**STATE OF NEW MEXICO**
**ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT**
**OIL CONSERVATION COMMISSION**

**IN THE MATTER OF PROPOSED**
**AMENDMENTS TO 19.15.41, 19.15.42, AND 19.15.43 NMAC**

**CASE NO. 25875**

# THE NEW MEXICO OIL & GAS ASSOCIATION'S CLOSING ARGUMENT

The New Mexico Oil & Gas Association ("NMOGA") respectfully submits this Closing Argument in response to the Oil Conservation Division's ("OCD's") Amended Application to adopt proposed rules 19.15.41, 19.15.42, and 19.15.43 NMAC, as subsequently modified by OCD's final proposed changes ("Proposed Rules").[1]

NMOGA supports adoption of the Proposed Rules. The current proposal reflects extensive technical development and coordination among OCD, the Energy, Minerals, and Natural Resources Department ("EMNRD"), the New Mexico Institute of Mining and Technology, the United States Environmental Protection Agency ("EPA") Region 6, industry representatives, environmental organizations, and other interested stakeholders. It also establishes the regulatory framework necessary for New Mexico to pursue primacy for EPA's Class VI Underground Injection Control ("UIC") program.

Rulemaking participants raised broader questions concerning unitization, correlative rights, pore-space ownership, carbon dioxide ownership, and protection of mineral interests, and while those questions may fall outside the scope of this rulemaking, NMOGA urges the OCD to take up the issues in parallel with EPA's consideration of New Mexico's primacy application. Timely attention to these issues will ensure that implementation of any Class VI program will protect mineral interests as required.

[1] Amended Application of Oil Conservation Division to Adopt 19.15.41 NMAC, 19.15.42 NMAC, and 19.15.43 NMAC, Case No. 25875, at 1 (N.M. Oil Conservation Comm'n filed May 17, 2026) [hereinafter "Amended Application"]; Oil Conservation Division's Notice of Final Proposed Changes, Case No. 25875, at 1 (N.M. Oil Conservation Comm'n filed Sept. 11, 2026).

## I. The Commission Should Adopt the Rules as Proposed by OCD

Not only are the Proposed Rules the product of a thorough public process, but Class VI primacy for New Mexico would streamline UIC oversight. Through the New Mexico Environment Department ("NMED") and OCD, the State already exercises primacy over the Class I–V UIC programs and has substantial experience implementing complex federal injection well requirements, overseeing permitting and compliance activities, and protecting groundwater resources. Incorporating Class VI wells into New Mexico's existing UIC framework would align regulatory oversight across all UIC well classes and promote a coordinated, predictable permitting and compliance program. State administration of the Class VI program would promote efficient, locally informed oversight consistent with applicable federal requirements and advance New Mexico's Class VI primacy process, creating the regulatory foundation necessary to support responsible carbon sequestration projects.

For the same reasons, NMOGA respectfully opposes the modifications proposed by the Conservation Groups and the Center for Biological Diversity. NMOGA shares the goal of protecting underground sources of drinking water and appreciates these parties' participation in the rulemaking. However, many of their proposals—including fixed-distance setbacks, a mandatory 10-mile site characterization area, redefining the area of review to encompass the full pressure front, reducing the maximum injection pressure from the federal 90% standard to 80%, shortening area-of-review reevaluation intervals with automatic triggers, and eliminating self-insurance—would impose requirements that exceed the federal Class VI framework and place New Mexico out of step with other primacy states. As the hearing testimony demonstrated, these measures would create a more stringent regulatory regime without providing a corresponding benefit to groundwater protection. Several proposals would also replace the site-specific, risk-based approach that underlies both the federal program and the Proposed Rules with rigid, one-size-fits-all mandates—regardless of risk or geology—that no other primacy state has adopted. Such requirements would increase permitting costs and uncertainty, undermine regulatory predictability, and move New Mexico away from alignment with the federal program it seeks to administer and promote. One-size-fits-all mandates are also unnecessary because the Proposed Rules preserve the Director's authority to impose additional site-specific conditions, where warranted. *See* Oxy Ex. 3, Rebuttal Testimony of Caroline Wachtman ¶¶ 5, 8, 12, 16, 24, 32, 41, 61. For these reasons, the Commission should adopt the rules as proposed by OCD.

## II. Issues Concerning Unitization, Correlative Rights, Pore-Space Ownership, and Related Mineral-Interest Issues were Not Resolved in this Rulemaking

A central dispute raised during this rulemaking concerns unitization, correlative rights, pore-space ownership, carbon dioxide ownership, and protection of mineral interests. Those issues, however, are not part of the rule package before the Commission, and the Commission need not resolve them to adopt the Proposed Rules.[2]

NMOGA recognizes the importance of these issues and does not minimize their significance. Unitization, correlative rights, pore-space ownership, and protection of mineral interests deserve their own dedicated proceeding, with full notice and an opportunity for participation, rather than being resolved in a proceeding that was not designed to address them. NMOGA expects OCD to initiate a separate rulemaking process promptly and is committed to participating constructively in that process. Adoption of the Proposed Rules is an important first step, but it is only the beginning.

