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 PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Oxy USA, Inc. ("Oxy"), by and through its undersigned counsel, hereby submits 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.

FINDINGS OF FACTS

1. The Oil Conservation Division ("OCD" or the "Division") filed an Amended Application with the Oil Conservation Commission ("OCC" or "Commission") on May 17, 2026 to adopt Rules 19.15.41, 19.15.42, and 19.15.43 NMAC governing Class VI underground injection wells for geologic sequestration of carbon dioxide.

2. The Commission issued a prehearing order on June 8, 2026. The parties filed prehearing statements on June 29, 2026. A public hearing was held over six days—July 27, 28, 29, 30, and 31, and August 3, 2026—at the Wendell Chino Building, Pecos Hall, in Santa Fe, New Mexico, before Hearing Officer Felicia Orth, Commission Chair Albert C.S. Chang, Commissioner Dr. William Ampomah, and Commissioner Paige Czoski.

3. The following parties participated in the hearing: OCD; Oxy USA, Inc. ("Oxy"); the New Mexico Oil and Gas Association ("NMOGA"); Conservation Groups, consisting of Diné C.A.R.E., Earthworks, San Juan Citizens Alliance, Sierra Club Rio Grande Chapter, Tó Nizhoní

Aní, and the Western Environmental Law Center ("WELC"); the Center for Biological Diversity ("CBD"); and WildEarth Guardians.

4. On September 11, 2026, OCD filed a Notice of Final Proposed Changes to OCD Exhibits 1–3, incorporating modifications to the proposed rules based on testimony and comments received during the hearing.

5. Due notice of the hearing was given in accordance with the Oil and Gas Act and applicable rules. No party challenged the adequacy of notice. The parties were afforded a full and fair opportunity to present testimony, cross-examine witnesses, introduce exhibits, and submit closing arguments and proposed findings of fact and conclusions of law.

6. Oxy presented two technical experts: Tiffany Wallace and Caroline Wachtman.

7. Tiffany Wallace testified on behalf of Oxy as a direct witness. Ms. Wallace holds a Master of Science in Petroleum Engineering from Texas A&M University and previously served as Deputy Director of OCD. Her direct testimony was submitted as Oxy Exhibit 2. Ms. Wallace provided testimony addressing each of Oxy's proposed modifications to the rules and explained how those modifications would align New Mexico's regulations with the federal Class VI framework.

8. Caroline Wachtman testified on behalf of Oxy as a rebuttal witness. Her testimony was submitted as Oxy Exhibit 3 and her curriculum vitae as Oxy Exhibit 4. Ms. Wachtman's testimony addressed and rebutted certain modifications proposed by other parties, including proposals related to the area of review, siting, and groundwater monitoring.

Permit Termination

9. The federal Class VI regulations do not contain a corresponding automatic permit termination provision. Tr. 316:21–22.

10. OCD's proposed two-year time frame was based on OCD's experience administering the Class II injection-well program. Tr. 317:3–15; 317:25–318:20.

11. Class VI geologic sequestration projects involve significantly longer lead times for infrastructure development, pipeline construction, and supply chain coordination than Class II injection wells. Tr. 1064:11–25.

12. A two-year window is inadequate for Class VI projects and would result in routine filings of extension requests, burdening both operators and the Division with unnecessary administrative processes. Tr. 1137:6–17.

Appeals

13. OCD's original proposed rules did not include a provision addressing appeals of Class VI permitting decisions, leaving uncertainty regarding the applicable procedures for an operator or affected party seeking review of the Division's decision. Tr. 1065:4–18.

Minor Modifications of Permits

14. The proposed minor-modification rule at 19.15.42.11 NMAC enumerates seven specific categories of permit changes that may be processed as minor modifications without requiring a full permit amendment. However, the existing enumerated categories do not capture all non-material, non-substantive changes that may arise during the multi-decade life of a Class VI permit. Tr. 1066:6–12.

15. Because Class VI permit reviews may take over two years to complete, conditions and circumstances may change between the time of initial permit issuance and when a minor modification is needed. Tr. 1066:13–18.

