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STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

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IN THE MATTER OF PROPOSED  
AMENDMENTS TO 19.15.2, 19.15.5, Case No.  
19.15.8, 19.15.9, AND 19.15.25 24683  
NMAC  
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HEARING - DAY 2

DATE: Tuesday, October 21, 2025  
TIME: 9:00 a.m.  
BEFORE: Hearing Officer Felicia Orth  
LOCATION: Pecos Hall, Wendell Chino Building  
1220 South St. Francis Drive  
Santa Fe, NM 87505  
REPORTED BY: Ryan Auten  
JOB NO.: 7626616

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A P P E A R A N C E S

ON BEHALF OF APPLICANT WESTERN ENVIRONMENTAL LAW  
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A P P E A R A N C E S (Cont'd)  
ON BEHALF OF INDEPENDENT PETROLEUM ASSOCIATION OF NEW  
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A P P E A R A N C E S (Cont'd)

ON BEHALF OF NEW MEXICO STATE LAND OFFICE:

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1 A P P E A R A N C E S (Cont'd)

2 ALSO PRESENT:

3 Albert Chang, Oil Conservation Division Director  
4 (by videoconference)

5 William Ampomah, Commission Member (by  
6 videoconference)

7 Greg Bloom, Commission Member (by  
8 videoconference)

9 Sheila Apodaca, Oil Conservation Commission Clerk  
10 (by videoconference)

11 Allison Marks, State Land Office Witness (by  
12 videoconference)

13 Anthony Harris, Energy, Minerals, and Natural  
14 Resources Department (by videoconference)

15 Calder Ezzell, Independent Petroleum Association  
16 of New Mexico Witness (by videoconference)

17 Clayton Sporich, New Mexico Oil and Gas  
18 Association Witness (by videoconference)

19 Madai Corral, Energy, Minerals, and Natural  
20 Resources Department (by videoconference)

21 Dan Arthur, New Mexico Oil and Gas Association  
22 Witness (by videoconference)

23 Daniel Manus, Public Attendee (by  
24 videoconference)

25

A P P E A R A N C E S (Cont'd)

Loren Diede, Oil Conservation Division Witness  
(by videoconference)

Douglas Emerick, New Mexico Oil and Gas  
Association Witness (by videoconference)

Brandon Powell, Energy, Minerals, and Natural  
Resources Department (by videoconference)

Phillip Goetze, Energy, Minerals, and Natural  
Resources Department (by videoconference)

Brittany Hall, Energy, Minerals, and Natural  
Resources Department (by videoconference)

Andrea Felix, New Mexico Oil and Gas  
Association Witness (by videoconference)

Clay Arrington, Public Attendee (by  
videoconference)

Kyrie Buffa, Public Attendee (by videoconference)

Gregory Chakalian, Energy, Minerals, and Natural  
Resources Department (by videoconference)

Liz Kuehn, Public Attendee (by videoconference)

Gabrielle Gerholt, Public Attendee (by  
videoconference)

Nicholas Gilmore, Public Attendee (by  
videoconference)

Liliana Castillo, Public Attendee (by  
videoconference)

1                   A P P E A R A N C E S (Cont'd)

2           Maegan McGowen, Public Attendee (by  
3           videoconference)

4           Rachael Ketchledge, Public Attendee (by  
5           videoconference)

6           Gerasimos Razatos, Energy, Minerals, and Natural  
7           Resources Department (by videoconference)

8           Robert Arscott, Independent Petroleum Association  
9           of New Mexico Witness (by videoconference)

10          Rosa Romero, Oil Conservation Division Witness  
11          (by videoconference)

12          Benjamin Shelton, Public Attendee (by  
13          videoconference)

14          Cory Smith, Public Attendee (by videoconference)

15          Gabriel Wade, Public Attendee (by  
16          videoconference)

17          Tiffany Wallace, OXY USA, Inc. Witness (by  
18          videoconference)

19          Matt Huchmala, Public Employee Labor Relations  
20          Board (by videoconference)

21          Ryan Auten, Reporter (by videoconference)

22          Nicholas Maxwell, Sunshine Audit Inspector (by  
23          videoconference)

24          Mikah Thomas, Public Attendee (by  
25          videoconference)



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A P P E A R A N C E S (Cont'd)

Mike Hanagan, Independent Petroleum Association  
of New Mexico Witness (by videoconference)  
Philana Thompson, Public Attendee (by  
videoconference)  
Stefi Weisburd, Public Attendee (by  
videoconference)  
Mark Murphy, Public Attendee (by videoconference)  
Miya King-Flaherty, Sierra Club (by  
videoconference)  
William Grantham, Public Attendee (by  
videoconference)  
Lisa O'Grady, Interpreter (by videoconference)  
Amanda Sackett, Earthworks (by videoconference)  
Annie Cook, Public Attendee (by videoconference)  
Freddie Lopez, Public Attendee (by  
videoconference)  
Jim Townsend, Senator (by videoconference)  
Rod Montoya, House Representative (by  
videoconference)  
Paul Morrison, Public Attendee (by  
videoconference)  
Sherry Morrison, Public Attendee (by  
videoconference)

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A P P E A R A N C E S (Cont'd)

Walter Gerstle, Public Attendee (by  
videoconference)

Rebecca Haulenbeek, Public Attendee (by  
videoconference)

Marlene Perrotte, Interfaith Power & Light (by  
videoconference)

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I N D E X

WITNESSES:	DX	CX	RDX	RCX
DWAYNE PURVIS				
By Mr. Nykiel	347		469	
By Mr. Cloutier		373		
By Mr. Suazo		399		
By Mr. Rankin		417		
By Mr. Tremaine		457		
PETER MORGAN				
By Ms. M. O'Grady	523,			

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E X H I B I T S

NO.	DESCRIPTION	ID/EVD
Applicant:		
Exhibit 34	Total Decommissioning and Reclamation Cost of Upstream Oil and Gas Operations in New Mexico after Vertex 2021	408/
Exhibit 38	Cash Flow for Hypothetical Oil/Gas Project to Demonstrate the Economic Concepts of Payout/Holdback	357/
Exhibit 47	Binned Permian Basin Vertical Wells to Final Rates of Production	355/
Exhibit 52	Distribution of the Concentration of Marginal and Inactive Wells	390/
Exhibit 54	Economic Yardsticks for the End of Economic Life: Holdback and Its Adjuncts	411/
Exhibit 55	OCD Master Orphan Wells List	374/
Exhibit 77	Variance of Actual Downhole Plugging Costs to Estimates	373/
Exhibit 79	Cumulative Oil/Gas Production, 1993 to Present	480/

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E X H I B I T S (Cont'd)

NO.	DESCRIPTION	ID/EVD
Applicant:		
Exhibit 85	Prioritization Scheme and Application to Wells Orphaned by Ridgeway Arizona Oil	363/
Exhibit 86	Variance of Actual to Estimated Versus Time for Recently Plugged Orphan Wells	364/
Exhibit 87	Rig Count in Permian Basin of Texas and New Mexico from 2013 to Present	371/
Exhibit 88	Categories and Amounts of Financial Assurance for Well Plugging	564/

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P R O C E E D I N G S

THE HEARING OFFICER: We are on day two of the hearing and proposed amendments to the Oil and Conservation Commission regulations, docketed as 24683.

This is the second opportunity to offer non-technical public comment. If you're in the room or on the platform, just know a few things. We're making a transcript, so I will ask you to spell your first and last name, and the Commission rules require that all comment be offered under oath or affirmation. I will ask you to just offer oral comment once, no longer than three minutes. You may certainly submit whatever you'd like in writing if there is more to say than that.

I have on the sheet that Mandy Sackett wants to comment during this time. Hello.

Mr. Purvis, can I ask you to move?  
Good morning. Would you spell your first and last name, please? Make sure that's on. Say it again.

MS. SACKETT: A-M-A-N-D-A, Amanda;  
Sackett, S-A-C-K-E-T-T.

//  
//

1 WHEREUPON,

2 AMANDA SACKETT,

3 called as a witness and having been first duly sworn  
4 to tell the truth, the whole truth, and nothing but  
5 the truth, was examined and testified as follows:

6 THE HEARING OFFICER: Thank you. I'll  
7 start.

8 MS. SACKETT: Good morning,  
9 Commissioners. My name is Mandy Sackett. I'm the New  
10 Mexico lead campaigner and a certified optical gas  
11 imaging thermographer for Earthworks. I'm trained to  
12 use a special infrared camera that allows me to  
13 visualize pollutants like methane from oil and gas  
14 facilities.

15 As a new employee and thermographer for  
16 Earthworks, my first few trips have been really  
17 shocking. Last month I spent time in the declining  
18 field of the San Juan Basin. It's eye-opening to see  
19 what managing a declining field actually looks like.  
20 These wells are broadly poorly maintained, and the  
21 frequency with which I found hydrocarbon emissions at  
22 the sites that we visited was really alarming. Many  
23 of them were next door to schools and houses.

24 Over a few days, we visited 17 sites.  
25 Fifteen of those were low producing wells. We found

1 emissions due to possible non-compliance with air  
2 quality rules at ten of those sites, and I reported  
3 them to NMED. We commonly saw thief hatch  
4 malfunctions on tank batteries; improperly functioning  
5 flares; repair issues with fittings in sump areas.

6 I'll tell you about a few examples of  
7 what I saw. At one site near Counselor, I found three  
8 sources of emissions, of continuous emissions, at just  
9 one site: a vent stack on the battery, the sump area,  
10 and a vent stack on the horizontal separator. This  
11 site is just 900 feet from a K to 8 school that serves  
12 exclusively Navajo students.

13 At another site in Kirtland, I found  
14 two emissions from a tank battery. There was an  
15 apparent thief hatch malfunction on the tank battery,  
16 and it was continually leaking emissions about 300  
17 feet from a new neighborhood. According to OCD's  
18 database, that site had produced virtually no oil or  
19 gas since 2019.

20 The thing is, as these sites become  
21 less productive, they keep polluting but produce less  
22 revenue, which makes it harder to self-fund cleanup  
23 and maintenance or start saving for well plugging.  
24 What we see in the field is proof that our current  
25 system is not working as it should. We have a backlog



1 of wells leaking methane and toxic gases, and the cost  
2 of cleanup keeps falling on the public. Industry says  
3 the system is fine, but if it were, New Mexico  
4 wouldn't be sitting on thousands of inactive and  
5 orphaned wells and hundreds of millions of dollars in  
6 future plugging liability.

7 As experts will lay out, our current  
8 bonding framework is not risk-based. It treats every  
9 operator the same, whether they manage 3 wells or  
10 3,000, and it ignores the actual probability that a  
11 company -- a company will walk away. This rule  
12 doesn't target small operators. It targets risky  
13 behavior. Every operator, large or small, should obey  
14 the law and cover the costs of cleaning up their own  
15 mess. You can't say the system is working when you  
16 can literally see methane pouring into the sky like I  
17 can with my camera.

18 Please adopt this rule and protect  
19 taxpayers, public health, and the climate. Thank you.

20 THE HEARING OFFICER: Thank you very  
21 much, Ms. Sackett.

22 The other person who wanted to speak  
23 this morning, Freddie Lopez.

24 Mr. Lopez, are you in the room or on  
25 the platform?

1 All right. He may join us later.

2 Annie? Let's see. Did I see Annie  
3 Cook on the platform would like to offer comment? I  
4 think you can unmute yourself. There you are. You're  
5 not unmuted.

6 MS. COOK: How about now?

7 THE HEARING OFFICER: Oh, terrific.  
8 Thank you. Would you spell your first and last name,  
9 please?

10 MS. COOK: Yes. Annie, A-N-N-I-E;  
11 Cook, C-O-O-K.

12 THE HEARING OFFICER: Thank you.  
13 WHEREUPON,

14 ANNIE COOK,  
15 called as a witness and having been first duly sworn  
16 to tell the truth, the whole truth, and nothing but  
17 the truth, was examined and testified as follows:

18 THE HEARING OFFICER: Thank you very  
19 much. I'll start your time.

20 MS. COOK: My name is Annie Cook, and  
21 I've been a resident of New Mexico since 1971 when I  
22 moved here from Kansas. New Mexico's home to me, and  
23 I've lived here longer than I've lived anywhere else.  
24 Both of my sons were born here. My oldest graduated  
25 from UNM, as I did, and my youngest graduated from the

1 School of Mining and Technology in Socorro.

2 I am a master's prepared nurse who  
3 retired in 2013 from the VA in Albuquerque after  
4 30-plus years of service. My husband of 33 years and  
5 myself own a home on the west side of Albuquerque, and  
6 we're totally invested in the Land of Enchantment. As  
7 retirees, my husband and I love to camp and enjoy the  
8 beauty of the Land of Enchantment. Our love of nature  
9 makes us advocates for keeping the environment  
10 pristine so we and our fellow New Mexicans can enjoy  
11 the beauty of New Mexico for years to come.

12 Because of my commitment to the  
13 environment, I'm concerned about these regulations. I  
14 feel these regulations, especially increasing the  
15 assurance money required, will cripple the smaller  
16 producers of oil and gas, requiring them to cancel  
17 projects and possibly face bankruptcy. I know the  
18 regulations are meant to ensure that if a project is  
19 canceled, the site will be cleaned up.

20 But if a company is forced to cancel  
21 projects or declare bankruptcy due to the imposition  
22 of these onerous regulations, we'll create the very  
23 situation that we are trying to avoid. Abandoned  
24 projects will create a snowball effect, causing job  
25 losses in the communities where they're located, and

1 this will cause the loss of other businesses such as  
2 grocers, gas stations, and other retailers, and it's  
3 going to negatively affect employment and growth in  
4 our smaller communities.

5 Additionally, the funding from the oil  
6 and gas industry provides 51 percent of the state  
7 budget for New Mexico, so losses in this industry will  
8 affect our entire state and in particular our  
9 educational system, which relies heavily on money from  
10 the oil and gas industry.

11 So today, I'd like to urge you to  
12 consider my comments when you're voting on these  
13 regulations, and I want to thank you so much for  
14 letting me speak today.

15 THE HEARING OFFICER: Thank you very  
16 much, Ms. Cook.

17 I see an "FL." That might be  
18 Mr. Lopez.

19 MR. LOPEZ: Hi. Can you hear me?

20 THE HEARING OFFICER: Yes, I can.  
21 Thank you very much. Would you spell your first and  
22 last name, please?

23 MR. LOPEZ: My name is Freddie Lopez.  
24 My first name is spelled F-R-E-D-D-I-E, and my last  
25 name Lopez is spelled L-O-P-E-Z.

1 WHEREUPON,

2 FREDDIE LOPEZ,

3 called as a witness and having been first duly sworn  
4 to tell the truth, the whole truth, and nothing but  
5 the truth, was examined and testified as follows:

6 THE HEARING OFFICER: Thank you very  
7 much. I'll start your time.

8 MR. LOPEZ: Thank you. My name is  
9 Freddie Lopez. I am 24 years old, and I have lived in  
10 New Mexico all my life. Raised here in Santa Fe. My  
11 dad is a tinsmith with a prestigious art gallery in  
12 downtown Santa Fe, and my mom is a stay-at-home mom.  
13 I was homeschooled right up until community college,  
14 and I graduated from the Santa Fe Community College  
15 with a high school equivalency as well as an  
16 associate's degree in business administration.

17 New Mexico is my home, Santa Fe is my  
18 home, and this is a place that in the future when it's  
19 my time to go, I'll be buried here and my kids will be  
20 buried here. I know how important the oil and gas  
21 industry is to our state. It is vital and essential  
22 for our economy as it's 51 percent responsible for the  
23 fruition of our economy.

24 And as a proud alumni of the Santa Fe  
25 Community College, I have to say education opens the

1 door and brings up many opportunities for all -- for  
2 all New Mexicans, especially folks in my generation,  
3 and our schools are in trouble. We are ranked 50th  
4 and 51st nationwide, and the oil and gas industry is  
5 responsible for the funding of all of our educational  
6 institutions. It is very important.

7 And to address the issues we have, we  
8 have to act now. But if we implement these rules and  
9 regulations in place, not only will it harm small oil  
10 and gas producers on projects, but also it will harm  
11 our children and their future because if our schools  
12 are not funded, how can we address the issues that we  
13 are facing in our education institutions?

14 So I urge you to please take my voice  
15 into consideration when you vote on these rules and  
16 regulations. If you believe in our children's future,  
17 if you believe in New Mexico's future, I kindly urge  
18 you to consider my voice when you make your final vote  
19 on these rules and regulations. Thank you.

20 THE HEARING OFFICER: Thank you,  
21 Mr. Lopez.

22 I see another hand, "MP." By the way,  
23 if you have dialed in using your phone, the way to  
24 raise your hand on the platform is to press star 5.

25 Oh, it's Marlene Perrotte. Good

1 morning. Can you unmute yourself? Sister? Sister  
2 Marlene?

3 COMMISSIONER BLOOM: I think we heard  
4 yesterday to use -- excuse me -- use Control, Shift, M  
5 to unmute, if you're having trouble.

6 THE HEARING OFFICER: Thank you,  
7 Commissioner Bloom.

8 Sister Marlene, it looks like you're  
9 unmuted.

10 MS. PERROTTE: Oh, can you hear me?

11 THE HEARING OFFICER: Yes. Now we can.  
12 Good morning.

13 MS. PERROTTE: Oh, thank you very much.

14 THE HEARING OFFICER: Would you spell  
15 your first and last name, please?

16 MS. PERROTTE: M-A-R-L-E-N-E, Marlene;  
17 Perrotte, P-E-R-R-O-T-T-E.

18 THE HEARING OFFICER: Thank you.  
19 WHEREUPON,

20 MARLENE PERROTTE,  
21 called as a witness and having been first duly sworn  
22 to tell the truth, the whole truth, and nothing but  
23 the truth, was examined and testified as follows:

24 THE HEARING OFFICER: I'll start your  
25 time.

1 MS. PERROTTE: Okay. Good morning  
2 Madam -- Madam Chairman and members of the New Mexico  
3 Oil Conservancy -- Conservation Commission. I am  
4 Marlene Perrotte, a Catholic Sisters of Mercy; a  
5 member of New Mexico El Paso Interfaith Power & Light  
6 and of the Partnership for Earth Spirituality.

7 As a woman of faith, I would offer the  
8 moral imperatives of the oil and gas corporations,  
9 that they must be held responsible for posting  
10 realistic bonds before they drill. Caring for and  
11 protecting Holy Mother Earth's community is a sacred  
12 trust and an ethical imperative. Right now, oil and  
13 gas corporations in New Mexico can drill as many wells  
14 as they want, yet put up a tiny fraction of the money  
15 needed to clean them up.

