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

AMENDED APPLICATION OF OIL CONSERVATION DIVISION TO ADOPT 19.15.41, 19.15.42, and 19.15.43 NMAC; STATEWIDE **CASE NO. 25875**

OXY USA, INC.'S CLOSING ARGUMENT

Oxy USA, Inc. ("Oxy") hereby submits these closing arguments to the New Mexico Oil Conservation Commission (the "Commission") with its proposed findings of fact and conclusions of law in Case No. 25875, addressing the proposed adoption of Rules 19.15.41, 19.15.42, and 19.15.43 NMAC governing Class VI injection wells for geologic sequestration.

Oxy supports the New Mexico Oil Conservation Division's ("OCD" or "Division") efforts to obtain primacy for the Class VI Underground Injection Control ("UIC") program. Class VI primacy will benefit New Mexico by providing local control over the regulatory process and facilitating protective, thorough, and timely permitting of geologic sequestration in the state. Oxy appreciates the work that the OCD has undertaken to engage with various stakeholders and develop the Class VI rules.

As a result, Oxy largely supports the proposed rules prepared by OCD, as subsequently modified by the final proposed changes filed on September 11, 2026. These rules establish the regulations necessary to obtain primacy for the Class VI well program and largely mirror the federal requirements.

Although Oxy generally supports the proposed rules, Oxy respectfully requests that the Commission adopt several modifications to better align New Mexico's Class VI regulations with

the federal requirements, provide the OCD with additional discretion, and address technological advances in sampling.

Specifically, Oxy requests that the Commission: (1) modify the two-year automatic permit termination provision to provide Operators more time to commence construction; (2) adopt the OCD's proposed provision addressing appeals; (3) revise the minor modification rule to provide the Director with additional discretion; (4) amend the area of review ("AOR") reevaluation provision consistent with the time frames in the federal regulations; (5) modify the self-insurance provision in the financial assurance rule; (6) amend the groundwater monitoring provision consistent with the frequency in federal regulations; (7) adopt a performance-based standard for the logging, sampling, and testing provision that allows for the infusion of new technologies; and (8) amend the emergency and remedial response provisions.

Oxy offered two expert witnesses, Ms. Tiffany Wallace and Ms. Caroline Wachtman, at the hearing. Ms. Wallace testified in support of Oxy's proposed changes, and Ms. Wachtman provided rebuttal testimony refuting certain modification proposed by other parties. As demonstrated through the testimony of Oxy's witnesses, Oxy's proposed modifications are targeted, practical, and consistent with the protection of underground sources of drinking water ("USDWs"). They would align New Mexico's regulations more closely with the federal Class VI framework while preserving the Commission's authority and discretion to impose more stringent requirements on a site-specific basis where warranted.

AUTOMATIC PERMIT TERMINATION (19.15.41.8.H NMAC)

Oxy requests that the Commission modify the automatic permit termination provision to provide operators with additional time to commence construction after permit issuance.

The proposed rules in Subsection H of 19.15.41.8 NMAC provide for automatic permit termination if drilling operations have not commenced within two years from the date of permit issuance. To avoid automatic termination, a permittee would be required to submit a written request for an extension at least 30 days prior to the expiration of the initial two-year period, demonstrating good cause for the delay, and providing an updated timeline for drilling, a detailed explanation of why more time is needed, and relevant documentation.

The federal rules do not contain a corresponding provision, and testimony during the hearing demonstrated the two-year time frame is too brief and poses feasibility challenges for Class VI wells. OCD's proposed construction timeline was apparently informed by the Division's experience with administering Class II injection wells, Tr. 317:25-318:20, however Class VI geologic sequestration projects are fundamentally different. Class VI projects involve longer lead times for infrastructure development, pipeline construction, and supply chain coordination. Tr. 1064:11–25. A two-year window is inadequate and would result in the routine filing of extension requests, burdening both operators and the Division. Tr. 1137:6–17.

Oxy requests that the Commission revise the proposed rules to provide operators up to five years to commence drilling operations from the date of issuance. To this end, Oxy proposes modifications to 19.15.41.8.H.(2) NMAC in Oxy Exhibit 1A.

APPEAL SECTION (19.15.41.8.J NMAC)

Oxy encourages the Commission to adopt the new appeal provision included in OCD's final proposed rules submitted to the Commission on September 11, 2026, which references the Commission's adjudicatory procedures in 19.15.4.8 NMAC. OCD's original proposal did not include a provision addressing appeals, and it was unclear what procedures applied to Class VI permits. Tr. 1065:4-18. OCD's new provision provides much needed clarity and transparency to

the rule by incorporating a reference to the existing regulations, without creating a separate process. *Id*. Oxy supports the language in OCD's final proposed rule and requests the Commission adopt Subsection J to 19.15.41.8 NMAC of the proposed rules.

