments reserved all legal arguments except for those based on substantial evidence grounds under the *Joint Stipulation*, noted with "A\R" or "A\M\R" in the attached *Joint Stipulation Chart*. The Applicants are filing the *Joint Stipulation*, their corresponding Exhibits 89-A through 89-E reflecting their final post-hearing Proposed Amendments for the Commission's consideration and marking the negotiated changes in blue, and the *Joint Stipulation Chart* as a Notice of Filing on April 3rd with their closing documents. NMOGA has attached the Applicants' April 3rd Notice of Filing to its NMOGA Closing Exhibit 6 with those documents attached thereto and marked as Attachments A, B, and C. NMOGA's Closing Exhibit 6 lists the compromises underlying the *Stipulation*, referred to by the parties during negotiations and in NMOGA's Closing Brief as the "Package Proposals," with all other changes to the Proposed Rules achieved through those post-hearing discussions and agreed to through the *Stipulation* detailed herein in NMOGA's Closing Brief where relevant.

Joint Stipulation filed by the parties on April 3, 2026, is proof that industry engagement within those boundaries works. NMOGA, IPANM, and OXY came to the table, participated in sixteen post-hearing negotiating sessions, and agreed—where the proposed rules can be squared with the Commission's statutory authority—to accept a substantially strengthened regulatory framework. That outcome represents a significant increase in regulatory obligations for New Mexico operators.

The stipulated provisions cover the great majority of the Proposed Rules across Parts 2, 5, 8, 9, and 25 NMAC. NMOGA does not challenge those provisions on substantial evidence grounds. What remains in dispute is narrow: a specific set of proposals that Applicants declined to negotiate and that the Legislature has not authorized—not by policy preference, but by operation of law. The Commission's task in this proceeding is not to resolve the orphaned well crisis. It is to adopt rules within the authority that the Legislature has actually granted. Where Applicants' proposals stay within that authority, NMOGA engaged constructively, and the result speaks for itself. Where they do not, no policy goal, however worthy, can supply the legal authority that the Legislature has not extended.

B. The Effect of the Joint Stipulation and NMOGA's Reservation of Rights

The Joint Stipulation should frame the Commission's review of this Closing Brief. Under paragraph 2 of the Joint Stipulation, NMOGA agreed not to challenge revisions highlighted in blue in Applicants' Exhibits 89-A through 89-E before the Commission based on lack of substantial evidence and, if adopted without material change, not to appeal those revisions on that basis. *Joint Stipulation* ¶ 2. The same paragraph expressly provides that NMOGA "reserve[s] [its] right to challenge any such revisions highlighted in blue before the Commission or on appeal on any other grounds or basis." *Id*.

Paragraph 5 identifies the specific blue provisions to which that limited agreement applies as to NMOGA. *Joint Stipulation* ¶ 5. Paragraph 9 further confirms that the Stipulation is limited to

this proceeding and "shall have no precedential, preclusive, or evidentiary effect and shall not be cited, relied upon, or used for any purpose in any other proceeding, including by OCD or the Commission, and shall not be used against any party in any future rulemaking, enforcement action, or appeal." *Joint Stipulation* ¶ 9.

Accordingly, this Closing Brief addresses three categories of issues: (1) stipulated provisions that NMOGA does not challenge on substantial-evidence grounds, while reserving all other legal arguments; (2) negotiated provisions that NMOGA can accept only with specific modifications reflected on the Joint Stipulation chart; and (3) non-stipulated or still-contested provisions that the Commission should reject as unlawful or materially revise before adoption. NMOGA attaches hereto proposed redlines to the Applicants' Proposed Rules as Exhibits 1-5 supported by substantial evidence in the record, both in the form of: specific modifications to the negotiated changes under the Stipulation as reflected in blue in the Applicants' Exhibits 89-A-E, and complete counterproposals for all provisions NMOGA still opposes.

C. The Right Goal, the Wrong Tool: NMOGA Acknowledges the Orphaned Well Problem, but the Legislature Has Not Granted Authority to Fix It by Rulemaking Alone

New Mexico has a real orphaned well problem, which NMOGA acknowledges. The Legislature acknowledged it when the New Mexico Legislative Finance Committee ("LFC")—the Legislature's own nonpartisan fiscal watchdog—published its June 2025 *Policy Spotlight: Orphan Wells*, referred to herein and throughout the Hearing as the "LFC Report." Applicants' ("Apps.") Ex. 4/OCD Ex. 18; *see also* OCD Ex. 19. But the LFC also acknowledged something else: that the current statutory framework is insufficient to fully address the orphaned well problem. Apps. Ex. 4/OCD Ex. 18 at 32. The LFC examined the statutory scheme and concluded that it is "constrained by the current statutory framework and, as a result, [this WELC rulemaking]

ha[s] the potential to simply replicate its existing problems." Apps. Ex. 4/OCD Ex. 18 at 32.

The LFC's conclusion was not academic. It issued three key recommendations to the Legislature: (1) amend Section 70-2-14 of the OGAct to specify that wells producing below certain thresholds require additional FA; (2) amend the OGAct to grant OCD authority to review and disallow the transfer of wells where the purchaser is unlikely to fulfill its asset retirement obligations ("ARO"); and (3) make other statutory changes to provide OCD with tools this rulemaking cannot. Apps. Ex. 4/OCD Ex. 18 at 36.

Applicants ask this Commission to do what the Legislature has not chosen to do: adopt rules premised on authority the Legislature has not conferred. But an agency cannot supply by rule what the statute withholds. However serious the orphaned well problem may be, and however desirable further reform may be as a policy matter, the remedy must come from the Legislature, not from an attempted expansion of administrative power under the guise of rulemaking.

The record also shows a mismatch between the problem identified and the solution proposed. The LFC distinguished between existing orphaned wells and "at-risk" wells and focused its recommendations on statutory tools aimed at defunct or defaulted operators. Apps. Ex. 4/OCD Ex. 18 at 5, 14-20, 36; *See NMOGA Proposed Findings of Fact* (*"FOF")* § B. Meanwhile, the testimony in this rulemaking established that current operators continue to perform the overwhelming majority of plugging for non-legacy wells. The Division's Oil and Gas Reclamation Fund ("Rec. Fund") is the statutory tool designed to address the legacy orphan well problem. In contrast, the bonding proposals address future risk, over-bonding the industry while it continues to plug 95% of wells in New Mexico at significantly lower prices than the Division. *FOF* ¶¶ 31-32*; see NMOGA Proposed Conclusions of Law* ("*COL")* ¶ 20. The Commission should not attempt to solve a legislatively acknowledged statutory gap by imposing new burdens on current operators.

D. The $250,000 Blanket Financial Assurance Cap Is a Deliberate Legislative Limit the Commission Cannot Exceed

1. The Legislature, Not the Commission, Defines Plugging Financial Assurance Categories and Caps under Section 70-2-14(A) of the New Mexico Oil and Gas Act

The Division's limited plugging FA authority is vested pursuant to Section 70-2-14(A) of the OGAct. That enabling provision establishes specific, mutually exclusive categories of plugging FA and express caps—categories that have evolved through repeated legislative amendment over decades. When the Legislature has chosen to create a new FA category or raise a statutory cap, it has done so directly by amending the statute, not by delegating that choice to rulemaking. The history matters:

- **1935**: The Legislature authorized a bond not to exceed $10,000 for plugging dry or abandoned wells. 1935 N.M. Laws, ch. 72, § 10.
- **1977**: The Legislature enacted NMSA Section 65-3-11.2, establishing three categories: (i) blanket bond, (ii) single-well bond, and (iii) single-well coverage for wells in TA status for more than two years. Cap raised to $50,000. *The Legislature's use of an express exception reflects the blanket cap otherwise applied across all coverage types.*
- **2015**: The Legislature amended the statute to create a specific category for temporarily abandoned status wells and authorize blanket TA bonding in excess of $50,000. House Bill 383/Senate Bill 442. *In so doing, the Legislature expressly excepted TA wells from the existing $50,000 blanket bond cap which confirms that the cap applied globally absent a statutory carve-out.*
- **2018**: Legislature raised the active well blanket bond cap fivefold to $250,000. 2018 N.M. Laws, ch. 16, § 2 (Senate Bill 189). The Legislature maintained a separate statutory treatment for TA wells, but no new categories were authorized. *Nor did the Legislature suggest that the blanket bond cap applied only to a single FA category.*
- **2025**: The Legislature received the LFC recommendations to create new categories for low-producing wells and ARO-based transfer restrictions, but the Legislature affirmatively did not amend the OGAct, its Section 70-2-14, or any statute to adopt those recommendations. Apps. Ex. 4/OCD Ex. 18 at 36.

This consistent pattern—of the Legislature acting directly, in the statute itself, each time it intended to create a new FA category or raise a cap—is dispositive evidence that those choices are legislative ones. *The Legislature's need to except TA wells from the prior blanket bond cap further demonstrates that the cap was understood to apply across FA categories.* Applicants' proposals

ask the Commission to break from that pattern and do by rule what the Legislature has done only by statute. The Commission lacks authority to do so.

2. Statutorily Enumerated Categories and Caps are Limited and Mutually Exclusive

In this rulemaking, a visual of the operative statutory language was given the name "Rankin's Rainbow" by the Parties:

> The oil conservation division shall establish categories of financial assurance after notice and hearing. Such categories shall include a blanket plugging financial assurance, which shall be set by rule in an amount not to exceed two hundred fifty thousand dollars ($250,000), a blanket plugging financial assurance for temporarily abandoned status wells, which shall be set by rule at amounts greater than fifty thousand dollars ($50,000), and one-well plugging financial assurance in amounts determined sufficient to reasonably pay the cost of plugging the wells covered by the financial assurance. In establishing categories of financial assurance, the oil conservation division shall consider the depth of the well involved, the length of time since the well was produced, the cost of plugging similar wells, and such other factors as the oil conservation division deems relevant.

A penultimate comma separates the three phrases shown above.[3] As NMOGA Legal Expert, Mr. Clayton Sporich ("NMOGA Legal Expert Sporich") testified, this comma structure is not incidental: it establishes that each category is limited and mutually exclusive by design. Tr. 48:24 (Oct. 31, 2025). These are separate buckets, not layers to stack.

Counsel for the Commission, Mr. Shandler, briefly remarked that New Mexico courts had already dismissed "Mr. Sporich's theory [] based on a comma" and that he had litigated and lost "the exact same argument" approximately twenty years ago. Tr. 128-129 (Nov. 6, 2025); Sporich Rebuttal 32:727-731. That characterization overreads the precedent. The case Mr. Shandler presumably referred to is *Int'l Chiropractors Ass'n v. N.M. Bd. of Chiropractic Examiners*, 2014-NMCA-046, 323 P.3d 914. In that case, Mr. Shandler argued that the Court should re-punctuate

[3] N.M. Legislative Council Serv., *Legislative Drafting Manual*, ch. 9, at 193 (Sept. 22, 2015) ("Use commas sparingly under rules of ordinary usage. Take particular care when adding or deleting commas, as such changes may change the original meaning of the statute. Do not use commas before the conjunction in a series. This comma is referred to as the penultimate or Oxford comma.").

the statute—inserting a comma where the Legislature had put none—to conform to his client's preferred reading. The Court declined. Here, the situation is precisely the inverse: NMOGA asks the Commission to honor a comma that the Legislature deliberately placed. The penultimate comma is there; it controls, and it confirms that the categories are separate and non-overlapping.

3. Proposed Low Producing Well and High-Risk Portfolio Financial Assurance Requirements, and Inflation Adjustment, All Exceed the $250,000 Legislative Cap

Applicants' Proposed Rules exceed the express statutory ceiling on the bonding of active wells established in NMSA Section 70-2-14(A) of the OGAct by requiring $150,000 "one-well FA" for every: active but newly defined "low producing well" under proposed 19.15.8.9(D) NMAC;[4] and every well in a "high-risk" portfolio, whether active or inactive, under proposed 19.15.8.9(E) NMAC. But the OGAct well treats and classifies low producing wells and all wells in a high-risk portfolio as active wells. *CA* § E. Just like the statute ensures that wells in the first two years of TA status are guaranteed eligibility for the $250,000 blanket FA. *CA* § F. Accordingly, the new "one-well" FA requirements proposed for such active wells, which are statutorily guaranteed the active well blanket discount, will exceed the OGAct's active well blanket cap of $250,000 by the time just two such active wells are secured.

Moreover, the discretionary inflation adjustment under proposed 19.15.8.9(H) NMAC expressly applies to those new low producing well and high-risk portfolio FA requirements as proposed, compounding the risk and likelihood that proposed 19.15.8.9(D) and (E) NMAC will exceed the statutory $250,000 cap. NMOGA suggests in its redline that those cross-references to Subsections (D) and (E) be deleted, such that they become part of the carve out of FA requirements that the discretionary inflation adjustment does not apply to. NMOGA Closing Ex. 3 (prop.

[4] Apps. Ex. 89-A. Initially proposed as "marginal well" under 19.15.2.7(M)(2) NMAC. Apps. Ex. 72-A. Parties agreed to change "marginal well" to "low producing well" as part of the Stipulation. *Joint Stipulation* ¶¶ 4-5.

19.15.8.9(H) NMAC). Applicants have already acknowledged the active well blanket bond option under 19.15.8.9(C)(2) NMAC is subject to the $250,000 legislative cap by setting blanket bonding for any number of active wells at $250,000 within Subsection (C)(2), and not cross-referencing (C)(2) in the inflation provision as one of the FA requirements to which the discretionary increases apply. The same should be true for Subsections (D) and (E), and those cross-references struck that otherwise make the proposed inflation provision applicable to low-producing wells and high-risk portfolio FA requirements. Those Proposed Rules impose FA obligations beyond the Legislature's clear limits, they fall outside the scope of the OGAct's authority and cannot be adopted.

E. The Low-Producing Well and High-Risk Portfolio Categories Exceed the Statute

No amendment to the OGAct enacted since 2018 authorizes the Commission to exceed the $250,000 blanket FA cap, to create new FA categories for low producing active wells, or to create new FA categories for wells in a high-risk portfolio. *CA* § D.1. The June 2025 LFC Report recommended that the Legislature enact a statutory amendment to authorize new FA categories for low-producing wells and grant Asset Retirement Obligation ("ARO") based transfer review and restrictions, confirming that such authority does not presently exist. Apps. Ex. 4/OCD Ex. 18 at 36.

Proposed 19.15.8.9(D) NMAC creates a new "low producing well" FA category imposing $150,000 one-well FA for each low producing active well (coupled with the new regulatory definition of "low producing well" under proposed 19.15.2.7(L)(6) NMAC), which exceeds the $250,000 active well statutory cap, *CA* § D.3, and creates a new category of "one-well" FA for active wells that the OGAct does not authorize. Proposed 19.15.8.9(E) NMAC likewise creates a new "high-risk portfolio" category imposing one-well FA on wells that remain active or would otherwise be eligible for blanket coverage (defining "high-risk" portfolios therein as when 20% or more of an operator's total wells are either inactive or in TA status), which again exceeds the

$250,000 active well statutory cap, Closing Argument ("CA") § D.3, and creates another new category not authorized under the statute. Both provisions should be rejected as *ultra vires.* NMSA § 70-2-14(A); *Marbob Energy Corp. v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013, ¶ 7, 146 N.M. 24.

If, as Applicants suggest, the Commission can always require one-well FA for any category of active well, then the $250,000 active well blanket cap becomes meaningless surplusage, *CA* § D—functionally replacing the Legislature's capped framework with an effectively unlimited bonding scheme. New Mexico law does not permit an agency or a court to construe a statute in a way that renders deliberate language superfluous. *Amdor v. Grisham*, 578 P.3d 971, 984 (N.M. 2025); *Baker v. Hedstrom,* 2013-NMSC-043, ¶¶ 15, 17, 309 P.3d 1047. Section 70-2-14(A) authorizes "one-well" FA only for wells "held in a temporarily abandoned status for more than two years." *CA* § F. Any contrary reading or interpretation that the Commission may require one-well FA for any category of active well at any time renders the $250,000 statutory cap and the specifically enumerated one-well FA provision superfluous, Tr. 240:6-12 (Oct. 27, 2025), in violation of the rule that no statutory provision shall be treated as mere surplusage, *Amdor*, and inviting future attempts to manufacture new well classifications as a means of imposing ever-increasing FA obligations absent statutory authorization.

Alternatively, to the extent the Commission rejects NMOGA's statutory authority arguments opposing the proposed one-well low producing well and high-risk portfolio FA requirements—arguments fully preserved for rehearing and appeal, *CA* §§ D–E[5]—NMOGA submits the following

[5] NMOGA preserves its statutory-authority objections to these proposals for purposes of rehearing and appeal. NMOGA likewise preserves its independent challenge to these proposals on grounds of waste, and asserts that challenge here without waiving any other preserved objections. *CA* § I.

modifications to Applicants' proposed 19.15.8.9(D) and (E) NMAC in their Exhibit 89-C for the Commission's consideration, as reflected in green in *NMOGA Closing Exhibit* 3:

- Striking all references to "one-well" as a statutory conflict because low producing wells and all wells in a high-risk portfolio, which are statutorily guaranteed to be eligible for blanket bond coverage as explained herein, *CA* §§ D-E;

- Making the effective date June 1, 2029 (instead of May 1, 2029), and annual determinations regarding low producing well or high-risk portfolio status due June 1 (instead of May 1) each year, *FOF* ¶ 92, *COL* ¶ 41;

- Adding additional variances for the low producing well status in addition to the negotiated takeaway capacity variance but still retaining the negotiated takeaway capacity variance and using its accepted "demonstration to the satisfaction of the division" standard, and adding a protest procedure, *FOF* ¶¶ 69-76, *COL* ¶ 42; and

- Replacing the $150,000 one-well FA amount with a figure and alternatives actually authorized by and aligned with the OGAct and supported by the record, *CA* § G.3, *COL* ¶¶ 49-59.

See also Joint Stipulation ¶ 5 and *Chart* (prop. 19.15.8.9(D)-(E) NMAC).

F. The Commission Lacks Authority to Remove the Two-Year Temporarily Abandoned Well Threshold for Heightened Inactive Well Financial Assurance

Section 70-2-14(A) of the OGAct requires "one-well" FA only for wells held in temporarily abandoned ("TA") status for more than two (2) years, and sets a floor of $50,000 for such 2+ year TA well FA; whereas wells in TA status for 2 years or less remain eligible for the active well blanket bond discount. NMSA § 70-2-14(A); *Marker v. N.M. Oil Conservation Comm'n*, Nos. A-1-CA-37860, A-1-CA-38814, 2021 N.M. App. Unpub. LEXIS 117 (Ct. App. Apr. 19, 2021); Sporich Rebuttal ¶¶ 12, 31-33; Tr. 815:10-24 (Oct. 22, 2025).