16 I personally have visited the Permian  
17 Basin many, many times and experienced abandoned  
18 wells, leaking oil pipes, leaking toxins such as  
19 methane, et cetera. Letting wells leak to protect  
20 profits today puts New Mexicans' health at risk. We  
21 can't afford delay in cleanup. It is our moral  
22 responsibility to ensure that corporations who drill  
23 these wells must clean them up.

24 It is an outrage that these  
25 corporations take their profits back to Houston and



1 Wall Street and leave us New Mexicans with the mess of  
2 cleanup. The oil and gas corporation should cover the  
3 full cost of cleaning up after itself, not New  
4 Mexicans' families. We need modern rules to match the  
5 reality of modern drilling. The bonding system is  
6 vastly inadequate, covering only 2 to 10 percent of  
7 total liability.

8 I support strong bonding rules to  
9 protect New Mexico's water, land, and air; her health  
10 and future. We need a responsible energy policy.  
11 Better practices must include full accountability. We  
12 cannot afford underfunded risks. It's time to fix the  
13 rules so the corporations that drill are the ones who  
14 must clean up. Thank you so very much for this  
15 opportunity.

16 THE HEARING OFFICER: Thank you,  
17 Sister.

18 Is there anyone else on the platform  
19 who would like to offer public comment during this  
20 public comment session? Our next public comment  
21 session is at 4 p.m. today. That comment session is  
22 one of several during which we will have an  
23 interpreter between Spanish and English.

24 Anyone else for this morning? All  
25 right. Thank you. We'll return then to the technical

1 case.

2 Mr. Cloutier, I think you said you had  
3 a preliminary matter to bring up?

4 MR. CLOUTIER: Yes, Madam Hearing  
5 Officer.

6 MR. MAXWELL: Your Honor, this is  
7 Mr. Maxwell on the platform. I can't hear him.

8 MR. CLOUTIER: I apologize,  
9 Mr. Maxwell.

10 I was just saying that we're going  
11 straight to surrebuttal with the second witness, which  
12 we're not objecting to. We thought we were going to  
13 be discussing that more before we did it. As long as  
14 we're doing that with the technical witnesses, sauce  
15 for the goose; sauce for the gander. No problem with  
16 it.

17 I think Mr. Suazo and I probably have  
18 to reevaluate witness times and make sure we're okay  
19 with it. I would not anticipate for my purposes that  
20 if I'm adding any time, it would be more than 10 or 15  
21 minutes, but I just wanted to bring that up and get  
22 your thoughts, please, Madam Hearing Officer.

23 THE HEARING OFFICER: Yes. You  
24 probably noticed yesterday what Ms. Fox did with the  
25 witness, which was to be very specific in her

1 identification of the precise rebuttal testimony the  
2 witness was surrebutting.

3 MR. CLOUTIER: She did.

4 THE HEARING OFFICER: So long as you're  
5 doing that.

6 MR. CLOUTIER: That's fine. We'll be  
7 happy to do that.

8 THE HEARING OFFICER: All right. Thank  
9 you.

10 Ms. Fox?

11 MS. FOX: Yeah. No objection. The  
12 hearing scheduling order provided for having direct  
13 rebuttal and surr all in one -- all in sequence, so  
14 that was what was contemplated in the order.

15 THE HEARING OFFICER: Thank you.

16 Anything else before we return to  
17 Mr. Purvis? No? All right. Thank you so much.

18 Let's see, are you taking yourself this  
19 morning questioning, Mr. Cloutier? Oh, I'm sorry. We  
20 need to finish his surrebuttal first. That's right.

21 Thank you. Go ahead.

22 MR. NYKIEL: Thank you, Madam Hearing  
23 Officer.

24 THE HEARING OFFICER: Yeah.

25 //

1 WHEREUPON,

2 DWAYNE PURVIS,

3 called as a witness and having been previously sworn  
4 to tell the truth, the whole truth, and nothing but  
5 the truth, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. NYKIEL:

8 MR. NYKIEL: Good morning, Mr. Purvis.  
9 We'll continue with your surrebuttal testimony. What  
10 are your high level observations of Industry's  
11 rebuttal testimony?

12 MR. PURVIS: Thank you for the  
13 question. And there are three primary high level  
14 observations of what's there and one about what is  
15 not. In the rebuttal testimony offered by other  
16 witnesses about my testimony, there were objections to  
17 the underlying data used in my work, objections to the  
18 value of the -- the notion of a holdback, and  
19 objections to perceived disrespect and bias. There  
20 were not, however, substantive objections to my  
21 calculations or the -- the conclusions from those --  
22 the conclusions that are built on those  
23 quantifications.

24 Now, there were a number of other  
25 arguments raised in this rebuttal testimony, which,

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1 like the direct testimony of other witnesses, I found  
2 spurious and unhelpful, but I've not addressed those  
3 here. So to the extent I've not addressed an issue  
4 raised in rebuttal testimony, it should not be assumed  
5 that I agree it's valid.

6 MR. NYKIEL: NMOGA witnesses Ms. Felix  
7 and Mr. Arthur claim in their rebuttal testimony on  
8 pages 8 and 9 respectively that you advised the New  
9 Mexico Legislative Finance Committee during the  
10 creation of its report "Policy Spotlight: Orphaned  
11 Wells." Did you advise the LFC on its work, and how  
12 did their work affect your own?

13 MR. PURVIS: I did not advise the LFC  
14 on their work, and I did not rely on their conclusions  
15 in the formation of my own. So there is no circular  
16 reference where I'm citing myself indirectly.

17 MR. NYKIEL: NMOGA witnesses Ms. Felix,  
18 Mr. Arthur, and Mr. McGowen opine in their rebuttal  
19 testimony at pages 18 through 19, 17 through 20, and 3  
20 respectively that the OCD's master orphaned wells  
21 spreadsheet is foundational to your characterization  
22 of the issue of with orphaned wells and that it  
23 exaggerates the scope of the issue of orphaned wells.  
24 What is your response?

25 MR. PURVIS: Of the 29 exhibits I

1 prepared, most of which are quantitative, the master  
2 orphan wells spreadsheet or MOWS affects three in  
3 part, and in none of those three is the master orphan  
4 wells spreadsheet used to justify the extent of the  
5 orphaned well issue.

6 If I may share my screen now, this  
7 slide and the three that follow show all of the  
8 exhibits I prepared in my testimony. The rebuttal  
9 testimony exhibits are outlined as the first and the  
10 second row. On this page where I'm setting the stage  
11 of the large scale issue, the master orphan wells  
12 spreadsheet does provide the sole source of  
13 information for the histogram on the first part of  
14 Line 2.

15 The orphaned wells spreadsheet affects  
16 one column of the two tables in the lower right, in  
17 the exhibit in the lower right, and on the third page  
18 back, the master orphan wells spreadsheet is part of  
19 the evidence of the nature of the companies that are  
20 orphaned. So when I talk, however, about the nature  
21 of the orphaned well issue, it's this group of slides,  
22 where I quantify the application of the definition of  
23 marginal wells against empirical data on economic  
24 limits.

25 MR. NYKIEL: NMOGA witness Mr. McGowen

1 argues in his rebuttal testimony at pages 23 through  
2 24 that the Vertex report discussed in your testimony  
3 is speculative and non-reproducible because  
4 stakeholders cannot audit it. What is your response?

5 MR. PURVIS: So Mr. -- sorry. The  
6 Vertex report, which was just published in March of  
7 2021, affects only one graphic. That's the upper  
8 right, the second and the first line here, used to set  
9 context. I was able to obtain the report from two  
10 sources, one of which being the company itself and  
11 I -- the company, when they delivered the report to  
12 me, told me they had also given a report to IPANM  
13 expert Dr. Arscott, but it's a matter of public  
14 record.

15 The report runs 91 pages, 31 tables in  
16 the middle, in the context of the report, four  
17 appendices. It is a comprehensive, quantitative,  
18 detailed analysis. Now, the -- the idea that it's  
19 speculative is misplaced. It is a Class 5 category of  
20 cost estimate.

21 Now, there is a formal taxonomy for the  
22 quantification or the classification rather of cost  
23 estimates, and Class 5 is the most broad. It's meant  
24 for strategic purposes, which is exactly the kind of  
25 application we have here. It may be imprecise, but

1       there's no evidence that it is inaccurate.

2                       MR. NYKIEL:   NMOGA witness Mr. McGowen  
3       claims in his rebuttal testimony at pages 21 through  
4       22 that WellDatabase, the data source you used to  
5       provide analysis of Applicants' proposed rules, is a  
6       less reliable and less widely adopted data source in  
7       the industry and therefore should be independently  
8       validated and compared to Mr. McGowen's preferred data  
9       source.   What is your response?

10                      MR. PURVIS:   There are about eight  
11       companies that offer the same fundamental service with  
12       the same fundamental product.   They obtain data from  
13       the regulators in each state in digital form, and they  
14       repackage it in a more accessible manner to  
15       subscribers.

16                      Now, there are three large companies  
17       that offer enterprise level solutions.   One of those  
18       he mentions, INVARIS.   The other he mentions is IHS.  
19       That company no longer exists.   It's now called S&P  
20       Global.   But S&P Global will not allow their data to  
21       be used in any way in public.   The variety of  
22       competitors in this market have different offerings  
23       depending on the scope of data that they have  
24       collected and the degree to which they add additional  
25       analysis of their own.



1           In this case, WellDatabase is a mid-  
2   tier offering. It uses the same core data downloaded  
3   digitally from the Oklahoma Corporation Commission in  
4   this -- corporation -- Oklahoma Conservation Division  
5   in this case, and that core data is what I have relied  
6   upon.

7           MR. NYKIEL: Mr. Purvis, you intended  
8   to say New Mexico?

9           MR. PURVIS: Yep. Yes. I certainly  
10  did not mean Oklahoma. I'm sorry. What's more, I --  
11  I used -- that was only part of the data I used. I  
12  did access the OCD's application program interface  
13  directly to get information directly from the state,  
14  and I quality controlled information as I used it.  
15  It -- WellDatabase is a widely accepted and used tool.  
16  This -- I find perfectly acceptable for this, for the  
17  way I've used it.

18          MR. NYKIEL: NMOGA witness Mr. McGowen  
19  claims in his rebuttal testimony at page 21 that your  
20  manual corrections to the data introduced substantial  
21  subjectivity into the data sets. What is your  
22  response?

23          MR. PURVIS: I give an example, the  
24  example in my testimony, that operators had sometimes  
25  reported 36 days of operations in a month. It's hard

1 to imagine that there's any way I could correct 36  
2 days in a month and make it less accurate. But in  
3 fact, I can tell you that when I made the corrections,  
4 there were very little corrections that needed to be  
5 made, and if memory serves, the change was a reduction  
6 in the number of marginal wells affected by about a  
7 10th of a percent. It's a trivial issue.

8 MR. NYKIEL: To which of your exhibits  
9 did rebuttal testimony take issue with your  
10 calculations or conclusions?

11 MR. PURVIS: On this slide of -- or in  
12 these slides, I've arranged my -- my testimony in  
13 order of key points. The -- the first points are that  
14 it's a very large issue, decommissioning is, and it's  
15 much larger than just downhole plugging. No  
16 disagreement from them. The second line demonstrates  
17 that there's a high side contingency element to the  
18 cost of decommissioning. All agree on that. We all  
19 agree that costs have increased and they continue  
20 to -- to increase.

21 Some disagreement on the application of  
22 holdback, but no disagreement that there are about  
23 63,000 wells in the state currently as we continue to  
24 drill that will need to be plugged. No disagreement  
25 that production is, except for horizontal wells, well

1 past its peak. No disagreement that the majority of  
2 wells are stripper. No disagreement that -- that the  
3 definitions apply to a small fraction of wells that  
4 are actually marginal. No doubt that the definitions  
5 are conservative by comparison.

6 No questions about the distribution of  
7 the -- the entities in the industry. No opposition  
8 that there are three separate clusters, one of  
9 companies, one of liabilities, and one of production.  
10 No disagreement that the number of wells has  
11 decreased, but of course that came out in rebuttal.  
12 Wouldn't necessarily know that yet.

13 So the -- the key, the -- there is a  
14 disagreement in a qualitative sense about the  
15 significance of the -- call it the 90 -- bottom 90  
16 percent of operating companies, but in term -- but in  
17 terms of quantification and themes, no -- no  
18 substantive disagreement.

19 MR. NYKIEL: NMOGA witnesses Mr. Arthur  
20 and Mr. McGowen and IPANM witness Mr. Winchester  
21 disagree in their rebuttal testimony at pages 20  
22 through 21, 28, and 16 through 17 respectively with  
23 your characterization of marginal wells. When you  
24 talk about marginal wells as categorized by  
25 Applicants' proposed rules, do you mean the same

1 thing?

2 MR. PURVIS: No, we don't. I do not  
3 observe any location in the testimony of other  
4 opposing experts that quantify the number of wells  
5 under the definition of marginal as proposed.  
6 Instead, the discussion is about the marginal wells  
7 under the generic meaning of that term.

8 I'm showing now my Exhibit 47 with some  
9 annotations on top of it. This -- these are the  
10 22,000 vertical wells in the Permian Basin. The color  
11 coding indicates whether or not they are defined as  
12 marginal. The dark blue is defined as marginal. The  
13 purple do not qualify as marginal, but will need some  
14 sort of address. The red lines indicate the actual  
15 historical economic limit of production.

16 (Applicant Exhibit 47 was marked for  
17 identification.)

18 But what we see is that there are a  
19 large number of wells, many more wells, that are  
20 within the window of the end of their economic life,  
21 are producing at low rates and low profit margins,  
22 that do not qualify for the additional financial  
23 assurance and therefore -- and are not defined  
24 marginal.

25 So to the extent that other experts

1 refer to marginal wells in the generic sense, they're  
2 talking about a much larger number of wells than are  
3 affected by the defined term of marginal.

4 MR. NYKIEL: NMOGA witness Mr. Arthur  
5 disagrees in his rebuttal testimony at pages 20  
6 through 21 with your testimony that there is a  
7 likelihood that marginal wells present a greater risk  
8 of orphaning. What is your response?

9 MR. PURVIS: My testimony is not that  
10 all marginal wells will be orphaned. My point is that  
11 they are barely making any money by definition, and  
12 the defined marginal are making even less money. And  
13 therefore they contribute -- they represent more  
14 liability than asset on an average and increase the  
15 risk to the portfolio as a whole. Not that every one  
16 is an orphan, not that every well past holdback will  
17 be orphaned, but that the risk increases.

18 MR. NYKIEL: NMOGA witness Mr. Arthur  
19 argues in his rebuttal testimony at pages 86 through  
20 87 that your testimony conflates inactive wells with  
21 problem wells. What is your response?

22 MR. PURVIS: I did -- don't believe I  
23 said, and I certainly did not mean to imply, that all  
24 inactive wells are problem wells. That would not be  
25 an accurate thing to say. Instead what I tried to say

1 is that inactive wells have a higher incidence of  
2 difficulties, and the longer a well stands idle, the  
3 more likely it is to suffer some sort of mechanical  
4 deterioration and failure. My point is not that as he  
5 seems to think that all inactive wells are problem  
6 wells. My point is that the average risk increases.

7 MR. NYKIEL: IPANM witness Mr. Arscott  
8 and NMOGA witness Mr. McGowen claim in their rebuttal  
9 testimony at pages 1 through 4 and 25 through 28  
10 respectively that the holdback concept is not a  
11 reliable measure of the value of oil and gas wells or  
12 the likelihood that they will become orphaned. What  
13 is your response?

14 MR. PURVIS: They -- they do argue that  
15 holdback is not a measure of fair market value. Look,  
16 I'm looking now at -- showing a demonstrative of my  
17 Applicants' Exhibit 38, and as I intended to say  
18 yesterday, if a -- a property between -- at the point  
19 of holdback forward, the operator's trading dollars.  
20 If he makes a purchase, then the purchase price is  
21 lost in a dollar to dollar basis.

22 (Applicant Exhibit 38 was marked for  
23 identification.)

24 But I'm not talking about this as a  
25 concept for what you should pay. There is no

1 disagreement that profits are high in the beginning;  
2 low at the end. No disagreement that when it stops  
3 producing, it's left as a liability except for some  
4 contingent possibility of some improvement. There's  
5 no disagreement that the point -- the point of  
6 holdback as defined does exist. There is a point in  
7 time when the cash flow undiscounted is zero and at  
8 the same time that present value is positive.

9           The argument goes that it's not a fair  
10 market value, and indeed it's not offered. Fair  
11 market holdback is not offered as an alternative fair  
12 market value, and it's not offered as a prescribed  
13 strategy. And what's more, it's not used in the rules  
14 in any way. Instead it is offered as a yardstick to  
15 characterize the -- the contours of the future cash  
16 flow. It's offered as a planning tool, a baseline  
17 from which to find -- to figure out how you will  
18 accomplish what is required.

19           If I tell you that -- by analogy, if I  
20 tell you that my cousin as a senior in high school had  
21 a 19-inch neck, you'd know he was a big boy, but you  
22 wouldn't know whether he's fat or strong. If I told  
23 you that he had a 36-inch waist and a 54-inch chest,  
24 then you would know that he is strong. That second  
25 yardstick provides a significant measure of the

1 character, the contours of -- and then it that gives  
2 us a basis about what to expect.

3 You would not be surprised to know that  
4 my cousin was the strongest high school senior in the  
5 state of Texas; that he was drafted to play for  
6 Nebraska the year after they won the national  
7 championship. Holdback is a useful planning tool.

8 MR. NYKIEL: NMOGA witness Mr. McGowen  
9 argues in his rebuttal testimony at page 25 that the  
10 holdback concept is not an accepted industry practice.  
11 What is your response?

12 MR. PURVIS: So holdback is in fact a  
13 variation of a well-established economic yardstick  
14 called return on investment and a variation of the  
15 most basic economic yardstick called payout. But  
16 defined and named as such, holdback is only a couple  
17 of years old, and I am the one who assigned that name  
18 and pointed out its significance.

19 It is -- it is under discussion, has  
20 been under discussion, with -- within the relevant  
21 professional societies as something to be officially  
22 endorsed in the current revisions of the Petroleum --  
23 PRMS. But in the meantime, the Society of Petroleum  
24 Engineers has published it in their Journal of  
25 Petroleum Technology.



1 I've spoken to dozens of organizations,  
2 including the -- an invitation to the National  
3 Stripper Well Association, and last year the society  
4 curated -- chose the topic for presentation in their  
5 distinguished lecture tour where we presented it in  
6 about half a dozen countries around the world.

