

**STATE OF NEW MEXICO
NEW MEXICO OIL CONSERVATION COMMISSION**

**IN THE MATTER OF PROPOSED
AMENDMENTS TO 19.15.2, 19.15.5,
19.15.8, 19.15.9, AND 19.15.25 NMAC**

CASE NO. 24683

**NEW MEXICO OIL CONSERVATION DIVISION'S AND WESTERN
ENVIRONMENTAL LAW CENTER'S RESPONSE IN OPPOSITION TO THE NEW
MEXICO OIL AND GAS ASSOCIATION'S
APPLICATION FOR REHEARING**

The New Mexico Oil Conservation Division (“OCD”) and The Western Environmental Law Center (“WELC”), through undersigned counsel, submits this response in opposition to the Application for Rehearing filed by the New Mexico Oil and Gas Association (“NMOGA”). Many of NMOGA’s arguments for rehearing are the same or similar to arguments it has previously asserted in its Closing Argument and Joint Motion to Dismiss in this rulemaking. WELC and OCD have previously addressed many of the points made by NMOGA in its Application for Rehearing. Thus, OCD hereby cites and incorporates by reference Applicants’ Opposition to NMOGA and IPANM’s Joint Motion to Dismiss, New Mexico Oil Conservation Division’s Response to New Mexico Oil and Gas Association and Independent Petroleum Association of New Mexico’s Motion to Dismiss, Applicants’ Notice of Filing Closing Argument and Proposed Statement of Reasons, and Oil Conservation Division’s Closing Statement, and reasserts the arguments and authorities addressing NMOGA’s arguments therein. OCD also cites and incorporates by reference the Rule Making Order and Reasons for the Action Taken as ordered by this Honorable Commission and would note that said Order sufficiently explains the reasons for the actions taken and provides explanation in a manner that accords with the requirements of the law.

NMOGA incorrectly asserts that this Honorable Commission’s Order left “no clear statement of what reasoning ultimately supports the final rule.” *NMOGA Application for*

Rehearing at p. 6. However, even a cursory review of the Order and the pleadings it cites, adopts, and incorporates shows that the Order is supported by legally sufficient reasoning, stipulations of the parties (including NMOGA), and factually sufficient evidence. Applicants' Notice of Filing Closing Arguments and Proposed Statement of Reasons provides extensive citations to the factual record and legal authorities in support of the rules as adopted by this Honorable Commission. Where WELC's proposals were changed, this Honorable Commission set out in sufficient detail the reasoning for those changes. For example, on page 3 of its Order, the Commission states that "[t]he reason for these modifications is because the Commission was concerned that the rules could be read such that two or three categories could be stacked upon each other where an operator would be forced to have multiple, overlapping \$150,000 bonds for a single well." Thus, NMOGA's argument that the Order contains no clear statement of reasoning is without merit. Similarly, the Order itself makes clear that the Commission was explicit in which of Applicants' proposed rule changes were adopted and modified. *See Rule Making Order and Reasons for the Action Taken* at p. 2-7 (wherein this Honorable Commission states "[a]ll of Applicants' rule changes are adopted except as modified in the following below" and goes on to specifically state which proposed rules were modified and the reasons for such modification). Notably, NMOGA fails to cite to specific examples wherein it claims the Order is unsupported by reasoning or evidence, but, rather, makes broad and incorrect assertions that are unsupported by the record in this matter.

NMOGA also rehashes arguments it has previously made regarding the authority of the Commission to enact these rules. NMOGA and IPANM's previous Joint Motion to Dismiss, making the same arguments has already been denied, as NMOGA correctly pointed out. As previously argued by WELC and OCD, the rules are within the authority granted by Section 70-2-14(A) and do not violate the statutory blanket financial assurance provisions. *See New Mexico Oil Conservation Division's Response to New Mexico Oil and Gas Association and Independent*

Petroleum Association of New Mexico's Motion to Dismiss at p. 5-8; *Applicants' Opposition to NMOGA and IPANM's Joint Motion to Dismiss* at p. 8-13.