At the Hearing, Commissioner Ampomah indicated his support for keeping the current scope of the TA-specific FA regulations which at present allows wells in TA status up to 2 years to remain eligible for the active well blanket bond option under 19.15.8.9(C)(2) NMAC (instead of expanding the heightened inactive well FA requirements to all TA wells indiscriminately and

without consideration of the statutory 2-year OGAct threshold as Applicants propose in prop. 19.15.8.9(F) NMAC). Tr. 502:16-504:9 (Oct. 21, 2025). Commissioner Ampomah concluded by noting he thought the risk of not allowing operators to use their active well blanket bond to cover active wells in approved TA status for short time periods, i.e., 2 years or less, for example, before being transitioned to water flooding, etc., would actually lead to the premature plugging of viable wells and considerable waste considering the amount of Permian oil that operators have been able to recover from oil recovery projects. Tr. 505:6-19 (Oct. 21, 2025).

Furthermore, OCD's purported unwritten policy of ignoring the 2-year TA protections under the OGAct does not respond to the issue NMOGA takes with the proposed expansion of the scope of inactive one-well FA under proposed 19.15.8.9(F) NMAC to all TA status wells as unlawfully prohibiting an operator from using its active well blanket bond to cover its wells in approved TA status for the first two years, as protected by the OGAct. *CA* § D. NMOGA proposes that the Commission should retain the existing scope of the heightened inactive well requirements as it currently exists under existing Subsection (D), only requiring heightened blanket bond assurance to be required when a TA well remains in that status for more than two years.

Proposed 19.15.8.9(F) NMAC unlawfully eliminates the two-year threshold, subjecting all pending, approved, and expired TA wells—regardless of duration—to heightened one-well FA requirements not authorized by the statute. The Commission cannot rewrite the statutory trigger for one-well TA bonding by rule.

G. The $150,000 Flat-Rate Bond Amount Is Inconsistent with the Statute and Unsupported by the Record

Even setting aside the category question, Applicants' proposed $150,000 flat rate for all wells, regardless of type or status, fails independently. Section 70-2-14(A) requires one-well FA to be set "in amounts determined sufficient to reasonably pay the cost of plugging the wells covered by

the financial assurance"—and it specifies that in establishing those amounts, 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." (Emphasis added.) This is an individualized inquiry requirement. A flat rate for all wells regardless of depth, age, or condition is not an individualized inquiry—it is the antithesis of one.

1. Applicants Unlawfully Disregard Statutorily Enumerated Factors Proven at Hearing to Be Best Indicator of a Well's Plugging Cost

Applicants ignore the plain language of those statutorily enumerated factors when setting one-well FA amounts for individually secured wells. Applicants' own legal expert specifically testified that depth is not a consideration under the Proposed Rules. Tr. 879:11-22 (Oct. 22, 2025); Apps. Ex. 57 at 38:2-10. By Applicants' own admission, its rules explicitly write out of existence the statutory factors the Legislature made mandatory. Disregarding the statutory factors entirely—factors the record shows remain the most reliable indicators of actual plugging costs, *FOF* § I—Applicants improperly focus on the final clause of the one-well FA command (which only allows consideration of the cost to plug *similar* wells). Applicants mischaracterize that clause as a catchall phrase and reinterpret it as directing consideration of any "relevant available information," without regard to the relevance limits of the parameters set by the preceding list. Tr. 572:21-573:4 (Oct. 21, 2025); Apps. Ex. 15 at 41:1-16. But the statute confines the inquiry to the specific well being secured, and it allows consideration only of plugging costs for wells with similar depth and time since last production.

2. One-Well Financial Assurance Must "Reasonably Pay the Cost of Plugging the Well[s] Covered," Not Pay the State's Inflated Cost of Plugging, and Does Not Prohibit Consideration of Industry Plugging Costs

The record establishes that $150,000 is not "reasonable" within the meaning of the statute. Applicants mischaracterize NMOGA's position of using industry cost to plug as opposing full cost

FA. But Applicants' Legal Expert, Mr. Peter Morgan ("Applicants Legal Expert Morgan"), testified that government "overheads" are "baked into" the $150,000 one-well FA figure. Tr. 703:4-15 (Oct. 22, 2025); Apps. Ex. 15 at 42:20-21. Across multiple witnesses—including witnesses called by parties other than NMOGA—the testimony converged on a picture of industry plugging costs well below that figure, typically ranging from $50,000 to $100,000 per well when operators perform the work and obtain necessary contracts. *FOF* § H.

Applicants' and OCD's reading of the OGAct would base FA amounts solely on OCD's inflated plugging costs (costs driven by delayed enforcement, failure to forfeit FA, Orphan Well Program backlogs, procurement and vendor-pricing issues, duplicate charges, and the now-abandoned 24-hour cure policy). *FOF* § G. OCD's limited staffing and focus on high-risk, multi-well projects, amplified by federal-funded large projects beginning in 2023, further increased its costs. *FOF* §§ D-E. As a result, OCD's average cost rose from $30,000 per well in FY2019 to $163,000 in FY2024. Apps. Ex. 4/OCD Ex. 18 at 13; *FOF* § F. The record, therefore, shows that the $150,000 figure reflects inflated government costs—not an individualized assessment of well characteristics. An FA requirement inflated to cover government inefficiencies and overhead—on the testimony of Applicants' own witnesses—is not an amount "sufficient to reasonably pay" the cost of plugging. It is an amount sufficient to cover what the government spends when it plugs wells years after they should have been plugged, in unreasonable circumstances that could have been prevented. That is not the statutory standard.

3. The Flat $150,000 "One-Well" Financial Assurance Requirement Proposed for Active Wells, Low Producing Wells, All Wells in a High-Risk Portfolio, and Inactive and TA'd Wells Should Be Rejected and Existing Structure Retained

In addition to those modifications that NMOGA suggests specific to the proposed low producing well and high-risk portfolio FA categories, *CA* § E, NMOGA also submits in its Closing Exhibit 3 the following counterproposals to Applicants' $150,000 one-well FA requirement for all

well types and changes to the blanket bonding under Subsections 19.15.8.9(C)-(F) NMAC in their Exhibit 89-C for the Commission's consideration, as reflected in green font in *NMOGA Closing Exhibit* 3:

- Replacing the flat $150,000 amount with NMOGA's recommended alternative single well bond structure which mirrors OCD's existing depth based individualistic well inquiry: "$75,000 per well; or $25,000 plus $12 per foot of the projected depth of a proposed well or the depth of an existing well; the depth of a well is the true vertical depth for vertical and horizontal wells and the measured depth for deviated and directional well; or an operator can propose a different one-well plugging financial assurance amount to the division along with supporting documentation substantiating the amount proposed as an accurate estimate of actual plugging costs based on the active well's depth, age and condition, as well as costs to plug similar wells, with the division retaining discretion in approving any deviations;"

- Adding additional tiered categories of active well blanket bonding under 19.15.8.9(C)(2) NMAC based on the number of wells secured, using the two tiers originally applied for by Applicants back in 2024: $200,000 active well blanket bond for 1 to 5 active wells; or $250,000 for 5 or more active wells, Tr. 37:3-38:21 (Oct. 31, 2025); and

- Retaining the tiered inactive well blanket bonding options under proposed 19.15.8.9(F)(2) NMAC (existing Subsection (D)(2)) based on the number of wells secured while increasing the tiered amounts for blanket inactive well FA.

Consistent with NMOGA's A/M/R and O positions reflected on the Stipulation Chart for every instance of the $150,000 one-well FA requirement for every well except active wells secured by blanket FA. *See also Joint Stipulation* ¶ 5 and *Chart* (prop. 19.15.8.9(C)-(F) NMAC).

H. The Potential Double-Bonding Problem Across OCD Regulations Posed by the Proposed Rules Can Be Fixed Now—and Should Be

Even if the Commission adopts some version of the new FA categories, the overlapping structure of the Proposed Rules creates an unintended double-bonding problem. Under the current draft, certain wells can fall simultaneously within multiple provisions, including proposed 19.15.8.9(C), (D), (E), (F), and (G), without any rule clarifying whether one category supersedes another or whether satisfaction of one obligation discharges the others. *COL* § C.8 ¶¶ 65-67.

NMOGA proposes a straightforward fix: amend the applicability provision of 19.15.8.9(A) NMAC to clarify that satisfaction of any one of the following Subsections satisfies the operator's plugging FA obligation for the well(s) covered by that Subsection. That clarification would prevent double-bonding without undermining any valid FA objective. *NMOGA Closing Ex. 3.*[6]

NMOGA also proposes adding to the applicability provision an OCD discretionary FA waiver as proposed by Commissioner Bloom where plugging and abandonment ("P&A") is ongoing or planned. NMOGA Closing Ex. 3 (prop. 19.15.8.9(A) NMAC). This Commission suggested acknowledgement of OCD's discretion to waive FA requirements where warranted or where posting the FA could result in the operator not being able to complete ongoing or forthcoming P&A operations aligns with NMOGA Regulatory Expert Arthur's recommendation that the adopted regulations maintain regulatory flexibility, especially in FA determinations. Tr. 82:6-83:18 (Oct. 29, 2025); *but see* Tr. 33:13-34:14 (Oct. 23, 2025) (confirming OCD has no discretion under the proposed high-risk portfolio FA requirement once the 20% threshold is triggered).

I. The Proposed Presumption of No Beneficial Use, *Ultra Vires* One-Well Financial Assurance for Low Producing Wells, High-Risk Portfolios and Wells TA'd for 2 Years or Less, Proposed TA Definition Changes, and Cross-References Parts 27, 29 and 30 Are *Ultra Vires* for Promoting Waste and Violating Correlative Rights

[6] Another double-bonding concern which remains a key question in this active OCC/OCD rulemaking, is the SLO's pending rulemaking to increase their "damage bonds" for state oil and gas lease reclamation, and whether those bonds would cover downhole obligations or risks, because those risks are solely to be secured by OCC/OCD's plugging FA authorized under the OGAct. Tr. 41:2-19 (Nov. 3, 2025). *See* Tr. 216:1-4 (Oct. 27, 2025) (NMOGA cross-examination of SLO Director Allison Marks asking "whether that could result in double bonding if SLO and the Commission don't . . . assess the impact of these bonding proposals"); *but see* Tr. 230:15-232:18 (Oct. 27, 2025) (Commissioner Bloom confirming that "to his knowledge" the SLO cannot call or take OCD bonds, or demand that OCD pull a bond; Commissioner Bloom then read a provision of the SLO rulemaking proposal entitled "Periodic Adjustment and Review of Bonding Levels" Subsection (E)(3) which states: "In the event that a well bond or other financial assistance on file with the New Mexico Oil Conservation Division would cover operations on a particular lease in the Oil and Gas Act and New Mexico Oil Conservation Commission rules are changed to allow the commissioner to access such bond or other financial assurance, the commissioner may adjust downward the monetary value of the bond required under this rule by the amount of the bond or other financial assurance on file with the New Mexico Oil Conservation Division that is applicable to wells on state trust land."). SLO reports that it is preparing to release its rulemaking, which will be open for a 30-day public comment before scheduling a hearing at its office, aiming to have everything completed and the final rule published in the State record by the end of May.

NMOGA opposes the Proposed Rules because they unlawfully promote waste and violate correlative rights by compelling premature plugging, abandonment of viable reserves, or distressed asset sales, thereby reducing ultimate recovery and destroying resources without beneficial use.[7] Tr. 223:7-23 (Nov. 3, 2025).

1. Lack of Statutory Authority for Rules That Create Waste or Depart from OGAct

The OGAct grants the Commission and Division authority only to prevent waste and protect correlative rights. NMSA § 70-2-11(A); *Santa Fe Expl. Co. v. Oil Conservation Comm'n*, 1992-NMSC-044, ¶ 27, 114 N.M. 103, 835 P.2d 819 (citing NMSA 1978, § 70-2-11(A)). Agencies, as creatures of statute, may exercise only powers expressly granted or necessarily implied to fulfill those duties. *Cont'l Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, ¶ 11, 70 N.M. 310, 373 P.2d 809 (stating OCC's powers are founded on "the duty to prevent waste and protect correlative rights"); *Sims v. Mechem,* 1963-NMSC-103, ¶ 11, 72 N.M. 186, 382 P.2d 183 (holding OCC must fully comply with its creating law to possess any jurisdiction in a matter). Under the New Mexico State Rules Act, any rule conflicting with a statute is invalid. NMSA 1978, § 14-4-5.7(A). Accordingly, OCD rules that increase waste or lack findings are invalid and contrary to the OGAct authorizing them. Applicants' sole admitted legal expert advising the Commission on the legality of the Proposed Rules[8] conceded during the Hearing that he only

[7] Applicants proposed presumption of no beneficial use ("PNBU") and *ultra vires* one-well FA proposal for low producing wells directly cause waste and violate correlative rights in prohibition of the OGAct. In addition, the Applicants proposed one-well FA for every well in a high-risk portfolio (where risk is based on the concentration of inactive wells), removal of the blanket bond option for statutorily protected wells TA'd for 2 years or less, and the proposed TA definition changes all indirectly but nonetheless unlawfully cause waste and violate correlative rights. Applicants Exs. 89-A (prop. 19.15.2.7(A)(13),(E)(8),(T)(3) NMAC), 89-C (prop. 19.15.8.9(D)-(F) NMAC), 89-E (prop. 19.15.25.9 NMAC). Moreover, adopting by cross-reference Part 27 venting and flaring, Part 29 remediation, and Part 30 release regulations, with the power to prevent operator and/or asset transfers and releases of FA, contradictorily and unlawfully causes waste and violates correlative rights as well. Applicants Exs. 89-B (prop. 19.15.5.9(A)(5) NMAC), 89-C (prop. 19.15.8.12 NMAC), 89-D (prop. 19.15.9.8(C)(1), 9.9(C)(1), (E) NMAC).

[8] The only other expert admitted by Applicants with a J.D. is Adam Peltz, director and senior attorney at the Environmental Defense Fund, but he considers himself to be a subject-matter expert, not a legal expert, even though he is an attorney, and that he "might" provide legal opinions. Tr. 815:10-24 (Oct. 22, 2025).

reviewed the OGAct's FA provision, did not review New Mexico case law interpreting OCC/OCD authority, and was unaware that the Commission's paramount duties are to prevent waste and protect correlative rights.[9]

2. OGAct's Duty to Prevent Underground and Surface Waste Includes Increasing Plugging, Decreasing Production, Unnecessary Expenditures, Inefficient Operations, and Destruction of Resources Without Beneficial Use—the Proposed Rules Promote Waste and Violate Correlative Rights

Rules that increase waste or lack anti-waste findings exceed statutory authority and are *ultra vires*. The OGAct defines "waste" to include both underground waste that reduces or tends to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered and surface waste involving unnecessary or excessive loss or destruction without beneficial use. NMSA § 70-2-3(A)-(B). Premature plugging constitutes economic and underground waste and may also violate correlative rights. Tr. 225:2-7 (Nov. 3, 2025). New Mexico courts invalidate agency actions that cause waste or lack findings demonstrating how waste is prevented; rules that cause waste violate NMSA §§ 70-2-3 and 70-2-11 and exceed OCC/OCD jurisdiction. *Sims*, 1963-NMSC-103, ¶¶ 11–12; *Cont'l Oil,* 1962-NMSC-062; *Fasken v. Oil Conservation Comm'n,* 1975-NMSC-009, 87 N.M. 292, 532 P.2d 588. Thus, any regulatory scheme that predictably forces premature plugging, abandonment of viable reserves, or sales below market value causes both underground and surface waste and violates correlative rights. The legally permissible amount of waste the OCC is allowed to permit under its rulemaking authority is zero. Tr. 223:24-224:3 (Nov. 3, 2025).

3. Proposed Presumption of No Beneficial Use and One-Well Financial Assurance for Low Producing Wells Cause Waste and Violate Correlative Rights by Accelerating and Causing Premature Plugging, Slowing Production, and Diverting Capital

The proposed presumption of no beneficial use ("PNBU") and the *ultra vires* one-well FA requirements for "low-producing wells" foreseeably divert capital from operations to bonding,

[9] Tr. 663:4-664:23 (Oct. 22, 2025).

force distressed asset sales below fair market value, slow production, and accelerate premature plugging of viable wells. These outcomes constitute underground waste by reducing ultimate recovery and surface waste by destroying resources without beneficial use. NMSA § 70-2-3(A)-(B). Under *Sims,* the Commission lacks jurisdiction to impose requirements not grounded in statutory criteria. 1963-NMSC-103, ¶¶ 11–12; *see Fasken*, 532 P.2d at 589. These categorical presumptions and/or FA provisions are therefore *ultra vires* on multiple independently sufficient grounds, including directly causing waste prohibited by NMSA §§ 70-2-3 and -11. *CA* §§ D-E, I. They also indirectly cause and increase waste, as detailed immediately below. *CA* § I.4.

4. *One-Well FA for "High-Risk Portfolios" Indirectly Causes or At Minimum Increases Waste and Infringes Correlative Rights by Draining Capital from Field Operations, Inducing Premature Plugging, and Reducing Ultimate Recovery by Curtailing Production and Profitability*

The proposed *ultra vires* "high-risk portfolio" FA category imposes a $150,000 one-well FA requirement for every well designated to an operator once its portfolio's inactive/TA mix exceeds an arbitrary 20%. Apps. Ex. 89-C (prop. 19.15.8.9(E) NMAC); *Joint Stipulation* ¶ 5. This category, like the low-producing well FA, is statutorily unauthorized, *CA* §§ D-E, and independently unlawful for draining capital from field operations, inducing premature P&A, curtailing production, reducing ultimate recovery of production and profitability, thereby at least indirectly causing waste and infringing correlative rights.[10]

5. *Removal of Wells Temporarily Abandoned ("TA") for Less Than 2 Years from Blanket Bond Eligibility and TA Definition Changes Cause Waste and Violate Correlative Rights by Forcing Premature Plugging for Non-Mechanical Reasons*

Proposed changes to 19.15.8.9(F) NMAC expand the scope of "inactive" wells and impose heightened FA requirements even during the first two years of TA, contrary to OGAct Section

[10] NMSA § 70-2-3; *see, e.g., Viking Petroleum, Inc. v. Oil Conservation Comm'n of the State,* 1983-NMSC-091, 100 N.M. 451, 672 P.2d 280.

70-2-14(A), which expressly preserves a two-year blanket-bond period before one-well FA may be required. *CA* § F. Compressing the TA pathway forces viable wells into premature plugging, directly reducing ultimate recovery and causing waste. Sporich Rebuttal ¶¶ 11, 23-33. Similarly, proposed TA definition changes risk forced premature plugging based solely on status designation rather than the beneficial-use and mechanical-integrity standards governing TA under Part 25. Apps. Ex. 89-A (prop. 19.15.2.7(A)(13), (E)(8), (T)(3) NMAC); Arthur Rebuttal at 29:769-73. Such actions exceed statutory authority and violate *Sims* and *Fasken*.[11]

6. Cross-Referencing Parts 27, 29, and 30 Paradoxically Creates More Waste

Applicants and OCD asserted that fugitive methane constitutes waste. Tr. 227:12-228:6 (Nov. 4, 2025). Part 27 already prohibits waste, limits venting and flaring, phases in a 98% gas-capture requirement by December 31, 2026, and requires detailed reporting and corrective actions. 19.15.27.6-.9 NMAC; EMNRD Methane Waste Rule Update (Oct. 29, 2025). These provisions already address methane loss as surface waste under NMSA Section 70-2-3(B).