7 MR. NYKIEL: IPANM witnesses  
8 Mr. Cantrell and Mr. Hanagan refer in their rebuttal  
9 testimony at pages 8 and 5 respectively to the  
10 following statement in your direct testimony,  
11 Applicants' Exhibit 30, at page 44, where you state  
12 "At this point, I cannot say precisely how many  
13 companies are not prepared for the increased  
14 accountability, how each will exercise the range of  
15 options available to them, or how many will go out of  
16 business, but I can say that the companies at risk are  
17 the ones whose loss will be missed the least."

18 What is your response? And I  
19 apologize. IPANM witnesses refer to that statement  
20 and claim that you have a bias and contempt for small  
21 operators. What is your response?

22 MR. PURVIS: I am so sorry that my  
23 testimony gave offense. The statement is harsh to the  
24 frank -- to the point of being harsh, and I'm sorry  
25 for that. Let me try again. Statistically speaking,

1 the small operators contribute a small amount to the  
2 state as a whole, and my evidence substantiates those  
3 figures.

4 MR. NYKIEL: IPANM witness  
5 Mr. Winchester and NMOGA witness Mr. McGowen claim in  
6 their rebuttal testimony at pages 16 and 13  
7 respectively that your testimony shows that the aim of  
8 this rulemaking is to drive small operators out of  
9 business more than to provide financial assurances to  
10 New Mexico taxpayers. What is your response?

11 MR. PURVIS: So I -- I can't testify as  
12 to motivations of individuals who crafted the  
13 proposal. What I can say is I feel no bias towards  
14 small operators any more than I feel biased towards  
15 large operators. What I'm concerned about is, as  
16 other people have testified, operators who solely the  
17 name of the industry and do not bear their legal  
18 longstanding, well-known responsibilities. I -- I  
19 don't have patience for that, but I'm not aware of any  
20 bias.

21 MR. NYKIEL: IPANM witness Mr. Hanagan  
22 identified in his rebuttal testimony at page 5 a quote  
23 from your company's webpage that states, in part "I  
24 believe the world needs less oil and gas, not more."  
25 Mr. Hanagan claims that based on this quote, it proves

1 your perspective is fundamentally at odds with the  
2 purpose of the OCC and the Oil and Gas Act. What is  
3 your response?

4 MR. PURVIS: I have stated on my  
5 website that our firm is committed to a net zero  
6 policy, based on my personal understanding and  
7 conviction about the social cost of burning  
8 hydrocarbons. That same statement goes on to say that  
9 I will continue to work with operators to maximize and  
10 optimize ongoing existing sources of supply, which is  
11 the -- the question here. The question before the  
12 Commission is not about the social cost of carbon. It  
13 is about how to deal with existing sources of supply.

14 MR. NYKIEL: NMOGA witnesses  
15 Mr. McGowen and Mr. Arthur claim in their rebuttal  
16 testimony at pages 22 and 73 respectively that your  
17 testimony establishing the average cost for OCD to  
18 decommission a well in New Mexico is wrong because  
19 it's not based on randomized nor representative data.  
20 Did you prepare an analysis of their claim?

21 MR. PURVIS: Yes.

22 MR. NYKIEL: Okay. I'm going to pass  
23 out -- Ms. Fox will pass out -- and would you please  
24 scroll to the relevant slide in your presentation  
25 that's been marked Applicants' Exhibit 85. And I'll

1 note that Applicants uploaded this to the rulemaking  
2 shared file folder on October 15th.

3 (Applicant Exhibit 85 was marked for  
4 identification.)

5 MR. PURVIS: While she's passing that  
6 out, let me first address the idea that randomized is  
7 not the proper measure of representativeness.  
8 Orphaning and well costs are not random. The question  
9 is one of representativeness.

10 And I see two dimensions to question  
11 the representativeness. Now, the first is the basins  
12 from which the sample comes. As I said in my direct,  
13 71 percent of the wells covered by the new rules exist  
14 in the Permian Basin. The -- the OCD's experience  
15 covers -- includes about 90 percent wells from the  
16 Permian, so there -- and about 20 percent from -- from  
17 the San Juan Basin.

18 But my -- my rebuttal testimony shows  
19 that by two separate measures, the difference in a  
20 median central expected costs in the San Juan and the  
21 Permian Basin differ only by 15 or 20 percent. So to  
22 the extent that the sample is not representative, it's  
23 unrepresented by 15 or 20 percent, and that difference  
24 is in -- within that 15 or 20 percent is a difference  
25 of 15 or 20 percent. By contrast, this is by far the

1 best available data to make the rule.

2 BY MR. NYKIEL:

3 MR. NYKIEL: Mr. Purvis, did you also  
4 prepare an additional analysis to address Mr. McGowen  
5 and Mr. Arthur's rebuttal testimony at pages 22 and 73  
6 respectively where they disagree with your use of the  
7 Division's average cost to decommission a well?

8 MR. PURVIS: Yes. I did write in my  
9 direct testimony that --

10 MR. NYKIEL: Pardon me, Mr. Purvis. I  
11 just want to identify that. Would you please scroll  
12 to the relevant slide?

13 And what we passed out includes  
14 Applicants' Exhibit 86, which Applicants also uploaded  
15 to the rulemaking shared file folder on October 15th.

16 (Applicant Exhibit 86 was marked for  
17 identification.)

18 BY MR. NYKIEL:

19 MR. NYKIEL: And is this your analysis?

20 MR. PURVIS: Well, first let me talk  
21 about 85 because I forgot to do that a minute ago.

22 MR. NYKIEL: Please.

23 MR. PURVIS: In my direct testimony, I  
24 conceded that the selection of wells chosen to be  
25 plugged by the OCC -- by the OCD may be biased towards

1 wells with a higher contingency. I said may, not was,  
2 because I thought that was a possibility. And  
3 surrebuttal, I have examined that question with two  
4 analyses. The first is here.

5 The top part of Exhibit 85 summarizes  
6 what the OCD has said publicly about their  
7 prioritization scheme. It involves two layers of  
8 prioritization: first, one on risk; and second, one  
9 on efficiency. The bullet list identify many of the  
10 30 variables that go into the priority.

11 Only a few of those pertain directly to  
12 the cost of decommissioning -- the cost of downhole  
13 plugging, rather. Instead, that's prioritized on  
14 things like proximity to occupied structures,  
15 proximity to agricultural areas, proximity to water  
16 supply wells, and proximity to threatened or  
17 endangered species, which have no bearing on downhole  
18 costs. So between the nature of the priority scheme  
19 and the overlay of efficiency, we would not  
20 necessarily expect to see higher cost wells  
21 prioritized.

22 Now, that theory can be tested with one  
23 set of data that exists in the master orphan wells  
24 spreadsheet, and that's what the bar chart shows. For  
25 the nearly 300 wells orphaned by Ridgeway, Arizona,

1 the spreadsheet shows the priority number assigned by  
2 the OCD. The lower the number on the left represents  
3 lower priority, and the higher number on the right  
4 represents higher priority.

5 The gray -- all of the bars represent  
6 the full population of wells to which a priority is  
7 assigned, and the average across 300 wells is a  
8 priority score of 35.8. We call it 36. The wells or  
9 the subset that are marked in shades of blue represent  
10 the first round of wells which were plugged by the  
11 OCD, and we see that the average priority score was  
12 33.74. There's practically no difference between the  
13 average of the full population and the initial wells,  
14 the first priority wells, plugged by the Commission.

15 Interestingly, we also see in this  
16 sample an average estimated cost of \$156,000, an  
17 actual cost of \$225,000, and an average overrun of  
18 \$44,000. All of that and -- which are consistent with  
19 the averages that are -- we've seen in other places.  
20 So this one example suggests that there is no bias by  
21 the prioritization scheme.

22 You asked me also about Exhibit 86?

23 MR. NYKIEL: And before we turn there,  
24 just to clarify, would you repeat the average overrun?  
25 I think you mentioned it was 44,000, but --

1 MR. PURVIS: I should have taken a  
2 Benadryl last night. The average overrun was 44  
3 percent.

4 MR. NYKIEL: Okay. Thanks.

5 And yes. We had passed out and shared  
6 Applicants' Exhibit 86, which had been uploaded on  
7 October 15th, the shared file folder.

8 BY MR. NYKIEL:

9 MR. NYKIEL: Is that your analysis?

10 MR. PURVIS: Yes. This is another  
11 analysis I prepared to test whether or not the  
12 prioritization scheme of the OCD creates a bias  
13 towards high contingency wells. The bottom line is  
14 no. This represents that the wells plugged by the OCD  
15 for which we have both by well estimates beforehand  
16 and actual costs after over about the last three  
17 years.

18 Now, during those three years, the cost  
19 itself, the baseline cost, was increasing rapidly, so  
20 I can't compare on the basis of cost alone. Instead  
21 I've looked at the overrun. The solid black dashed  
22 line represents no overrun. The costs came in at the  
23 end of the day exactly as predicted, as estimated.  
24 The red dashed line represents an overrun of a hundred  
25 percent, double.



1           Now, the Ridgeway example is shown in a  
2   hot pink on the right, and what we see is that the --  
3   the very first wells that they plugged did have higher  
4   overruns, but the majority of the wells were  
5   consistent with the overall theme, the overall  
6   average. Similarly, Energy Acumen, shown in blue just  
7   to the left, represents the first wells in the  
8   priority scheme for decommissioning orphaned wells.

9           I -- I find the name ironic for a  
10   company that orphaned their wells. But they -- they  
11   do see the very first well is a -- is a high side, an  
12   overrun, and there is one or two other wells in the --  
13   in the first batch. But most of the wells in that  
14   first batch are average, and the highest overrun that  
15   exists for that operator's orphaned wells is the last  
16   one that's plugged.

17           In the case of M&M, Biya, Lease Holder,  
18   and Flare, small operators in all those -- the cases  
19   you see there, all their first wells that were chosen  
20   to be plugged. Again, we don't see a high contingency  
21   pervasively at the front. Blue Sky is a package of  
22   wells done about the middle of the program of  
23   decommissioning all their wells, and we do see some  
24   high overruns there in the middle.

25           In the case of Canyon, this batch of

1 wells you see here represents towards the tail end of  
2 the overall program of plugging their wells, and what  
3 we see is that the highest overrun among the Canyon  
4 wells was the last.

5 So this set of samples shows -- it does  
6 not show a pattern of high contingency overrun, high  
7 overruns, in the early wells. And those two are the  
8 best pieces of evidence that I have to test the  
9 theory, and both indicate a lack of bias towards high  
10 contingency.

11 MR. NYKIEL: IPANM witness Mr. Hanagan  
12 asserts in his rebuttal testimony at page 4 that  
13 "Nothing in Mr. Purvis's Exhibit 35 reflects drilling  
14 nor does well count or horizontal well percentage  
15 correspond to company size." What is your response?

16 MR. PURVIS: He has not correctly read  
17 my exhibits. I apologize. Scoot back here. In my  
18 Exhibit 35 as well as 36, 37, and a rebuttal exhibit,  
19 I look at multiple measures. But 35, 36, and 37 all  
20 include a measure of new production, which is  
21 described specifically as new drawing.

22 MR. NYKIEL: IPANM witnesses  
23 Mr. Cantrell and Mr. Hanagan argue in their rebuttal  
24 testimony at pages 8 and 5 respectively that your  
25 testimony about the impact of Applicants' proposed

1 rules is limited to analysis of well count and  
2 production levels and misses the indirect economic  
3 effects of small operators. What is your response?

4 MR. PURVIS: So any sort of economic  
5 activity does have a direct impact, an indirect  
6 impact, and an imputed impact, where the echoes of the  
7 economic activity are circulating through the economy.  
8 The economic impact of oil and gas operations of all  
9 sizes is in direct proportion to the revenue, which is  
10 the production, and in direct proportion to the costs  
11 as measured by number of wells.

12 So to the extent that -- so I have not  
13 measured economic impact directly. I have measured  
14 the primary drivers of economic impact, and I've  
15 measured those for both large and medium and  
16 medium-small and small operators.

17 MR. NYKIEL: More specifically, IPANM  
18 witness Mr. Hanagan asserts in his rebuttal testimony  
19 at page 4 that "Mr. Purvis ignores the wells drilled  
20 by small operators like Manzano and Armstrong Energy.  
21 In fact, the Permian Basin remains the nationwide  
22 leader in vertical well rig counts, with 80 percent of  
23 vertical rigs nationwide in 2024 and 50 percent of  
24 vertical rigs in 2025 so far.

25 "Discounting the development of

1 potential" -- I'm sorry -- "discounting the  
2 development potential by smaller operators drilling  
3 vertical wells ignores a large percentage of the  
4 population of operators in New Mexico."

5 Did you prepare an analysis of  
6 Mr. Hanagan's assertion?

7 MR. PURVIS: Yes, I did.

8 MR. NYKIEL: Would you please scroll to  
9 the relevant slide in your presentation?

10 We have already passed out Applicants'  
11 Exhibit 87, which Applicants uploaded to the  
12 rulemaking shared file folder on October 15th.

13 (Applicant Exhibit 87 was marked for  
14 identification.)

15 BY MR. NYKIEL:

16 MR. NYKIEL: Is this your analysis?

17 MR. PURVIS: Yes, it is.

18 MR. NYKIEL: And what does it say?

19 MR. PURVIS: So I appreciate you asking  
20 about this because it's emblematic of the noise and  
21 hand waving without quantification that's systemic  
22 through the opposition to the rules.

23 Mr. Hanagan says 80 percent of vertical  
24 wells. The Permian is a concentration of vertical  
25 wells, and that it's 80 percent and 50 percent, which

1 makes it sound like a lot. But his footnote shows  
2 that 80 -- the 80 percent is out of 10 rigs nationally  
3 and the 50 percent is out of 12 rigs nationally.

4 What I've tried to do on this exhibit  
5 is show a more meaningful quantitative analysis. This  
6 is the same source of data. It's the Baker Hughes rig  
7 count, and it shows all of the rigs active in the  
8 Permian Basin as a whole. On the left side of the  
9 page is the Permian in Texas, and on the right side,  
10 the Permian in New Mexico.

11 The three lines represent the rig count  
12 drilling different kinds of wells. The black line is  
13 horizontal; the light gray line is the least  
14 important, least significant, directional; and the  
15 purple line is vertical wells. And what we see first  
16 is that there are many more rigs, both vertical and  
17 horizontal, in Texas than there are in New Mexico, so  
18 the citation to the Permian is misleading in that way.

19 But more to the point, over the last  
20 two years in Texas, the proportion of rigs drilling  
21 vertically has ranged from only 1.1 to 4.1 percent of  
22 the rigs. And in New Mexico, the rig count drilling  
23 for vertical wells over the last two years has  
24 averaged between zero and 2.8 percent of the rigs. So  
25 for all the ballyhoo about the significance and

1 importance in my -- all the ballyhoo about my  
2 ignorance, a quantification of the data validates my  
3 conclusion that vertical well drilling is very small.

4 MR. NYKIEL: Madam Hearing Officer,  
5 this concludes Mr. Purvis's testimony. He stands  
6 available for cross-examination and questions from the  
7 Commission.

8 THE HEARING OFFICER: Thank you very  
9 much.

10 Mr. Cloutier, are you beginning the  
11 questioning?

12 MR. CLOUTIER: Thank you, Madam Hearing  
13 Officer.

14 CROSS-EXAMINATION

15 BY MR. CLOUTIER:

16 MR. CLOUTIER: Good morning,  
17 Mr. Purvis.

18 MR. PURVIS: Good morning, sir.

19 MR. CLOUTIER: I'd like to jump right  
20 into the data, and let me screen share with you. I  
21 believe in your surrebuttal, you identified Exhibit 77  
22 as one of the exhibits which you used the master  
23 orphan spreadsheet to prepare. Is that correct?

24 (Applicant Exhibit 77 was marked for  
25 identification.)

1 MR. PURVIS: One second.

2 MR. CLOUTIER: Let me share my screen  
3 here. Sorry.

4 MR. PURVIS: I'm trying to double check  
5 your number.

6 MR. CLOUTIER: Mr. Everhart, could I  
7 ask you to share 77? I'm sorry. I'm having trouble  
8 here. Okay. Thank you.

9 MR. PURVIS: Yes.

10 BY MR. CLOUTIER:

11 MR. CLOUTIER: Okay. And the master  
12 orphan spreadsheet is Exhibit 55 in the logged  
13 exhibits?

14 (Applicant Exhibit 55 was marked for  
15 identification.)

16 MR. PURVIS: I'll take your word for  
17 it.

18 MR. CLOUTIER: Okay. So there's about  
19 1800 wells listed on the master orphan wells  
20 spreadsheet. Is that correct?

21 MR. PURVIS: Yes, sir.

22 MR. CLOUTIER: And only about 300, 310  
23 of them have plugging cost data. Correct?

24 MR. PURVIS: If memory serves, that's  
25 about right.

1 MR. CLOUTIER: Yeah. And I'll confess  
2 operator error. I got 303 one time and 312 the next  
3 time, so I don't want to give you a precise figure.  
4 And you used in the spreadsheet --

5 MR. EVERHART: You're sharing now.

6 MR. CLOUTIER: I'm sharing now?

7 MR. EVERHART: Yeah.

8 MR. CLOUTIER: Okay. All right.

9 MR. EVERHART: I'll stop.

10 MR. CLOUTIER: Good. All right.

11 BY MR. CLOUTIER:

12 MR. CLOUTIER: The spreadsheet itself,  
13 let me fully minimize. So the spreadsheet is columns.  
14 You're using the data in Columns BI here, Estimated  
15 Plugging Costs, and BK, Actual Plugging Costs, in  
16 Exhibit --

17 MR. PURVIS: No.

18 MR. CLOUTIER: No?

19 MR. PURVIS: No.

20 MR. CLOUTIER: Which ones are you using  
21 to prepare Exhibit 77? I'll scroll over.

22 MR. PURVIS: If memory serves, it is  
23 Estimated Plugging Costs and the column at the far  
24 right called Total Plugging Costs.

25 MR. CLOUTIER: Okay. All right. And



1 so basically we have approximately 12, 13 percent of  
2 the wells listed on the master orphan wells  
3 spreadsheet with actual plugging costs and total  
4 plugging costs in them. Correct? The 300 --

5 MR. PURVIS: I don't think that math is  
6 either right or relevant.

7 MR. CLOUTIER: Okay.

8 MR. PURVIS: So assuming it is 300 out  
9 of 1800, it would be about 16 percent.

10 MR. CLOUTIER: Sixteen percent. Okay.

11 MR. PURVIS: But more to the point, the  
12 spreadsheet includes wells deep into the history of  
13 the operations of the program whose experience are  
14 much less relevant to the current rulemaking in 2025.