Similarly, NMOGA again asserts that acquisition of operating authority may not be regulated by the OCD and the OCC, despite that claim being previously rejected by the Commission. WELC and OCD have previously addressed this assertion more thoroughly. *See New Mexico Oil Conservation Division's Response to New Mexico Oil and Gas Association and Independent Petroleum Association of New Mexico's Motion to Dismiss* at p. 4-5; *Applicants' Opposition to NMOGA and IPANM's Joint Motion to Dismiss* at p. 2-5. In short, OCD and OCC already regulate transfers of operatorship and regulation of operatorship of a well does not equate to regulation of real property interests. *Id.* OCD and OCC have no awareness of private transactions and does not seek to regulate the terms of those transactions but does and must regulate who may operate wells in New Mexico. *Id.* Similarly, OCD and WELC have previously addressed NMOGA's contention that OCD and OCC may not consider the risk involved with allowing an operator to transfer wells into its portfolio, and those claims were properly rejected by this Honorable Commission. *See Applicants' Opposition to NMOGA and IPANM's Joint Motion to Dismiss* at 49-57.

WELC and OCD have also previously addressed NMOGA's assertion that the proposed rules "promote waste". *See Oil Conservation Division's Closing Statement* at p. 7-8; *Applicants' Notice of Filing Closing Argument and Proposed Statement of Reasons* at p. 9-11. NMOGA fails to cite specifically what portions of the proposed rules "cause waste and impair correlative rights", how the proposed rules cause waste and impair correlative rights, or what portions of the record support those assertions. *See NMOGA Application for Rehearing* at p. 15. NMOGA's implicit assertion that financial assurance causes waste flies in the face of the legislature's intent in enacting

Section 70-2-14, which explicitly calls for the establishment of financial assurance for oil and gas wells.

Relatedly, both OCD and WELC have addressed NMOGA's contention that the factors set out in Section 70-2-14(A) were not considered. *See Oil Conservation Division's Closing Statement* at p. 6-7; *Applicants' Notice of Filing Closing Argument and Proposed Statement of Reasons* at p. 7-9. On the contrary, the proposed rules are legally justified by the enabling statute and supported by the substantial evidence that was presented at the hearing showing the factors were considered and that the \$150,000 amount is linked to OCD's cost to plug wells when industry does not plug their own wells. *Id.* Notably, Section 70-2-14 considers the cost of plugging the well a relevant factor with regard to financial assurance, but does not speak to any particular operator's ability or lack thereof in obtaining said bonding through one of the available mechanisms to do so.

NMOGA now complains of OCD's role in the regulation of federal and tribal wells, but nothing in the proposed rules alters the current regulatory regime, wherein OCD concurrently regulates federal wells in cooperation and conjunction with federal entities. The record does not support NMOGA's contention that the rules create new or novel issues related to either federal or tribal wells.

NMOGA attempts to have untimely evidence which was submitted after the agreed deadline considered by this Honorable Commission. Said evidence has previously been considered and rejected. *Applicants' Motion to Exclude NMOGA's Closing Exhibit 7 and Related Finding of Facts.* NMOGA could have submitted the untimely comments in a timely manner, but did not.

OCD's witnesses at no time indicated any inability to implement the proposed rules during their direct testimony or testimony under cross-examination. Further, OCD's ability to implement and enforce the proposed rules is implicit in its presentation and general support for WELC's

proposed rules. NMOGA does not cite any testimony or other evidence indicating OCD's inability to implement the proposed rules, because all of OCD's evidence explicitly or implicitly supports the proposition that OCD can implement the proposed rules it supports the implementation of.

NMOGA urges, in Paragraph V of its *Application*, that this Honorable Commission reconsider matters that were already previously addressed by the OCC. Thus, this matter is unripe and moot.

Wherefore, premises considered, OCD respectfully prays that this Honorable Commission deny NMOGA's Application for Rehearing and for such other relief that it may be entitled to in law or equity.