The Commission's own procedures highlight the importance of a process that allows full and meaningful consideration of important issues. An applicant begins a rulemaking by filing an application that identifies the proposed rules and includes a draft of those rules.[3] The Commission must then publish a notice of proposed rulemaking summarizing the proposed rules, public participation procedures, and the rulemaking's purpose and legal authority.[4] The State Rules Act imposes the same requirements: agencies must publish a notice specifying how the public may participate.[5] New Mexico courts have recognized that these notice requirements ensure meaningful participation by informing interested persons of the substance of the rules under consideration.[6]

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[2] *See* Notice of Public Hearing for Proposed Rulemaking, at 1–2 (stating legal authority for proposed 19.15.41, 19.15.42, and 19.15.43 NMAC); Geologic Carbon Dioxide Storage Stewardship Act, NMSA 1978, §§ 74-14-1 to -7; Oil and Gas Act, NMSA 1978, §§ 70-2-6, 70-2-11, 70-2-12.
[3] 19.15.3.8(A)(2) NMAC.
[4] 19.15.3.9(B) NMAC.
[5] NMSA 1978, §§ 14-4-2(D), 14-4-5.2(A), 14-4-5.3.
[6] *See Rivas v. Bd. of Cosmetologists*, 1984-NMSC-076, ¶¶ 8–9, 686 P.2d 934, 935–36 (explaining that agencies must provide notice of proposed action and that "[a]ll interested parties must be given the opportunity to present data, views, arguments and witnesses"); *Earthworks' Oil & Gas Accountability Project v. N.M. Oil Conservation Comm'n*, 2016-NMCA-055, ¶¶ 34, 39, 374 P.3d 710, 722–23 (recognizing that the purpose of the Oil Conservation Act's "reasonable notice" requirement is to notify "interested persons" and observing that notice may be inadequate if it is "insufficient, ambiguous, misleading, or unintelligible" (quoting *Johnson v. N.M. Oil Conservation Comm'n*, 1999-NMSC-021, ¶ 23, 978 P.2d 327, 332)).

The history of OCD's draft provisions illustrates why that notice framework controls here. OCD previously circulated draft provisions addressing mineral-interest issues, including Reserve 4 concepts involving unitization, correlative rights, and ownership questions.[7] NMOGA originally supported the rulemaking addressing these concepts and was actively involved in their development. But those provisions were ultimately removed from the Proposed Rules and never included in the noticed rule package, leaving further opportunity for participation and development of a record on these issues for a future proceeding.

The Commission's notice procedures are organized around the specific rules identified in the application and notice—here, the Proposed Rules.[8] The Commission should therefore address ownership and unitization issues in a future proceeding directed at those topics. This conclusion is consistent with broader administrative-law principles: agencies must focus proceedings on the issues actually before them and must reserve other issues for future proceedings.[9] The bottom line is that the Commission may not resolve issues materially different from those disclosed for public participation and the issues of unitization, correlative rights, pore-space ownership, and protection of mineral interests were not noticed here.[10]

## III. Foundational Unitization, Correlative Rights, Pore-Space Ownership, and Related Mineral-Interest Issues Should be Addressed

The Geologic Carbon Dioxide Storage Stewardship Act recognizes the dominant mineral estate and protects ongoing mineral development activities.[11] Those statutory protections provide an important foundation, but they do not eliminate the need to resolve the unitization, correlative rights, ownership, and related mineral-interest issues raised during this proceeding. Those issues

[7] *See* N.M. Energy, Minerals & Nat. Res. Dep't, Oil Conservation Div., Notice Request for Public Comment on the Oil Conservation Division's Draft Rules to EPA for Class VI Primacy (Aug. 22, 2025); N.M. Energy, Minerals & Nat. Res. Dep't, Oil Conservation Div., Proposed New Mexico State Amendments, Reserve 4 (posted Aug. 22, 2025).

[8] *See* 19.15.3.8–19.15.3.14 NMAC.

[9] *See Sw. Rsch. & Info. Ctr. v. Sec'y of N.M. Env't Dep't*, 2025-NMCA-007, ¶¶ 29–31, 570 P.3d 217, 226–27 (holding evidence regarding possible future expansion was irrelevant because the proceeding required the parties to "focus on the issue at hand" and explaining that any future expansion would be addressed in separate proceedings with their own opportunity for public comment and evidence).

[10] *See Sw. Pub. Serv. Co. v. N.M. Pub. Regul. Comm'n*, 2024-NMSC-012, ¶ 45, 548 P.3d 97, 113–14 (rejecting due process challenge where the party "had notice that the [Public Regulation Commission] was considering" the issue, "had an opportunity to propose its own method," and "had an opportunity to comment on the very language that the [Public Regulation Commission] eventually adopted").

[11] *See, e.g.,* HB 458, § 7 ("To the extent the dominant mineral estate is reasonably utilizing the surface estate for the production of minerals located thereon and therein, the formations so used shall not be interfered with.").

must be addressed through a dedicated rulemaking before the Class VI program moves into active permitting and implementation.

The primacy process provides a natural window—and an imperative one—to do that work. As testimony at the hearing established, after the rules are adopted OCD must submit a primacy application to EPA; based on experience in other states seeking primacy, the process of submittal and EPA consideration could take two years. OCD should use that time to initiate and complete a rulemaking addressing unitization, correlative rights, pore-space and other ownership issues to implement a comprehensive Class VI program.

NMOGA expects OCD to prioritize this work and stands ready to participate constructively with OCD and other stakeholders. If Class VI permitting is truly a priority for New Mexico, resolving these foundational issues must be treated with equal urgency.

## IV. Conclusion

For the foregoing reasons, NMOGA respectfully requests that the Commission adopt the Proposed Rules. NMOGA urges the Commission to direct OCD to promptly initiate a dedicated rulemaking addressing unitization, correlative rights, pore-space ownership, and related mineral-interest issues necessary for the implementation of a Class VI program that maintains the priority of the mineral estate and protects continued oil and gas development. NMOGA is committed to working with OCD and other stakeholders to resolve these issues before the Class VI program moves into active implementation.

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## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that on October 9, 2026, a true and correct copy of the foregoing was served on the persons listed below via the EMNRD CentreStack system.

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