15 MR. CLOUTIER: All right. And that's  
16 why you pared it down from the 300 or so to the number  
17 on Exhibit 77, which was 182?

18 MR. PURVIS: That is not the reason I  
19 pared it down.

20 MR. CLOUTIER: Okay.

21 MR. PURVIS: The footnote on Exhibit 77  
22 explains the choice. So there were about 300 that had  
23 cost estimates. I used a sample of -- I used 182 of  
24 those because I excluded cost estimates that were  
25 clearly not specific to individual wells. So when I

1 observed that the same estimate down to the dollar was  
2 applied to multiple wells, I deemed that not to be a  
3 reliable per well estimate.

4 MR. CLOUTIER: All right. So for  
5 instance, if there were a bunch of ones that were  
6 estimated \$150,000 and in a row -- I think I can find  
7 that.

8 MR. EVERHART: Need me to share?

9 MR. CLOUTIER: Yeah. Please.

10 MR. EVERHART: All right.

11 MR. CLOUTIER: I'll stop sharing. I'm  
12 having trouble. Just search the estimated column for  
13 \$150,000. You should get around Line 200 estimated.  
14 Just select a hundred and -- nope. All right. It's  
15 not relevant.

16 BY MR. CLOUTIER:

17 MR. CLOUTIER: So we've got 182 wells  
18 that you've selected. You'd agree and you've  
19 testified that about 5 percent of the wells  
20 historically have been plugged by the OCD and 95  
21 percent by industry?

22 MR. PURVIS: I don't recall testifying  
23 to that fact.

24 MR. CLOUTIER: Page 10 of your direct  
25 "Historic, most wells to date have been plugged by

1 industry, not by public funds."

2 MR. PURVIS: Yes. I do agree with  
3 that.

4 MR. CLOUTIER: And then page 34 of your  
5 direct "Historically 5 percent of U.S. onshore wells  
6 documented as plugged were orphaned wells plugged by  
7 state agencies."

8 MR. PURVIS: Nationally? Yes. Five  
9 percent.

10 MR. CLOUTIER: And you heard  
11 Mr. Alexander testify yesterday about the LFC report  
12 concluding the same thing in New Mexico, that about 5  
13 percent was plugged?

14 MR. PURVIS: I did hear the testimony  
15 yesterday.

16 MR. CLOUTIER: All right. And you  
17 don't think that testimony was unreliable, do you?

18 MR. PURVIS: I will -- I'm happy to  
19 accept for discussion that 5 percent are plugged by  
20 the state.

21 MR. CLOUTIER: Okay. So we're taking a  
22 percent of Exhibit 55, which is a small percent of  
23 plugging costs in New Mexico historically, and coming  
24 up with your figures for estimated plugging costs.  
25 Correct?

1 MR. PURVIS: The data that's available  
2 is a small percentage of what has been done. It  
3 remains the best data by far.

4 MR. CLOUTIER: The best data you could  
5 find?

6 MR. PURVIS: The best data that exists  
7 in the public domain, including the disclosures of  
8 my -- other experts in this case.

9 MR. CLOUTIER: All right. You testify  
10 on page 5 of your direct "These rules are necessary  
11 because the nature of oil and gas economics in concert  
12 with New Mexico's existing rules create little  
13 obligation that insures operators are planning for  
14 decommissioning and because existing incentives favor  
15 delaying, decommissioning, and ultimately increase the  
16 risk of orphaning." That sound like your testimony?

17 MR. PURVIS: I have not verified it.  
18 But yes. That does sound right.

19 MR. CLOUTIER: All right.  
20 Mr. Alexander testified yesterday about his work at  
21 Southwestern and how they would try to exceed  
22 regulatory standards. Do you believe Southwestern is  
23 some sort of outlier in the industry?

24 MR. PURVIS: I have not formed an  
25 opinion on that.

1 MR. CLOUTIER: All right. Would you  
2 agree that operators face other incentives, not just  
3 financial assurance, to plug wells?

4 MR. PURVIS: Some operators do. Some  
5 operators do not.

6 MR. CLOUTIER: What about, for  
7 instance, the threat of litigation? Is that an  
8 incentive to plug wells?

9 MR. PURVIS: The threat of litigation  
10 is more effective on some -- some companies than on  
11 others. It can be a deterrent. It is more effective  
12 on some than others.

13 MR. CLOUTIER: And what about the  
14 threat of regulatory action, such as pulling your  
15 ability to transport oil or gas in the state of New  
16 Mexico? Is that an incentive to plug wells?

17 MR. PURVIS: You know, litigation I  
18 think has been rare, but I don't know of any instance  
19 where an -- a company has lost the right to operate on  
20 account of -- of this. Maybe just I haven't looked,  
21 but I don't -- in theory, I suppose it could be, but  
22 in practice I don't know that it is.

23 MR. CLOUTIER: Do you know if the OCD  
24 has authority in its toolbox of enforcement mechanisms  
25 to pull an operator's ability to transport oil or gas?

1 MR. PURVIS: I do not know.

2 MR. CLOUTIER: Okay. Or its authority  
3 to operate?

4 MR. PURVIS: I -- I couldn't say one  
5 way or the other what this -- what the laws are.

6 MR. CLOUTIER: All right. You  
7 criticized Mr. George Sharpe's testimony that most  
8 companies were responsible and plugged their wells and  
9 that it's hard to envision bad actors who let their  
10 wells languish changing their behavior. On page 7 and  
11 8 of your rebuttal testimony is, I quote "Pure opinion  
12 subjective, anecdotal, and not a suitable basis for a  
13 multi-billion dollar risk."

14 MR. PURVIS: And please remind me what  
15 line you're reading on?

16 MR. CLOUTIER: I'm reading from  
17 starting on Line 20 of page 7 to Line 3 of page 8.

18 MR. PURVIS: Okay. Thank you.

19 MR. CLOUTIER: I get that accurate?

20 MR. PURVIS: Yes. You did read it  
21 correctly.

22 MR. CLOUTIER: Thank you. However,  
23 your own testimony bears out, Mr. Sharpe, that 95  
24 percent of wells are getting plugged by industry.  
25 Responsible companies are plugging historically.

1 Correct?

2 MR. PURVIS: I don't think that's a  
3 accurate characterization of the situation. Most  
4 importantly is the fact that past is not prologue.  
5 The company -- the industry in New Mexico has gone  
6 through a lifecycle. And in particular in the last 20  
7 years, while production has been declining, oil and  
8 gas prices have tripled, quadrupled, and quintupled at  
9 various points in time. And meanwhile, costs have  
10 increased.

11 The point is that the current depleted  
12 state of wells in New Mexico are not well reflected by  
13 the historical operations. And his -- the 95 percent  
14 certainly should be higher, but it's not  
15 representative of what should be expected in the  
16 future.

17 MR. CLOUTIER: Okay. But it's what's  
18 happened. Correct?

19 MR. PURVIS: That is what's happened.

20 MR. CLOUTIER: And he indicates that he  
21 doesn't expect bad actors to change their behavior  
22 based on this rulemaking. Correct? And you indicate  
23 that that's speculative or subjective. Correct?

24 MR. PURVIS: He does opine that he does  
25 not expect bad actors to change their behavior.

1 MR. CLOUTIER: So I'm going to -- bear  
2 with me if I can. I am not good at this, am I? Do we  
3 have it? You familiar with Mr. Winchester's testimony  
4 that on the OCD master orphan well list about 75  
5 percent of the population is concentrated in 10  
6 operators: the Canos, the Ridgeways, the Canyons; the  
7 same people we just looked at in Exhibit 86?

8 MR. PURVIS: I do not recall that part  
9 of his testimony. I did prepare a similar analysis in  
10 my direct testimony to show that the concentration in  
11 the large -- larger companies of hundreds of wells do  
12 contribute a disproportionate number of the overall  
13 orphaned wells.

14 MR. CLOUTIER: And you don't have any  
15 reasonable basis to tell this Commission that any of  
16 those companies are going to change their behavior  
17 based on this proposed rulemaking, do you? They're  
18 going to post bonds or start plugging wells?

19 MR. PURVIS: For -- let's clarify for  
20 just a second for the sake of answering your question.  
21 When you ask about bad actors, do you mean bad intent  
22 with bad outcomes, bad -- bad outcomes with good  
23 intentions, or something else?

24 MR. CLOUTIER: Well, it's Mr. Sharpe's  
25 testimony, so I -- in addition to, I'm asking the



1 questions. I'm not Mr. Sharpe. So but how about you?  
2 You talked about the people who sully the reputation  
3 of the industry, the people who don't comply earlier  
4 this morning.

5 MR. PURVIS: The -- there are certainly  
6 a group of people who can be characterized as bad  
7 actors based on their bad intentions. The Boomhower  
8 article describes this as the judgment proof problem,  
9 as it's known in economics, where a company does not  
10 have to suffer the consequences of its bad choices.  
11 They can go bankrupt, and the -- the owners can go on  
12 just fine.

13 And as the rules now stand, there's a  
14 moral hazard embedded. The financial incentives are  
15 not aligned with the -- they are -- they create a  
16 disincentive to do what's right. The CEO in Fort  
17 Worth told me just a couple months ago, he said, "I --  
18 I'd love to do what's right, but it must make economic  
19 sense."

20 The folks with bad intentions who own  
21 wells will still be able to execute their bad  
22 intentions because they already own the wells. Other  
23 parts of the rules will create a layer of protection  
24 against bad intentions. But there is a second  
25 question here, and that's one of bad outcomes; good,

1 well-intended operators who, for one reason or  
2 another, have not made adequate preparations for their  
3 ultimate liability.

4 Now, to be clear, this rulemaking does  
5 not change the ultimate liability, the ultimate  
6 responsibility. Those are well-known, longstanding;  
7 have been since decades before I entered the industry.  
8 It does, however, change the accountability. And to  
9 the extent a well-meaning operator has not made  
10 adequate preparation, the rulemaking could change part  
11 of the outcome for the per state -- from the  
12 perspective of the state.

13 MR. CLOUTIER: It's a big could, isn't  
14 it?

15 MR. PURVIS: I'm not trying to quantify  
16 the answer to that -- that question.

17 MR. CLOUTIER: Doesn't the Commission  
18 have to do that sitting here? We've got this promise  
19 of a rulemaking of post bonding. This is a good  
20 thing, and we'll ultimately protect the taxpayer. How  
21 do we quantify how the taxpayer's going to be  
22 protected by this rulemaking?

23 MR. PURVIS: The most direct evidence  
24 that I've -- I've seen on this actually comes from  
25 Dr. Arscott. In his Figure 9, Exhibit 9 to his direct

1 testimony, he quantifies what he believes the  
2 incremental bonding will be. And his estimate,  
3 multiply the number of companies by the average bond  
4 is 1.9 billion. So one point, if he's right that the  
5 incremental rulemaking will create \$1.9 billion worth  
6 of financial security, then it's a great deal of  
7 protection.

8 MR. CLOUTIER: So you think Dr. Arscott  
9 is predicting what the response of industry is going  
10 to be -- the operators are going to be to this?  
11 That's how you understand his testimony?

12 MR. PURVIS: I do not understand him to  
13 have -- opine on what each -- how each operator will  
14 elect among the four options that they have.

15 MR. CLOUTIER: And those options would  
16 be plug --

17 MR. PURVIS: Plug is -- plug is the  
18 least attractive of the four options. So the -- an  
19 operator faced with a -- a dilemma of an increased  
20 bonding responsibility could just get rid of the wells  
21 to someone else in bankruptcy, or they can do one of  
22 four things. They can improve production so that  
23 it's -- they could continue as is, even if it's at a  
24 loss. They can put the well in temporary abandonment,  
25 or they could plug.

1                   Of those four options, the least  
2     attractive is plugging. All of the other options are  
3     less costly in the best case scenario. The only time  
4     that plugging becomes competitive with the other  
5     options is when the third-party bonding agency decides  
6     that the operator is a bad risk, and the third  
7     party -- not the OCD -- the third party requires of  
8     the operator a collateral.

9                   Now, in that situation, the collateral  
10    could be as much as \$150,000 of cash, but that is  
11    weighed against the cost of plugging, removal,  
12    remediation, and restoration, which we've didn't --  
13    plus the overhead costs, which are in most cases more.  
14    So the -- among the options, plugging is the least  
15    attractive in the large majority.

16                  MR. CLOUTIER: But plugging is an  
17    option. An operator who is sitting here on the  
18    effective date of this regulation with a marginal  
19    well -- ten marginal wells. Let's put it that way.

20                  MR. PURVIS: Okay.

21                  MR. CLOUTIER: They've got the option  
22    to bond, whether they temporarily abandon or just  
23    continue to produce. Correct? This is at the  
24    rulemaking.

25                  MR. PURVIS: And to be clear, when you

1 say marginal, you mean -- define marginal?

2 MR. CLOUTIER: Not -- I'm talking about  
3 marginal under the rulemaking. We're living in a  
4 universe where the rulemaking is here. They've got  
5 the option bond those wells. They've got the option  
6 to produce those wells, because they're already  
7 qualified as marginal on the effective date of the  
8 rulemaking, and bond and produce. They've got the  
9 option to plug and abandon, or they've got the option  
10 to do neither and put themselves in the regulatory  
11 crosshairs of the OCD. Correct?

12 MR. PURVIS: Yes. It -- it -- they do  
13 have the option of not attempting to meet their legal  
14 obligations.

15 MR. CLOUTIER: Right. Become a bad  
16 actor, essentially?

17 MR. PURVIS: Certainly bad outcome.

18 MR. CLOUTIER: Yes. So they have three  
19 options. So how do you tell the Commission how much  
20 bonding the state of New Mexico is going to get as a  
21 result of this rulemaking?

22 MR. PURVIS: Mr. Winchester also opined  
23 that he -- he believes that members of his  
24 organization will walk away from their liabilities.  
25 And that -- that -- and I wrote also that the

1 rulemaking will create pain for some companies because  
2 companies have not systematically prepared.

3 So if a company has a hundred percent  
4 of their wells that qualifies as defined marginal,  
5 then they're in the small minority, but they also have  
6 not made allowances for what they know to be their  
7 obligation. And if they cannot put up financial  
8 assurance, if a third party deems them unable to pay,  
9 then the state is right to ask for financial assurance  
10 and the orphaning would happen sooner, but it does not  
11 change the outcome.

12 MR. CLOUTIER: And does it protect the  
13 taxpayer?

14 MR. PURVIS: For that example, it  
15 accelerates the -- the orphaning, but does not change  
16 the outcome. But that is a small sample. We can  
17 look, for example, at my Exhibit 52, where I showed  
18 the proportional number of companies that have a -- a  
19 large percentage of more defined marginal. But what  
20 the rulemaking also does is change the behavior of  
21 wells and operators -- or I should say it  
22 differently -- change the financial assurance that's  
23 available from companies that are not yet completely  
24 hopeless.

25 //

1                   (Applicant Exhibit 52 was marked for  
2                   identification.)

3                   MR. CLOUTIER: So my question, though,  
4                   is, how do you tell the Commission how much bonding is  
5                   going to protect the taxpayers of the state of New  
6                   Mexico from this evil if they adopt this rulemaking?  
7                   I want to know how we're getting from A to B.

8                   MR. PURVIS: I think I understand your  
9                   question, and you'll -- you'll correct me if I miss it  
10                  again. The question is relative cost and relative  
11                  benefit. I have not tried to predict the behavior of  
12                  every individual company, either their -- their  
13                  judgment or their ability to perform.

14                  I do observe that it applies to a large  
15                  number of wells, and I have observed the ceiling of  
16                  cost that it would take from the state. Now, the --  
17                  the ceiling is very small and the probability of  
18                  reaching that ceiling is zero. So the -- the most  
19                  likely is much, much less. Does that better answer  
20                  your question? Sorry.

21                  MR. CLOUTIER: We'll leave it there.  
22                  Let's talk about your holdback theory. You have --  
23                  this is -- I think you used it as a tool for  
24                  analyzing, but it's in addition to or as an  
25                  alternative to traditional measures of economic

1 measures on NPV to help measure the risk. Correct?

2 MR. PURVIS: It's -- no.

3 MR. CLOUTIER: Okay. Can you tell me  
4 in a sentence why I'm wrong?

5 MR. PURVIS: It is not an alternative.  
6 It is an additional measure of the contours, the --  
7 the nature of the cash flow.

8 MR. CLOUTIER: I apologize. I thought  
9 I used the word additional or alternative, but if I  
10 did --

11 MR. PURVIS: Yes. Additional, yes.  
12 Alternative, no.

13 MR. CLOUTIER: Okay. You're the sole  
14 author of, and I quote, "Economic Yardsticks for the  
15 End of the Economic Life: Holdback and its Adjuncts."  
16 Correct?

17 MR. PURVIS: At a -- a wider scale, I'm  
18 the sole author of the idea in all contexts.

19 MR. CLOUTIER: Okay.

20 MR. PURVIS: And I -- I should be clear  
21 that the idea is labeling a point that exists. The  
22 point does and always has -- exists.

23 MR. CLOUTIER: And has the article that  
24 I mentioned or any other of your articles on this been  
25 peer-reviewed?



1 MR. PURVIS: No. They have not.

2 MR. CLOUTIER: You mentioned at page 3  
3 of your direct that you've published on the holdback  
4 concept in states such as California, Colorado, Ohio,  
5 Pennsylvania, West Virginia, and parts of Wyoming.  
6 Correct?

7 MR. PURVIS: Yes, sir. That's correct.

8 MR. CLOUTIER: Have any of those states  
9 used the holdback concept to require single well  
10 bonding as their policy?

11 MR. PURVIS: My analyses in all cases  
12 post-state revisions to their financial assurance  
13 requirements. So no. Those analyses were just in the  
14 last couple years.

15 MR. CLOUTIER: Okay. On page 6 of your  
16 direct, Lines 17 to 19, you state "I explained the  
17 surprises of late life economics, the concept of  
18 holdback, and how they demonstrate the need for  
19 operators to have long lead plans for decommissioning  
20 their whole portfolio." That correct?

21 MR. PURVIS: I -- I would trust that  
22 you have read correctly. You said page 6?

23 MR. CLOUTIER: Page 6 of your direct,  
24 Lines 17 through 19.

25 MR. PURVIS: Thank you. Yes, I see

1     that.

2                   MR. CLOUTIER: All right. Are you  
3     suggesting that operators are surprised by the late  
4     life economics of oil and gas wells?

