STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

IN THE MATTER OF APPLICATION OF OIL CONSERVATION DIVISION TO ADOPT 19.15.41, 19.15.42, and 19.15.43 NMAC

CASE NO. 25875

WILDEARTH GUARDIANS' CLOSING ARGUMENT

WildEarth Guardians 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 filed on September 11, 2026.

The Oil Conservation Commission (Commission) should reject the proposed regulatory scheme for several reasons: (1) the Commission and OCD lack the authority to promulgate the proposed Class VI regulatory scheme; (2) OCD has not demonstrated on the record the need for Class VI primacy; (3) OCD lacks the capacity to oversee the proposed regulatory scheme; (4) OCD already lacks capacity to oversee its existing programs for regulating oil and gas extraction. OCD needs to ensure it has the resources and the funding to oversee long-term Class VI permitting and enforcement, especially given the serious and significant stakes if even one of these waste storage wells fails. The glaring omissions in OCD's pre-filed and live hearing testimony related to these capacity issues should give the Commission pause in approving OCD's proposal for Class VI primacy.

I. The Commission and OCD Lack the Authority to Promulgate the Proposed Regulatory Scheme

As an initial matter, neither the Commission nor OCD have the authority to adopt the proposed rules. As stated in the Motion to Dismiss the Proposal,[1] the Commission and OCD are restricted to the statutory authority granted to them by the Legislature and neither the New Mexico Oil and Gas Act, NMSA 1978, §§ 70-2-1 – 70-2-39 (Oil and Gas Act), nor the Geologic Carbon Dioxide Storage Stewardship Act, NMSA 1978, §§ 74-14-1 – 74-14-7 (Stewardship Act), confer the necessary authority to promulgate the rules in the Application. The Oil and Gas Act's fundamental purpose and grants of authority concern the conservation of oil and gas and protecting correlative rights; the act does not expressly or impliedly provide authority to regulate Class VI wells. NMSA 1978, §§ 70-2-6; 70-2-11. Neither statute authorizes the expansive regulatory scheme found in Applicant's proposed rules and neither agency has authority to promulgate them. Thus, the Commission should dismiss the application for the proposed Class VI regulatory scheme.

II. OCD Has Not Demonstrated a Need for Primacy Beyond Fast-Tracking Permitting

As OCD states in its Petition for Rulemaking, it's seeking to assume primary responsibility for the permitting, compliance, and enforcement of Class VI carbon capture and storage (CCS) injection wells to fast track the permitting of these wells - reducing the permitting time from EPA's 3-6 years to 6-8 months at the state level. OCD Am. Pet. (May 18, 2026) ¶ 2. OCD's reason for needing to fast-track the Class VI permitting process is "bringing the State closer to achieving its waste mitigation and climate goals." *Id*. OCD's petition also states a need

[1] WildEarth Guardians hereby incorporates, renews, and preserves all of the arguments for Petition dismissal in the Motion to Dismiss and the Reply in Support of the Motion to Dismiss. WildEarth Guardians reserves all rights to seek review of any rule adopted in this proceeding on the ground that the Commission and OCD lack the authority to promulgate it. WildEarth Guardians closing arguments are offered without waiver of that objection.

to "enhance both regulatory efficiency and environmental stewardship." *Id*. at ¶ 6. Yet nowhere in OCD's pre-filed or live hearing testimony does the Division explain the specific "waste mitigation and climate goals" the proposed regulatory scheme is intended to achieve or how having primacy over the Class VI permitting process will achieve these undefined goals, or enhance environmental stewardship.

In fact, CCS is not a climate solution. While CCS is often touted as a mitigation measure for the climate crisis, it actually has the potential to increase greenhouse gas emissions by prolonging fossil fuel extraction. The Intergovernmental Panel on Climate Change's (IPCC) modeled pathway with the best chance of keeping warming below 1.5°C makes **no** use of fossil fuels with CCS, and employs limited to zero use of engineered carbon removal technologies.[2] Instead, the success of achieving that warming reduction pathway requires a rapid phaseout of fossil fuels along with only limited CO2 removal by natural carbon sequestration methods, such as reforestation and enhanced soil remediation.[3] Because CCS is unnecessary, ineffective, dangerous, and will actually delay reaching greenhouse gas reduction target, CCS is not a climate solution that will prevent the worsening harms of the climate crisis, and new CCS infrastructure (such as Class VI wells) is contrary to the public interest.