Respectfully submitted,

/s/ Jesse Tremaine

Jesse Tremaine
Legal Director, OCD
Michael Hall
Assistant General Counsel
New Mexico Energy, Minerals, and Natural
Resources Department
1220 South St. Francis Drive
Santa Fe, NM 87505
jessek.tremaine@emnrd.nm.gov
michael.hall@emnrd.nm.gov

Tannis Fox
Morgan O'Grady
Western Environmental Law Center
409 East Palace Avenue, #2
Santa Fe, NM 87501
fox@westernlaw.org
ogrady@westernlaw.org

Attorneys for Applicants Western Environmental Law Center, Citizens Caring for the Future, Conservation Voters New Mexico Education Fund, Diné C.A.R.E., Earthworks, Naeva, New Mexico Interfaith Power and Light, Sierra Club, and WildEarth Guardians

Certificate of Service

I certify that on August 11, 2026, I served a copy of the foregoing to the following via email to:

Michael H. Feldewert
Adam G. Rankin
Paula M. Vance
Holland & Hart, LLP
P.O. Box 2208
Santa Fe, New Mexico 87504
mfeldewert@hollandhart.com
agrarkin@hollandhart.com
pmvance@hollandhart.com

Aaron B. Tucker
Holland & Hart, LLP
555 17th Street, Suite 3200,
Denver, Colorado 80202
abtucker@hollandhart.com

Attorneys for OXY USA Inc.

Andrew J. Cloutier
Ann Cox Tripp
Hinkle Shanor LLP
P.O. Box 10
Roswell, New Mexico 88202-0010
acloutier@hinklelawfirm.com
atripp@hinklelawfirm.com

Attorneys for Independent Petroleum Association of New Mexico

Miguel A. Suazo
James Martin
James Parrot
Jacob L. Everhart
Beatty and Wozniak, P.C.
500 Don Gaspar Avenue
Santa Fe, New Mexico 87505
msuazo@bwenergylaw.com
jmartin@bwenergylaw.com
jparrot@bwenergylaw.com
jeverhart@bwenergylaw.com

Attorneys for New Mexico Oil and Gas Association

Jennifer L. Bradfute
Matthias Sayer
Bradfute Sayer P.C.
P.O. Box 90233
Albuquerque, New Mexico 87199
jennifer@bradfutelaw.com
matthias@bradfutelaw.com

Jordan L. Kessler
EOG Resources, Inc.
125 Lincoln Avenue, Suite 213
Santa Fe, New Mexico 87501
Jordan_kessler@eogresources.com

Attorneys for EOG Resources, Inc.

Mariel Nanasi
422 Old Santa Fe Trail
Santa Fe, New Mexico 87501
mnanasi@newenergyeconomy.org

Attorney for New Energy Economy

Nicholas R. Maxwell
P.O. Box 1064
Hobbs, New Mexico 88241
inspector@sunshineaudit.com

Ari Biernoff, General Counsel
Christopher Graeser
Richard H. Moore
Associate Counsels
New Mexico State Land Office
P.O. Box 1148
Santa Fe, New Mexico 87504-1148
abiernoff@nmslo.gov
cgraeser@nmslo.gov
rmoore@nmslo.gov

*Attorneys for Commissioner of Public
Lands and New Mexico State Land Office*

Felicia Orth, Hearing Officer
New Mexico Energy, Minerals, and Natural Resources Department
Wendell Chino Building
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
Felicia.l.orth@gmail.com

Oil Conservation Commission Hearing Officer

Zachary A. Shandler
Assistant Attorney General
New Mexico Department of Justice
P.O. Box 1508
Santa Fe, New Mexico 87504
zshandler@nmdoj.gov

Oil Conservation Commission Counsel

Sheila Apodaca
New Mexico Energy, Minerals, and Natural Resources Department
Wendell Chino Building
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
occ.hearings@emnrd.nm.gov

Oil Conservation Commission Clerk

/s/ Jesse Tremaine

Jesse Tremaine