5                   MR. PURVIS: Yes.

6                   MR. CLOUTIER: Okay. And that they  
7     don't plan for decommissioning?

8                   MR. PURVIS: Yes.

9                   MR. CLOUTIER: All right.

10                  MR. PURVIS: I -- I should be careful  
11     about the word operators. My point is not that all  
12     but systematically. In my presentation of this  
13     concept to dozens of organizations, I consistently  
14     find companies, individuals surprised. And as I  
15     discussed with those companies what plans they have  
16     made for decommissioning, I have heard firsthand  
17     account of one company and secondhand accounts of two  
18     others that saved money in advance to be able to meet  
19     their obligations when their production ends.

20                  MR. CLOUTIER: You've talked in your  
21     presentation before my cross-examination of the small  
22     operators representing 0.2 percent of production and  
23     only 0.05 percent of new production. Are you with me?  
24     Page 50 of your rebuttal, operators with ten or fewer  
25     wells?

1 MR. PURVIS: Yes.

2 MR. CLOUTIER: And you also indicate on  
3 page 23 of your direct, Lines 16 through 18 "If 90  
4 percent of the companies responsible for unplugged  
5 wells in the state were to instantly disappear, the  
6 state would only lose two and a half percent of its  
7 current production and 0.3 percent of its production  
8 growth." I quote you accurately?

9 MR. PURVIS: I believe you did.

10 MR. CLOUTIER: Okay. I'm trying not to  
11 misquote you, so.

12 MR. PURVIS: That's easy to read.

13 MR. CLOUTIER: Do you know how many  
14 barrels of oil were produced in New Mexico January 1  
15 through July 31 this year?

16 MR. PURVIS: New Mexico is currently on  
17 the pace for between 700 and 750 million barrels of  
18 crude for this year.

19 MR. CLOUTIER: Right. Almost 2.2  
20 million barrels a day or so, a little less than that;  
21 sounds about right?

22 MR. PURVIS: Yeah. Sounds about right.

23 MR. CLOUTIER: So by my math  
24 multiplying -- I think it's about 2.183 -- but that  
25 gets us to 460 million barrels -- let's call it 450

1 million barrels -- January through July, which is the  
2 last EIA data I looked at when I looked at this. With  
3 me? Okay. So two and a half percent of that; 11.25  
4 million sound accurate?

5 MR. PURVIS: Does two and a half  
6 percent of 411 million sound accurate?

7 MR. CLOUTIER: 450 million?

8 MR. PURVIS: Those -- those are --  
9 you've taken two numbers and put them together, but  
10 yeah.

11 MR. CLOUTIER: Yeah. That's -- I'm  
12 just doing some math.

13 MR. PURVIS: Yes.

14 MR. CLOUTIER: I'm a simple guy,  
15 Mr. Purvis. You got to -- sorry to slow you down, but  
16 two and a half percent of 450 million?

17 MR. PURVIS: I calculate, as -- you  
18 said 450?

19 MR. CLOUTIER: Yep.

20 MR. PURVIS: Eleven million barrels of  
21 oil. Right?

22 MR. CLOUTIER: I had 11.25, but yeah.

23 MR. PURVIS: Approximately 11.25.

24 MR. CLOUTIER: All right. Time \$60 a  
25 barrel? Again, sorry for the simple math.

1 MR. PURVIS: \$675 million.

2 MR. CLOUTIER: Right. Do you know what  
3 the severance tax rate, combined severance tax rate,  
4 in the state of New Mexico is for oil? 8.15 percent  
5 sound pretty good?

6 MR. PURVIS: Yes. It sounds right in  
7 the middle.

8 MR. CLOUTIER: All right. So that's  
9 about \$55 million of severance tax revenue?

10 MR. PURVIS: Yes.

11 MR. CLOUTIER: Do you know that New  
12 Mexico receives about 48 -- not about -- exactly 48  
13 percent of federal oil and gas royalty paid under the  
14 payment in lieu of taxes program?

15 MR. PURVIS: I'm familiar with the  
16 concept, not the numbers.

17 MR. CLOUTIER: Okay. Do you know that  
18 state royalty goes into the severance -- the permanent  
19 fund?

20 MR. PURVIS: I'm not very familiar with  
21 the use of the funds.

22 MR. CLOUTIER: Do you know that New  
23 Mexico's about 70 percent state and federal minerals  
24 combined?

25 MR. PURVIS: That's about right.

1 MR. CLOUTIER: Okay. Is it fair to say  
2 that you think that \$55 million in tax revenues over  
3 seven months is a "minute" contribution towards the  
4 production and tax revenue for the state of New  
5 Mexico?

6 MR. PURVIS: Yeah. If you were  
7 offering me \$55 million, I would not call it minute.  
8 But the --the report cited by both Mr. Arthur and  
9 Mr. McGowen represent that the oil and gas  
10 contribution to the state is on the -- is in the most  
11 recent number \$14 billion. So we double it to a  
12 hundred million dollars, and it is still by  
13 comparison, either to the overall contribution or by  
14 comparison to the value at risk, small.

15 MR. CLOUTIER: Do you think for a state  
16 that, say, ranks dead last in public education, it's  
17 more of a call for the legislature to decide whether  
18 to forgo \$55 million then and with all due respect to  
19 the three members of this Commission?

20 MR. PURVIS: I think that question is  
21 one, beyond scope, but more importantly a false  
22 alternative. There is a significant issue that needs  
23 to be developed to -- needs to be addressed. I'll  
24 leave it at that. Oh, and one other, if I just could  
25 be clear, the 2.5 percent of the -- the 55 million is

1 a ceiling that is not a rational number. There's not  
2 a scenario in which 2.5 percent disappears.

3 Dr. Boomhower addresses in his article  
4 from a finance -- economic theory standpoint and from  
5 the experience of Texas, what we see instead is that  
6 the most productive out of that 2.5 percent continue  
7 to exist and be produced by other people. And it's a  
8 fraction of that that stops, the lowest producing of  
9 the lowest producing that ends production. So it's  
10 not 55 million that's being lost. It's some small  
11 portion of that 55 million, which is a very small  
12 portion of 14 billion.

13 MR. CLOUTIER: Okay. How small a  
14 portion? Because I tried to get you to quantify this  
15 earlier and you didn't. With all due respect, you did  
16 give me answers, and I appreciate you trying, so. But  
17 you're telling the Commission now it's a small  
18 proportion and a small portion of it. How small? How  
19 much of --

20 MR. NYKIEL: Madam Hearing Officer, I  
21 think this is asked and answered.

22 THE HEARING OFFICER: Well, yes and no.  
23 Listening earlier, he was not able to quantify. Now  
24 Mr. Cloutier is coming back around in response to his  
25 last answer, which is small portion.

1                   If there's something he can add to what  
2                   he said earlier, go ahead and do that, Mr. Purvis.

3                   MR. PURVIS: I cannot quantify what  
4                   portion of the two and a half percent will -- will go  
5                   away in short order. I do know by analogy and first  
6                   principles that it'll be a small portion.

7                   MR. CLOUTIER: Okay. I'll pass the  
8                   witness.

9                   THE HEARING OFFICER: All right. Thank  
10                  you very much. We need a break. Let's come back in  
11                  12 minutes. It'll be 10:40.

12                  (Off the record.)

13                  THE HEARING OFFICER: Mr. Everhart?

14                  MR. SUAZO: Thank you, Madam Hearing  
15                  Officer.

16                  CROSS-EXAMINATION

17                  BY MR. SUAZO:

18                  MR. SUAZO: Good morning, Mr. Purvis.  
19                  I'm Miguel Suazo. I'm with Beatty and Wozniak, and  
20                  I'm representing NMOGA in this proceeding. How are  
21                  you today?

22                  MR. PURVIS: Thank you, Mr. Suazo, for  
23                  asking. I'm doing fine.

24                  MR. SUAZO: Excellent. I want to ask  
25                  you a few questions about your background to start.



1 You've worked extensively with NGOs like Carbon  
2 Tracker. Correct?

3 MR. PURVIS: Yes.

4 MR. SUAZO: And Carbon Tracker, as I  
5 understand what they do, advocates for stronger  
6 decommissioning rules. Is that accurate?

7 MR. PURVIS: That's a subset of their  
8 mission.

9 MR. SUAZO: Okay. So that's a yes?

10 MR. PURVIS: Yes.

11 MR. SUAZO: Thank you. And you're an  
12 advocate in general for stronger regulations for oil  
13 and gas development. Is that correct?

14 MR. PURVIS: I personally believe in  
15 stronger -- in the need for stronger financial  
16 protections. Yes.

17 MR. SUAZO: Okay. Now, you disagree  
18 with WELC and the OCD on the proposed definition of  
19 marginal well. Is that right?

20 MR. PURVIS: I don't believe that I do.

21 MR. SUAZO: I believe in your direct  
22 testimony, page 962, Lines 20 through 24, you said  
23 that you believe the word marginal refers to a  
24 financial condition, not a production rate. So you  
25 disagree with the definition based upon that

1 statement, or am I misunderstanding?

2 MR. PURVIS: Yeah. No. You're  
3 misunderstanding. There the generic term does mean  
4 low profit. That concept has been codified in the  
5 proposal, but I do believe the general concept  
6 incorporates -- encompasses a lot more wells than the  
7 definition as proposed.

8 MR. SUAZO: Okay. So to better  
9 understand that, I guess you would agree that a well  
10 by well analysis is more accurate for whether  
11 determining a -- for determining whether a well is  
12 marginal. Is that right? Versus a lease based  
13 assessment for marginality?

14 MR. PURVIS: That logic doesn't follow.  
15 I don't think I understand what you mean.

16 MR. SUAZO: Okay. I guess what I'm  
17 trying to get at is you think marginal is an economic  
18 concept, not a production concept. Is that a fair  
19 assessment?

20 MR. PURVIS: Yes. In my understanding  
21 of the term in general use, it is an economic concept.

22 MR. SUAZO: Okay. So you interpret  
23 OCD --

24 MR. PURVIS: Oh, I -- I just wanted to  
25 clarify one -- one point. There are a lot of

1 regulations or tax incentives mostly that describe  
2 marginal wells with a capital M as a defined term  
3 based purely on rate. There are tax incentives at  
4 state and national levels queued to rates of normally  
5 10 or 15 barrel of oil equivalent per day. There  
6 certainly are instances in which the word marginal is  
7 strictly a production measure.

8 MR. SUAZO: Okay. And so you  
9 interpret, just to follow up on that, OCD's and WELC's  
10 proposed marginal well definition is as consistent of  
11 two criteria, which are volume and time?

12 MR. PURVIS: Yes.

13 MR. SUAZO: Okay. And so you agree  
14 that this definition is less effective than requiring  
15 financial assurance earlier in the well's lifecycle.  
16 Is that accurate?

17 MR. PURVIS: I think so. I would think  
18 it would be more effective for the state to require  
19 financial assurance earlier.

20 MR. SUAZO: Okay. Forgive me. I'm  
21 trying to make sure I'm not asking you questions that  
22 Mr. Cloutier might have already covered. So bear with  
23 me as I'm going to kind of work through the topics I  
24 want to touch on with you.

25 MR. PURVIS: Take your time.

1                   MR. SUAZO: Let's talk a little bit  
2 about your use of Vertex's cost estimates. You  
3 estimated in your direct testimony that the total cost  
4 for upstream oil and gas infrastructure  
5 decommissioning in New Mexico to be approximately \$22  
6 billion. Is that accurate?

7                   MR. PURVIS: I cited the twenty -- the  
8 nearly five-year-old report by Vertex for that number.

9                   MR. SUAZO: Okay. And at the time that  
10 Vertex commissioned the report, as I understand it,  
11 there was a range in that value, minus-30 percent to  
12 plus-50 percent. Is that correct?

13                  MR. PURVIS: Yes. That is the accuracy  
14 range that they assigned to their estimate.

15                  MR. SUAZO: Okay. And you would agree  
16 that that -- minus-30, plus-50 percent -- is a pretty  
17 widely variable range. Right?

18                  MR. PURVIS: Thirty percent and fifty  
19 percent are too broad to sign a contract for that  
20 number. It is not too broad for strategic planning.  
21 They are broad numbers, but they're suitable for  
22 purpose. And -- and I'll also point out it's  
23 conservative if it's 50 percent probability is higher  
24 for a five-year-old estimate.

25                  MR. SUAZO: So in your surrebuttal, you

1 said that the Vertex data might be imprecise, but that  
2 it is not inaccurate. As I understand what you said  
3 imprecision is inherently at least a bit inaccurate.  
4 Can you please further elaborate on what you meant?

5 MR. PURVIS: Sure. Precision and  
6 accuracy are two different measures of quality.  
7 Precision has to do with how exact it is, and accuracy  
8 is how close it is to reality. The standards for cost  
9 estimation, including the taxonomy, prescribes how  
10 those parameters are defined. And Vertex is a company  
11 active in remediation and plugging -- in the state of  
12 New Mexico and familiar with cost estimation.

13 I have no reason to think that they  
14 have not appropriately estimated those costs such that  
15 if we did in March of 2021 estimate down to a bid  
16 level that -- down to a Class 2 or 3 estimate, there  
17 should be a 90 percent probability that it would fall  
18 within the ranges of defined, in which case it is  
19 accurate but not precise.

20 MR. SUAZO: Okay. So let's unpack that  
21 a little bit because in your direct, you're using the  
22 2021 Vertex cost estimates, and you're using that to  
23 say that the total orphaned well costs across the  
24 state can range from 15 billion on the low side and 33  
25 billion on the higher side. Is that right?

1 MR. PURVIS: No. I'm saying that the  
2 end of the life of the oil industry in New Mexico will  
3 cost tens of billions of dollars and that needs to be  
4 planned for. My testimony was not an attempt to  
5 translate that number to specifically how much will  
6 fall on the state; on the taxpayers of the state.

7 MR. SUAZO: Okay. So using the Vertex  
8 estimates, are they -- I guess they're not  
9 particularly current at this point since it's 2025,  
10 but -- and you're saying they're not precise, but  
11 they're useful as a planning tool?

12 MR. PURVIS: Yes.

13 MR. SUAZO: Okay. Go ahead.

14 MR. PURVIS: Sorry. If I may, you saw  
15 on -- on my exhibit about the way costs have changed,  
16 that costs in fact have gone up significantly since  
17 2021. When they were preparing their report in early  
18 '21, it was close on the heels of a dramatic reduction  
19 in costs during COVID across industry as a whole. So  
20 the -- I bring that forward five years to now, I would  
21 expect the number to be significantly higher than the  
22 22 billion.

23 MR. SUAZO: Okay. And the Vertex  
24 figures that you use in your testimony provide  
25 estimates for full pipeline removal, which is

1 something that's separate from plugging and associated  
2 costs. Correct?

3 MR. PURVIS: Yes. They provide  
4 separately a cost estimate for decommissioning of the  
5 current midstream industry in the state under two  
6 scenarios.

7 MR. SUAZO: Okay. And the range  
8 provided by Vertex for these costs is between 3.4 and  
9 20.3 billion. Is that correct?

10 MR. PURVIS: No. I wouldn't  
11 characterize it that way. They have two different  
12 assessments, two alternative scenarios, each with  
13 separate ranges of uncertainty. One scenario is the  
14 pipelines are entirely removed; the other is that  
15 they're abandoned in place. But in either event, it's  
16 midstream and not relevant to upstream oil and gas  
17 we're talking about today.

18 MR. SUAZO: Okay. But how are we to  
19 know what costs are included with the 3.4 billion  
20 compared to the 20.3 billion? I guess as I understand  
21 it, the higher end includes removal of pipelines and  
22 all associated infrastructure, and the 3.4 billion  
23 includes what?

24 MR. PURVIS: Abandonment in place.

25 MR. SUAZO: Okay.

1 MR. PURVIS: Now, and I -- I know that  
2 because I read it in the report, but abandonment of  
3 midstream assets is not my strong suit.

4 MR. SUAZO: Okay. Understood. I just  
5 want to make sure we're talking about these numbers  
6 with some context and understanding so I --

7 MR. PURVIS: Yes. We can agree on that  
8 context.

9 MR. SUAZO: Now, I'd like to talk a  
10 little bit about page 4 of your demonstrative exhibit.  
11 And you say there that WELC's proposals would only  
12 apply to 11 percent of the 22 billion upstream  
13 estimate and only 24 percent of the 9.8 billion  
14 decommissioning liability estimate. Is that accurate?

15 MR. PURVIS: I'm sorry. Which -- which  
16 exhibit are you talking about?

17 MR. SUAZO: I'm sorry. Page 4 of your  
18 demonstrative exhibits that were filed on  
19 October 15th. We can pull it up for you. Sorry. I  
20 thought it was up. My fault. I didn't tell you.

21 MR. PURVIS: It's the Vertex exhibit  
22 originally submitted as Exhibit 34?

23 MR. SUAZO: I have it in my list as  
24 Purvis demonstrative exhibit, page 4. I don't know if  
25 that's how WELC labeled it in their submissions



1 elsewhere.

2 MR. NYKIEL: It's Applicants'  
3 Exhibit 34.

4 (Applicant Exhibit 34 was marked for  
5 identification.)

6 MR. PURVIS: I have it. Yes. Thank  
7 you. Would you ask the question again?

8 BY MR. SUAZO:

9 MR. SUAZO: Sure. So this is a exhibit  
10 states that WELC's proposals would only apply to 11  
11 percent of the 22 billion upstream estimate. Is that  
12 right?

13 MR. PURVIS: Yes.

14 MR. SUAZO: And only 24 percent of the  
15 9.8 billion decommissioning liability estimate?

16 MR. PURVIS: Yes.

17 MR. SUAZO: Correct? Okay. And those  
18 estimated costs are 1 billion and 1.4 billion  
19 respectively. Is that right?

20 MR. PURVIS: One billion on private  
21 lands and 1.4 billion on state lands as of March 2021.  
22 Yes.

23 MR. SUAZO: Okay. So that just seems  
24 broad to me. It -- you know, as a lay person that  
25 doesn't traffic in these numbers as much as somebody

1     like yourself, it just kind of seems like those  
2     numbers are essentially provided almost for shock  
3     value as opposed to accuracy. Is that a fair  
4     characterization?

5                     MR. PURVIS: No.

6                     MR. SUAZO: Well, I just think that  
7     that seems like an especially high number based upon  
8     the data that we're -- that you've said is, you know,  
9     inaccurate; not inaccurate, but imprecise, which leads  
10    to the broad range and costs that we're putting in  
11    front of the Commission to think about as they  
12    consider this problem.

13                    MR. PURVIS: I'm sorry. I don't  
14    understand the question, Mr. Suazo.

15                    MR. SUAZO: I guess what I'm getting at  
16    here is the assumptions behind these numbers. Are  
17    they disclosed or explicitly broken down somewhere to  
18    help us understand how Vertex calculated its costs?