16. A catch-all provision provides the Director with necessary discretion to address modifications that fall outside the seven enumerated categories but similarly pose no increased risk to underground sources of drinking water. Oxy Exhibit 2 ¶¶ 19-23.

Area of Review Reevaluation

17. The EPA established the five-year interval through notice-and-comment rulemaking based on technical evaluation of the time needed to accumulate sufficient operational and monitoring data to support a meaningful Area of Review ("AoR") reevaluation. Tr. 1085:3–6.

18. No state has adopted a fixed-interval AoR reevaluation period as short as the one originally proposed by OCD. Tr. 324:2-7.

19. Early in a project's life, geophysical response may be limited depending on the quantity of CO_2 injected, the composition of the injection, and the permeability of that particular injection. Tr. 1146:3-16.

Financial Responsibility and Self-Insurance

20. 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.

21. 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.

22. 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.

23. The net working capital metric included in the proposed rule is a short-term financial indicator that measures a company's current assets less current liabilities. While useful

for assessing short-term liquidity, net working capital may not accurately reflect a company's long-term capacity to fund post-closure obligations that may span decades. Tr. 1069:1–17; Oxy Ex. 2 ¶¶37–39.

24. 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.

25. Tangible net worth is specifically designed to measure a company's ability to meet long-term liabilities and is the standard EPA itself adopted for RCRA. 1069:1-17; Oxy Ex. 2 at ¶ 39.

Groundwater Monitoring

26. Groundwater monitoring programs should be tailored to site-specific conditions. The appropriate monitoring frequency depends on factors unique to each injection site. Tr. 1071:22–1072:8; 1155:9–20; 1156:3–1157:7.

27. 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.

Logging, Sampling, and Testing

28. Spontaneous potential ("SP") logs are an outdated technology that has been largely supplanted by modern alternatives providing superior data quality and resolution. Moreover, running an SP log can be redundant with other required logs and may increase well-integrity risk by requiring additional tool runs in the wellbore. Tr. 1070:24–1071:4; Oxy Exhibit 2, at ¶¶ 46-47.

29. 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.

Emergency and Remedial Response

30. Emergency and remedial response plans are comprehensive documents that do not change significantly over short periods absent material changes in operations or site conditions. The federal five-year review cycle reflects this reality and provides a reasonable balance between ensuring plan currency and avoiding unnecessary administrative burden. OCD Exhibit 25 at 14.

31. Shutting in non-impacted wells that are operating safely and maintaining mechanical integrity is unnecessary and could create additional operational and safety risks, including risks associated with the uncontrolled shutdown of injection operations. Tr. 1073:4-17;

32. Oxy witness Wachtman further testified that multiple wells in the same area of review may be experiencing entirely different operating conditions, and requiring shutdown of wells not experiencing any integrity issues is unnecessary. Tr. 1158:6-1159:11.

33. Conservation Groups' witness Harvey agreed that unless all wells in the area of review were in danger of leaking or there was a risk to a USDW, there would be no reason to stop injecting at the non-impacted wells in that scenario. Tr. 1280:20–1281:14.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this proceeding and authority to promulgate rules governing Class VI underground injection wells pursuant to the Geologic Resources Stewardship Act, NMSA 1978, § 74-14-3(B), and the Oil and Gas Act, NMSA 1978, §§ 70-2-6, 70-2-11, and 70-2-12.

2. Proper notice of the hearing was provided in accordance with applicable statutory and regulatory requirements. The hearing was conducted in a manner consistent with due process.

3. To obtain primacy for the Class VI Underground Injection Control program, New Mexico's rules must be at least as stringent as the federal requirements set forth in 40 C.F.R. Part 146, Subpart H.

4. The federal Class VI regulations at 40 C.F.R. § 146.84(b)(2)(i) require operators to reevaluate the area of review no less frequently than every five years and whenever monitoring and operational conditions warrant.

5. The federal Class VI regulations at 40 C.F.R. § 146.90(d) require periodic groundwater monitoring.

6. The federal Class VI regulations at 40 C.F.R. § 146.94 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).

WHEREFORE, Oxy respectfully requests that the Oil Conservation Commission adopts and finalize its proposed modifications as supported by the Findings of Facts and Conclusions of Law articulated herein.

Respectfully submitted,

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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:

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