Invoking "waste" to justify expanded FA, transfer restrictions, or denial of FA release is internally contradictory, because such measures predictably force underground and surface waste. *CA* § I.1-.5. Leaks can be repaired without eliminating beneficial use. Tr. 228:7-23 (Nov. 4, 2025). Once a well is plugged, those reserves are gone forever; OCC/OCD by statute must be seeking to produce every molecule of energy possible from each well before P&A. Arthur Surrebuttal Slides.

For these reasons, NMOGA opposes adding a Part 27 cross-reference to proposed 19.15.5.9(A)(5) NMAC, Apps. Ex. 89-B; although the Applicants agreed during negotiations to specify 19.15.27.8(A)-(D) NMAC to ensure their intent to encompass all existing Part 27 compliance exceptions, and NMOGA accepted that clarification, NMOGA expressly reserved all

[11] *Sims*, 1963-NMSC-103; *Fasken*, 532 P.2d at 589; *CA* §§ D-F.

non-substantial evidence objections, including statutory authority. *Joint Stipulation* ¶ 5 and *Chart*.

On these same paradoxical waste grounds, NMOGA further opposes the Applicants':

- Proposed Amendments to the Subsection 5.9(A) Compliance Criteria, which Applicants propose to strike the current allowances for a small number of wells out of compliance with P&A requirements for maintenance and operational realities, 19.15.5.9(A)(4) NMAC (2026); add Part 27 venting and flaring compliance under, Apps. 89-B (prop. 19.15.5.9(A)(5) NMAC); and expand from governing just operator registrations and transfers, 19.15.9.8(C)(1), 9.9(C)(1) NMAC (2026), also to govern FA release determinations, Apps. Ex. 89-C (prop. 19.15.8.12 NMAC).

- Proposed Rule adding new grounds to deny well/asset/facility transfers, under the change of operator provision, based on the 5.9(A) Compliance Criteria, if/as amended, as well as the regulations at Parts 29 and 30 separately governing releases and remediation (without specifically referencing their existing exemptions or exceptions as was done for Part 27 under Subsection 5.9(A)). Ex. 89-D (prop. 19.15.9.9(E)).

Delaying transfers or FA release would strand assets with under-capitalized operators, impede acquisition by better-capitalized operators, and accelerate premature plugging, thereby creating more waste, not less, and jeopardizing correlative rights with those wells.

J. The Transfer Review and Denial Proposals Based on Asset Retirement Obligations Require Legislative Amendment

1. All ARO-Based Transfer Review and Restrictions in Various Financial Assurance and Change of Operator Regulation Forms are Ultra Vires

Three provisions in the Proposed Rules work together to create ARO-based well transfer restrictions: proposed 19.15.9.9(C)(6) NMAC (authorizing denial of change-of-operator applications based on "substantial risk" of inability to fulfill P&A requirements); and proposed 19.15.8.9(D)(1) NMAC (imposing an immediate $150,000 FA requirement for low-producing wells upon any transfer which can effectively serve as a transfer block). Each functions as a transfer restriction rooted in the assessment of the transferee's likely ability to meet future AROs, here P&A for the subject wells, to the satisfaction of the Division.

The LFC explicitly identified ARO-based transfer review as a "Key Recommendation" for

legislative action. Apps. Ex. 4/OCD Ex. 18 at 36. That recommendation confirms the current statute does not already provide the authority that Applicants seek to exercise by rule. OCD's own counsel told the Legislature that a statutory amendment would be required before OCD could deny transfers on this basis. The Legislature received that message. It did not act. These provisions must be rejected.[12]

The Commission should also reject proposed 19.15.9.9(B) NMAC to the extent it requires a P&A plan and a demonstration that the new operator has and will have the financial ability to meet P&A requirements "in light of all the operator's assets and liabilities," as well as proposed 19.15.8.9(D)(1) and 19.15.9.9(C)(6) NMAC. As well as the related rebuttal factors requiring a P&A Plan complete with a demonstration of adequate capitalization to cover AROs for the wells presumed to have no beneficial use, or separately, under proposed 19.15.25.9(D)(3)-(4) NMAC. All these provisions create a sweeping ARO-based transfer-screening regime that the Legislature has not enacted.[13]

K. Acquiring Operating Authority Is Not an "Operation"—OCD Cannot Regulate It Without Legislative Amendment

Applicants' proposed amendment to 19.15.8.9(A) NMAC would prohibit any operator from "proceed[ing] with [] any proposed drilling or acquisition of operating authority under 19.15.9.9 NMAC" until OCD has approved the operator's FA. Apps. Ex. 89-C. The words "acquisition" and "operating authority" are vague, and the proposed final sentence, which creates an approval

[12] Moreover, the "proxy" Applicants selected to test the likelihood that an operator will be able to afford their P&A obligations, i.e., revenue levels, unfairly label smaller and independent operators that operate and profit at smaller margins as unlikely to meet their AROs. Tr. 813:24-814:2 (Oct. 22, 2025) (Applicants Subject-Matter Expert Peltz "average revenue levels can serve as a proxy to help contextualize an operator's likely ability to meet expected plugging obligations").

[13] By contrast, where the parties reached negotiated compliance-history provisions in proposed 19.15.9.8(B), 19.15.9.8(C)(2), 19.15.9.9(B), and 19.15.9.9(C)(2) NMAC, the Commission should adopt NMOGA's proposed modification reducing the ten-year lookback to five years, consistent with the existing five-year lookback under the leadership/25%+ ownership in noncompliant entity grounds to deny operator registration. Joint Stipulation Chart, 19.15.9.8(B), 19.15.9.8(C)(2), 19.15.9.9(B), 19.15.9.9(C)(2) NMAC.

precondition, unlawfully expands the applicability provision, which at present only requires FA to be in place; it does not require OCD pre-approval of the acquisition itself as a condition to proceeding.

NMOGA has accepted (i.e., waived substantial evidence appeals for) the negotiated addition of the blue cross-reference to the change of operator provision at 19.15.9.9 NMAC, which the parties agreed to under the Joint Stipulation, to modify and limit the reference to "operating authority" and make clear the FA authority does not apply nor extend to real property acquisitions and transfers, operating agreements, or compulsory pooling order approval – only transfer of operatorship. Sporich Surrebuttal Slides at 3. But NMOGA still opposes the existing reference to "acquisition" as coupled with the proposed new final sentence, creating a preapproval condition. Tr. 61:12-62:8 (Oct. 31, 2025).

Section 70-2-6 of the OGAct limits OCD's jurisdiction and authority to matters arising "as a result of oil or gas operations." Property acquisition is not an operation. Operatorship acquisition is a transaction concerning rights to assume operations; it is not itself the conduct of drilling, producing, or plugging wells. The plugging liability the FA secures is only created when the subject well is spud and drilling operations commence. NMOGA/IPANM Joint Motion to Dismiss.

In *Marbob Energy Corp. v. N.M. Oil Conservation Comm'n*, the New Mexico Supreme Court held that the Commission could not exercise authority not expressly granted in the OGAct, even under broad statements of regulatory purpose. Here, as in *Marbob*, the specific statutory limitation governs. OCD may regulate operations. It may not regulate acquisitions unless the Legislature says so. *Gonzales v. N.M. Educ. Ret. Bd.*, 1990-NMSC-024, ¶ 11, 109 N.M. 592, 788 P.2d 348; *Marbob*, 2009-NMSC-013, ¶¶ 13-14, 23-24.

New Mexico courts have consistently treated operating agreements and related instruments as

conveying or affecting interests in real property. *See Skaggs v. Conoco, Inc.,* 1998-NMCA-061, ¶ 24, 125N.M. 97, 957 P.2d 526; *Rock Island Oil & Ref. Co. v. Simmons*, 1963-NMSC-192, 73 N.M. 142, 386 P.2d 239. The distinction OCD attempts to draw between "operatorship" and property rights does not create new statutory authority where none exists.

The LFC Report treated acquisition oversight as requiring legislative amendment. Apps. Ex. 4/OCD Ex. 18 at 36. If Applicants' intent is only to require FA as a condition of commencing drilling operations—not to regulate the acquisition transaction itself—the fix is simple: amend 19.15.8.9(A) NMAC to strike "or acquisition" or otherwise clarify that the precondition applies only to drilling and production, so that Subsection 8.9(A) tracks the OGAct, which authorizes it. NMOGA also opposes the Applicants' proposed final sentence, creating the new approval precondition as effectively regulating acquisitions and transfers. Both are struck in NMOGA's redline to the Applicants proposed amendments to 19.15.8.9(A) NMAC. *NMOGA Closing Ex.* 3.

L. NMOGA and OXY Oppose Newspaper Notice Requirement and Allowing Any Interested Person to Request Hearing and Intervene under 5-Year TA Extension

NMOGA opposes the Applicants' proposed newspaper notice requirement and absence of a standing requirement under proposed 19.15.25.13(C)(2) NMAC (governing indefinite five-year TA Extensions). *COL §* G.2. NMOGA adopts and incorporates by reference OXY's suggested modification, closing arguments, and proposed findings of fact and conclusions of law that oppose and amend the Applicants' proposed 19.15.25.13(C)(2) NMAC, striking the newspaper notice clause and requiring standing to request a hearing or intervene. *NMOGA Closing Ex. 5.*

M. Unlawful Application of Proposals Which Mandate P&A to Federal/Tribal Wells

OCD stated at the Hearing that it intends to apply the proposed PNBU under 19.15.25.9 NMAC and the proposed P&A timing amendments under 19.15.25.8 NMAC to federal and tribal wells, including mandatory permanent P&A if PNBU is not rebutted to OCD's satisfaction,

notwithstanding valid federal temporary abandonment ("TA") approvals, which OCD characterized only as "strong rebuttal evidence." Tr. 43:15-44:13 (Oct. 27, 2025). This presents a novel legal question: whether New Mexico may compel permanent P&A of a federally permitted/tribal well based on a state presumption of non-use, or whether doing so exceeds concurrent state authority and constitutes an uncompensated regulatory taking and a denial of due process, given that state authority over federal leases ends where it conflicts with federal regulatory determinations or frustrates federal leasing purposes.[14] Unlike *Texas Oil & Gas*, where federal agencies approved the state action and found no conflict with federal policy, OCD here proposes to mandate permanent P&A of federally permitted wells notwithstanding federal TA approvals reflecting federal determinations that the wells retain future utility.[15] This requirement would impose severe economic impacts and interfere with reasonable investment-backed expectations grounded in federal approvals, potentially constituting a compensable regulatory taking under *Penn Central Transportation Co. v. New York City*,[16] and raising serious procedural due-process concerns where a short rebuttal period triggered by potentially inadequate notice can result in irreversible deprivation of property.[17] At a minimum, the Commission must clarify that PNBU presumptions and associated P&A mandates do not apply to federal wells with valid federal TA approval, and that OCD may not compel permanent abandonment of a federally permitted well absent express federal authorization or termination of federal approval.[18] NMOGA expressly reserves all federal preemption, regulatory takings, and due-process arguments for appeal.

N. Unlawfully Imposing New Duties and Legal Consequences for Past Conduct

[14] *Texas Oil & Gas Corp. v. Phillips Petroleum Co.,* 406 F.2d 1303, 1306-08 (10th Cir. 1969).
[15] *Id.* at 1306-07.
[16] 438 U.S. 104, 124 (1978).
[17] *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306, 314-15 (1950); *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *Fuentes v. Shevin*, 407 U.S. 67, 80-81 (1972).
[18] *Texas Oil & Gas Corp.,* 406 F.2d at 1306-08.

NMOGA also challenges the Applicants' proposal to immediately enforce the PNBU against operators deemed "substantially out of compliance" based on pre-promulgation production, financial assurance, and P&A compliance history under existing 19.15.7.24, 19.15.8.9, and 19.15.25.8 NMAC. Apps. Ex. 89-E (prop. 19.15.25.9(E) NMAC). Under the PNBU, historical compliance is not used merely as context but as the operative trigger for these new presumptive classifications for production and injection wells that, if not rebutted to OCD's satisfaction, result in mandatory P&A obligations that did not exist when the conduct occurred.[19]

New Mexico considers a rule to be retroactive if it creates new obligations or attaches new legal consequences to past conduct.[20] Administrative agencies may not promulgate rules with retroactive legal effect absent clear and express statutory authorization.[21] The OGAct contains no express authorization for retroactive rulemaking.[22] In *Marker v. New Mexico Oil Conservation Commission*, the Court of Appeals upheld amended FA rules only because the Commission delayed their applicability and did not impose new duties based on completed conduct.[23] A rule is retroactive when it attaches new legal consequences to past conduct, not merely because it relies on historical facts.[24] Unlike *Marker*, the PNBU applies immediately upon promulgation and uses pre-rule compliance history as the decisive predicate for new P&A obligations, but the OGAct provides no authority for retroactive rulemaking. Accordingly, in the event our oppositions to these proposals above are not accepted, at a minimum, OCD may not enforce the PNBU and low producing well transfer FA requirements in this manner and should delay all parts of the proposals

[19] Similarly, Applicants propose penalizing pre-promulgation production levels by requiring $150,000 in one-well FA requirements for any low-producing wells subject to transfer (without clarifying whether this applies to operator transfers, asset transfers, or both). Apps. 89-C (prop.19.15.8.9(D)(1) NMAC).
[20] *City of Albuquerque v. State ex rel. Vill. of Los Ranchos de Albuquerque,* 1991 NMCA 015, ¶¶ 33 34; *State ex rel. Taylor v. Johnson,* 1998 NMSC 015, ¶ 22. *See also Landgraf v. USI Film Products,* 511 U.S. 244, 280 (1994).
[21] *Bowen v. Georgetown Univ. Hosp.,* 488 U.S. 204, 208 (1988).
[22] *See* NMSA 1978, §§ 70 2 6, 70 2 11, 70 2 12.2 (note about written prospectively).
[23] *C.f.* Nos. A 1 CA 37860 & A 1 CA 38814, mem. op. ¶¶ 25 26 (N.M. Ct. App. Apr. 19, 2021).
[24] *Id.* ¶ 26; *Landgraf,* 511 U.S. at 280.

to the negotiated transition window.[25]

II. NMOGA ADMITTED EVIDENCE

NMOGA presented four technical experts and one fact witness during the Hearing, all of whom submitted pre-filed "Direct" and "Rebuttal Testimony" on August 8 and September 19, 2025, Demonstratives on October 15, 2025, and NMOGA's experts also filed surrebuttal slides:

- NMOGA P&A and Well Repurposing Expert Harold McGowen[26]
- NMOGA Legal Expert Clayton Sporich[27]
- NMOGA FA Expert Douglas Emerick[28]
- NMOGA Regulatory and Operational Expert Daniel Arthur[29]
- NMOGA VP of Regulatory Affairs Andrea Felix[30]

During the Hearing, all five witnesses adopted, under oath, their Direct and Rebuttal Testimony, Demonstratives, and any surrebuttal testimony or slides, following cross-examination, prior to Commissioner questioning, and subject to no objection by any party.[31]

NMOGA and IPANM also filed a Joint Motion to Dismiss several of the Applicants' FA proposals as exceeding statutory authority. Applicants filed a Response; the NMOGA and IPANM filed a Reply. In response to the Hearing Examiner's denial and written recommendations, NMOGA and IPANM filed their exceptions, and after the oral argument promised in the

[25] Pursuant to the Package Proposals underlying the Joint Stipulation, Applicants agreed to delay: the low producing well and high-risk portfolio FA requirements to start mid-2029 under proposed 19.15.8.9(D)(2) and (E) NMAC, and the PNBU by 1-year from promulgation of the Proposed Rules for all operators not substantially out of compliance with existing production reporting, FA, and P&A timing requirements under 19.15.25.9(E) NMAC. NMOGA Closing Ex. 6. However, in the event the Commission adopts those parts of the Proposed Rules without the compromised delays, NMOGA preserves this retroactivity argument with respect to the entire PNBU and *ultra vires* FA categories.
[26] NMOGA Prehearing Statement ("PHS") Exhibit D, McGowen Direct; McGowen Rebuttal; McGowen Direct and Rebuttal Demonstrative Slides; and McGowen Surrebuttal Demonstrative Slides.
[27] NMOGA PHS Exhibit E, Sporich Direct; Sporich Rebuttal; Sporich Direct and Rebuttal Demonstrative Slides; and Sporich Surrebuttal Demonstrative Slides.
[28] NMOGA PHS Exhibit F, Emerick Direct; Emerick Rebuttal; Emerick Direct and Rebuttal Demonstrative Slides; and Emerick Surrebuttal Demonstrative Slides.
[29] NMOGA PHS Exhibit C, Arthur Direct; Arthur Rebuttal; Arthur Direct and Rebuttal Demonstrative Slides; and Arthur Surrebuttal Demonstrative Slides.
[30] NMOGA PHS Exhibit B, Felix Direct; Felix Rebuttal; and Felix Direct and Rebuttal Demonstrative Slides. NMOGA VP Regulatory Affairs Andrea Felix was a fact witness treated as a technical witness for cross-examination.
[31] Tr. 56:5-13, 268:7-16 (Oct. 30, 2025); Tr. 166:22-167:4 (Oct. 29, 2025); 56:4-13 (Oct. 30, 2025); Tr. 89:16-90:19 (Oct. 31, 2025).

procedural order was not held at the end of the Hearing, as indicated throughout the rulemaking, the Industry Associations preserved their statutory authority arguments and objections to the denial expressly.[32]

In addition, NMOGA participated in sixteen (16) post-hearing negotiating sessions between November 2025 and February 2026, the results of which are reflected in the *Joint Stipulation* filed April 3, 2026, and in the blue-highlighted provisions of Applicants Exhibits 89-A through 89-E, which NMOGA either "accepts" (A\R) or "accepts with suggested modification" (A\M\R). *Stipulation* ¶ 5. NMOGA's positions on each proposed provision are set forth in the Joint Stipulation Position Chart, filed April 3, 2026. *Joint Stipulation Chart.*

III. PROPOSED FINDINGS OF FACT ("*FOF*")

A. The New Mexico Oil and Gas Act Vests Limited Statutory Authority

1. This Commission and the Division's enabling act is the New Mexico Oil and Gas Act, NMSA, §§ 70-2-1 to 70-2-38 ("OGAct").

2. For nearly a century, every time the Legislature has created a new financial-assurance category or raised a bonding cap, it has done so expressly by statute—not by delegation—demonstrating that such decisions are legislative choices that cannot be created or expanded by agency rulemaking.