19                    MR. PURVIS: Yes. As I said in my  
20    surrebuttal, the report's 91 pages long, has 131  
21    tables of data, and 4 appendices. It's explained in  
22    depth.

23                    MR. SUAZO: But that's your  
24    explanation, not Vertex's. Right?

25                    MR. PURVIS: No. The Vertex report.

1                   MR. SUAZO:   Okay.  I'm sorry.  I  
2   thought you were talking about your 91-page report.

3                   MR. PURVIS:  My report was long.  But  
4   no.  The Vertex report is 91 pages long.

5                   MR. SUAZO:  Okay.  And did you have any  
6   insight into how Vertex -- actually, I think Drew -- I  
7   think Mr. Cloutier covered that.  Let me move on.  
8   Okay.  We're going to stay on Vertex.  And Vertex is a  
9   decommissioning contractor in the state of New Mexico.  
10  Is that right?

11                  MR. PURVIS:  Among other things, yes.

12                  MR. SUAZO:  Okay.  So they essentially  
13  could stand a benefit from increased orphan well P&A  
14  work in this state?

15                  MR. PURVIS:  Yes.

16                  MR. SUAZO:  Okay.  Mr. Purvis, let's  
17  talk a little bit about, I guess, what went into your  
18  testimony.  Do you know how many times you cited  
19  yourself in your testimony?

20                  MR. PURVIS:  I do not know.  Would you  
21  please --

22                  MR. SUAZO:  Ten sound about right in  
23  your direct?

24                  MR. PURVIS:  Ten sounds about right.

25                  MR. SUAZO:  Okay.

1 MR. PURVIS: But thank you for that.

2 MR. SUAZO: Now, how many of the  
3 self-cited sources listed in your testimony are peer  
4 reviewed?

5 MR. PURVIS: Between my rebuttal  
6 testimony and my direct testimony, I would -- I  
7 estimate 10 or 15 papers are as peer-reviewed -- were  
8 peer-reviewed.

9 MR. SUAZO: And are any of them  
10 industry-reviewed?

11 MR. PURVIS: Besides my own? No. My  
12 papers are not -- they're cited but not peer-reviewed.  
13 And no. All of the papers that I've cited do not come  
14 from the Society of Petroleum Engineers. They come  
15 from economics and other kinds of journals.

16 MR. SUAZO: Okay. Mr. Purvis, could we  
17 ask you to please turn to Exhibit 54, page 825. I'll  
18 give your counsel and you time -- chance to get there.

19 (Applicant Exhibit 54 was marked for  
20 identification.)

21 MR. PURVIS: Hold on just a second, or  
22 you're welcome to display it.

23 MR. SUAZO: We can pull it up on the  
24 screen if that's faster.

25 MR. PURVIS: Please do.

1 MR. SUAZO: And if I could trouble you  
2 to read the first two sentences of the first paragraph  
3 that is highlighted or will be highlighted in just a  
4 second.

5 MR. PURVIS: Thank you. That's why I  
6 couldn't find it. I was looking for a graphic. I --  
7 I do see the SPE paper that I wrote about holdback.  
8 Which two sentences would you like for me to read?

9 MR. SUAZO: The first two, please?

10 MR. PURVIS: "Traditional economic  
11 measures use chiefly net present value" --

12 MR. SUAZO: Sorry. Above that?

13 MR. PURVIS: Ah. "This paper was  
14 selected for presentation by an SPE program committee  
15 following review of information contained in an  
16 abstract submitted by the author. Contents of the  
17 paper have not been reviewed by the Society of  
18 Petroleum Engineers and are subject to correction by  
19 the author. The material does not necessarily reflect  
20 any position of the Society of Petroleum Engineers,  
21 its officers, or members."

22 MR. SUAZO: Thank you. So this  
23 particular paper that you relied upon is not reviewed  
24 by SPE?

25 MR. PURVIS: Only so far as the program

1 committee reviewed the abstract in this first  
2 publication.

3 MR. SUAZO: How many of the sources  
4 that you use in your testimony are opinion pieces or  
5 guest editorials or business development marketing  
6 types of materials? You don't have to have a precise  
7 number, just more or less.

8 MR. PURVIS: I don't know.

9 MR. SUAZO: And are any of the  
10 materials that you use that you cite in your  
11 testimony, are they used as materials to attract  
12 customers to Purvis Energy Advisors?

13 MR. PURVIS: There is one that I've  
14 cited, the white paper that I published on my website  
15 before I published in the -- at the convention here,  
16 and it was published on my website along with other  
17 studies. I did not and do not expect it to win many  
18 clients.

19 MR. SUAZO: So I guess by citing  
20 yourself, are you essentially, you know, telling the  
21 Commission that your testimony is credible because  
22 you've previously said the same thing based upon your  
23 own work?

24 MR. PURVIS: It would -- it would be  
25 nice to -- to think that my name had that much

1 authority. I -- I do not believe that's the case.  
2 The -- the credibility, I think the idea should be  
3 evaluated on its own merits. The citations allow for  
4 a fuller discussion of the ideas.

5 MR. SUAZO: Fair enough. So I guess  
6 that takes us back to holdback, which I'd like to  
7 better understand. Now, holdback, as I understand it,  
8 it's an alternative to traditional economic measures.  
9 I think you said NPV and ROI?

10 MR. PURVIS: Not an alternative, an  
11 additional measure.

12 MR. SUAZO: Okay. And you're the sole  
13 author of the article titled "Economic Yardsticks for  
14 the End of Economic Life: Holdback and its Adjuncts."  
15 Is that correct?

16 MR. PURVIS: You're talking about the  
17 one where you still have on the screen, Exhibit 54?  
18 Yes. I am the sole author.

19 MR. SUAZO: Okay. And so with regard  
20 to the holdback approach, in your view on net  
21 revenues, you state that by the time the net revenues  
22 at normal prices are only twice as much as monthly  
23 costs, a well is within striking distance of its  
24 economic limit. Correct?

25 MR. PURVIS: That's a rule thumb I

1 described. Yes.

2 MR. SUAZO: Okay. And this is not a  
3 formal or industry recognized threshold at this time.  
4 Correct?

5 MR. PURVIS: No, no, no. That's --  
6 that's a personal rule of thumb based on doing  
7 reserves since '95.

8 MR. SUAZO: Over decades of your own  
9 evaluations? Okay.

10 MR. PURVIS: Just a rule of thumb.

11 MR. SUAZO: Have any -- so no states  
12 have adopted this holdback theory. Is that the right  
13 thing to call it?

14 MR. PURVIS: I don't think theory's the  
15 right word, but the -- the concept of holdback has not  
16 been endogenize in any formal sense that I know of  
17 since it was published in the fall of '22.

18 MR. SUAZO: Did you use, in your  
19 testimony and in the figures that you provided to the  
20 Commission, any industry valuation data like ROI or  
21 payout methods in addition to your holdback method  
22 just for comparison?

23 MR. PURVIS: I'm sorry. I -- I don't  
24 think I followed the question, Mr. Suazo. Again?

25 MR. SUAZO: Did you use -- did you not



1 use valid industry valuation data like return on  
2 investment?

3 MR. PURVIS: So holdback is a variation  
4 of return on investment, but I didn't do any economic  
5 evaluation at all. I -- I showed in Exhibit -- the  
6 holdback exhibit -- a sample cash flow.

7 MR. SUAZO: Okay. I just have one more  
8 question because I think Mr. Cloutier covered most of  
9 the topics. In your surrebuttal, you discussed how  
10 Hanagan misconstrued his website.

11 MR. PURVIS: I -- I don't -- how he  
12 misconstrued my website?

13 MR. SUAZO: No. Sorry. I'm trying to  
14 understand this question myself.

15 All right. I think it's going to add  
16 more confusion than clarity. No further questions for  
17 NMOGA for Mr. Purvis on cross. Thank you.

18 THE HEARING OFFICER: Thank you,  
19 Mr. Suazo.

20 Let's see. Ms. Bradfute or Mr. Sayer?  
21 Questions? Okay. Mr. Sayer indicated no questions.

22 Mr. Rankin for OXY?

23 MR. RANKIN: Thank you, Madam Hearing  
24 Officer.

25 //

1 CROSS-EXAMINATION

2 BY MR. RANKIN:

3 MR. RANKIN: Can you hear me okay,  
4 Mr. Purvis?

5 MR. PURVIS: I can. Thank you, Mister.

6 MR. RANKIN: Thank you. So yesterday,  
7 Mr. Alexander identified you as the applicants'  
8 witness who will be the expert testifying on the  
9 financial assurance aspects of the proposed rule. Is  
10 that correct?

11 MR. PURVIS: Yes. I heard that  
12 testimony.

13 MR. RANKIN: You agree?

14 MR. PURVIS: Certainly a lot of topics  
15 on -- yes.

16 MR. RANKIN: Okay. So you're going to  
17 be the Applicant witness who's the expert on the  
18 financial assurance aspects of this proposed rule?

19 MR. PURVIS: I'm not sure I'm the only  
20 one, but that's certainly an emphasis of my testimony.

21 MR. RANKIN: Okay. So at page 5 of  
22 your testimony, and I'll go ahead and pull this up.  
23 Here on page 5 of your testimony where I've  
24 highlighted, you explained how the proposed rules are  
25 designed --

1 MR. NYKIEL: Sorry. Is it rebuttal  
2 or --

3 MR. RANKIN: I'm sorry. This is direct  
4 testimony.

5 MR. NYKIEL: Direct?

6 MR. RANKIN: Yeah.

7 BY MR. RANKIN:

8 MR. RANKIN: In your direct testimony  
9 "Explain how the proposed rules are designed to  
10 motivate operators to have and execute a plan for  
11 decommissioning before the revenue from the well  
12 production is insufficient to cover the cost."  
13 Correct? That's the first sentence I've highlighted.

14 MR. PURVIS: Yes, sir.

15 MR. RANKIN: Okay. So the proposed  
16 roles are set up to use financial assurance then to  
17 help achieve that purpose. Correct?

18 MR. PURVIS: Yes, sir.

19 MR. RANKIN: Okay. And then you go on  
20 to say in the next sentence here that I've highlighted  
21 that the rules are necessary because the nature of oil  
22 and gas economics, together with New Mexico's existing  
23 rules, create little obligation to ensure operators  
24 are planning for decommissioning. I'm paraphrasing  
25 generally, but that's a correct reflection of your

1 testimony?

2 MR. PURVIS: Yes, sir.

3 MR. RANKIN: Okay. And then you go on  
4 to say "And because the existing incentives favor  
5 delaying decommissioning and ultimately increase the  
6 risk of orphaning." Correct?

7 MR. PURVIS: Yes.

8 MR. RANKIN: Okay. So the proposed  
9 rules are set up then to increase the obligations on  
10 operators to ensure that the operators plan to  
11 decommission their wells. Correct?

12 MR. PURVIS: Yes.

13 MR. RANKIN: Okay. And the increase  
14 you referenced and the testimony I've highlighted are  
15 the obligations -- rather the increase that you  
16 referenced would be the increase in the financial  
17 assurance obligations. Correct?

18 MR. PURVIS: Yes.

19 MR. RANKIN: Okay. And then the  
20 proposal there, the same may be true of other things;  
21 the same may be true of other provisions?

22 MR. PURVIS: Sure.

23 MR. RANKIN: I mean, at least part.  
24 Right?

25 MR. PURVIS: Yes.

1 MR. RANKIN: Right. And maybe a  
2 principle part of the rule. Right?

3 MR. PURVIS: Of -- I'm not sure I  
4 understand the question. FA is certainly a principle  
5 part of the -- of the proposal.

6 MR. RANKIN: Right. And the increased  
7 incentives that you referenced also would be the  
8 increased financial assurance. Correct?

9 MR. PURVIS: That's one of the  
10 incentives. Yes.

11 MR. RANKIN: Right. Okay. All right.  
12 So in other words, just to be clear, what I understand  
13 from this testimony is that the financial assurance is  
14 a large part, a principle part of the rule's purpose  
15 to motivate operators to plan for decommissioning and  
16 then also to not delay decommissioning. Correct?

17 MR. PURVIS: That's -- yes. That's the  
18 way I understand it.

19 MR. RANKIN: Okay. And looking at your  
20 Exhibit 38 from your PowerPoint Slide 10 from your  
21 demonstratives, that discusses the holdback. My  
22 understanding is then that this -- what you're -- what  
23 the purpose here would be to encourage or motivate  
24 operators to decommission within that holdback period.  
25 Correct?

1 MR. PURVIS: No.

2 MR. RANKIN: No. Okay. When would  
3 they -- when is when you or when is the -- what is the  
4 purpose of urging them to decommissioning? At what  
5 point? Is it up to them to decide?

6 MR. PURVIS: I -- yeah. I don't  
7 believe there's anything in the design intended to  
8 affect the timing of when it happens, merely that it  
9 does happen at the operator's expense instead of the  
10 public expense.

11 MR. RANKIN: Well, you just told me  
12 that the intent is to have it be decommissioned  
13 sooner. Correct?

14 MR. PURVIS: I don't remember saying  
15 sooner, but it -- the -- sooner than has been the case  
16 because of wells sitting in, for long periods of time,  
17 inactive status.

18 MR. RANKIN: Okay. The testimony you  
19 provided was that you wanted to incentivize operators  
20 to not delay decommissioning. Correct?

21 MR. PURVIS: Yes. Not to delay.

22 MR. RANKIN: Right. And so the inverse  
23 of that would be to do it sooner. Correct?

24 MR. PURVIS: No. No. Only to the  
25 extent that companies are artificially -- artificially

1     delaying now.

2                   MR. RANKIN: All right. So you're not  
3     saying -- your testimony is not that the purpose of  
4     this rule is to have operators plug their wells sooner  
5     than they otherwise would?

6                   MR. PURVIS: My testimony is that it  
7     should be done in a timely manner without artificial  
8     delay. To the extent that there is artificial delay,  
9     yes. Sooner.

10                  MR. RANKIN: Okay. And the financial  
11     assurance that's proposed on this rule is designed to  
12     make that happen. Correct?

13                  MR. PURVIS: That's the hope. Yeah.

14                  MR. RANKIN: Okay. So the last part  
15     here I wanted to point out is at the bottom of this  
16     same page, I've highlighted this sentence here. You  
17     say that the applicants offer a conservative but  
18     effective approach to limit the state's financial  
19     exposure in a way that will have little impact on  
20     overall oil and gas production in the state. Correct?

21                  MR. PURVIS: Yes.

22                  MR. RANKIN: I've read it correctly and  
23     that's still your position. Correct?

24                  MR. PURVIS: Yes.

25                  MR. RANKIN: Okay. I'm going to jump

1 in and discuss the financial assurance issue. I'm  
2 first going to go to the changes, proposed changes, to  
3 the active wells provision in the rules. I've got up  
4 here on the Slide 12 of your demonstrative proposed  
5 modifications to 19.15.8.9.C, and just here looking at  
6 the first portion of the modifications of the rule  
7 here is that you're proposing to increase the one well  
8 plugging bond to \$150,000. Correct?

9 MR. PURVIS: I'm not proposing, but the  
10 proposal is to increase to 150.

11 MR. RANKIN: The applicants' proposal  
12 is to increase that; make that change. Correct?

13 MR. PURVIS: Yes.

14 MR. RANKIN: Okay. And then the next  
15 modification here is to the statewide blanket bond,  
16 modifying it from a tiered approach to essentially no  
17 tiering where all operators with two or more active  
18 wells can elect to pay a blanket bond of \$250,000.  
19 Correct?

20 MR. PURVIS: I don't think they can  
21 elect. I think they're obligated. But otherwise,  
22 yes.

23 MR. RANKIN: I guess -- it wouldn't  
24 make no sense, but if they wanted to, they could go  
25 out and have single well bonds for all their wells.



1 Correct?

2 MR. PURVIS: I -- I guess you could do  
3 anything above the minimum that's required.

4 MR. RANKIN: Right. So it's really at  
5 their election to get a blanket bond. Correct?

6 MR. PURVIS: No. I -- I think the  
7 provision requires them to have a blanket bond as a  
8 minimum and leaves open the option for more assurance  
9 if they want it.

10 MR. RANKIN: And then it's on the  
11 operator -- a rational operator would elect to choose  
12 the blanket bond. Correct?

13 MR. PURVIS: Yes.

14 MR. RANKIN: Okay. So and referring  
15 back to your testimony on this topic?

16 MR. PURVIS: Okay.

17 MR. RANKIN: In your direct, this is  
18 page 38 of your direct where you review these changes.  
19 Okay? At the bottom of this page, you note that in  
20 discussing the effect of this change and the  
21 implications of it, you state that "However, the Oil  
22 and Gas Act statutory cap of \$250,000 for blanket  
23 binding means that the single well financial assurance  
24 requirement will not have wide effect as most wells  
25 reside in large company portfolios of 400 wells or

1 more, thus qualifying for the blanket bond." Did I  
2 read that correctly?

3 MR. PURVIS: You have read it  
4 correctly, and I think that I wrote it imprecisely.  
5 What it -- what I was trying to say was that most  
6 companies are going to fall under the -- the blanket  
7 bond.

8 MR. RANKIN: Simply because they have  
9 multiple wells. Right?

10 MR. PURVIS: Yes.

11 MR. RANKIN: And multiple active wells,  
12 that's allowing them to elect rather than pay single  
13 well bonds for each of those wells to be covered by  
14 the blanket bond. Correct?

15 MR. PURVIS: Yes.

16 MR. RANKIN: Okay. And the issue here  
17 is that the statute caps that at \$250,000. Correct?

18 MR. PURVIS: As I understand the -- the  
19 law, yes.

20 MR. RANKIN: No matter how many active  
21 wells they have. Right?

22 MR. PURVIS: As I understand the law,  
23 but -- but I -- I haven't studied the law as such.

24 MR. RANKIN: But that's the issue.  
25 Right? No matter how many active wells they have,

1 they only have to pay \$250,000 to get financial  
2 assurance. Correct? To cover all those wells?

3 MR. PURVIS: That's the way I  
4 understand it with the caveat that I'm -- I'm not sure  
5 how it applies differently to active or inactive  
6 wells.

7 MR. RANKIN: Very well. So I'm just  
8 talking about active wells. So for operators that  
9 have multiple active wells, they only have to pay  
10 \$250,000 to obtain financial assurance for all those  
11 wells. Correct?

12 MR. PURVIS: Yes.

13 MR. RANKIN: Okay. So --

14 MR. PURVIS: Under this provision  
15 alone.

16 MR. RANKIN: Very well. And the  
17 statute that you're referencing is this statute,  
18 70-2-14. Correct? And I've highlighted here the  
19 language that provides for the blanket bond in green.  
20 Have you reviewed that statute?