Even if fast-tracking Class VI permitting in the name of "regulatory efficiency" was a legitimate justification for seeking primacy (which it is not), OCD has not demonstrated a need for regulatory efficiency as more protective of underground sources of drinking water and public health than EPA's Class VI permitting process. For New Mexico, EPA estimates 1-3 Class VI

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[2] *See* Exhibit 2 attached to WildEarth Guardians' August 3, 2026 public comment. Ctr. for Int'l Envtl. L., *Confronting the Myth of Carbon-Free Fossil Fuels: Why Carbon Capture Is Not a Climate Solution*, at 2 (2021), https://www.ciel.org/wp-content/uploads/2021/07/Confronting-the-Myth-of-Carbon-Free-Fossil-Fuels.pdf (citing Intergovernmental Panel on Climate Change, *Summary for Policymakers*, in Global Warming of 1.5°C, at 14 (Masson-Delmotte et al. eds., 2018), Section C.1.1., Figure SPM 3b (Pathway 1), https://www.ipcc.ch/sr15/)

[3] *Id*. at 2-3. *See also* Exhibit 3 attached to WildEarth Guardians' August 3, 2026 public comment. September 26, 2025 Center for Biological Diversity Comments on New Mexico Class VI Primacy Draft Rules, at 1-2.

projects based on EPA's engagement with potential Class VI permittees.[4] And EPA is undergoing its own process to streamline its own Class VI process for permitting in states such as New Mexico where EPA has implementation authority.[5]

OCD has not demonstrated how a faster approval process for a relatively new, permanent industrial waste disposal method in the state actually benefits people, the environment, and the climate, when weighed against the catastrophic impacts to people and the environment when injection wells fail and release CO_2, as they have in other states. As the pre-filed testimony illustrates, failure of CO_2 injection wells has led to asphyxiation deaths and long-term groundwater contamination. And injection-induced seismicity has resulted in earthquakes which caused personal injuries and property damage.[6] Unless and until OCD can articulate how state primacy over the Class VI program will benefit New Mexicans in light of these serious potential risks, the Commission should not allow OCD to move forward with its primacy application.

III. OCD Lacks Capacity to Oversee and Enforce the Proposed Class VI Regulatory Scheme

In its pre-filed and live technical testimony, OCD consistently stresses the need for speed in processing and approving Class VI permits, with little evidence demonstrating that OCD has the staffing and funding capacity to ensure that its permanent underground waste disposal program will protect groundwater, communities, and future generations from long-term contamination risks. Class VI permitting is complicated and highly technical, as reflected in the proposed regulatory scheme, and EPA's own words to Congress: "[Geologic storage] is a

[4] *See* Exhibit 4 attached to WildEarth Guardians' August 3, 2026 public comment. EPA, "Report to Congress Regarding Recommendations to Improve Class VI Permitting Procedures for Commercial and Research Carbon Sequestration Projects," at 16 (Oct. 28, 2022). https://www.epa.gov/system/files/documents/2022-11/EPA%20Class%20VI%20Permitting%20Report%20to%20Congress.pdf

[5] *Id*. at 20.

[6] Direct Testimony of Dr. Catherine Helm-Clark. Center for Biological Diversity Exhibit 3 at pp. 0048-53.

complex process that is highly dependent on site-specific conditions; therefore, a robust and comprehensive permit application and permit review process is fundamental to preventing endangerment of [underground sources of drinking water] from these activities."[7] With fewer resources and less experience than the EPA—in addition to a long history of cooperation with New Mexico industry—it is unlikely that OCD will be able to provide as robust a review of forthcoming Class VI permit applications as EPA has historically done.

OCD states that a fully-staffed Class VI program will consist of three (3) full-time staff. OCD will also rely on geologists, engineers, field inspectors, and specialized technical contractors for technical expertise to support the Class VI program. OCD Ex. 4 at 4 (Justin Wrinkle Direct Testimony). Yet OCD has not provided any discussion regarding the number of Class VI permits the 3-person staff will be required to process, the number of wells associated with each permit once projects are built out that will require oversight and enforcement by the Division, workload allocation between permit approvals and oversight and enforcement, or whether the small in-house team is an adequate staff size to ensure both rigorous permit review and comprehensive post-permit oversight and enforcement.

In addition to unanswered questions about staffing levels for the Class VI program, particularly capacity for oversight and enforcement once permits are issued, there are also unanswered questions about the tentative nature of the funding for the Class VI program beyond the few full-time program staff funded by the State's general fund. Given OCD's expected reliance on specialized technical contractors to review permit applications, and to perform field inspections to ensure compliance with construction and operational requirements and ensure the safety of those operations, OCD Ex. 4 at 5, the lack of any funding contingency plans or firm

[7] *Supra*, n.4., at 19.

commitments by OCD that any funding shortfalls will **not** result in program staff time being limited to permit approvals at the expense of permit oversight and enforcement should give OCC pause in approving the proposed regulatory scheme.