3. The plain language and plain grammatical structure of Section 70-2-14(A) of the OGAct—specifically the penultimate comma separating the three financial-assurance clauses referred to during the Hearing as "Rankin's Rainbow"—creates three discrete and mutually exclusive

[32] Tr. 131:16-132:24 (Nov. 4, 2025) (Miguel Suazo, lead counsel for NMOGA, at the close of the Hearing after the Commission declined to hear oral argument on the Motion to Dismiss, verbally preserved NMOGA's "object[ion] to the denial of the motion to dismiss simply to preserve NMOGA's position that the Commission lacks statutory authority under the act -- the Oil and Gas Act to adopt the proposed rules. And NMOGA . . . maintain[s] that the Commission does not have the power to create new categories of wells or operators for purposes of financial assurance to increase individual well bonding requirements beyond the $250,000 cap or otherwise enlarge the scope of regulatory obligations beyond those authorized under the [A]ct" with IPANM verbally joining in the objection).

categories, as confirmed by witness testimony and drafting rules informing the proper interpretation.

4. Section 70-2-14(A) of the OGAct only authorizes one-well FA for wells TA'd for more than 2 years, does not establish any categories of active wells subject to a one-well FA requirement, and authorizes all active wells to be secured by the $250,000 blanket FA amount.

5. Applicants' one-well FA proposal violates Section 70-2-14(A) because it disregards the statute's mandatory factors—depth, time since last production, and comparable-well plugging costs—and instead relies on an unlimited "catchall" interpretation that the Legislature did not authorize.

6. The record shows that a $150,000 one-well FA amount is not "reasonable" under Section 70-2-14(A), because the statute requires an individualized determination based on *the* specific well's depth, time since last produced, and the actual industry cost of plugging comparable wells—not inflated government overhead—and the evidence demonstrates that real-world plugging costs are consistently far lower.

7. After conducting its 2025 LFC Report on the "orphan well problem" in New Mexico, the LFC recommended that the Legislature consider the following statutory amendments concerning the State's ability to regulate "orphan wells" through recommended but not yet existing statutory authority over FA for low producing wells and transfer approvals:

i. "Amending Section 70-2-14 NMSA 1978 to specify that wells producing below certain thresholds set in rule require additional financial assurance;"
ii. "Amending Section 70-2-14 NMSA 1978 to allow an operator to meet its financial assurance obligations by fully funding a third-party trust or escrow up to OCD's site- or operator-specific estimated plugging and remediation costs;" and
iii. "Amending statute to grant the Oil Conservation Division the authority to review and disallow the transfer of wells should the division determine, through processes outlined in rule, that the purchaser is unlikely to be able to fulfill its asset retirement obligations."

Apps. Ex. 4/OCD Ex. 18 at 36.

8. The OGAct assigns the Division and Commission "two major duties: the prevention of waste and the protection of correlative rights." S*anta Fe Expl. Co.*, 1992-NMSC-044, ¶ 27 (citing NMSA 1978 § 70-2-11(A)). The statute itself provides: "The division is hereby empowered, *and it is its duty*, to prevent waste … and to protect correlative rights." NMSA 1978, § 70-2-11(A) (emphasis added). *See Cont'l Oil Co.*, 1962-NMSC-062, ¶ 11 (Commission's powers are "founded on the duty to prevent waste and protect correlative rights"); *Sims*, 1963-NMSC-103, ¶ 11 (Commission must fully comply with its creating law to possess any jurisdiction in a matter).

9. Rules that result in or accelerate the premature plugging of wells, decreased production, and move capital all unlawfully cause waste, and "[t]he premature plugging of wells will affect the correlative rights of all of the owners and working interest owners and royalty interest owners of the wells that are prematurely abandoned" which can result in the infringement or violation of such rights. Tr. 225:2-7 (Nov. 3, 2025) (IPANM Legal Expert Calder Ezzell).

B. LFC Report "Orphan Well" Recommendations for the Legislature, and Certain Versus Expected Liability to the State Creating a Funding Gap

10. The June 2025 LFC Report confirmed there are 702 "orphan wells" on state and private land in New Mexico for which OCD has been granted plugging authority following operator default. Apps. Ex. 4/OCD Ex. 18 at 15-16.[33]

11. The LFC estimated the State's "certain liability"—the cost to plug those approximately 700 orphan wells—at approximately $130 million "[b]ased on the average per-foot cost for state-contracted well plugging in FY24 ($43.85)," and between $200 million and $400 million to plug and remediate. Apps. Ex. 4/OCD Ex. 18 at 15-17 (distinguishing between "certain liability"

[33] "For this report, orphaned wells are those for which OCD has already pursued and received plugging authority, either through a settlement agreement or administrative hearings, because those represent the most immediate and certain costs." Apps. Ex. 4/OCD Ex. 18 at 15.

and "expected liability").

12. Applicants' Proposed Rules go beyond securing the LFC's identified certain liability by imposing increased and unauthorized bonding for an additional 4,400 wells identified as "at risk" but not orphaned, at least 3,000 of which remain active wells for which the OGAct does not authorize one-well FA. Apps. Ex. 4/OCD Ex. 18 at 1, 15.

13. The Proposed Rules would increase aggregate FA requirements by 437%, from $118.4 million to $636.6 million—further representing an 882% increase in single well bonding (i.e., "one-well FA" requirements the Proposed Rules unlawfully exempt from blanket bond coverage)—sufficient to cover not only orphan-well liability, but also the LFC's estimated expected liability for approximately 1,400 inactive and 3,000 active low-producing wells. OCD Ex. 29; Apps. Ex. 4/OCD Ex. 18 at 15

14. The LFC's "expected liability" estimate is overstated because it assumes that 100% of the 4,400 "at risk" wells—over which OCD currently lacks plugging authority and approximately 3,000 of which remain actively producing—will ultimately become State responsibility through operator default, an assumption contrary to industry practice.

15. "Currently in New Mexico, oil and gas companies plug roughly 99 percent of oil and gas wells that have reached the end of their useful life without use of any taxpayer funds." Tr. 27:14-17 (Nov. 6, 2025) (Rep. Montoya). Applicants Legal Expert Morgan, likewise testified that "[n]inety-five percent of the wells that have been plugged in New Mexico have been plugged by industry." Tr. 676:14-16 (Oct. 22, 2025).

C. Limited Plugging Financial Assurance Authorized by the New Mexico OGAct

16. Pursuant to its limited FA authority vested under Section 70-2-14(A) of the OGAct, OCD is only allowed to demand FA for the P&A and reclamation of a specific well and its well pad being permitted by the Division.

17. Release of FA instruments on file with OCD is predicated on all wells secured having been plugged and abandoned, restored and remediated, and released pursuant to New Mexico's P&A regulations in 19.15.25.9-.11 NMAC, or have replacement coverage by another assurance instrument that OCD has approved. 19.15.8.13 NMAC.

18. The existing Part 8 regulation at 19.15.8.9(B) NMAC, the sole Subsection that Applicants do not propose to amend in the FA requirements in Section 8.9, states the "[FA] shall be conditioned for well [P&A] and location restoration and remediation only, and not to secure payment for damages to livestock, range, crops or tangible improvements or any other purpose."

D. Federal and Tribal Wells and All Production Facilities Are Inapplicable

19. "[S]tate funds are primarily used for plugging wells on state and private land," such that federal and tribal orphan well P&A costs are not at issue or relevant to secure the State of New Mexico's certain or expected liability. Apps. Ex. 4/OCD Ex. 18 at 15 ("LFC Report").

20. OCD Deputy Director Powell confirmed this rulemaking will not affect tribal jurisdiction. Tr. 44:3-5 (Oct. 27, 2025).

21. Director Powell confirmed, "OCD doesn't bond federal wells. So the bonding portion of the federal wells will not apply." Tr. 44:15-17 (Oct. 27, 2025).

22. OCD's existing FA regulations carve out federal wells. 19.15.8.9(A) NMAC ("unless the well is covered by federally required financial assurance") (eff. 2026).

23. Lease-wide damage bonds are instead filed with the NM SLO for state-issued leases or the BLM for federal oil and gas wells and leases. Arthur Rebuttal at 60-63, 138-40.

24. OCD requires facility operators to provide FA for production facilities separate and apart from any well plugging assurance. Arthur Rebuttal Appx. A (OCD's 2024 Oil and Gas Reclamation Report) ("Bonds for other production facilities range from $25,000 to $250,000.").

E. OCD's Orphan Well Program: Funding, Operations, Prioritization, and Staffing

25. OCD Environmental Bureau Chief Rosa Romero confirmed the Orphan Well Program is funded by the Rec. Fund and federal grants. Tr. 80:17-21, 81:13-16, 83:11-18 (Oct. 24, 2025).

26. The federal government has provided New Mexico $55.5 million in Infrastructure Investment and Jobs Act ("IIJA"), also referred to as the Bipartisan Infrastructure Law ("BIL"), funds for orphan well identification, plugging, remediation, and restoration on state trust, private, and split-estate lands, with up to $111.8 million additional funds available. Tr. 244:1-4 (Nov. 5, 2025) (IPANM Economist Expert citing LFC Report); Tr. 186:9-11 (Nov. 6, 2025); Apps. Ex. 23.

27. The Orphan Well Program's primary funding source—the Rec. Fund—is funded by operator Conservation Taxes collected throughout the life of wells: "anywhere between .19% and .24% … charged on all hydrocarbons severed and sold," with "either 10% to 20% of that revenue … diverted to the Reclamation Fund." Tr. 243:12-17 (Nov. 6, 2025) (Arscott).

28. The Rec. Fund balance was $66.7 million as of April 2025. Apps. Ex. 4/OCD Ex. 18 at 11. Representative Murphy testified that this represents a "tremendous capital reserve" that continues to grow through ongoing Conservation Tax revenue. Tr. 27:23-28:13 (Nov. 6, 2025).

29. The Legislature has repeatedly diverted Rec. Fund monies to the General Fund; $129 million was diverted in 2024 alone, and if returned, wells needing plugging could be addressed within four years. Tr. 586:9-20 (Oct. 21, 2025).

30. Legislators asked the Commission during the Hearing not to usurp legislative authority and to allow the 2026 Budgetary Session to address the Rec. Fund reform. Tr. 141:23-144:19 (Nov. 6, 2025) (Rep. Murphy); Tr. 583:8-584:20 (Oct. 21, 2025) (Sen. Townsend); Tr. 586:20-587:12 (Oct. 21, 2025) (Rep. Montoya).

31. The Rec. Fund is the statutory mechanism for legacy orphan wells, while the Proposed Rules address future risk through increased bonding, notwithstanding evidence that industry plugs

approximately 95% of wells without public funds. Tr. 131:14-132:16, 166:24-25, 169:17-170:10, 189:2-17 (Nov. 4, 2025); Tr. 676:14-16 (Oct. 22, 2025); Tr. 27:14-17 (Nov. 6, 2025).

32. Chief Romero testified she did not know whether forfeited plugging bonds were a funding source for the Orphan Well Program. Tr. 84:2-15 (Oct. 24, 2025).

33. IPANM Executive Director Jim Winchester testified and submitted Direct Testimony recounting EMNRD Deputy Secretary Ben Shelton's admission that OCD has "barely pursued financial assurance" due to limited collections and staffing, noting OCD pursued only one bond in eight years. LFC Transcript, 62:18-63:9; IPANM PHS Ex. D at 7:5-12.

34. OCD Deputy Director Powell confirmed that forfeited FA is not currently a funding source because OCD does not typically redeem plugging bonds, including one-well FA. Tr. 84:2-15 (Oct. 27, 2025).

35. OCD prioritizes orphan wells based on risk and efficiency, including surface-release risk, number of wells, and proximity to reduce costs. Apps. Ex. 85; Tr. 365:7-366:23 (Oct. 21, 2025); Tr. 26:17-21 (Oct. 29, 2025); Tr. 85:1-9 (Oct. 24, 2025).

36. Deputy Director Powell testified that project scope and cost are considered in prioritization. Tr. 54:13-15 (Oct. 24, 2025). Chief Romero could not confirm whether the highest-risk sites are costliest or whether costs are tracked. Tr. 86:10-87:22 (Oct. 24, 2025).

37. The LFC Report confirms "OCD does not systematically track the cost of well plugging" and recommends a statutory amendment requiring tracking. Apps. Ex. 4/OCD Ex. 18 at 13, 36.

38. At the time of the Hearing, OCD Petroleum Specialist Loren Diede oversaw the Orphan Well Program as its sole full-time employee, with three others assigned part-time. Tr. 136:21-137:1 (Oct. 23, 2025); Tr. P:1-1 (Oct. 23, 2025).

39. OCD confirmed it plugged at most 100 wells in FY24, while industry plugged 773 wells

based on sundries submitted to OCD. Tr. 153:21-24 (Oct. 23, 2025).

F. OCD's Inflated Plugging Costs, Which Produced $163,000 Per Well Average

40. OCD's "Oil and Gas Reclamation Fund Reports" reflect the average cost to OCD to P&A wells in: FY20 was $31,600 per well; FY21 was $48,157.05 per well; FY22 was $66,257.08 per well; FY23 was $171,941.70 per well. IPANM Exs. 10-13.

41. "In FY24, costs ranged from $31 thousand to $778 thousand." LFC Report, Apps. Ex. 4/OCD Ex. 18 at 13; Tr. 12:8-9 (Oct. 20, 2025).

42. "The average per-well cost of state-contracted plugging has risen nearly 450 percent since FY19 and the average per-foot cost has risen 270 percent, more than eight times the rate of overall oilfield inflation" . . . from an average of $30 thousand to $163 thousand" in FY24. Apps. Ex. 4/OCD Ex. 18 at 13;[34] Tr. 12:8-9 (Oct. 20, 2025).

43. OCD's FY24 P&A cost was $43.85/foot on average, or a median of $40.30/foot; compared to OCD's FY22 average plugging cost at $19.10/foot. Apps. Ex. 4/ OCD Ex. 18 at 16-17.

44. New Mexico's orphan well plugging costs have drastically increased over the past few years and are inflated compared not only to industry costs but also compared to other states, reporting TX average statewide plugging costs of $15.60/foot. Apps. Ex. 4/OCD Ex. 18 at 16-17.

45. NMOGA P&A Expert McGowen analyzed OCD's orphan well cost data on the Master Orphan Spreadsheet ("MOSS"), OCD Ex. 17, and found an average of $128,000 plugging cost per well by his calculations. Tr. 35:9-14 (Oct. 30, 2025).

G. Why OCD Plugging Costs are Inflated and LFC's Recommendations

[34] "Since FY19, per-foot costs for state-contracted plugging have risen roughly 270 percent. In FY24, the average per-foot cost of state-contracted plugging in New Mexico was $43.85. The Texas Railroad Commission (RRC) has reported comparable costs for state-contracted plugging in RRC District 8, a region that borders New Mexico. However, RRC attributes those high costs primarily to complex emergency plugging incidents in District 8. While New Mexico has had a handful of emergency plugging incidents, its costs for nonemergency plugging are similarly high." LFC Report, Apps. Ex. 4/OCD Ex. 18 at 13.

46. Applicants Legal Expert Morgan testified that government "overheads" are "baked into" the $150,000 one-well FA figure. Tr. 703:4-15 (Oct. 22, 2025); Apps. Ex. 15 at 42:20-21.

47. OCD confirmed that mandatory use of a statewide price agreement restricting vendor procurement is the primary reason its plugging costs are inflated. Tr. 108:14-21 (Oct. 24, 2025).

48. On cross-examination by IPANM, OCD Deputy Director Powell confirmed plugging invoices included cross-state travel costs due to a lack of authorized regional vendors and contained duplicate charges. Tr. 105:10-106:14 (Oct. 27, 2025).

49. NMOGA P&A and Well Repurposing Expert Harold McGowen ("NMOGA P&A Expert McGowen") testified that OCD's former policy requiring a 24-hour cure period for every plug—one per formation crossed—further inflated reported plugging costs, despite no longer being required. McGowen Direct at 87:1790-90:1837.

50. The LFC Report found that while OCD increased overall plugging expenditures between FY19 and FY24, per-project costs were highest for remediation and reclamation of infrastructure, not well plugging. Apps. Ex. 4/OCD Ex. 18 at 13.

51. Chief Romero testified that her Environmental Bureau did not begin major environmental projects until OCD received federal IIJA funding in 2023. Tr. 26:3-5 (Oct. 24, 2025).

52. Plugging costs for 12 wells within a half-mile radius, plugged by the same contractor between Mar. and Nov. 2023, ranged from $73,000 to $220,000. Apps. Ex. 4/OCD Ex. 18 at 29-30.

53. The LFC issued recommendations to EMNRD addressing cost tracking, vendor procurement, and plugging program management. Apps. Ex. 4/OCD Ex. 18 at 23, 36.

H. Industry's Plugging Costs Properly Inform the One-Well Inquiry, are Reported in the Record, and Prove Just How Inflated OCD's Costs are

54. Section 70-2-14(A) of the OGAct provides that the Division "shall release financial assurance when it is satisfied that the conditions of the financial assurance have been fully

performed." NMSA 1978, § 70-2-14(A).

55. In recommending statutory changes, the LFC emphasized that policy should encourage operators to plug wells before they become OCD's responsibility, leveraging the industry's ability to perform plugging "faster and likely at a lower cost." Apps. Ex. 4/OCD Ex. 18 at 32. Applicants' Technical Expert Alexander reiterated this principle. Tr. 12:8-9 (Oct. 20, 2025); Applicants' Ex. 3 at 0056–0060.

56. OCD Deputy Director Powell admitted that "industry probably does plug wells cheaper than OCD," Tr. 212:4-6 (Oct. 24, 2025), and much faster because delays before OCD acts lead to additional well failures and increased costs. Tr. 69:13-23 (Oct. 27, 2025). In FY24, industry plugged 773 wells compared to OCD's 100. Tr. 268:21-269:5 (Oct. 23, 2025).

57. NMOGA P&A Expert McGowen testified that $70,000 is a reasonable P&A cost. Tr. 38:21-39:18 (Oct. 30, 2025).

58. NMOGA Regulatory Expert Arthur testified he has personally plugged wells for $40,000–$60,000 per well. Arthur Rebuttal 73-74:1700-1702.

59. IPANM witness Sharpe testified that average plugging costs in northwestern New Mexico are $52,000 per well, ranging from $30,000 to $80,000. Tr. 258:25-259:8 (Oct. 31, 2025).

60. IPANM witness Representative Murphy testified that average P&A costs are approximately $100,000–$120,000 per well. Tr. 204:3-11 (Nov. 4, 2025); IPANM Sharpe Direct at 5:10-13.

61. IPANM witness Armstrong testified that average costs to plug four wells over the past two years were approximately $120,000 per well, including remediation. Tr. 99:5-11 (Nov. 3, 2025).

62. Applicants' Technical Expert Purvis testified that a reasonable cost includes a $135,000 base plus $2 per vertical foot, Tr. 488:13-18 (Oct. 21, 2025), and that Colorado's baseline is

$130,000 per well. Tr. 490:6-10 (Oct. 21, 2025).