21 MR. PURVIS: I have not, Mr. Rankin.

22 MR. RANKIN: Okay. So you don't --  
23 you're not familiar with what the exist -- I mean,  
24 when you, in your testimony -- in your direct  
25 testimony, second sentence here that I've highlighted

1 "These rules are necessary because the nature of oil  
2 and gas economics in concert with New Mexico's  
3 existing rules create little obligation that assurance  
4 operators are planning for decommissioning and so on."

5 So you cite to what the existing rules  
6 are, but you're not -- you didn't familiarize yourself  
7 with what the existing statutory regulatory framework  
8 was that create those rules?

9 MR. PURVIS: Enough to draw that  
10 conclusion, but not enough to interpret the law.

11 MR. RANKIN: Okay. So you didn't  
12 review what the statute is or what it provides for as  
13 part of your preparation or review or recommendations  
14 to the Commission on what should be done?

15 MR. PURVIS: No. What I -- I did -- I  
16 mean, no analysis of the legal language. I did  
17 observe that the current bonding is a very small  
18 proportion and does not address the judgment proof  
19 problem.

20 MR. RANKIN: Okay. Going back to your  
21 testimony -- this is back to page 38 of your direct --  
22 you wanted to say that the effect of the \$250,000  
23 blanket bond means that the single well financial  
24 assurance rule, which requires 150,000 --

25 MR. PURVIS: On page 38? Please remind

1 me what line you're reading at?

2 MR. RANKIN: I'm summarizing.

3 MR. PURVIS: Oh, okay.

4 MR. RANKIN: I'm summarizing.

5 MR. PURVIS: Okay.

6 MR. RANKIN: In your testimony in this  
7 section, you testify that you state that the effect of  
8 the \$250,000 blanket bond means that the single well  
9 financial assurance in the proposed rule, which would  
10 require \$150,000 for every one well plugging bond,  
11 will not have wide effect. Correct?

12 MR. PURVIS: I think my testimony is  
13 that 19.15.8.C does not have much effect.

14 MR. RANKIN: Yeah. I mean, the  
15 issue -- and the issue there is, as we were just  
16 discussing -- right -- it's because operators have the  
17 option to elect when they have multiple active wells  
18 to obtain financial assurance under the blanket bond  
19 provision -- right -- of \$250,000. Correct?

20 MR. PURVIS: Yes.

21 MR. RANKIN: And that's why it won't  
22 have wide effect. Right? Because that \$250,000 isn't  
23 going to cover the multiple wells that they may have  
24 if they don't --

25 MR. PURVIS: Yes. \$250,000 is not much

1 money considering the size of the portfolios.

2 MR. RANKIN: Okay. And so the point  
3 being that \$250,000 based on your cost estimates is  
4 not going to even going to cover two wells. Right?

5 MR. PURVIS: Based on my analysis of  
6 other people's actual costs, it's not going to cover  
7 any.

8 MR. RANKIN: Right. But there's  
9 another way -- right -- to get more financial  
10 assurance that targets more wells and more operators  
11 across the state, and that's to create a new category  
12 of wells that targets marginal wells. Correct?

13 MR. PURVIS: There are three other  
14 provisions that trigger single well, and a fourth that  
15 triggers portfolio level.

16 MR. RANKIN: And I'm talking now here  
17 about that the proposal under the rule is to create  
18 this new category of marginal wells. Correct?

19 MR. PURVIS: Yes.

20 MR. RANKIN: And that proposal is  
21 intended to target, to broaden the scope of wells that  
22 are required to get additional financial assurance  
23 under the rule. Correct?

24 MR. PURVIS: Yes, it does do that.

25 MR. RANKIN: Okay. And that's the

1 intent. Right?

2 MR. PURVIS: I believe so.

3 MR. RANKIN: Yeah. I mean, otherwise  
4 you're stuck with \$250,000 short blanket bond or  
5 single well bonds of 150. Right?

6 MR. PURVIS: Right.

7 MR. RANKIN: And that's not addressing  
8 the problem that you've identified?

9 MR. PURVIS: The -- yes.

10 MR. RANKIN: So then I'm going to go to  
11 Slide 13 in your PowerPoint, which is the overview of  
12 the proposal to create this marginal well and the  
13 inactive well financial assurance category. Correct?

14 MR. PURVIS: One second. I'm getting  
15 there.

16 MR. RANKIN: I've got it on the screen  
17 too so you can see it.

18 MR. PURVIS: Yeah. Yes. Thank you.

19 MR. RANKIN: Yeah. Yeah. I'm going to  
20 be real -- I'm going to direct you real -- so we get  
21 to it real fast.

22 MR. PURVIS: Okay. Thank you.

23 MR. RANKIN: So here on Slide 13 of  
24 your demonstrative, this outlines your proposal to  
25 amend the financial assurance provisions to include

1 this new category of marginal wells and inactive  
2 wells. Correct?

3 MR. PURVIS: Inactive preexists.

4 MR. RANKIN: Financial assurance, I  
5 mean -- yeah. Okay. But very well. It does exist.  
6 You're right. But this is a new provision in the  
7 rule. Correct?

8 MR. PURVIS: Yes.

9 MR. RANKIN: Okay. And the first thing  
10 here is the definition of the marginal well that the  
11 applicants are proposing. Right?

12 MR. PURVIS: Yes.

13 MR. RANKIN: And then the very next  
14 aspect of the financial assurance provision provides  
15 that a transferee, the one receiving wells, has to  
16 provide a one well financial assurance of \$150,000 for  
17 each marginal well prior to transfer. Correct?  
18 That's under subpart 1. Right?

19 MR. PURVIS: Yes. Yes.

20 MR. RANKIN: Okay. So that's one way  
21 of addressing the issues to make sure that operators,  
22 if they're going to transfer these wells, that the  
23 recipient actually is bonded and has the economic  
24 financial assurance in place to protect the state.  
25 Right?



1 MR. PURVIS: Yes.

2 MR. RANKIN: Okay. Next provision  
3 starting in January 2028 -- and this is under  
4 subparagraph 2 -- operators then are required to  
5 provide a one well plugging bond for each marginal  
6 well. Correct?

7 MR. PURVIS: Yes.

8 MR. RANKIN: Okay. And even though  
9 marginal wells are active wells, operators would not  
10 be able to then rely on or elect a blanket bond to  
11 cover any marginal wells anymore. Correct?

12 MR. PURVIS: Oh. I'm not sure I  
13 understand the question, and I'm not sure how to  
14 answer it. It sounds like an interpretation, a  
15 interpretation of the way the rules work together.

16 MR. RANKIN: Well, isn't the purpose to  
17 prevent operators from relying on a blanket bond so  
18 they actually are -- they have more financial  
19 assurance to cover all their wells?

20 MR. PURVIS: The purpose is to protect  
21 the state; to provide financial assurance to protect  
22 the state.

23 MR. RANKIN: But you can't tell me  
24 whether operators are going to be prohibited from  
25 electing to obtain a blanket bond under this new

1 provision?

2 MR. PURVIS: I have given that no  
3 thought, Mr. Rankin.

4 MR. RANKIN: Really? So if I'm an  
5 operator, and I have more than -- let me ask you this,  
6 then. If I'm an operator, I have more than 15 percent  
7 wells that are marginal. Okay? And I have a  
8 portfolio of 400 wells, and I got 15 percent that are  
9 marginal, can I still elect to put my active  
10 non-marginal wells under a blanket bond?

11 MR. NYKIEL: Madam --

12 MR. PURVIS: No.

13 MR. NYKIEL: Madam Hearing Officer, I'm  
14 object. It calls for a legal conclusion.

15 THE HEARING OFFICER: Yeah.

16 Mr. Rankin, would you ask it in a way  
17 that doesn't call for a legal --

18 MR. RANKIN: I'm sorry. This is his  
19 slide, and he's proposing these rules. I'm trying to  
20 understand what the effect of them are going to be.  
21 He's the witness.

22 THE HEARING OFFICER: Right. I  
23 understand. Writing testimony about mostly financial  
24 matters.

25 Mr. Purvis, can you answer the question

1 without answering it as a legal conclusion?

2 MR. PURVIS: Well, the only thing I  
3 would clarify is that the rules are not -- as written  
4 are not mine. I did not write them. I have said that  
5 they would be effective and should be adopted.

6 BY MR. RANKIN:

7 MR. RANKIN: Okay. So you can't tell  
8 me as you're sitting here what the effect of this rule  
9 would be on operators who have more than 15 percent  
10 marginal wells in their portfolio, whether they would  
11 be obligated to or no longer able to elect a blanket  
12 bond for their remaining active wells?

13 MR. PURVIS: I do not know the  
14 interaction between the two provisions that you're  
15 talking about.

16 MR. RANKIN: Who among WELC's witnesses  
17 would be able to answer that question?

18 MR. PURVIS: I do not know.

19 MR. RANKIN: Okay. So if I'm just  
20 looking -- and I'm just going to read the plain  
21 language of the rule. Okay? I'm going to look at  
22 this subparagraph 3, and I'll read it out loud.

23 "An operator with 15 percent or more of  
24 their wells in marginal or inactive well status or a  
25 combination thereof shall" -- not at discretion, but

1 shall -- "provide a one well plugging financial  
2 assurance in the amount of \$150,000 for each well  
3 registered to the operator until the percentage of the  
4 operator's marginal and inactive wells is decreased  
5 below 15 percent."

6 Did I read that correctly?

7 MR. PURVIS: Yes, sir.

8 MR. RANKIN: So just understanding the  
9 plain language of that provision that Applicants are  
10 proposing that's part of your testimony, what's your  
11 understanding of what the effect of that provision  
12 would be on whether an operator would have the ability  
13 to elect, after this is adopted, a blanket bond for  
14 its remaining active wells that are not marginal?

15 MR. NYKIEL: Madam Hearing Officer, I  
16 believe that was asked and answered.

17 THE HEARING OFFICER: Mr. Purvis, have  
18 you answered that already?

19 MR. PURVIS: I believe I have.

20 MR. RANKIN: Well, I've asking him now  
21 specifically about this provision to help me  
22 understand what it means. As the witness who's  
23 testifying to it, who's proposed this or presenting  
24 this as part of the applicants' proposal, I'm trying  
25 to understand what it means for the industry.

1 THE HEARING OFFICER: Do you have  
2 anything to add to your earlier answer?

3 MR. PURVIS: The only thing I could say  
4 is that I assume that the operator could have both,  
5 but I do not know the way that the legal -- that the  
6 statutes or the -- the regulations rather would  
7 interact.

8 MR. NYKIEL: Madam Hearing Officer, we  
9 have a legal expert to follow who is in a better  
10 position to answer some of these questions.

11 THE HEARING OFFICER: All right. Thank  
12 you. Is that Mr. Morgan?

13 MR. NYKIEL: Yes.

14 THE HEARING OFFICER: Okay. Thank you.

15 MR. RANKIN: Who was it? Mr. Morgan.  
16 Okay.

17 BY MR. RANKIN:

18 MR. RANKIN: Mr. Purvis, because you're  
19 not familiar with how this rule would actually  
20 operate, I'm going to be able to eliminate a  
21 substantial portion of my questions for you.

22 MR. PURVIS: It's a win-win.

23 MR. RANKIN: No. It's not a win-win.  
24 It's not a win-win. However, you'll have a shorter  
25 cross-examination from me.

1 All right. I'm going to talk about  
2 impacts. Mr. Cloutier did address some of this with  
3 you, but I want to dig in a little bit deeper. Going  
4 back to your testimony in direct, we talked about this  
5 briefly at the outset, and he buried you on this. In  
6 short here, your belief is that in proportion to the  
7 risk of -- mitigation of the risk that the impact on  
8 oil and gas production is going to be small. Correct?

9 MR. PURVIS: Yes.

10 MR. RANKIN: Okay. And this slide here  
11 in your demonstrative, Slide 28 from your Exhibit 52,  
12 shows that at the 15 percent threshold that we were  
13 just discussing. Right?

14 MR. PURVIS: Mm-hmm.

15 MR. RANKIN: About, you know, there's a  
16 threshold once you reach 15 percent, then operators  
17 are going to have to do something and you can't tell  
18 me what that is or whether they can continue to use a  
19 blanket bond or what. But at 15 percent, if once they  
20 have 15 percent marginal wells in the portfolio,  
21 something happens in the rule, and this is intended to  
22 show what the effect of that is. Right?

23 MR. PURVIS: Yes. The ceiling effect.

24 MR. RANKIN: The ceiling effect. Okay.  
25 And looking at this, you see a big drop off. Right?

1 Once for companies that have portfolios of 15 percent  
2 or more marginal wells, that sort of drops off.  
3 Right? There's fewer companies that -- generally,  
4 fewer companies that have 15 percent or more marginal  
5 wells in their portfolio. Right?

6 MR. PURVIS: I -- I think what you're  
7 saying is the same thing I observed. Between the  
8 third and fourth bin, there's a step change down.  
9 Yes.

10 MR. RANKIN: Okay. But nevertheless,  
11 when I look at your table at 15 percent, that's still  
12 51 percent of all the operators in the state would be  
13 impacted by that threshold. Correct?

14 MR. PURVIS: Fifty-one percent of the  
15 legal entities, no. Fifty-one percent of the  
16 operating companies, yes.

17 MR. RANKIN: Do you know how many that  
18 would be?

19 MR. PURVIS: Hundreds.

20 MR. RANKIN: Hundreds. Okay. And at  
21 that 15 percent, it's about a little less than 20  
22 percent of the total wells in the state. Correct?

23 MR. PURVIS: Correct.

24 MR. RANKIN: And then on the far right  
25 column, you've got 2.3 percent BOE, which I understand

1 to be barrels of oil equivalent. Right?

2 MR. PURVIS: Correct.

3 MR. RANKIN: And just to be clear, I  
4 mean, I think there's two places on the slide where  
5 you use the number 2.5 percent. So I don't know if  
6 it's 2.3 or 2.5. That's the difference between  
7 precision and accuracy. Right? Either way it's  
8 accurate, but it's not quite precise. Right?

9 MR. PURVIS: That's a typo, and I  
10 apologize.

11 MR. RANKIN: That's okay. So I'll just  
12 use 2.3 percent.

13 MR. PURVIS: Thank you.

14 MR. RANKIN: Okay. So now these  
15 charts, this chart right here is based off of 2024  
16 production in New Mexico. Correct?

17 MR. PURVIS: Correct.

18 MR. RANKIN: That's my understanding.  
19 Right? And so we see that the 15 percent threshold  
20 will have an impact on 51 percent of the companies  
21 that operate in the state. Hundreds. Right?

22 MR. PURVIS: Yes.

23 MR. RANKIN: Just out of curiosity, do  
24 you know -- I mean, how many -- Mr. Cloutier was  
25 asking you about the master orphaned wells spreadsheet



1     that was part of your analysis. How many operators,  
2     different entities, legal entities, are on that master  
3     orphaned wells spreadsheet?

4                     MR. PURVIS: I don't recall.

5                     MR. RANKIN: Is it hundreds?

6                     MR. PURVIS: No.

7                     MR. RANKIN: Is it dozens?

8                     MR. PURVIS: It's closer to dozens than  
9     hundreds, but I don't remember the number.

10                    MR. RANKIN: But if I were to pull that  
11     up, I could look at it and see how many operators are  
12     actually implicated in that master orphaned well  
13     spreadsheet?

14                    MR. PURVIS: Yes.

15                    MR. RANKIN: But it's not hundreds.  
16     Right?

17                    MR. PURVIS: It's not hundreds.

18                    MR. RANKIN: It's not 51 percent of the  
19     operators in the state. Right?

20                    MR. PURVIS: Correct.

21                    MR. RANKIN: Okay. So now, we talked  
22     about this at the outset. The proposed rules were set  
23     up to increase the incentives, not to delay  
24     commissioning wells, decommissioning wells, during the  
25     operating life. Correct?

1                   MR. PURVIS: I -- I believe that's what  
2 we read before.

3                   MR. RANKIN: Right. And that's your  
4 testimony. Right?

5                   MR. PURVIS: Not -- not to artificially  
6 delay.

7                   MR. RANKIN: Right. So you -- but and  
8 then on the far right, we talked about these 2.3  
9 percent, but you don't tell us what those volumes are.  
10 Right? You just say it's a small percentage of the  
11 total production.

12                   MR. PURVIS: That's correct.

13                   MR. RANKIN: So Mr. Cloutier was asking  
14 about 2025 production. I'm going to pull up -- I  
15 pulled this down last night. I went to the OCD's  
16 website, and I pulled down the most recent production  
17 values for total production in the state. You see  
18 there's a Column H that has total gas. Okay? There's  
19 a Column N that has total oil. Okay?

20                   And I'm going to just -- I'm going to  
21 scroll down to the -- almost to the bottom because I'm  
22 going to look at 2024 because that's what's on your  
23 chart. Okay? Oh, that was 1994. What was I doing?  
24 2004. Man, I'm 20 years off. Sorry. Okay. Here we  
25 go.

1                   So Column H again is the gas column.  
2    Okay? And Column N is the oil column. I'm not going  
3    to bother doing the conversion of barrels of oil  
4    equivalent for gas, but I think it's about 6,000 cubic  
5    feet, something like that, is the conversion.

6                   MR. PURVIS: That's the standard  
7    conversion. Yeah.

8                   MR. RANKIN: Okay. So I'm not going to  
9    bother with that. Okay? But I'm just going to focus  
10   on oil like Mr. Cloutier did. Okay? So if I go over  
11   to the oil column and I look at the total production  
12   for the state for 2024, that was 740 million barrels.  
13   Right?

14                  MR. PURVIS: Yes.

15                  MR. RANKIN: And that matches with what  
16   the LFC reported, and it's on track within the range  
17   of what you predict for 2025. Right?

18                  MR. PURVIS: Yeah. I -- I estimated  
19   700, 750 million.

20                  MR. RANKIN: Okay. And again, just to  
21   get these numbers out there, I ran -- you can see my  
22   calculation. I took that value, I multiplied it at  
23   times 2.3 percent, and I get 17 million barrels.  
24   Right?

25                  MR. PURVIS: Yes.

1 MR. RANKIN: And that's nothing to  
2 sniff at. Right?

3 MR. PURVIS: Again, I would not object  
4 if someone gave me 17 million barrels.

5 MR. RANKIN: Right. And I'm not even  
6 including the barrel of oil equivalent for the gas --  
7 right -- to get what the total impact of your proposed  
8 well -- of the applicants' proposed rule will have.  
9 Right?