MINOR MODIFICATION OF PERMITS (19.15.42.11.J NMAC)

Oxy proposes adding a catch-all provision authorizing the Director to approve "non-material, non-substantive permit modifications that do not increase risk to USDWs" as minor modifications. This would provide the Director with discretion to address modifications that fall outside the seven enumerated categories, but that similarly pose no increased risk to USDWs.

The proposed rule at Subsection J of 19.15.42.11 NMAC provides a list of changes to a permit that are considered "minor modifications" and thus not subject to formal permit revision procedures. Oxy believes that as currently proposed, the rule creates inadvertent ambiguity as to what constitutes a major or minor modification and does not give the Director sufficient discretion to make that determination. Tr. 1066:6–12. The permit review process for Class VI can take more than two years to complete. Tr. 1066:13–18. In that time, it is likely that operating conditions and project plans will change that necessitate clarification to improve the enforceability of the permit. Tr. 1066:13–18. Without a catch-all provision, operators may be required to pursue a major modification process—with its associated time and cost—for changes that are functionally immaterial to USDW protection. The catch-all preserves the Director's discretion to evaluate proposed changes on a case-by-case basis. The provision would provide sufficient protection to USDWs while also improving permitting timelines.

Oxy proposes a catch-all category at Subsection J.(8) of 19.15.42.11 NMAC for "non-material, non-substantive permit modifications that do not increase risk to USDWs." Oxy Exhibit 1B.

AREA OF REVIEW REEVALUATIONS (19.15.43.9.E NMAC)

Oxy requests that the Commission modify the area of review reevaluation provision to match the federal standard of five years as established at 40 C.F.R. § 146.84(b)(2)(i), while retaining the Director's authority to require AOR reevaluation at shorter intervals when conditions warrant.

The proposed rule at Subsection E of 19.15.43.9 NMAC provides for the fixed frequency of the AOR reevaluations, including an initial reevaluation two years after injection begins and subsequent reevaluations not to exceed four years. The federal framework employs a different approach: a fixed five-year frequency for scheduled reevaluations, supplemented by a "when conditions warrant" provision that allows regulators to require earlier reevaluations at any time. No other state has adopted an AOR reevaluation frequency as short as the one OCD proposes. Tr. 324:2-7.

Because New Mexico has already incorporated the "when conditions warrant" provision into their proposal, Tr. 321:14-322:12, the shorter fixed frequency provides no additional safety benefit while imposing unnecessary costs and administrative burdens. Oxy Ex. 2, ¶¶ 26-29. The five-year frequency was established by EPA through notice-and-comment rulemaking with full consideration of data-driven modeling and analysis of the timelines involved. Tr. 1085:3-6. Five years is a reasonable timeline, especially because shorter timeframes may not yield sufficient results. Tr. 1146:3-6. Oxy's witness in Class VI project development testified during the hearing that there may not be much geophysical response within the first two years of injections, depending on the quantity of CO_2 injected, the composition of the injection, and the permeability of that particular injection. Tr. 1146:8-16. Furthermore, the shorter reevaluation frequencies pose a

logistical challenge, given the extended time needed for modeling, data collection, and processing. Oxy Ex. 2, ¶ 26.

Oxy proposes two modifications to Subsection E of 19.15.43.9 NMAC for consistency with the federal requirements. Oxy Exhibit 1C.

FINANCIAL RESPONSIBILITY (19.15.43.9.F NMAC)

Oxy requests the Commission amend the proposed financial responsibility requirements to revise the self-insurance provisions consistent with the Resource Conservation and Recovery Act ("RCRA").

When EPA developed the Class VI rules, it solicited input from the EPA's Environmental Financial Advisory Board ("EFAB") to develop recommendations on financial responsibility requirements. Tr. 1045:9-17. EFAB agreed that both self-insurance and third-party insurance should be made available to demonstrate financial responsibility for Class VI wells. Tr. 1045:18–23. EPA's objective, as noted in the preamble to the rule, was not to prohibit self-insurance, but to calibrate the self-insurance criteria so that the public bears no greater risk than under third-party instruments. Tr. 1047:23-1048:6.

As currently proposed, Section 19.15.43.9.F NMAC establishes financial responsibility requirements for Class VI operators, including a self-insurance mechanism that relies on both net working capital and tangible net worth as the measure of financial capacity. Oxy proposes the Commission adopt the financial test set forth in EPA's hazardous waste regulations at 40 C.F.R. § 261.143(e)(1) (RCRA), which relies on *tangible net worth* rather than *net working capital* as the measure of a company's ability to meet long-term financial obligations.