I. Factors Determinative of Plugging Costs Supported by Statute or the Record

63. Depth is a primary driver of plugging costs. Applicants Technical Expert Alexander and IPANM Economist Arscott testified that depth strongly correlates with P&A costs and is a theoretically sound metric. Tr. 307:10-308:7 (Oct. 20, 2025); Tr. 108:15-23, 110:18-23, 124:1-15 (Nov. 5, 2025). NMOGA P&A Expert McGowen explained that deeper wells require more plugs, typically one per formation crossed. Tr. 268:20-270 (Oct. 29, 2025).

64. Applicants Legal Expert Morgan acknowledged the OGAct requires consideration of depth when setting one-well FA. Tr. 572:14-20 (Oct. 21, 2025); Apps. Ex. 15 at 0325:1-4. Applicants Subject Matter Expert Peltz nevertheless confirmed that the Applicants' proposed one-well FA does not consider or account for depth. Tr. 879:11-22 (Oct. 21, 2025). NMOGA FA Expert Emerick recommended retaining the existing statutory depth-based framework, even if base amounts are increased. Tr. 141:13-18 (Oct. 29, 2025).

65. Multiple experts testified that other well-specific factors materially drive P&A costs, including fluid characteristics, age, construction, formation behind pipe, driller reputation, access, casing condition, required plugs, cement cure time, and road construction. Tr. 478:10-16 (Oct. 21, 2025) (Applicants Purvis); Tr. 771:25-772:2, 771:12-16 (Oct. 22, 2025) (Applicants Morgan); Tr. 540:10-18 (Oct. 21, 2025); Apps. Ex. 15 at 0329:16-19; Tr. 139:2-20 (Oct. 23, 2025) (OCD Diede); OCD Ex. 4 at 3:8-9; Tr. 124:13-125:12 (Oct. 24, 2025) (OCD Wrinkle).

66. NMOGA and IPANM witnesses agreed that depth, age, water, production history, current condition, and rust are the most important cost-determinative factors and indicators of risk. Tr. 65:11-24, 95:10-96:2 (Oct. 29, 2025) (NMOGA Arthur); Tr. 268:6-269:11 (Oct. 30, 2025) (NMOGA McGowen); Tr. 125:14-25 (Nov. 5, 2025) (IPANM Arscott). NMOGA P&A Expert McGowen further testified that if 19.15.8.9 NMAC is amended, a risk-based bonding framework

differentiating by well type, age, and condition should be adopted. Tr. 209:6-11, 271:5-272:10, 273:16-22 (Oct. 29, 2025).

J. *Ultra Vires* One-Well Financial Assurance Requirement for Every "Low Producing Well" Immediately for Transfers or Effective Mid-2029 But Subject to "Variances" All Parties Agree with or Individually Proposed by Industry Associations

67. Applicants' impermissibly exceed the express statutory ceiling on the bonding of active wells established in Section 70-2-14(A) of the OGAct by proposing to require "one well FA" for every active but newly defined "low producing well" under proposed 19.15.8.9(D) NMAC and 19.15.2.7(L)(6) NMAC. Applicants Exs. 89-C, 89-A.

68. Through negotiations, the originally proposed as "marginal well" under 19.15.2.7(M)(2) NMAC, Apps. Ex. 72-A, was changed to low producing well, Apps. Ex. 89-E.

69. The parties accepted the negotiated takeaway capacity variance to low producing well determinations under 19.15.8.9(D)(3) NMAC, Apps. Ex. 89-C, subject to the reservation of the ability to challenge on any grounds besides substantial evidence, and that the Industry Associations would propose additional variances, *Joint Stipulation* ¶ 5 and *Chart*.

70. The Commission indicated support for more broadly defining midstream shutdowns warranting an exception to low producing well status, and ensuring there is a carve out for force majeure events. *See* Tr. 97-98:3 (Oct. 29, 2025) (Commissioner Bloom questioning of NMOGA Regulatory Expert Arthur supporting "exceptions or carve-outs" for low producing well status "for things like a pipeline going down, . . . a midstream or takeaway shutdown"); *see also* Tr. 202:6-204:5 (Oct. 30, 2025) (Commissioner Bloom questioning of NMOGA P&A Expert McGowen reiterating support for low producing well variances for at least "midstream shutdowns" and "force majeure" situations, with McGowen drawing analogy to Winter Storm Uri/Snowmaggeddon).

71. Accordingly, NMOGA suggests that the lack of takeaway capacity variance should also

apply to transportation constraints, including, but not limited to, lack or failure of midstream takeaway capacity, pipeline curtailments or shut-ins, storage limitations, transportation interruptions, or market delivery constraints. *See also* NMOGA Closing Ex. 3 (prop. 19.15.8.9(D)(3)(a) note).

72. NMOGA agrees that force majeure should be expressly addressed under the variances and proposes an additional exception for force majeure events under its modified 19.15.8.9(D)(3) NMAC, NMOGA Closing Ex. 3 ("(f) A force majeure event including war, terrorism, civil unrest, embargos or blockades, governmental actions or shut downs, regulatory restrictions, natural disasters, extreme weather events, fire, flood or any other act of God;"), as supported by the Commission during the Hearing. Tr. 202:6-204:5 (Oct. 30, 2025).

73. NMOGA proposes additional 19.15.8.9(D)(3) NMAC variances in its Closing Exhibit 3:

> (b) A compression or facility limitation, including compressor failures, equipment scarcity, maintenance or processing-plant downtime, or inlet restrictions;
> (c) An operational safety requirement, including curtailment for the protection of life, health, the environment or property;
> (d) A regulatory safety directive or operational hold, compliance with which is mandatory;
> (e) A proximity operation or interference including nearby fracturing, stimulation, drilling or operations impacting safe or prudent pressure practices;
> * * *
> (g) An exception otherwise permitted by the provisions of the subject lease or approved by the NMSLO, BLM or other governmental agency with jurisdiction over said well;
> (h) Financial capability, based on well economics, operational plans or plans to improve well performance, or any other relevant information; or
> (i) No current market or the only market would require selling at a loss which constitutes waste.

74. All of NMOGA's proposed additional variances use the same negotiated "demonstration satisfactory to the division" standard. Apps. Ex. 89-C (prop. 19.15.8.9(D)(3) NMAC).

75. NMOGA also proposes that a procedure for protesting variance determinations by OCD be added as new Subsection 19.15.8.9(D)(4) NMAC as shown in its Closing Exhibit 3:

> Upon receipt of an operator's written variance request, the division shall have 30 days to accept or deny the operator's variance. If the division denies the operator's variance, the operator shall have 30 days in which to file a request for a hearing with the division. Normal appeal and hearing procedures apply, and any such hearing shall be conducted pursuant to the procedures for adjudicatory proceedings in 19.15.4 NMAC.

76. OCD agreed to create a guidance document confirming that low producing well variances are determined annually at the same time as low producing well status determinations and thus any approved variance continues for 1 year but not indefinitely. *Joint Stipulation* ¶ 7.

K. *Ultra Vires* One-Well Financial Assurance Requirement for Every Well in a "High-Risk Portfolio" Determined by Concentration of Inactive and Temporarily Abandoned Wells Effective Mid-2029

77. The Applicants impermissibly exceed the express statutory ceiling on the bonding of active wells established in Section 70-2-14(A) of the OGAct by proposing to require "one well FA" for every well in a "high-risk" portfolio, whether active or inactive, under proposed 19.15.8.9(E) NMAC. Apps. Ex. 89-C.

78. Applicants used OCD's inflated average plugging cost of $163,000 per well, not the actual cost industry members will incur, when calculating the alleged number of "high-risk operators" in the state. Apps. Ex. 68; Tr. 814:2-21 (Oct. 22, 2025).

79. Through negotiations, the Applicants agreed to and the parties accepted the change from 15% threshold considering any combination of low producing wells, inactive and/or TA'd wells, to 20% inactive and/or TA'd wells only. *Joint Stipulation* ¶ 5.

80. Applicants Subject-Matter Expert Peltz confirmed that under the Proposed Rules, OCD would have no discretion to waive the proposed $150,000 one-well FA requirement once an operator's portfolio is classified as "high-risk." Tr. 33:13-34:14 (Oct. 23, 2025).

L. Acknowledging OCD's Direction to Waive or Extend Regulatory Requirements

81. Commissioner Bloom supported a waiver option confirming OCD's discretion to waive

plugging FA requirements where P&A is ongoing or planned. Tr. 164:8-19 (Oct. 31, 2025).

82. Accordingly, NMOGA proposes adding a discretionary waiver where OCD can waive FA requirements if the operator is engaged in P&A operations for the subject well, is planning to, or if OCD finds good cause. NMOGA Closing Ex. 3 (prop. 19.15.8.9(A) NMAC).

83. Notably, NMOGA proposes a parallel clause to the PNBU which similarly acknowledges OCD's discretion to extend the 30-day rebuttal period. NMOGA Closing Ex. 5 (prop. 19.15.25.9(D) NMAC); *see* Tr. 164:5-165:7 (Oct. 27, 2025) (OCD Deputy Director Powell).

84. During cross-examination of NMOGA Regulatory Expert Arthur, counsel for OCD indicated that it is also within OCD's discretion to accept less than the rebuttal requirements listed in the Proposed Rules as adequate to rebut the PNBU. Tr. 35:5-16 (Oct. 30, 2025) (confirming that takeaway capacity and force majeure issues could be an explanation why the PNBU does not apply).

85. Relatedly, during negotiations, OCD offered to add a discretionary waiver for mechanical integrity requirements for TA'd wells in response to NMOGA's request, which all parties accepted under the Stipulation, Applicants' Ex. 89-E (prop. 19.15.25.15 NMAC), *Joint Stipulation* ¶ 5.

M. <u>Authorized Instruments and Surety Market Necessitate Phased Bonding</u>

86. IPANM Economist Expert Arscott testified that optimal plugging FA should not exceed expected P&A costs. Tr. 242:15-25 (Nov. 5, 2025)

87. Even if sureties could meet the Proposed Rules' 437% FA increase, the surety market would likely decline participation due to heightened regulatory burden, increased bond levels, and underwriting uncertainty tied to low-producing well and high-risk portfolio classifications. Tr. 128:9-129:5 (Oct. 29, 2025).

88. The Surety & Fidelity Association of America confirmed through public comment that the Proposed Rules would create adverse selection against smaller operators, further reduce surety

appetite already constrained by recent market events, and disqualify many operators from increased liabilities, with any remaining capacity offered on more restrictive terms. *NMOGA Closing Ex. 7*.

89. NMOGA FA Expert Emerick testified that surety bonds are underwritten to a zero-loss ratio and function more like loans than insurance, with underwriting adjusted to avoid loss, higher regulatory risk passed through as increased premiums—favoring large operators with strong balance sheets—and that non-cancelable plugging bonds conflict with low-producing well and high-risk portfolio FA proposals. Tr. 112:6-113:15, 115:8-116:13, 127:3-7, 131:8-132:1, 152:2-7, 161:2-17 (Oct. 29, 2025).

90. OCD Exhibit 29 shows that approximately 70% of operators rely on surety bonds (69.26%), compared to cash bonds (13.38%) and letters of credit (17.36%), meaning the impacts of increased FA coupled with constrained surety availability would disproportionately affect most operators. OCD Ex. 29.

91. The OGAct requires approval by the Secretary of Insurance before plugging insurance policies may satisfy FA requirements, NMSA 1978, § 70-2-14(F)(1), yet whether any approved policies are currently available remains unresolved and critical to feasibility. IPANM Gilstrap Direct 6:5-9; Tr. 173:1-176:7 (Nov. 3, 2025).

92. NMOGA FA Expert Emerick testified that phasing in any new bonding requirements is essential to mitigate surety-market disruption. Tr. 141:16-24 (Oct. 29, 2025).

93. Consistent with that testimony, the negotiated CPI adjustment is discretionary with OCD, effective no earlier than 2032, and available only every three years. Apps. Ex. 89-C; Joint Stipulation ¶ 5.

94. Under the broader Stipulation, most ultra vires one-well FA requirements were delayed

until at least May 1, 2029, with annual determinations thereafter, although OCD required immediate effectiveness for low-producing well transfer FA; NMOGA and IPANM accepted with a June 1, 2029, effective date and reservation of non-substantial-evidence challenges. Stipulation ¶ 5; NMOGA Closing Ex. 3.

95. NMOGA FA Expert Emerick recommended retaining the existing tiered blanket-bond framework, which better aligns coverage with actual exposure, preserves liquidity, and protects small- and mid-sized operators, a view shared by NMOGA Regulatory Expert Arthur. Tr. 141:13-16, 143:22-144:9 (Oct. 29, 2025); Tr. 98:3-6 (Oct. 29, 2025).

96. The concept of beneficial use already appears on OCD bond forms, and adding a new definition may affect existing bonds. Tr. 146:4-8 (Oct. 29, 2025).

N. The Presumption of No Beneficial Use, Rebutting the Presumption, and OCD Discretion to Extend the 30-Day Rebuttal Period

97. For oil and gas production wells, Applicants' proposal creates a rebuttable presumption that a well is not capable of beneficial use if, during a consecutive 12-month period, it produces less than 90 barrels of oil equivalent. Apps. Ex. 89-E (prop. 19.15.25.9(A) NMAC)

98. The proposal exempts wells drilled but not completed for less than 18 months ("DUCs") and wells completed but non-producing for less than 18 months. Apps. Ex. 89-E (prop. 19.15.25.9(C) NMAC).

99. For injection and disposal wells, the proposal creates a rebuttable presumption of no beneficial use if, during a consecutive 12-month period, the well injects less than 100 barrels. Apps. Ex. 89-E (prop. 19.15.25.9(B) NMAC).

100. Applicants' original proposal also required fewer than 90 days of production during the 12-month period to trigger the presumption. Apps. Ex. 72-E (prop. 19.15.25.9(A)-(B) NMAC).

101. During the Hearing and post-hearing negotiations, OCD explained that operators

calculate and report production days; accordingly, the 90-day element was moved to Subsection (D) as rebuttal element (2), a change accepted by the Industry Associations as part of the negotiated "Package Proposals." Applicants' Ex. 82-E (prop. 19.15.25.9(D)(2) NMAC); *Joint Stipulation* ¶ 5; *NMOGA Closing Ex.* 6.

102. Proposed 19.15.25.9(D)(5) NMAC was amended to expressly allow submission of any relevant evidence by the operator or an agency. Applicants' Ex. 89-E.

103. OCD deems PRMS Reports relevant evidence of future well repurposing potential. Tr. 124:20-125:17 (Oct. 30, 2025) (NMOGA P&A Expert McGowen); Tr. 316:1-7, 493:20-494:23 (Oct. 20, 2025) (OCD Deputy Director Powell).

104. Failure to timely rebut the PNBU to OCD's satisfaction results in mandatory TA or P&A of the well(s) pursuant to 19.15.25.8(B) NMAC, as amended. Tr. 84:20-90:5 (Oct. 20, 2025) (Applicants Technical Expert Alexander).

105. NMOGA opposes application of the PNBU to federal wells and to tribal wells with tribal approval. Tr. 43:15-44:13 (Oct. 27, 2025).

O. Inactive Wells and Authorized Inactivity

106. Under existing law, a well may remain inactive for 12 months before the 90-day compliance window in 19.15.25.8 NMAC is triggered, authorizing up to 15 months of continuous inactivity before the operator must TA or permanently P&A the well. Tr. 502:2-6 (Oct. 21, 2025); Apps. Ex. 4/OCD Ex. 18 at 15.

107. Applicants initially proposed shortening the compliance window to 30 days (13 months total inactivity), but the Joint Stipulation adopted a 60-day window, allowing 14 months of inactivity if the Proposed Amendments are adopted. Apps. Ex. 72-E; Joint Stipulation ¶ 5.

108. A well's typical lifespan is 30 to 50 years. Tr. 202:24-203:1 (Nov. 4, 2025).

109. The existing framework distinguishes between inactive but compliant wells under 19.15.25.8 NMAC and wells in approved Temporary Abandonment under 19.15.25.13 NMAC, distinctions the Proposed Rules collapse.

P. Temporary Abandonment ("TA") Changes – Proposed 19.15.25 and .2 NMAC

110. During the Hearing, Commissioner Ampomah confirmed that enhanced oil recovery and other alternative uses that need to be accommodated by TA permitting, but which conflicted with the originally proposed 8-year cap on TA, and that Approved TA wells should not be penalized. Tr. 502:16-504:9, 505:6-19 (Oct. 21, 2025). Applicants' Technical Experts Alexander and Peltz agreed that exceptions to an 8-year TA cap should exist. Tr. 247:3-12 (Oct. 20, 2025); Tr. 930:2-931:21 (Oct. 22, 2025).

111. During negotiations, Applicants abandoned the hard 8-year cap on TA originally proposed and replaced it with a new TA regime. Apps. Ex. 72-E (prop. 19.15.25.13-.14 NMAC).

1. TA Permitting under Proposed 19.15.25.13-.14 NMAC

112. Post-hearing party discussions resulted in blue negotiated language being added to proposed 19.15.25.13 NMAC, as reflected in Apps. Ex. 89-E, which now allows a 5-year Initial TA period under Subsection (A), followed by the possibility for a 2-year TA Renewal under (B), and then indefinite 5-year TA Extensions are available under (C) if the operator can meet the requisite beneficial use demonstration and mechanical integrity requirements. Improvements Applicants deem equivalent to the "exceptions" discussed at the Hearing to the originally proposed hard 8-year cap on TA, Apps. Ex. 72-E (prop. 19.15.25.13-.14 NMAC), and that NMOGA accepts for purposes of waiving substantial evidence challenges only, *Joint Stipulation* ¶ 5.

113. NMOGA additionally proposes adding a new Subsection 19.15.25.13(D) NMAC, which would allow an operator that can meet the heightened 5-year TA Extension requirements at the end of the 5-year Initial TA to apply for the 5-year TA Extension, instead of the 2-year TA

Renewal the Proposed Rules apply by default. NMOGA Closing Ex. 5.

114. As negotiated, proposed 19.15.25.13 and .14 NMAC require: a demonstration of beneficial use and mechanical integrity when applying for 5-year Initial TA, a demonstration of mechanical integrity at the 2-year TA Renewal, and a demonstration of beneficial use and mechanical integrity for every 5-year TA Extension. Apps. Ex. 89-E.

115. In addition, OCD agreed to NMOGA's request to adopt some of the nuanced items discussed post-hearing, but which Applicants and the agency did not want to appear in the express regulations, as guidance documents or FAQs, including an operator's ability to file an application to review OCD's denial of TA applications. *Joint Stipulation* ¶ 7.

2. Mechanical Integrity under Proposed 19.15.25.15 NMAC

116. Applicants proposed 19.15.25.15 NMAC adds new caliper and casing log requirements for mechanical integrity demonstrations, but the Proposed Rules do not tell operators how to interpret the newly required casing and caliper logs and risk or the standards required to be deemed in compliance with the regulations. Tr. 116:12-21, 161:9-18 (Oct. 30, 2025).

