Good afternoon, Madam Hearing Examiner and Members of the Commission.

My name is Allison Marks, and I serve as the Director of the Oil, Gas & Minerals Division at the New Mexico State Land Office and provide this comment on behalf of the SLO. I have been a licensed attorney in this state for over 20 years, devoting a significant portion of that time focusing on environmental and energy-related issues. At one point, I served as counsel to the OCD, before becoming the Deputy Director of the Division.

The SLO manages, for the benefit of 22 designated beneficiaries, with the biggest being common schools, 9 MILLION acres of surface estate and 13 MILLION acres of subsurface estate. The Bureau of Land Management, BLM, manages about 13.5 million acres of surface estate in this state, along with millions of acres of subsurface estate. The state receives 50% of BLM royalties and of BLM lease sales. BLM is an important agency for community engagement.

In the history of my time working for the state, I have never seen a rulemaking where someone seeks to enact a partial rule or does not contemplate all necessary parts of a rule. In this case, the rulemaking seems to omit vital portions of the rule and defer those portions to a later time.

SLO previously raised areas of concern regarding this rule, but, in the interest of time, I'm going to address just a few. Also, while BLM does not participate in state rulemakings, there were shared areas of concern between both the BLM and SLO. For example, the rule is silent about sequestration units. A sequestration unit should follow similar processes utilized by both agencies when forming an oil and gas unit. With such a process, the BLM and SLO, if a fed/state unit, or the respective agency if the unit does not encompass lands from both agencies, first gives preliminary approval, then obtains an order from the OCD approving the unit and any additional stipulations, and then obtains final approval. It is imperative to make clear in any rule that SLO (or BLM) **cannot be forced into a unit**. And, while the SLO appreciates OCD's participation in the oil and gas unit process by approving the units, the OCD does not, based on representations from OCD personnel, enforce many portions of a unit agreement—even when adopted as part of an order. Therefore, clear and specific guidance, in the form of a rule, must include clarity for permittees, state agencies, and other stakeholders—this rule fails to do so with respect to units, along with other key topics.

Another matter of grave concern to the SLO is the failure to protect mineral owners and persons with the rights to extract minerals—effectively, the rule fails to protect the beneficiaries and money the state obtains from mineral extraction (which is about 48% of the state's revenue), such as oil and gas, along with potential monies from other subsurface leasing such as geothermal and helium leasing. The rule, pursuant to sequestration legislation, notes the surface owner may own the pore space for sequestration, but the proposed rule fails to recognize crucial persons to whom notice must be given, such as persons who OWN the minerals (including government agencies) and persons who have leased such lands or otherwise have rights to extract minerals vis-à-vis contractual depth severances. Allowing for sequestration, without sufficient notice, could significantly increase drilling costs or pose additional risks companies may decide to avoid; this, in turn, DECREASES the royalty money this state relies on and raises the potential for mineral damage to a mineral owner or lessee.

Finally, the SLO believes it must be abundantly clear WHO has the liability to monitor or otherwise take care of a sequestration unit, in the event an operator goes defunct or otherwise fails to address their liabilities. The SLO feels very strongly that that liability absolutely CANNOT be shifted to the beneficiaries of the SLO. **The rule simply refers to “the state” but this is unclear who “the state” is** or if the reclamation fund would be used to address problems.