Net working capital is a measure of day-to-day cash required to run a business and was never designed to serve as a metric for long-term corporate liability capacity. Tr. 1069:11-17; Oxy

Ex. 2 at ¶ 37. Well-managed companies deliberately minimize working capital resources, which means a net working capital test may understate the financial strength of otherwise creditworthy operators. Oxy Ex. 2 at ¶¶ 37-38. Tangible net worth, by contrast, is specifically designed to measure a company's ability to meet long-term liabilities and is the standard EPA itself adopted for comparable hazardous waste programs. 1069:1-17; Oxy Ex. 2 at ¶ 39.

Oxy proposes modifications to the draft rules in Subsection F of 19.15.43.9 NMAC to address these concerns. Oxy Exhibit 1C.

GROUNDWATER MONITORING (19.15.43.9.K NMAC)

Oxy proposes replacing "quarterly" groundwater monitoring with "periodic," consistent with the federal standard, which provides the Director with discretion to prescribe a monitoring frequency that is site and project specific during the permitting process.

The proposed rules at Subsection K.(4) of 19.15.43.9 NMAC require quarterly monitoring of the ground water quality and geochemical changes above the confining zones(s) that may be the result of CO2 movement through the confining zone(s) or additional identified zones, as part of the testing and monitoring requirements for geologic sequestration projects. The federal rules require the same monitoring, but on a "periodic basis," rather than quarterly.

A one-size-fits-all quarterly mandate removes the Director's ability to tailor monitoring frequency to site-specific conditions. In some cases, more frequent monitoring may be warranted; in others, less frequent monitoring may be scientifically appropriate. Tr. 1071:22-1072:8; Tr. 1155:9-20. A prescriptive quarterly floor prevents the Director from exercising downward discretion even when justified by site conditions, Tr. 325:7-13, while a "periodic" standard preserves the Director's authority in both directions, Tr. 1156:3-1157:7.

Oxy proposes the Commission revise the frequency of groundwater monitoring in Subsection K.(4) of 19.15.43.9 NMAC to quarterly for consistency with the federal requirements. Oxy Exhibit 1C.

LOGGING, SAMPLING, AND TESTING (19.15.43.9.H NMAC)

Oxy proposes a performance-based approach that removes spontaneous potential logging as a mandatory requirement and instead allows operators to propose fit-for-purpose, site-specific logging methods that meet or exceed the information objectives of the prescribed methods. This approach would allow for the use of new methods and technologies as they become available.

The proposed rules at Subsection H of 19.15.43.9 NMAC requires an owner or operator to run appropriate logs, surveys and tests to determine or verify the depth, thickness, porosity, permeability, and lithology of, and the salinity of any formation fluids in all relevant geologic formations to ensure conformance with the injection well construction requirements under Subsection G of 19.15.43.9 NMAC and to establish accurate baseline data against which future baseline measurements may be compared. As currently proposed, Section 19.15.43.9.H NMAC prescribes a specific list of required logging, sampling, and testing methods, including spontaneous potential logging.

Oxy encourages the Commission to adopt a performance-based standard that allows for the infusion of new technologies, instead of a prescriptive list of mandated tests. Tr. 1071:5-11; Exhibit 2, at ¶ 46. Some of the listed test methods, such as spontaneous potential, are outdated, provide redundant information, and may increase integrity risk. Tr. 1070:24-1071:4; Oxy Exhibit 2, at ¶¶ 46-47. Spontaneous potential was one of the first wireline logs to be utilized. Oxy Exhibit 2, at ¶ 46. Witnesses for both industry and environmental groups testified that spontaneous potential logging should be options because newer methods, such as gamma ray, provide better information.

Oxy Exhibit 2, at ¶ 46; CBD, Direct Testimony of Catherine Helm-Clark, Ph.D., 0089:3-10. Requiring logs that are redundant or unnecessary leads to more time in the well, particularly in the shallow sections, which unnecessarily increases well integrity risk. *Id.* OCD's witness testified that if another logging suite provided better information than the required test it should be considered more stringent than the federal requirements. Tr. 327:15-22.

Oxy requests that the Commission revise the sampling, logging, and testing requirements in Subsection H of 19.15.43.9 NMAC to be performance based, rather than prescriptive. Oxy Exhibit 1C.

EMERGENCY AND REMEDIAL RESPONSE (19.15.43.9.O. NMAC)

Oxy encourages the Commission to adopt a revised emergency and remedial response provision that adopts the federal five-year timeline for plan reviews and clarifies well shut in requirements for operations with multiple wells.

The proposed rule at Subsection O of 19.15.43.9 NMAC contains requirements for developing an emergency and remedial response plan that must be reviewed and updated at regular intervals. The federal regulations, found at 40 C.F.R. § 146.94, similarly require an owner or operator to develop and submit an emergency and remedial response plan. The federal regulations require that the plan be reviewed and amended, if appropriate, at least every five years. 40 C.F.R. § 146.94(d). OCD's original proposal required emergency and remedial response plans to be reviewed every three years.