117. NMOGA P&A Expert McGowen testified that caliper logs likely present more risk (fishing, etc.) than the value of the results, especially if required to run caliper without reference to pressure test results or indication of leak. Tr. 115:19-116:11, 161:19-167:13 (Oct. 30, 2025).

118. During negotiations, OCD offered to add a discretionary waiver for the new mechanical integrity requirements for TA'd wells in response to NMOGA's request, if the operator can demonstrate "the current and anticipated internal casing integrity of the well and that such integrity shall be maintained throughout the period of" TA, which all parties accepted under the Stipulation. Applicants' Ex. 89-E (prop. 19.15.25.15(B)(5) NMAC); *Joint Stipulation* ¶ 5.

3. TA Definitions Proposed under 19.15.2.7 NMAC

119. NMOGA opposes Applicants' proposal to strike the existing definitions of

"temporary abandonment" and "temporarily abandoned status" in 19.15.2.7(T)(3) NMAC and collapse them into "approved temporary abandonment" under proposed 19.15.2.7(A)(13) NMAC, as well as the proposal to add new definitions for "expired temporary abandonment" and "expired temporary abandonment status" under proposed 19.15.2.7(E)(8) NMAC. Apps. Ex. 89-A.

120. NMOGA Regulatory Expert Arthur testified that these changes collapse distinct regulatory concepts, risk reclassifying inactive-but-compliant wells as out of compliance, eliminate regulatory space for wells not yet approved for TA. Arthur Rebuttal 27:726-27, 28:736-38, 28:749-29:753.

121. Arthur also testified that the phrase "no longer complies" in the proposed expired TA definition is vague and could trigger automatic reclassification based on minor or correctable issues, leading to arbitrary enforcement. Arthur Rebuttal 30:786-94; OCD Ex. 15 at slides 3, 6.

122. Arthur further testified that expanding TA-related definitions would force wells into either approved TA or permanent plugging on shortened timelines, removing operational flexibility for recompletion, infrastructure work, or market conditions and undermining conservation goals; if greater oversight is needed, OCD should rely on existing tools such as mechanical integrity testing, monitoring or repair conditions, or denial of TA extensions rather than new outcome-determinative definitions. TA definitions also carry FA consequences, as only approved TA wells in their first two years qualify for the active-well blanket bond discount. Arthur Rebuttal 28:739-45, 29:754-759, 29:774-30:778, 30:795-31:817.

Q. Operatorship

123. The record reflects no evidence that the existing Part 9 requirements have caused compliance failures or impeded OCD's ability to enforce operator obligations.

124. Applicants propose expanding the existing grounds to deny operator registration under 19.15.9.8(C)(2)-(3) NMAC, where the operator or its officer, director, partner, or 25%+

owner has held an interest in an entity that is not compliant with the Subsection 5.9(A) Compliance Criteria in the last five years, to be transformed into: mandatory information at operator registration and transfer under proposed new Section 9.9(B); new grounds to deny changes of operator under proposed Subsection 9.9(C)(2)-(3); and annually recertified under proposed Section 9.8(E). Apps. Ex. 89-D.

125. OCD Deputy Director Powell incorrectly claimed that information is currently a required disclosure at operator registration. Tr. 45:20-23 (Oct. 27, 2025). It is not.

126. Powell testified the identical language that appears in Form C-145 language has nothing to do with this OGAct rulemaking under Title 19 Part 15 NMAC, and is actually contingent or an outgrowth of the methane reporting rule in Title 19 Part 27 NMAC. Tr. 45:5-47:2 (Oct. 27, 2025).

127. Applicants also proposed an overly broad brand-new compliance certification with no lookback. Applicants' Ex. 72-D. But during negotiations, a lookback limitation was agreed necessary by all parties, and the certifications scope was limited by compromise by the parties. *Joint Stipulation*.

128. A ten-year lookback period as Applicants now propose under the negotiated compliance certification proposed under 19.15.9.8(B), 9.8(C)(2), 9.9(B), and 9.9(C)(2) NMAC in Applicants' Exhibit 89-D is not supported by substantial evidence.

129. A five-year lookback period for prior forfeiture, insolvency, and compliance history in proposed 19.15.9.8(B), 9.8(C)(2), 9.9(B), and 9.9(C)(2) NMAC is consistent with the existing five-year lookback period under the current operatorship registration regulations at 19.15.9.8(C)(2)-(3) NMAC.

130. Applicants and SLO at the Hearing supported Applicants' replacement of all Part

9 references to "officer, director, or partner" ("ODP") with "authorized official" through Applicants' rebuttal testimony and Exhibit 72-D to ensure Limited Liability Companies ("LLCs") and Limited Partnerships ("LPs") are encompassed. Tr. 759:6-761:15 (Oct. 22, 2025) (Apps. Legal Expert Morgan confirming that "authorized official" is intended to provide that greater flexibility to encompass that start of entity); Tr. 209:10-210:17 (Oct. 27, 2025) (SLO Director Marks noting ambiguity under the Uniform Revised Limited Partnership Act, NMSA 1978, § 54-2A-102 but inclusion of LLCs and LPs better encompasses company structures under New Mexico law).

131. During negotiations NMOGA, IPANM, and OXY requested adding language that the authorized official be "designated by the operator" to allow operators to select the employee best suited to respond, while still retaining "authorized official" to resolve Applicants and SLO's concerns raised at the Hearing; all parties accepted that change as part of the Joint Stipulation. *Joint Stipulation* ¶ 5 and *Chart*.

132. New Mexico courts have consistently treated operating agreements and related instruments as conveying or affecting interests in real property, *see Skaggs,* 1998-NMCA-061, ¶ 24; *Rock Island Oil*, 1963-NMSC-192, and the distinction OCD attempts to draw between "operatorship" and property rights cannot create statutory authority where none exists.

IV. PROPOSED CONCLUSIONS OF LAW ("COL")

A. Foundational Legal Propositions

1. The OCC and OCD are creatures of statute whose authority is limited to their enabling legislation, the New Mexico OGAct, NMSA 1978, §§ 70-2-1 to 70-2-38 ("OGAct"). *Gonzales,* 1990-NMSC-024, ¶ 11; *Sims,* 1963-NMSC-103, ¶ 11.

2. An agency may not create a regulation that exceeds its statutory authority. *Gonzales*, 1990-NMSC-024, ¶ 11.

3. Adopted rules will be upheld only if within the agency's express statutory authority or fairly implied as necessary to exercise those powers. *N.M. Mining Ass'n v. N.M. Mining Comm'n*, 1996-NMCA-098, ¶ 15, 122 N.M. 332, 924 P.2d 741; *Marbob*, 2009-NMSC-013, ¶ 7.

4. Statutory construction is not within the Commission's specialized expertise and agency interpretations of the OGAct are therefore afforded no special deference. *Marbob*, 2009-NMSC-013, ¶ 7; *N.M. Indus. Energy Consumers v. N.M. Pub. Regulation Comm'n*, 2007-NMSC-053, ¶ 19, 142 N.M. 533, 168 P.3d 105.

5. General language in a statute is limited by specific language. Where the OGAct enumerates specific categories or limits, those specific provisions govern over any broad grant of general authority. *Marbob*, 2009-NMSC-013, ¶ 30; *Morningstar Water Users Ass'n v. N.M. PUC*, 1995-NMSC-062, ¶ 44, 120 N.M. 579, 904 P.2d 28; *CA* § G.1.

6. Statutes must be read so that no provision is rendered surplusage or superfluous. *Amdor*, 578 P.3d at 984.

7. The Legislature does not enact meaningless language; statutory caps and categorical limitations express deliberate policy choices and parameters of policy and jurisdiction that the Commission must honor. *Baker*, 2013-NMSC-043, ¶ 11; *Dona Ana Mut. Domestic Water Consumers Ass'n v. N.M. Pub. Reg. Comm'n*, 2006-NMSC-032, ¶ 7, 140 N.M. 6, 139 P.3d 166; S*tate ex rel. Egolf v. N.M. Pub. Reg. Comm'n,* 2020-NMSC-018, ¶ 33, 476 P.3d 896.

8. Agency rulemaking decisions must be supported by substantial evidence, defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Duke City Lumber Co. v. N.M. Envtl. Improvement Bd.,* 1984-NMSC-042, 101 N.M. 291, 681 P.2d 717; *Public Serv. Co. v. N.M. Pub. Regulation Comm'n,* 2019-NMSC-012, ¶ 12, 444 P.3d 460; *Southwest Research & Info. Ctr.,* 2014-NMCA-098, ¶ 21; *Regents of the Univ. of Cal.,* 2004-

NMCA-073, ¶ 35, 136 N.M. 45.

9. Agency regulations must be reasonably related to the agency's legislative purpose; regulations that are not so related are arbitrary and capricious and invalid. *N.M. Att'y Gen. v. N.M. Pub. Regulation Comm'n,* 2011-NMSC-034, ¶¶ 1, 18-19, 150 N.M. 174, 258 P.3d 453; *Phelps Dodge Tyrone, Inc. v. N.M. Water Quality Control Comm'n,* 2006-NMCA-115, ¶ 33, 140 N.M. 464, 143 P.3d 502.

10. Rules that predictably cause or accelerate premature plugging, decrease production, and divert capital constitute underground or surface waste and/or violate correlative rights under Section 70-2-3(A) of the OGAct and exceed the Commission's and Division's authority. *Cont'l Oil,* 1962-NMSC-062; *Sims*, 1963-NMSC-103; *Fasken*, 532 P.2d at 589.

11. Under the New Mexico State Rules Act, a rule that contradicts a statute is invalid, and the Commission cannot expand FA obligations beyond the limits the Legislature imposed. N.M. Stat. Ann. § 14-4-5.7(A) ("No rule is valid or enforceable if it conflicts with statute."). *CA* § I.1.

B. Stipulated Provisions — Acceptance and Reservation of Rights

Pursuant to the Joint Stipulation filed April 3, 2026, NMOGA agreed not to challenge the following negotiated provisions as reflected in blue highlight in Applicants Exhibit 89-A through 89-E, before the Commission or on appeal on substantial evidence grounds. NMOGA expressly reserves all legal arguments other than substantial evidence as to each such provision. The Commission may adopt the stipulated provisions consistent with the Stipulation. *Joint Stipulation.*

12. NMOGA does not challenge on substantial evidence grounds the following stipulated provisions in 19.15.2 NMAC: 19.15.2.7(L)(6). NMOGA reserves all legal arguments other than substantial evidence for each provision. *Joint Stipulation* ¶ 5; Apps. Ex. 89-A.

13. NMOGA does not challenge on substantial evidence grounds the following stipulated provisions in 19.15.5 NMAC: 19.15.5.9(A)(4); 19.15.5.9(A)(5); 19.15.5.9(B)(1)(a)-(d);

19.15.5.9(B)(2). NMOGA reserves all legal arguments other than substantial evidence as to each provision. *Joint Stipulation* ¶ 5; Apps. Ex. 89-B.

14. NMOGA does not challenge on substantial evidence grounds the following stipulated provisions in 19.15.8 NMAC: 19.15.8.9(A) (last sentence); 19.15.8.9(C); 19.15.8.9(D); 19.15.8.9(E); 19.15.8.9(F)(2); 19.15.8.9(H); 19.15.8.12(B). NMOGA reserves all legal arguments other than substantial evidence as to each provision. *Joint Stipulation* ¶ 5; Apps. Ex. 89-C.

15. NMOGA does not challenge on substantial evidence grounds the following stipulated provisions in 19.15.9 NMAC: 19.15.9.8(C)(5); 19.15.9.8(E); 19.15.9.9(C)(5). NMOGA reserves all legal arguments other than substantial evidence. *Joint Stipulation* ¶ 5; Apps. Ex. 89-D.

16. NMOGA does not challenge on substantial evidence grounds the stipulated provisions in 19.15.25 NMAC identified in paragraph 5 of the Joint Stipulation. NMOGA reserves all legal arguments other than substantial evidence as to each such provision. *Joint Stipulation* ¶ 5; Apps. Ex. 89-E.

17. The Joint Stipulation is non-precedential and non-evidentiary with respect to any future proceeding, consistent with paragraph 9 of the Joint Stipulation and the Commission's practice. *Joint Stipulation* ¶ 9.

C. Financial Assurance — 19.15.8 NMAC

1. This Financial Assurance Rulemaking Should Be Limited to Securing the State's Certain Liability for Orphan Wells, Not Active Wells, Which Industry Plugs

18. This FA rulemaking should only seek to fill the certain liability funding gap identified in the LFC Report for "orphan wells" defined by the LFC wells for which OCD has been granted plugging authority. *FOF* ¶ 10, n.33.

19. The LFC Report confirms that OCD does not have statutory authority to require a new one-well FA for the 3,000 active "low producing wells" that make up the LFC Report's expected

liability, and which unrealistically assumes the State would have to plug all 3,000 of those active wells. *CA* § D-E; *FOF* ¶¶ 11-14.

20. Industry plugs at least 95% of the wells in New Mexico. *FOF* ¶ 15.

2. This Rulemaking Should Not Apply or Extend to Federal or Tribal Wells

21. The Rec. Fund statute independently authorizes EMNRD/OCD to recover plugging and restoration costs paid from the Rec. Fund, including on federal lands, with any recovery deposited back into the Fund. NMSA 1978, § 70-2-38(B).

22. Both the LFC Report and OCD have confirmed that the FA provisions of this rulemaking do not apply to federal or tribal wells. *FOF* § C, ¶¶ 21-23.

23. Accordingly, OCD and Applicants agreed to NMOGA and IPANM's request to add a clause to Subsection (A) making clear the federal well carve out applies to all FA requirements in the following proposed Subsections, as reflected in blue in the negotiated version of 19.15.8.9(A) NMAC in Applicants Exhibit 89-C as follows: "This Subsection A applies to Subsections B through H of this Section."[35] *Joint Stipulation*. *FOF* ¶ 22.

24. NMOGA asserts that if federal wells are excluded because they are covered by federal lease bonds, then FA for state wells should take state lease bonds into consideration. *CA* § H n.6; *FOF* ¶¶ 23-24.

25. NMOGA further asserts that OCD does not have the authority to apply the proposed PNBU

[35] Notably, Applicants original Proposed Amendments to the FA requirements in 19.15.8.9 NMAC struck through the existing clause "are covered by Subsection A of 19.15.8.9 NMAC" in the inactive well FA requirements in what is now proposed Subsection (F) in Ex. 89-C (existing Subsection (D), initially proposed Subsection (E) in Ex. 72-C) but left that clause in its amended version of the active well FA requirements in Subsection (C). During the post-hearing party discussions, NMOGA and IPANM explained their concern that retaining that clause in the active well FA requirements only and not the inactive could be interpreted as the Subsection (A) carve out for federal wells not applying to inactive or TA'd federal wells. NMOGA and IPANM first proposed retaining the existing clause in both the active and inactive Subsections. Applicants and OCD compromised and agreed to strike that existing clause from both the active and inactive Subsections and instead add the clause "This Subsection A applies to Subsections B through H of this Section" to the applicability provision in Subsection (A) to make clear its limits apply to all FA requirements in the following Subsections. Apps. Ex. 89-C (prop. 19.15.8.9(A), (C), and (F)).

or P&A requirements under 19.15.25.9 and 25.8 NMAC, respectively, to federal or tribal wells. *CA* § M; *FOF* ¶ 105.

3. The $250,000 Blanket Bond Cap — Ultra Vires Provisions

26. Section 70-2-14(A) of the OGAct establishes three mutually exclusive, enumerated categories of plugging FA: (1) a blanket plugging FA set by rule in an amount not to exceed $250,000; (2) one-well FA for temporarily abandoned status wells, set by rule in an amount greater than $50,000; and (3) one-well plugging FA in amounts sufficient to reasonably pay the cost of plugging the well secured. NMSA 1978, § 70-2-14(A); *CA* §§ D-F; *FOF* ¶ 105.

27. The penultimate comma separating the three categories in Section 70-2-14(A) establishes that these categories are separate and non-overlapping, and that each constitutes a distinct and limited type of FA obligation. NMSA 1978, § 70-2-14(A); *Baker*, 2013-NMSC-043, ¶ 11; *CA* § D.2; *FOF* ¶ 3.

28. The Legislature has demonstrated that when it intends to authorize new categories of FA beyond those listed in Section 70-2-14(A), it does so by express statutory amendment, acting directly in the statute. 2015 N.M. Laws (HB383/SB442); 2018 N.M. Laws, ch. 16, § 2 (SB189); *CA* § D.1; *FOF* ¶ 2.

29. No amendment to the OGAct enacted since 2018 authorizes the Commission to exceed the $250,000 blanket bond cap for active wells, to create new FA categories for low producing active wells, or to create new FA categories for wells in a high-risk portfolio. NMSA § 70-2-14(A); *CA* § D.1; *FOF* ¶ 2.

30. The LFC Report's recommendation that the Legislature amend Section 70-2-14 to authorize new FA categories for low-producing wells and ARO-based transfer restrictions, confirms that such authorization does not currently exist. Apps. Ex. 4/OCD Ex. 18 at 36. *CA* § J.1; *FOF* ¶ 7.

31. Proposed 19.15.8.9(D) creates a new "low producing well" FA category imposing $150,000 one-well FA for each low producing active well, which exceeds the $250,000 active well blanket bond cap and is not authorized by Section 70-2-14(A). This provision must be rejected as *ultra vires.* NMSA § 70-2-14(A); *Gonzales*, 1990-NMSC-024, ¶ 11; *Marbob*, 2009-NMSC-013, ¶ 23; *CA* § D.3-E; *FOF* ¶ 67.

32. Proposed 19.15.8.9(E) creates a new "high-risk portfolio" FA category imposing $150,000 one-well FA for each well in a portfolio where 20% or more of wells are inactive or in TA status, which exceeds the $250,000 active well blanket bond cap and is not authorized by Section 70-2-14(A). This provision must be rejected as *ultra vires*. NMSA § 70-2-14(A); *Gonzales*, 1990-NMSC-024, ¶ 11; *Marbob*, 2009-NMSC-013, ¶ 23; *CA* §§ D.3-E; *FOF* ¶ 77.

33. OCC cannot interpret Section 70-2-14(A) in a way that renders the $250,000 blanket bond cap or the enumerated one-well FA provision superfluous. *Amdor*, 578 P.3d at 984; *CA* § E.

4. $150,000 One-Well Financial Assurance Requirements for Every Low Producing Well and Every Well in a "High-Risk Portfolio" – Ultra Vires

34. Section 70-2-14 of the OGAct contains no authorization for FA categories based on production rate, let alone low-producing or marginal wells (i.e., marginally producing wells), and makes no distinction as to any types or subsets of active wells, as confirmed by the LFC's recommendations to the Legislature. *CA* §§ C-E; *FOF* ¶¶ 4, 67, 77.