IV. OCD Already Lacks the Capacity to Oversee and Enforce Its Existing Programs

OCD has a demonstrated lack of capacity to oversee the programs it already administers to regulate the oil and gas industry, including the Class II UIC program. In the Ground Water Protection Council's 2020 Peer Review of New Mexico's Class II UIC Program, the Council reported:

> The OCD projects that its workload will continue to increase in the foreseeable future as a result of Permian production . . . Despite this vastly increased workload, staffing within OCD has not increased as a result of an inability to expand staffing levels, recruit new staff to replace departing staff due to salary constraints, and retain existing staff because of budget limitations. These three conditions have resulted in staffing shortages of between 40-60 percent in some sections and have placed the OCD in a near crisis situation from a programmatic standpoint. At present, the OCD has insufficient staff available to manage critical aspects of a Class II UIC program such as witnessing of Mechanical Integrity Tests (MITs) and casing installation and cementing, conducting periodic file reviews and implementing inspection frequencies at levels that would guarantee protection of Underground Sources of Drinking Water (USDWs). Even if staffing were filled at the current fully authorized levels the program would still be unable to meet all of the needs for USDW protection contemplated in the states' primacy agreement with the [EPA].[8]

The report goes on to state, "OCD has been unable to increase its budget to provide for elevated staffing levels and has also been unable to reclassify positions to make state service more attractive to those with the qualifications needed to implement a Class II UIC regulatory program."[9] These concerns are reflected in OCD's enforcement efforts today,[10] as it continues to

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[8] *See* Exhibit 5 attached to WildEarth Guardians' August 3, 2026 public comment. Ground Water Prot. Council, "State of New Mexico Class II UIC Program Peer Review" (Jan. 8, 2020), at 4, https://www.gwpc.org/wp-content/uploads/2019/09/New_Mexico_Peer_Review_1_8_2020.pdf.

[9] *Id*.

[10] *See* WildEarth Guardians' August 3, 2026 public comment at 4 & n.9.

cite a lack of capacity in its struggle to enforce other programs it administers and there is no reason to believe that OCD will be better resourced to manage administration of Class VI wells.

Oil and gas extraction in New Mexico is characterized by thousands of spills, recurring pollution, and limited enforcement. For overall spill trends, industry reported spill data from OCD over the last several years reported a total of 38,153 spills in New Mexico in 2025[11] – an average of 104 spills per day – reflecting an immense amount of pollution to air, land, and water. The 2025 trend in spill scale and frequency is not a one-off anomaly. Between 2022 and 2025, oil and gas operators reported 177,704 spills to OCD.[12]

For 2026, a Waste Watch analysis from WildEarth Guardians documented 17,373 reported oil and gas spills during the first half of 2026—an average of 96 spills every day, or roughly one reported spill every 15 minutes.[13] Operators reported spilling more than 4.5 million gallons of liquid oil and gas waste in the first six months of the year, with more than 1.5 million gallons permanently "lost" to New Mexico's soil and water. The analysis also found that enforcement remains limited despite tens of thousands of reported spills each year.[14]

Despite tens of thousands of oil and gas spills reported each year, enforcement remains limited relative to the scale of pollution. The same companies repeatedly rank among the top spillers, while penalties remain rare.[15] OCD's Spill Search database shows the seven companies are responsible for 50 percent of total oil and gas-related spills between 2022 and 2025.[16] These

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[11] *See* Exhibit 6 attached to WildEarth Guardians' August 3, 2026 public comment. Melissa Troutman and Rebecca Sobel, WildEarth Guardians, *The 2025 New Mexico Oil & Gas Spill Report: Land, Air & Water Pollution from Oil and Gas* (2026) at 11, https://wildearthguardians.org/press-releases/record-volumes-of-oil-and-gas-spills-polluted-new-mexico-in-2025-new-report-finds/.

[12] *Id*. at 11.

[13] *See* Exhibit 7 attached to WildEarth Guardians' August 3, 2026 public comment. https://wildearthguardians.org/press-releases/q2-waste-watch-new-mexico-oil-and-gas-spill-counts-drop-but-toxic-waste-volumes-surge/

[14] *Id*.

[15] *Supra*, n.11 at 11.

[16] *See* WildEarth Guardians' August 3, 2026 public comment at 4 & n.13.

repeat offenders include EOG Resources, XTO Energy, Matador Production, Earthstone Operating, and Devon Energy Production.[17] Yet OCD continues to issue oil and gas extraction permits to these repeat offenders without follow-up oversight or enforcement actions to prevent continuous spilling of toxic fracking waste.