OCD's final proposed rules adopt a five-year review period for emergency and remedial response plans consistent with the federal requirements. Oxy agrees with OCD's change to the review cycle because emergency and remedial response plans are comprehensive documents that

do not change significantly over short periods. OCD Exhibit 25 at 14. The federal framework's five-year review cycle reflects this reality.

Finally, Oxy encourages OCD to amend the language of Subsection O.(3) to specify that in the case evidence shows that the injected CO2 stream and associated pressure front may cause an endangerment to a USDW, the owner or operator must immediately cease injection *in the impacted well*. Oxy Exhibit 1C. This change will clarify that operators of multiple wells need not cease injections in all wells, only the impacted well. Tr. 1073:4-17. This language is designed to address scenarios where multiple wells in the same AOR are experiencing different operating conditions, and the non-impacted wells are not having any loss of mechanical integrity. Tr. 1158:6-1159:11. Conservation Groups' witness agreed that unless all the wells were in danger of leaking or there was a risk to the USDW, there would be no reason to stop injecting at the non-impacted wells in that scenario. Tr. 1280:20-1281:14.

Oxy requests that the Commission revise Subsection O.3 of 19.15.43.9 NMAC to clarify that operators of multiple wells cease injection only at impacted wells.

CONCLUSION

The testimony and evidence presented at the hearing in Case No. 25875 demonstrates that Oxy's proposed modifications to Rules 19.15.41, 19.15.42, and 19.15.43 NMAC are targeted, practical, and consistent with the protection of USDWs. The proposed changes align New Mexico's Class VI regulations more closely with the proven federal framework, reduce unnecessary administrative burden on both operators and the Division, and—critically—maintain or enhance the protection of USDWs.

Oxy respectfully requests that the Commission adopt each of the modifications set forth in this Closing Argument and Oxy's pre-hearing submissions.

Respectfully submitted,

HOLLAND & HART, LLP

/s/ Aaron Tucker

Aaron B. Tucker
555 17th Street, Suite 3200
Denver, CO 80202
(303) 295-8369
abtucker@hollandhart.com

Adam G. Rankin
Paula M. Vance
A. Raylee Starnes
Post Office Box 2208
Santa Fe, New Mexico 87504
(505) 988-4421
(505) 983-6043 Facsimile
agrankin@hollandhart.com
pmvance@hollandhart.com
arstarnes@hollandhart.com

ATTORNEYS FOR OXY USA INC.

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2026, I served a copy of the foregoing document to the following via Electronic Mail to:

Felicia Orth
felicia.l.orth@gmail.com

Hearing Officer

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

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

Jesse Tremaine
Legal Director
New Mexico Energy, Minerals, and
Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
(505) 741-1231
(505) 231-9312
jessek.tremaine@emnrd.nm.gov

Attorney for New Mexico Oil Conservation Division

Ana Maria Gutierrez
Jessica Portmess
Womble Bond Dickinson (US) LLP
1899 Wynkoop St., Ste. 750
Denver, CO 80202
(720) 983-1350
ana.gutierrez@wbd-us.com
jessica.portmess@wbd-us.com

Amanda Thatcher
Womble Bond Dickinson (US) LLP
Phoenix, AZ 85004
(602) 262-5311
amanda.thatcher@wbd-us.com

Attorneys for the New Mexico Oil and Gas Association

Morgan O'Grady
Staff Attorney
Rose Rushing
Staff Attorney
Daniel Timmons
Senior Attorney
Western Environmental Law Center
409 East Palace Avenue, Suite 2
Santa Fe, New Mexico 87501
505-570-5566
ogrady@westernlaw.org
rushing@westernlaw.org
timmons@westernlaw.org

Attorneys for Diné C.A.R.E., Earthworks, San Juan Citizens Alliance, Sierra Club Rio Grande Chapter, Tó Nizhóní Áni, and Western Environmental Law Center

Zachary Pavlik, Staff Attorney
Colin Cox, Senior Attorney
Center for Biological Diversity
Climate Law Institute
zpavlik@biologicaldiversity.org
ccox@biologicaldiversity.org

Attorneys for the Center for Biological Diversity

Samantha Ruscavage-Barz
Senior Attorney, Climate & Health
WildEarth Guardians
301 Guadalupe St., Suite 201
Santa Fe, NM 87501
(505) 401-4180
1025 ½ Lomas NW
Albuquerque, NM 87102
(505) 320-6435
sruscavagebarz@wildearthguardians.org

Attorney for WildEarth Guardians

/s/ Aaron Tucker
Aaron Tucker
Oxy USA, Inc.

39675443_v4