35. The only category of one-well FA authorized under Section 70-2-14 is limited to wells in TA status for more than 2 years, which are subject only to a floor of $50,000 per well in coverage; such that the "low-producing well" and "high-risk" $150,000 one-well FA requirements are unauthorized. *CA* § E; *FOF* ¶ 4.

36. The "low-producing well" and "high-risk" $150,000 one-well FA requirements unlawfully remove active low-producing wells, and active wells and wells in TA status 0-2 years just in a

high-risk portfolio, from the $250,000 blanket bond option. *CA* § D; *FOF* ¶¶ 4, 110, 122.

37. The "low-producing well" and "high-risk" $150,000 one-well FA requirements contradict the well-specific, risk-based criteria mandated by Section 70-2-14(A), which requires OCD to consider depth, time since last production, and comparable plugging costs when setting one-well FA. NMSA § 70-2-14(A); *CA* § G; *FOF* ¶¶ 5-6.

38. Both the "low-producing well" and "high-risk" $150,000 one-well FA requirements also present possible double-bonding concern, for which NMOGA proposes a simple solution to resolve that issue for the various OCD plugging FA proposals at issue in this rulemaking, but it does not prevent the concerns with double-bonding presented by the SLO's upcoming FA rulemaking. *CA* § H and n.6; *FOF* ¶ 24; *COL* ¶¶ 65-67.

39. Both the "low-producing well" and "high-risk" $150,000 one-well FA requirements also unlawfully promote waste and violate correlative rights. *CA* § I; *FOF* ¶¶ 8-9.

40. As part of the Package Proposal, the parties agreed not to challenge the Applicants' originally proposed definition for marginal wells (now low-producing wells) of producing less than 1,000 BOE and less than 180 days over a consecutive 12-month period (2.7 BOE/day). *NMOGA Closing Ex* 6. However, substantial evidence also exists for this Commission to adopt the LFC's recommendation of using 750 BOE/year (2 BOE/day). Apps. Ex. 4/OCD Ex. 18 (LFC Report).

41. Although NMOGA opposes "low-producing well" and "high-risk" $150,000 one-well FA requirements under 19.15.8.9(D) and (E) NMAC as *ultra vires*, unlawfully promoting waste and violating correlative rights, inconsistent with the non-cancelable nature of plugging financial assurance, and the low producing transfer requirement under (D)(1) also an unauthorized ARO-based transfer restriction—any one of these presenting independently valid reasons for this

Commission to reject the Proposed Rules—in the event the Commission adopts either or both the low producing well and high-risk portfolio FA requirements, NMOGA recommends both be amended as follows and as reflected in *NMOGA Closing Exhibit* 3:

- Striking all references to "one-well" as a statutory conflict because low producing wells and all wells in a high-risk portfolio which are statutorily guaranteed to be eligible for blanket bond coverage as explained herein, *CA* §§ D-E;

- Making the effective date June 1, 2029 (instead of May 1, 2029 as now proposed by Applicants in their Exhibit 89-C), and annual determinations regarding low producing well or high-risk portfolio status due June 1 (instead of May 1) each year, except for the low producing well transfer FA requirement which being immediately effective if adopted was part of the compromise to obtain the delay for all other adopted new categories of FA to mid-2029, *FOF* ¶ 92;

- Adding additional 1-year variances for low producing well status, in addition to the negotiated takeaway capacity variance, using the negotiated variance's "demonstration to the satisfaction" of OCD standard for additional variances proposed, and adding protest procedure, *FOF* ¶¶ 69-76, *COL* ¶ 42; and

- Replacing the $150,000 one-well FA amount with a figure actually authorized by and aligned with the OGAct, *CA* § G.3*, COL* ¶ 49-56.

42. NMOGA accepts Applicants low producing well variance for takeaway capacity issues, supports expanding it to encompass all midstream constraints discussed at the Hearing, adding a force majeure variance as supported by the Commission, and adding additional variances for operational, regulatory, safety, market, and economic conditions supported by the record, all subject to NMOGA's proposed protest procedure, OCD's annual review, and 1-year duration. *FOF* ¶¶ 69-76. *NMOGA Closing Exhibit* 3 (prop. 19.15.8.9(D)(3)(b)-(i) NMAC).

43. The parties were not able to agree on exceptions for the high-risk portfolio FA requirements, or for the PNBU, like the takeaway capacity variance accepted for low producing wells. *See Joint Stipulation* (prop. 19.15.8.9(E) NMAC).

5. Two-Year TA Threshold — Ultra Vires Provisions

44. Section 70-2-14(A) requires minimum $50,000 one-well FA only for wells held in TA status for more than two years; wells in TA status for two years or less remain eligible for the active well blanket bond. NMSA 1978, § 70-2-14(A); *Marker,* 2021 N.M. App. Unpub. LEXIS 117; *CA* § F; *FOF* ¶ 4.

45. Because Section 70-2-14(A) expressly preserves a two-year TA period before one-well FA may be required, any rule imposing heightened FA earlier directly conflicts with the statute and is therefore invalid. *CA* § F; *FOF* ¶¶ 110, 122.

46. Proposed 19.15.8.9(F) NMAC unlawfully eliminates the two-year threshold, subjecting all pending, approved, and expired TA wells — regardless of duration — to heightened one-well FA requirements in contravention of the statute. This provision must be rejected and existing scope of the heightened FA requirements under proposed 19.15.8.9(F) NMAC (existing Subsection (D)) retained as only applying to wells in TA status more than two years so operators can continue to use their active well blanket bond for the first two years a well is in TA status. NMSA § 70-2-14(A); *CA* § F.

47. While NMOGA has accepted Applicants insistence that high-risk portfolio determinations will consider inactive and all pending, approved, and expired TA wells as "high-risk" (as part of the Package Proposals negotiated and compromised under the Joint Stipulation, *NMOGA Closing Exhibit* 6), the expanded scope cannot be accepted or adopted here where TA wells are statutorily exempt from one-well FA requirements for the first two years. *Joint Stipulation*.

6. $150,000 One-Well Assurance Required for Virtually Every Well Type, Regardless of Type or Status, is Inconsistent with the Enabling Statute and Enumerated Factors

48. Applicants propose $150,000 one-well FA for every well type except for active wells secured by blanket FA, *see* Applicants Exhibit 89-C:[36]

[36] While simultaneously proposing to remove new *ultra vires* categories of active wells and wells in TA status for 0-

- Individually secured "active wells" immediately effective with promulgation of the Proposed Amendments under proposed 19.15.8.9(C)(1) NMAC;
- Every Low Producing Well, immediately effective with promulgation of the Proposed Amendments for transfers of low producing wells only, and otherwise delayed to at least May 1, 2029, under proposed Subsection (D)(1)-(2);
- Every well in a high-risk portfolio with 20% or more TA'd and/or inactive wells effective date delayed to at least May 1, 2029 under proposed Subsection (E);
- Every TA'd and "inactive well" regardless if covered by a blanket FA instrument, immediately effective, under proposed Subsection (F)(1)-(2); and
- Every well not covered by existing blanket FA, immediately effective, under proposed Subsection (G).

49. But Section 70-2-14(A) of the OGAct requires one-well FA amounts to be "sufficient to reasonably pay the cost of plugging the wells covered by the financial assurance," based on individualized consideration of the depth of the well, length of time since the well was produced, and the cost of plugging similar wells. NMSA 1978, § 70-2-14(A); *CA* § G.

50. Section 70-2-14(A) only expressly allows for the consideration of similar plugging costs, not surface reclamation for the well – not the lease, 19.15.8.9(B) NMAC, but the bulk of OCD Orphan Well Program costs go towards surface reclamation and remediation, which should not be considered when determining the amount reasonably necessary to pay plugging costs as required by the statute. *FOF* ¶¶ 19-39.

51. A flat $150,000 one-well FA rate applicable to all well types without regard to the statutorily enumerated factors of depth, time inactive, or similar plugging costs does not satisfy the individualized inquiry required by Section 70-2-14(A), is inconsistent with the plain language of the statute, and is not supported by substantial evidence. NMSA § 70-2-14(A); *Baker*, 2013-NMSC-043, ¶ 15; *CA* §§ D-G; *FOF* ¶¶ 5-6.

52. The statute does not distinguish between OCD or industry in who ultimately completes the conditions of the FA, so long as they are completed in a satisfactory manner to finally release the

2 years from the blanket bond discount they are statutorily entitled to. *CA* §§ D-F.

FA. *CA* § H; *FOF* ¶¶ 16-18.

53. Not only are OCD's costs unreasonably inflated, OCD also does not systemically track its Orphan Well Program costs, which the LFC recommends should be required by statute, and which provides uncertain data for a "one-well" estimate to be relied on. *FOF* ¶ 53.

54. The administrative record contains substantial evidence that depth, age, and well condition are the primary determinants of plugging cost. *FOF* ¶¶ 63-66.

55. Numerous operators and witnesses testified that the cost to industry to P&A one-well typically ranges from $50,000 to $100,000. *FOF* ¶¶ 54-62.[37]

56. Each instance of the $150,000 one-well FA amount must be replaced with a depth- based, individualistic well formula consistent with the statutory mandate and as currently appears in OCD's existing Part 8 FA rules. NMSA § 70-2-14(A); *Duke City Lumber*, 1984-NMSC-042; *Public Serv. Co.,* 2019-NMSC-012, ¶ 12; *see* 19.15.8.9(C)(1),(D)(1) NMAC (2026); *CA* § G.3; *FOF* § A ¶¶ 4-5. Accordingly, NMOGA counter-proposes replacing every instance of the proposed $150,000 one-well FA amount with NMOGA's recommended alternative single well bond structure, which provides a default one-well FA amount as desired by OCD while mirroring OCD's existing depth based individualistic well inquiry. *See* Tr. 141:13-18 (Oct. 29, 2025).

57. NMOGA proposes a default one-well FA for all well types of "$75,000 per well; or $25,000 plus $12 per foot of the projected depth of a proposed well or the depth of an existing well; the depth of a well is the true vertical depth for vertical and horizontal wells and the measured depth for deviated and directional well. NMOGA Closing Ex. 3 (prop. 19.15.8.9(C)(1),(D)(1),(D)(2),(E)(1),(F)(1) NMAC).

58. NMOGA's counterproposal also includes an option for operators to submit a different one-

[37] Tr. 312:4-6 (Oct. 24, 2025), 69:13-23 (Oct. 27, 2025); Tr. 38:21-39:18 (Oct. 30, 2025); Tr. 259:5-8 (Oct. 31, 2025); Tr. 99:5-11 (Nov. 3, 2025); Tr. 204:3-11 (Nov. 4, 2025); Arthur Rebuttal 73-74:1700-1702.

well FA amount, different than whatever one-well FA amount this Commission adopts, for the Division to consider and which the operator must substantiate through documentation is an accurate estimate of actual plugging costs for the specific well(s) to be secured, based on the OGAct factors of depth, time inactive, and cost to plug similar wells, as well as well age and condition as factors proven to be reliable indicators of plugging cost at the Hearing, but subject to OCD's express and ultimate discretion in approving any one-well FA deviations. NMOGA Closing Ex. 3 (prop. 19.15.8.9(C)(2), (F)(2) NMAC). *FOF* ¶¶ 54-66.

59. Availability of NMOGA's one-well FA deviation request option comports with the individualistic well inquiry required under Section 70-2-14(A) of OGAct by preventing the default rule from requiring operators to post more FA than would be required to "reasonably secure the cost to plug the well" while still leaving approval solely in OCD's discretion. *CA* § G.1.

60. OCD confirmed through the Joint Stipulation that virtually every decision by the Division can become the subject of an Application for a Hearing before the Division to reconsider, before appeal rights are created, and NMOGA asserts OCD's decision to reject a request to deviate from the one-well FA amount which applies by default could be the subject of such an application if the operator so desires. *See Joint Stipulation* ¶ 7.

7. Preserving Blanket Bonding

61. NMOGA also counterproposes retaining the tiered blanket FA assurance framework for both active and inactive wells under OCD's existing Part 8 FA regulations, the sole distinction between types of FA under the current rules, and increasing the blanket amount required based on the number of wells secured. *NMOGA Closing Ex.* 3 (prop. 19.15.8.9(C)(2), (F)(2) NMAC). *See* Tr. 141:13-16, 143:22-144:9 (Oct. 29, 2025); *see also* Tr. 98:3-6 (Oct. 29, 2025).

62. Applicants proposed changes to the heightened inactive well blanket bond provision effectively eliminate the blanket assurance discount for inactive and TA'd wells (by replacing it

with a requirement that each well secured by such blanket instrument be covered by $150,000 in coverage, effectively requiring $150,000 in one-well FA for every inactive and TA well regardless if a blanket instrument is used), and remove TA wells 0-2 years from the active well blanket bond discount under Subsection 8.9(C)(2) to which those wells are statutorily guaranteed. Apps. Ex. 89-C (prop. 19.15.8.9(F)(2) NMAC).

63. Specific to active well blanket bonding, NMOGA actually proposes using the two tiers originally applied for by Applicants back in 2024: (i) $200,000 active well blanket bond for 1 to 5 active wells; or (ii) $250,000 for 5 or more wells; before the Proposed Rules were amended by Applicants to require $250,000 in blanket FA for any number of active wells secured, even just two. NMOGA Closing Ex. 3 (prop. 19.15.8.9(C)(2) NMAC); Tr. 37:3-38:21 (Oct. 31, 2025).

64. NMOGA FA Expert Emerick predicts the Proposed Rules restriction of the blanket bond option for active wells and elimination for inactive and TA'd wells, even wells TA'd only 0-2 years would reduce competition and revenues. *See* Tr. 141:13-16, 143:22-144:9 (Oct. 29, 2025) qualify as statutorily prohibited waste. *CA* § I.

8. Double-Bonding — Constructive Fix

65. The overlapping structure of proposed 19.15.8.9(C) through (G) NMAC creates double-bonding obligations for certain well types under multiple Subsections (C)-(G) simultaneously, without a provision clarifying which obligation controls or when satisfaction of one discharges another. Apps. Ex. 89-C; *CA* § H; *FOF* ¶¶ 110, 122.

66. The applicability provision of 19.15.8.9(A) NMAC should be amended to clarify that satisfaction of any one of proposed Subsections (C) through (G) satisfies the operator's plugging FA obligation for the wells covered by that Subsection, such that the requirements are alternatives rather than cumulative obligations. *NMOGA Closing Ex.* 3; NMSA § 70-2-14(A).

67. An additional double-bonding issue is created by the SLO bonding proposal for $500,000

lease wide bonds, where the $150,000 one-well FA proposed by Applicants would apply to many wells on state leases. *CA* § H n.6.

9. Surety Market and Financial Assurance Instruments

68. Almost 70% of bonds in place are surety bonds, and the Proposed Rules have an outsized effect on those operators. *FOF* ¶ 99; *see* OCD Ex. 29.

69. The current surety market is hardened and disfavors oil and gas, and the Proposed Regulations themselves represent risk that underwriters try to avoid; accordingly, even if the surety market could meet the 437% increase in operator FA proposed by Applicants, it will elect not to. *FOF* ¶¶ 86-96.

70. NMOGA opposes adding an additional new requirement that eligible sureties must be a certified company listed on the U.S. Department of the Treasury Circular 570, which will further restrict the FA available to the 70% of operators using surety bonds, as unreasonable, and if the Commission adopts it, it needs to be phased in over time at a minimum. Apps. Ex. 89-C (prop. 19.15.8.10 NMAC).

71. Whether the Secretary of Insurance has approved any plugging insurance policies as required under the OGAct remains an open question of key importance for these proposals to be feasible. NMSA § 70-2-14(F)(1). *FOF* ¶ 91.

D. Opposing Changes to Subsection 5.9(A) Compliance Criteria, Which Control Operator Registrations/Transfers, and as Proposed, Releases of Financial Assurance

72. The existing P&A allowances authorized under the current version of 19.15.5.9(A)(4) NMAC are necessary and properly gauged to only allow for a small number of wells to be out of compliance with the plugging timing and inactivity requirements under 19.15.25.8 NMAC,[38] to

[38] As negotiated, requiring *applying for* TA or properly plugging the well within 60 days (currently 90 days; originally proposed 30 days by Applicants, *see* Apps. Ex. 89-E) of either: a drilling suspension (which as negotiated applies to new wells but not old wells)

account for mechanical, maintenance, and operational realities. *CA* § I.6. NMOGA counterproposes retaining those existing P&A exceptions which the Commission previously found necessary should not be eliminated, especially not simultaneously with this regulatory overhaul. . *NMOGA Closing Ex.* 2 (prop. 19.15.5.9(A)(4) NMAC).

73. If the Commission does remove the Subsection 5.9(A)(4) P&A allowances, it should do so slowly and implement over time, just like the TA implementing schedule Applicants added to their TA permitting proposal, post-hearing, which now staggers deadlines for existing inactive wells to come into compliance. *See* Apps. 89-E (prop. 19.15.25.13(D) NMAC).

74. Through negotiations, Applicants agreed to add back the existing agreed compliance order ("ACO") exception under Subsection 5.9(A)(4), in addition to the existing P&A allowances, which exempts any wells subject to and in compliance with an ACO for inactive wells ("ACOI"). Apps. Ex. 89-B (prop. 19.15.5.9(A)(4) NMAC). *CA* § I.6.

75. NMOGA opposes the Part 27 venting and flaring compliance cross-reference at 19.15.5.9(A)(5) NMAC as unlawfully promoting waste and violating correlative rights by resulting in premature plugging and stranded assets, *CA* § I.6, but accepts the negotiated blue language reflected in Applicants' Exhibit 89-B, adding specific subsections to ensure that Applicants' intent to encompass all Part 27 regulatory exceptions and exemptions under the cross-reference adding them to the Subsection 5.9(A) Compliance Criteria. *Joint Stipulation* ¶ 5.

76. The Subsection 5.9(A) Compliance Criteria currently govern operator registration and transfer requirements, 19.15.9.8(C)(1) and 9.9(C)(1) NMAC (2026), and are proposed to govern releases of FA, Apps. Ex. 89-C (prop. 19.15.8.12 NMAC).

E. NMOGA Accepts Proposed Definitions of Beneficial and Inactive but Suggests Identical Modification to Both – Proposed 19.15.2.7(B)(7) and (I)(4) NMAC

77. The amended definition of an "inactive well" proposed by Applicants, as amended through

negotiations with that stipulated language reflected in blue, to mean "a well that has had no production or injection for 12 consecutive months or is not being used for beneficial purposes including ~~such as~~ production, injection or monitoring and that is not being drilled, completed, repaired or worked over." Apps. Ex. 89-A (prop. 19.15.2.7(I)(4) NMAC).