OCD has the authority to enforce the Oil and Gas Act and hold repeat offenders accountable for polluting New Mexico's air and water with their toxic fracking waste. In 2020, OCD regained authority to assess civil penalties for violations of the Oil and Gas Act following updates to its enforcement rules. NMSA § 1978, § 70-2-31(B). In 2021, the OCC adopted a rule that explicitly prohibited liquid oil and gas spills, including releases of oil, chemicals, and produced water. 19.15.5.10(D) NMAC. This regulatory update was intended to strengthen spill prevention and cleanup authority. At the time, the Energy, Minerals and Natural Resources Department (EMNRD) described the rule change as providing OCD with additional tools to prevent and remediate spills in the oil and gas field.[18]

Together, these actions restored and expanded the state's legal authority to penalize spill-related violations and require cleanup. Yet publicly available records show that enforcement has not been applied at a scale commensurate with the volume and frequency of reported spills. From 2021 to 2025, OCD issued only a small number of civil penalties, despite tens of thousands of reported spills and clear evidence that the same operators repeatedly rank among the top polluters quarter after quarter.[19]

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[17] *Supra*, n.15.
[18] *See* WildEarth Guardians' August 3, 2026 public comment at 5 & n.15.
[19] *See* WildEarth Guardians' August 3, 2026 public comment at 5 & n.16.WildEarth Guardians, Oil & Gas Waste Watch Reports, Q1–Q3 2025 analyzing publicly available spill data at https://wildearthguardians.org/climate-health/oil-gas-waste/; public information request and review of publicly available OCD enforcement actions and press releases (2021–2025); OCD compliance activity available at https://www.emnrd.nm.gov/ocd/compliance/. *See also*, *supra*, n.11, at 28.

Absent consistent enforcement, the spill problem is likely to intensify as wells age and extraction declines. State regulations specify cleanup requirements and the substances that must be addressed when contamination occurs.[20] Despite these requirements, cleanup obligations are not absolute. When an operator asserts that meeting cleanup standards is "technically infeasible" or would impose an "unreasonable burden," the company may petition the OCD for an alternative abatement standard. If approved, this allows reduced cleanup requirements and permits some contamination to remain in place, subject to conditions set by the Division.[21] These provisions create a regulatory pathway for pollution to persist in the environment, particularly where contamination is difficult to locate, expensive to remediate, or challenging to verify. Over time, the cumulative effect of incomplete cleanup, undocumented contaminants, and repeated spills compounds risks to land, water, air quality, and public health, while shifting long-term burdens away from polluters and onto taxpayers and communities.

OCD's primacy over the Class VI permitting process will only exacerbate the existing pollution and contamination problems caused by oil and gas extraction. During the rulemaking hearing, OCD reported that the Division currently has only 18 field inspectors to oversee tens of thousands of producing and non-producing oil and gas wells. 7/28/26 Tr. 409:7-10. Currently, two of these inspectors are assigned to inspect injection wells in southeastern New Mexico. *Id*. at 14-21. The remaining inspectors are responsible for all other field inspections spread across **all** of OCD's programs. *Id*. at 11-14. During the hearing, OCD also stated that in order to maintain the Class VI program, if needed it would shift some of these field inspectors to the Class VI program. *Id*. at 411:14-17. This will ensure that OCD is always chronically behind with well inspections to prevent spills and enforce spill clean-up requirements.

[20] NMSA 1978, § 74-6-4; 20.6.4 NMAC; 20.6.2 NMAC.
[21] 19.15.30.9 NMAC.

Before OCD rushes to take on responsibility for permanently storing industrial carbon waste underground through a new regulatory program, it needs to first demonstrate to New Mexicans and the Commission that it can effectively oversee the oil and gas waste system it already regulates. Unless and until OCD does this and reverses its failing track record on oversight and enforcement, the Commission cannot allow OCD to take on yet another regulatory program that it's unable to manage, oversee, and enforce.

CONCLUSION

OCD's status quo of lax regulations and inadequate enforcement of its current regulatory programs has allowed the oil and gas industry to run rampant, wreaking havoc on our land, water, and communities. With record emissions and daily toxic waste spills, OCD needs to prioritize strengthening oversight for the programs it currently administers before taking on primary responsibility for a new regulatory program. Doing so will ensure that oil and gas extraction doesn't sacrifice public health and clean water.

Respectfully submitted on this 9th day of October 2026,

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CERTIFICATE OF SERVICE

I certify I served a copy of the foregoing pleading via email to the following on October 9, 2026:

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