78. NMOGA accepts those negotiated changes for purposes of waiving substantial evidence appeals, but its negotiated positions on the proposed new definition of "inactive well" as well as "beneficial use/purposes" will remain A/M/R. For both, NMOGA suggests an additional modification for the Commission's consideration which would concisely yet proportionately broaden those definitions to make clear "production, injection, monitoring, enhanced oil recovery, water flooding operations, regulatory compliance, or participation in reservoir management, pressure maintenance, or infrastructure optimization programs" are beneficial uses which render the well in active (not inactive) status. *Joint Stipulation Chart* (prop. 19.15.2.7(B)(7), 19.15.2.7(I)(4) NMAC)); *NMOGA Closing Ex.* 1 (same).

79. That language better reflects actual field operations and avoids definitions that are artificially narrow in ways that may sweep in legitimate and productive well uses and resolves Commissioner Ampomah's concerns that the proposed definition of "beneficial" was overly restrictive and did not adequately envision or encompass enhanced, secondary, or tertiary recovery, or water flooding operations. Tr. 498:5-503:17 (Oct. 21, 2025); *see also* OXY Rebuttal Exhibits.

F. Presumption of No Beneficial Use – Proposed 19.15.25.9 NMAC

1. Stipulated Provisions — Acceptance and Reservation

80. NMOGA accepts the negotiated language reflected in blue in Applicants' Exhibit 89-E, clarifying the procedure and how to rebut the PNBU under proposed 19.15.25.9 NMAC. NMOGA does not challenge on substantial evidence grounds those negotiated changes to the provisions identified in paragraph 5 of the Joint Stipulation, including 19.15.25.9(A), (B), (D)(2), (D)(3),

(D)(5), and (E) NMAC, as well as the resulting numbering change in 19.15.25.10(C) NMAC. NMOGA reserves all legal arguments other than substantial evidence as to each. *Joint Stipulation* ¶ 5. Including opposing the PNBU on grounds of waste, *CA* § I, *COL §* E, and specific rebuttal factors identified below, *COL §* F.3.

2. Modifications Still Sought — A/M/R Positions

81. NMOGA further suggests that the Commission should also clarify in proposed 19.15.25.9(D) NMAC for the PNBU that OCD retains discretion to extend the 30-day rebuttal period. NMOGA Closing Ex. 5 (prop. 19.15.25.9(D) NMAC); *Joint Stipulation Chart* (same).

82. NMOGA and IPANM both also suggest that the Commission should revise proposed 19.15.25.9(D)(1) NMAC to recognize that demonstrating a well may "produce or operate" in an economically beneficial manner so as to account for wells serving valid lease, injection, monitoring, or other operational functions is sufficient to rebut the presumption and avoid mandatory P&A obligations. *NMOGA Closing Ex*. 5 (prop. 19.15.25.9(D)(1) NMAC); *Joint Stipulation Chart* (same).

3. NMOGA Opposes P&A Plan and Adequate Capitalization Rebuttal Factors

83. Proposed 19.15.25.9(D)(4) NMAC, requiring a P&A plan, which, as defined by cross-reference, must include a demonstration of adequate capitalization, as part of the beneficial use rebuttal process, should be stricken. NMOGA opposes the P&A plan rebuttal factor as an *ultra vires* ARO-based review and denial mechanism with no statutory basis for requiring a P&A plan as a condition of rebutting a presumption that a well lacks beneficial use, and this provision was not agreed to in the Joint Stipulation. NMSA § 70-2-14(A); Apps. Ex. 89-E; NMOGA Closing Ex. 5 (striking 19.15.25.9(D)(4) NMAC). *CA* § J.1.

84. NMOGA accepts only the blue negotiated language in proposed 19.15.25.9(D)(3) NMAC for purposes of waiving substantial evidence arguments for that changed clause only; NMOGA

reserves all other arguments and opposes requiring demonstration of adequate capitalization as a condition of rebutting the beneficial use presumption as an *ultra vires* ARO-based review and denial mechanism. *Joint Stipulation* ¶ 5. *CA* § J.1.

G. When Wells are Properly Abandoned Stipulations – Proposed 19.15.25.8 NMAC

85. NMOGA accepts negotiated language reflected in blue in Applicants' Exhibit 89-E, clarifying "when wells are to be properly abandoned" under proposed 19.15.25.8(B) NMAC by: compromising on a 60-day compliance window under Section 25.8(B) (currently 90 days originally proposed to be cut to 30 days by Applicants); adding new language clarifying that the drilling suspension triggering event in Subsection (B)(1) does not apply to new wells but does apply to dry holes; and retaining the "continuous" requirement under the 1-year inactivity triggering event in Subsection (B)(3). NMOGA does not challenge on substantial evidence grounds those stipulated provisions identified in paragraph 5 of the *Joint Stipulation*, including 19.15.25.8(B), (B)(1), and (B)(3). NMOGA reserves all legal arguments other than substantial evidence as to each. *Joint Stipulation* ¶ 5.

86. The parties accepted a 60-day compliance window under 19.15.25.8(B) NMAC, which if adopted by this Commission, will convert the current total of 15 months of authorized continuous inactivity before an operator is in violation of the P&A requirements under Subsection 25.8(B)(3) into 14 months total (1-year continuous inactivity plus 60-day window to apply to TA or P&A the well). *Joint Stipulation* and *Chart* (prop. 19.15.25.8 NMAC).

87. If this Commission adopts that stipulated compromise, then a rebuttable presumption is created that the well is out of compliance with Section 25.8 P&A requirements after 14 months of continuous inactivity, instead of 13 months as originally proposed. *Joint Stipulation* and *Chart* (prop. 19.15.5.9(B) NMAC).

H. Temporary Abandonment Permitting – Proposed 19.15.25.13-.15 NMAC

1. Stipulated Provisions — Acceptance and Reservation

88. NMOGA accepts the negotiated language in blue in Applicants' Exhibit 89-E, removing the originally proposed hard 8-year cap on TA under proposed 19.15.25.13-.14 NMAC. NMOGA does not challenge on substantial evidence grounds the stipulated TA provisions identified in paragraph 5 of the Joint Stipulation, including 19.15.25.13(A)(1), (A)(2), (B), (C), (C)(1), (C)(2)(a), (C)(2)(b), (C)(2)(b)(i), (C)(2)(b)(ii), (C)(2)(b)(iii), (C)(2)(b)(iv), (C)(2)(b)(v), (C)(2)(c), (C)(4), (E)(1), and (F); and 19.15.25.14(A), (C), and (D). NMOGA reserves all legal arguments other than substantial evidence as to each. *Joint Stipulation* ¶ 5. Including opposing the operator newspaper notice requirement and language allowing "any interested person" to request a TA Extension hearing, or to intervene in such a hearing, without any standing requirement. *CA* § L; *COL* ¶¶ 92-94.

89. NMOGA does not challenge on substantial evidence grounds the stipulated mechanical integrity provisions identified in paragraph 5 of the Joint Stipulation, including 19.15.25.15(A), (A)(4), (A)(5), (B), (B)(2), (B)(3), (B)(4), (B)(5), and (F) NMAC; and resulting numbering change in 19.15.25.16(B) NMAC. NMOGA reserves all legal arguments other than substantial evidence as to each. *Joint Stipulation* ¶ 5; Apps. Ex. 89-E.

2. Modifications Still Sought: Striking Newspaper Notice and Adding a Standing Requirement to the TA Extension Provision — A/M/R Positions

90. NMOGA, IPANM, and OXY propose to modify the negotiated TA Extension provision to strike the newspaper notice requirement and add a standing requirement in proposed 19.15.25.13(C)(2) NMAC (governing five-year TA Extensions negotiated to be available indefinitely by application). That negotiated language is highlighted in blue in the Applicants' Exhibit 89-E, but NMOGA, IPANM, and OXY designated their acceptance of the post-hearing

improvements in Subsection 25.13(C),[39] as subject to the reservation of all non-substantial evidence arguments and with the suggested modification to strike the newspaper notice requirement and replace the references to "any interested person" with "person with standing." OXY Ex. D/NMOGA Closing Ex. 5 (prop. 19.15.25.13(C) NMAC); *Joint Stipulation* ¶ 5 and *Chart* (prop. 19.15.25.13(C) NMAC). *CA* § L.

91. The TA extension notice procedure in proposed 19.15.25.13(C)(2) NMAC should not require operators to publish notice of TA Extension applications in a newspaper of general circulation and should not allow "any interested person" to intervene in the extension review process. Division website notice is sufficient, and the intervention language exceeds the procedural authority established in the OGAct and Part 1 administrative procedures. NMSA 1978, §§ 70-2-1 *et seq.* (2024); 19.15.1 NMAC (2026); *CA* § L.

3. NMOGA Opposes TA Definition Changes

92. NMOGA also opposes the related and brand new TA definitions that Applicants propose: deleting the definition of "temporary abandonment (status)" under the current version of 19.15.2.7(T)(3) NMAC (meaning "the status of a well that is inactive") and collapsing those existing defined terms under the definition for "approved temporary abandonment (status)" under proposed 19.15.2.7(A)(13) NMAC (meaning "the status of a well that is inactive, has been approved in accordance with 19.15.25.13 NMAC and complies with 19.15.25.12 NMAC through 19.15.25.14 NMAC;" and adding a new defined term for "expired temporary abandonment (status)" under proposed 19.15.2.7(E)(8) NMAC (proposing to mean "the status of a well that is inactive, has been approved in accordance with 19.15.25.13 NMAC and complies with 19.15.25.12 NMAC through 19.15.25.14 NMAC"). Apps. Ex. 89-A. *FOF* ¶¶ 120-122.

[39] From the originally proposed hard 8-year cap on TA. Apps. Ex. 72-E. *FOF* ¶¶ 110-115.

93. This Commission should keep the existing defined TA terms as is, and expressly preserve a separate, well-managed "inactive" condition, to prevent these proposed definitions from unlawfully causing waste by accelerating plugging. *FOF* § P.3 ¶¶ 119-23; *COL* §§ E, M.

94. "This approach would maintain operational flexibility, align with conservation mandates, and avoid introducing duplicative or confusing terminology." Arthur Rebuttal 29:765-66. *FOF* ¶¶ 120-22.

I. Operatorship and Well Transfers — 19.15.9 NMAC

1. Stipulated Provisions — Acceptance and Reservation

95. NMOGA does not challenge on substantial evidence grounds the following stipulated provisions in 19.15.9 NMAC: 19.15.9.8(C)(5); 19.15.9.8(E); 19.15.9.9(C)(5). NMOGA reserves all legal arguments other than substantial evidence as to each. *Joint Stipulation* ¶ 5.

96. As part of the Stipulation, the parties accepted that all Part 9 certification, disclosures, and requirements that the Commission ultimately adopts can be made by an "authorized official designated by the operator" to allow for the operator to choose the appropriate respondent while ensuring LLCs and LPs are not excluded, as was the case under prior ODP language. *Joint Stipulation* ¶ 5 and *Chart*.

2. Modifying 10-Year Compliance Certification Lookback to Five — A/M/R Positions

97. Pursuant to the Stipulation, the parties agreed to amend the newly proposed compliance certification to only look to final administrative forfeiture demands, and adjudicated orders and settlement agreements concerning oil and gas law and regulations, and only settlement agreements with state or federal agencies. Apps. Ex. 89-D (prop. 19.15.9.8(B),(C)(2), 9.9(B),(C)(2) NMAC); *Stipulation* ¶ 5 and *Chart* (same).

98. Applicants still propose that the negotiated compliance certification be required at operator registration under 19.15.9.8(B) NMAC; as grounds to deny operator registration under Subsection

9.8(C)(2); require with operator transfer applications under Subsection 9.9(B); and as grounds to deny operator transfers under Subsection 9.9(C)(2). Apps. Ex. 89-D.

99. Ten years is not supported by substantial evidence and is inconsistent with the current 5-year lookback in place under the existing regulatory grounds to deny operator registration under existing 19.15.9.8(C)(2)-(3) NMAC. *FOF* ¶¶ 123, 127-129.

100. NMOGA accepts the negotiated certification for purposes of waiving substantial evidence appeals, except for the 10-year lookback, which NMOGA submits a proposed modification for, countering that the lookback should be for 5 years to align with the existing Part 9 regulatory framework already in place. *Joint Stipulation* ¶ 5, n.8 and *Chart* (prop. 19.15.9.8(B),(C)(2), 9.9(B),(C)(2) NMAC); *NMOGA Closing Ex.* 4 (same).

3. NMOGA Opposes the Expansion of the Existing Operator Disclosure Requirement

101. Applicants' proposed expansion of the existing grounds to deny operator registration to become mandatory information at operator registration and transfer, grounds to deny operator changes, and an annual recertification requirement are proposals not supported by substantial evidence. *FOF* ¶¶ 123-126.

102. That language under proposed 19.15.9.8(B), 9.8(E), 9.9(B), and 9.9(C)(2)-(3) is an unrelated and irrelevant inquiry supported by the methane reporting rule in Title 19 Part 27 NMAC. *FOF* § Q ¶¶ 123-126.

4. NMOGA Opposes Acquisition Pre-Approval — Ultra Vires Provisions

103. Section 70-2-6 of the OGAct limits OCD's jurisdiction and authority to matters arising "as a result of oil or gas operations." NMSA 1978, § 70-2-6.

104. The acquisition of an operating interest in an oil or gas well is a property transaction, not an "operation" within the meaning of Section 70-2-6. New Mexico courts have consistently treated operating agreements as conveying interests in real property. *Skaggs*, 1998-

NMCA-061, ¶ 19; *Rock Island Oil*, 1963-NMSC-192

105. The OGAct does not authorize OCD to condition, restrict, or require pre-approval of private acquisitions of oil and gas operating interests. NMSA §§ 70-2-6, 70-2-14(A); *Marbob*, 2009-NMSC-013, ¶¶ 13-14, 23-24.

106. The OGAct does not authorize OCD to regulate acquisitions because the specific limitation in Section 70-2-6 to oil and gas operations governs over the general clause, and the New Mexico Supreme Court has expressly rejected the "reasonably necessary" argument when it conflicts with a specific statutory limitation. *Marbob*, 2009-NMSC-013, ¶¶ 13-14, 23-24; *Morningstar*, 1995-NMSC-062, ¶ 44.

107. Proposed 19.15.8.9(A)'s prohibition on proceeding with any "acquisition" absent OCD approval exceeds OCD's statutory authority under Section 70-2-6 and must be stricken or amended to limit the precondition to drilling operations only. *Gonzales*, 1990-NMSC-024, ¶ 11; *Marbob*, 2009-NMSC-013, ¶ 23; *Unite N.M. v. Oliver,* 2019-NMSC-009, ¶ 8, 438 P.3d 343.

108. The LFC Report listed as a "Key Recommendation" that the Legislature amend the OGAct to grant OCD authority to review and disallow well transfers, confirming that such authority does not presently exist by statute. Apps. Ex. 4 at 36.

109. A regulation that grants OCD power to oversee acquisitions is not reasonably related to OCD's legislative mandate to regulate oil and gas operations, subject to the paramount duties to prevent waste and protect correlative rights, and is therefore arbitrary and capricious and invalid. *N.M. Att'y Gen.*, 2011-NMSC-034, ¶¶ 1, 18-19; *Atlixco Coalition v. Maggiore*, 1998-NMCA-134, ¶ 24, 125 N.M. 786, 965 P.2d 370; *CA* § I.1.-.2.

5. NMOGA Opposes ARO-Based Transfer Review and Denial — Ultra Vires Provisions

110. Proposed 19.15.9.9(C)(6) NMAC, authorizing denial of change-of-operator applications where disclosed information shows a "substantial risk" that the new operator would

be unable to satisfy P&A requirements, creates an ARO-based transfer restriction not authorized by the OGAct. NMSA 1978, § 70-2-14(A); Apps. Ex. 4/OCD Ex. 18 at 36.

111. Proposed 19.15.9.9(D) and (E) NMAC, conditioning and restricting well transfers based on FA compliance for the wells being transferred, constitute ARO-based transfer restrictions requiring legislative authorization that does not currently exist. These provisions must be rejected. NMSA § 70-2-14(A); Apps. Ex. 4/OCD Ex. 18 at 36.

112. Proposed 19.15.8.9(D)(1) NMAC, imposing an immediate $150,000 FA requirement for low-producing wells upon any transfer, functions as an ARO-based transfer restriction and exceeds OCD's statutory authority for the reasons stated in COLs 22 and 43-44 above. NMSA § 70-2-14(A); Apps. Ex. 4/OCD Ex. 18 at 20.

V. CONCLUSION AND REQUESTS FOR RELIEF

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

1. Adopts the stipulated provisions reflected in blue in Applicants' Exhibits 89-A through 89-E, consistent with and as limited by the Joint Stipulation filed April 3, 2026, and finds such provisions supported by the substantial evidence adduced at the Hearing.
2. Rejects the following proposed provisions as exceeding the Commission's and Division's statutory authority under the OGAct, and identifies in the Final Order the specific statutory basis for each rejection:
    a. Proposed 19.15.8.9(D)NMAC: "low producing well" one-well FA category exceeding the $250,000 active well blanket bond cap. NMSA § 70-2-14(A).
    b. Proposed 19.15.8.9(E) NMAC: "high-risk portfolio" one-well FA category exceeding the $250,000 active well blanket bond cap. NMSA § 70-2-14(A).
    c. Proposed 19.15.8.9(F) NMAC: elimination of the two-year TA threshold. NMSA § 70-2-14(A).
    d. Proposed 19.15.8.9(A): "acquisition" pre-approval language. NMSA §§ 70-2-6, 70-2-14(A).

e. 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, ARO-based denial, or FA-based transfer restrictions. NMSA § 70-2-14(A).
f. Proposed 19.15.25.9(D)(4) NMAC: P&A plan as condition of beneficial use rebuttal. NMSA § 70-2-14(A).
g. Proposed 19.15.9.9(D) and (E) NMAC: transfer restrictions based on FA compliance. NMSA § 70-2-14(A).

3. Adopts the following modifications proposed by NMOGA:

a. 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.
b. Add an OCD discretionary FA waiver to 19.15.8.9(A) NMAC for operators with ongoing or planned P&A programs, as proposed by Commissioner Bloom during the Hearing.
c. Amend 19.15.8.9(A) NMAC to clarify that satisfaction of any one Subsections (C) through (G) satisfies the operator's plugging FA obligation for the wells covered, preventing double-bonding. NMOGA Closing Ex. 3.
d. Replace or otherwise revise the flat $150,000 single-well bond amount in proposed 19.15.8.9(D)(1)-(3) and any related provisions so the amount complies with Section 70-2-14(A)'s individualized inquiry requirement, and strike "one-well" where necessary to avoid statutory conflict. *See* NMSA § 70-2-14(A).
e. Reduce the lookback period in proposed 19.15.9.8(B), 9.8(C)(2), 9.9(B), and 9.9(C)(2) NMAC from ten years to five years, consistent with the existing regulatory framework.
f. 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.
g. Strike newspaper notice and "any interested person" intervention language from proposed 19.15.25.13(C)(2) NMAC.

4. 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.

5. 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 NMOGA Closing Brief with Proposed Findings of Fact and Conclusions of Law was served to counsel of record by electronic mail this 3rd day of April 2026, as follows:

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