10 MR. PURVIS: Correct.

11 MR. RANKIN: I'm just looking at oil  
12 here. And so 2.3 percent of the oil portion of this  
13 production is 17 million barrels. Right?

14 MR. PURVIS: That's the math.

15 MR. RANKIN: Okay. And then if I --  
16 and I did -- I actually picked the same number that  
17 Mr. Cloutier did because I looked at the current price  
18 of oil, and it's around 60 -- it's a little below this  
19 now, but around 60 bucks a barrel. So the value of  
20 that oil from last year that would be impacted under  
21 your analysis is over a billion bucks. Right?

22 MR. PURVIS: That's the math.

23 MR. RANKIN: That's the math. It's a  
24 big number. Okay? So and that's not even including  
25 the value of the natural gas, which, you know, as we

1 all know, is not as valuable as the oil.  
2 Nevertheless, that's just the oil portion. Correct?

3 MR. PURVIS: Correct.

4 MR. RANKIN: Okay. Now, as you  
5 testified to Mr. Cloutier, you know, that's the high  
6 end. Right? You're saying that that 2.3 percent, 2.5  
7 percent, that \$1 billion is not going to just go away.  
8 Right?

9 MR. PURVIS: Correct.

10 MR. RANKIN: But some fraction of it  
11 is?

12 MR. PURVIS: Yes.

13 MR. RANKIN: And you don't know what it  
14 is. Right?

15 MR. PURVIS: Correct.

16 MR. RANKIN: You haven't done an  
17 analysis to determine what portion of that 2.3 percent  
18 that's going to be impacted by this rule is going to  
19 no longer be in existence. Right?

20 MR. PURVIS: I have not quantified it.  
21 I have made a directional analysis.

22 MR. RANKIN: Okay. It's going to be  
23 down right? Up or down? Down. Right?

24 MR. PURVIS: Right. Exactly.

25 MR. RANKIN: Okay. So no -- so you

1 haven't done any kind of study to determine whether  
2 the proposal will ultimately result in a reduction in  
3 ultimate recovery across the state, have you? Other  
4 than it's going to go down. Right?

5 MR. PURVIS: There are competing  
6 factors that -- some of which may drive production up  
7 and some of which may drive production down. I have  
8 made an analysis of the effect of this standard  
9 economic model of economic limit on how that would  
10 change the economic life of -- of wells under the  
11 rules.

12 Please excuse me for just a second. I  
13 can't see Mr. Rankin.

14 MR. RANKIN: I'm sorry. Yeah.

15 MR. PURVIS: Thank you.

16 MR. RANKIN: I'm in the back row.

17 So but you haven't done a study to  
18 determine what the volumes of reduction in ultimate  
19 recovery would be from adoption of this rule, have  
20 you?

21 MR. PURVIS: I have not done any  
22 analysis consistent with -- with the type of work on  
23 the -- the exhibit we were just looking at, but I did,  
24 as I said, make an analysis of how it would affect  
25 economic limit and it would --

1 MR. RANKIN: And what's your answer on  
2 that?

3 MR. PURVIS: It will change the  
4 economic limit for most wells between about one and  
5 three months in the idealized model that we use.

6 MR. RANKIN: Okay. So then you also  
7 haven't conducted an analysis to determine what the  
8 financial impact would be on operators or wells that  
9 generate that 2.3 percent of the statewide production.  
10 Right?

11 MR. PURVIS: I'm sorry. I don't  
12 understand the question.

13 MR. RANKIN: Sure. In other words, as  
14 a result of imposing additional financial assurance on  
15 companies -- right -- there's going to be some  
16 financial impact on those operators who produced that  
17 2.3 percent of the volumes of the state that we're  
18 just looking at. Right?

19 MR. PURVIS: Yes.

20 MR. RANKIN: And you have not conducted  
21 any sort of analysis of the financial impact on those  
22 companies to determine how it would affect their  
23 ability to continue to produce that 2.3 percent of oil  
24 in the state, have you?

25 MR. PURVIS: I believe that's fair.

1 MR. RANKIN: Right. Okay. Now,  
2 you've -- on this Slide 35 in your demonstratives, you  
3 showed us sort of this concept about weighing costs  
4 and benefits. Right?

5 MR. PURVIS: Yes, I did.

6 MR. RANKIN: And but you didn't do any  
7 kind of study to determine whether any potential  
8 reduction in ultimate recovery or financial impacts on  
9 operators would be offset by any potential economic  
10 benefits derived from the increased financial  
11 assurance, did you?

12 MR. PURVIS: I did not make a  
13 prediction of what the net gain is. I did observe  
14 that the cost is minimal and the protection -- the  
15 issue being protected is much larger.

16 MR. RANKIN: Or even that there is a  
17 net gain. Did you do an analysis to show us that  
18 there's a net gain?

19 MR. PURVIS: I did not predict what the  
20 new bonding level would be.

21 MR. RANKIN: Because we don't even know  
22 what the net loss would be. Right? So we can't say  
23 what the net -- if there is even a net gain. Right?

24 MR. PURVIS: I don't think that's a  
25 fair statement.



1 MR. RANKIN: Okay. So you feel like  
2 there -- you, in your opinion -- that there is a net  
3 gain?

4 MR. PURVIS: Yes.

5 MR. RANKIN: But you can't tell me what  
6 it is?

7 MR. PURVIS: I can't. I have not  
8 quantified it.

9 MR. RANKIN: Okay. So why -- so  
10 sitting as the Commission's before you or even the  
11 operators, the public and I have no way of knowing  
12 whether there's a net gain or not because it's just  
13 your opinion. Right?

14 MR. PURVIS: No. I've -- I've  
15 quantified the magnitude of both, and there are  
16 different orders of magnitude.

17 MR. RANKIN: Okay. But we just looked  
18 at the \$1 billion that is the value of the 2.3 percent  
19 from 2024, and you can't tell me what percentage of  
20 that is going to be impacted. Right?

21 MR. PURVIS: Correct.

22 MR. RANKIN: And so that's a value, and  
23 I don't know how much of that value is going to be  
24 impacted, do I?

25 MR. PURVIS: We -- I have not specified

1 and not quantified that.

2 MR. RANKIN: Okay. So I can't know  
3 whether your opinion about that there's a net benefit  
4 is accurate or not. Right?

5 MR. PURVIS: I -- I continue to  
6 disagree. I believe that the analysis of the  
7 magnitude of the issue being addressed, the magnitude  
8 of assurance that would be created by comparison to  
9 the loss, is a net gain to the public.

10 MR. RANKIN: So because you haven't  
11 done an analysis to determine whether there's going to  
12 be, or as I understand it, actually there's probably  
13 going to be a net reduction in ultimate recovery, you  
14 can't -- you're not able to testify today that this  
15 proposed rule will prevent waste?

16 MR. PURVIS: I have not drawn a -- I  
17 have not drawn an opinion about the effect on waste,  
18 as I understand waste is a legal concept.

19 MR. RANKIN: Okay. So but it's also an  
20 engineering concept. Right? I mean, isn't it an  
21 engineered -- one of the engineering purposes out  
22 there is to not waste -- right -- is to maximize  
23 recovery. Do it in an economic way. Right? It's  
24 also an economic -- it's an industry term. Right?

25 MR. PURVIS: It -- it is a term that we

1 talk about, although it has -- like marginal has both  
2 legal and industry application, although the majority  
3 of the application is legal.

4 MR. RANKIN: Okay. But just to  
5 confirm, you didn't do an analysis to say one way or  
6 the other whether this rule would be able to prevent  
7 waste. Right?

8 MR. PURVIS: I -- I did draw a couple  
9 of opinions I think are relevant. First is that waste  
10 is not an economic concept. It's a volumetric  
11 concept.

12 MR. RANKIN: Oh, okay. So in the  
13 engineering --

14 MR. PURVIS: Use on the engineering  
15 side. Thank you, Mr. Rankin. Yes.

16 MR. RANKIN: So you're not commenting  
17 on that, on the legal side, under New Mexico law, what  
18 the Commission's rules, how the Commission rules guide  
19 the Commission to consider waste. Right?

20 MR. PURVIS: Right.

21 MR. RANKIN: But you're just saying --

22 MR. PURVIS: That's correct. And I  
23 also did opine that the -- as I said a minute ago, the  
24 change in ultimate recovery would be minute and that  
25 there are competing forces that might cause ultimate

1 recovery to be higher. I opined that the change does  
2 not make premature end of production because the  
3 value -- this -- the word premature as a -- is a value  
4 judgment. And -- and it seems to me that fully --  
5 more secure financially responsible operations is --  
6 does not make it premature.

7 MR. RANKIN: Okay. But the challenge  
8 here is putting consideration of risk of taking on  
9 orphaned wells and the economic liability of orphaned  
10 wells versus the commission's obligation to prevent  
11 waste. Right? There's some balancing that has to  
12 occur between those two competing interests. Right?

13 MR. PURVIS: Yeah. And as I understand  
14 the charge of the Commission, it is to balance  
15 correlative rights, waste, and environmental and  
16 public interest.

17 MR. RANKIN: To balance or to prevent  
18 waste? That's -- you don't know. That's not your  
19 expertise, is it?

20 MR. NYKIEL: Yeah. I'm going to just  
21 object to the speculation and the legal nature of the  
22 question.

23 BY MR. RANKIN:

24 MR. RANKIN: Okay. So I'll move on to  
25 my last couple questions then. Okay? So we've

1 discussed a fair bit about whether or not you can  
2 actually quantify what the impact is and whether it's  
3 a net benefit or not. Okay? And you continue to take  
4 the position that you believe it is a net benefit, but  
5 with the values here and being un unable to quantify  
6 them, I remain unconvinced. Okay? So we'll move on  
7 from that.

8 I'm going to go back to your Slide 28,  
9 and I'm going to look at this again. And you provided  
10 some helpful additional other brackets -- okay -- to  
11 consider impacts of other portfolio mixes.

12 MR. PURVIS: Okay.

13 MR. RANKIN: If I were to look at this  
14 table in your exhibit here, so the rule is focused on  
15 15 percent -- right -- of a portfolio mix of marginal  
16 wells and other active wells. Right?

17 MR. PURVIS: The rule says 15 percent  
18 marginal and -- and inactive.

19 MR. RANKIN: Yes. Right. But you've  
20 also provided a sort of overview of what the impact  
21 might look like if we looked at different percentages  
22 of those two wells. Right?

23 MR. PURVIS: Yes. That's correct.

24 MR. RANKIN: And when we get up to a  
25 higher mix, like 30 percent or more, all of a sudden

1     you're dropping down below 1 percent.   Correct?

2                   MR. PURVIS:   That's correct.

3                   MR. RANKIN:   One percent of the barrels  
4     of oil equivalent production impacted.   Right?

5                   MR. PURVIS:   The table on my Exhibit 52  
6     reads that a threshold of 30 percent marginal in an --  
7     an inactive instead of a threshold of 15 percent  
8     impacts the extreme limit of 0.6 percent.

9                   MR. RANKIN:   And as well, it's a  
10    smaller number or smaller fraction of operators in the  
11    state.   Correct?

12                   MR. PURVIS:   Yes, sir.

13                   MR. RANKIN:   Thirty-three percent  
14    instead of fifty-one percent.   What is the -- do you  
15    have any idea how many operators 33 percent  
16    represents?

17                   MR. PURVIS:   Around a hundred, maybe a  
18    little bit more.

19                   MR. RANKIN:   So not hundreds, but a  
20    hundred.   Right?

21                   MR. PURVIS:   Legal entities, yes.

22                   MR. RANKIN:   Smaller impact and a much  
23    smaller impact on the barrels of oil equivalent.  
24    You're reading that correctly?

25                   MR. PURVIS:   Yeah.

1 MR. RANKIN: Okay.

2 THE HEARING EXAMINER: Mr. Rankin, you  
3 have about five minutes.

4 MR. RANKIN: Perfect.

5 BY MR. RANKIN:

6 MR. RANKIN: Oh, okay. I'm not going  
7 to be able to pull it up right now to go through it,  
8 but if I told you that my understanding is that for  
9 your spreadsheet, for the master orphaned wells  
10 spreadsheet, it's fewer than 20 operators. Would that  
11 surprise you?

12 MR. PURVIS: I thought it -- I would've  
13 expected a little bit more, but I -- I would accept  
14 your representation.

15 MR. RANKIN: Okay. And that's a lot  
16 fewer than the hundreds under the 15 percent that are  
17 going to be impacted under the proposed rule. Right?

18 MR. PURVIS: The historical pace of  
19 orphaning is less than can be expected in the future.

20 MR. RANKIN: So your view is that it's  
21 going to be an -- there's going to be more of these  
22 folks on that list?

23 MR. PURVIS: I believe all the evidence  
24 points to that, yes.

25 MR. RANKIN: Okay. But you -- but that

1 hasn't been the case. Right? I mean, it still -- I  
2 mean, remains to be seen. There's only 14 operators  
3 or fewer than 20 on that list -- right -- of orphaned  
4 wells?

5 MR. PURVIS: The orphaned -- the master  
6 orphan wells spreadsheet includes only those operators  
7 who have already endured enforcement action, and it  
8 includes 1800 wells. The list of wells already  
9 prepared, ready for enforcement action, but not yet  
10 enforced because of lack of resources is approximately  
11 double that currently.

12 Well, what it appears to be here, and I  
13 know nationally, is that the population of orphaned  
14 wells today is larger than the population of all wells  
15 that have ever been plugged by orphan well programs  
16 over the decades that they have existed.

17 Meanwhile, as my -- my work shows, the  
18 pace of -- well, haven't been pace of decommission  
19 here, but the -- the very large population, tens of  
20 thousands of wells, are standing on the edge of  
21 economic viability as it stands.

22 MR. RANKIN: Well, no further  
23 questions.

24 Thank you very much, Madam Hearing  
25 Officer.



1 THE HEARING OFFICER: Thank you,  
2 Mr. Rankin.  
3 Mr. Maxwell, do you have questions of  
4 Mr. Purvis?  
5 MR. MAXWELL: No questions. Thank you.  
6 THE HEARING OFFICER: Thank you.  
7 I'm not sure if Ms. Nanasi is on the  
8 platform, but I'll ask. No.  
9 All right. Mr. Moore for State Land  
10 Office?  
11 Mr. Tremaine, do you have questions?  
12 MR. TREMAINE: I do have a couple  
13 questions, Madam Hearing Officer, thank you.  
14 MR. PURVIS: If -- if I may, if we're  
15 going to be more than just a couple of minutes, I  
16 could sure -- sure use a break now rather than later.  
17 MR. TREMAINE: Yeah. I think I'm going  
18 to be about ten minutes, but I think we should take a  
19 break.  
20 THE HEARING OFFICER: All right. Well,  
21 it is lunchtime then now, so let's break for lunch and  
22 come back a little bit before one.  
23 MR. PURVIS: Thank you.  
24 (Off the record.)  
25 THE HEARING OFFICER: All righty. When

1 we broke for lunch -- we're back after our lunch  
2 break. When we broke for lunch, Mr. Tremaine was  
3 about to ask his questions of Mr. Purvis.

4 Go ahead, Mr. Tremaine.

5 MR. TREMAINE: Thank you, Madam Hearing  
6 Officer. I'm just getting booted back up into -- I  
7 wanted to screen share, so okay.

8 CROSS-EXAMINATION

9 BY MR. TREMAINE:

10 MR. TREMAINE: Good afternoon,  
11 Mr. Purvis.

12 MR. PURVIS: Good afternoon.

13 MR. TREMAINE: Thank you for being  
14 here. I hope you had a good lunch. I'd like to -- if  
15 I can please share, I'd like to screen share -- well,  
16 doing a very poor job of it.

17 MR. PURVIS: Oh, good drawing.

18 MR. TREMAINE: Yeah. That's -- yeah.  
19 The -- while I'm floundering at this, this is amazing  
20 because I've done this in any number of hearings and  
21 this is not how it goes. Well, let's try this another  
22 way while I reboot here.

23 So, Mr. Purvis, do you recall your  
24 Exhibit 52 discussing the breakdown of operators and  
25 wells and production that would be impacted by the

1 cutoff disqualifying operators from blanket bonding?

2 MR. PURVIS: Yes, I do.

3 MR. TREMAINE: Okay. And the current  
4 proposed rule, do you agree that it disqualifies  
5 operators from blanket bonds if more than 15 percent  
6 of their wells included in their portfolio fit the  
7 proposed definition of marginal wells?

8 MR. PURVIS: As I told Mr. Rankin, I'm  
9 not sure I understand the interaction between the  
10 blanket bond rules and the by well rules.

11 MR. TREMAINE: Thank you. I didn't  
12 mean to belabor that point, but the cutoff proposed in  
13 a rule is 15 percent. Right?

14 MR. PURVIS: Yes.

15 MR. TREMAINE: Okay. And would you  
16 agree that that 15 percent cutoff came out of  
17 discussions that the petitioner had with OCD and in  
18 response to edits proposed by OCD in response to the  
19 original petition?

20 MR. PURVIS: I have no knowledge of  
21 where it came from.

22 MR. TREMAINE: Okay. To your  
23 knowledge, did WELC or any other party solicit  
24 feedback on this part of the rule from Industry?

25 MR. PURVIS: I have no independent

1 knowledge.

2 MR. TREMAINE: Okay. Are you aware of  
3 any feedback or counterproposals or red lines related  
4 to this subsection for marginal well portfolios that  
5 have been provided by Industry?

6 MR. PURVIS: What I know about the  
7 origins of the proposal is just what's been covered in  
8 the hearing the last couple days.

9 MR. TREMAINE: Thank you.

10 MR. PURVIS: For that part.

11 MR. TREMAINE: Okay. So do I  
12 understand your testimony to generally stand for the  
13 proposition that setting that threshold for marginal  
14 well portfolios at 15 percent represents a logical  
15 breakpoint?

16 MR. PURVIS: Yes.

17 MR. TREMAINE: Okay. Included -- and  
18 this is why I was trying to share the slide.  
19 Apologies. But on your Slide 52, you listed several  
20 other break points with breakdowns.

21 MR. PURVIS: Yes, I did.

22 MR. TREMAINE: Including, I believe 25  
23 percent, 30 percent, et cetera.

24 MR. PURVIS: Yes, that's correct. I  
25 did.

1 MR. TREMAINE: Do you believe after  
2 performing your analysis that those other thresholds  
3 for margin well portfolios would constitute other also  
4 logical break points that could be included in this  
5 rule?

6 MR. PURVIS: Yes. And not all the  
7 points. The higher you go, I believe the -- the less  
8 reasonable it becomes, but I do believe that something  
9 between 15 and 25 percent would be a reasonable number  
10 based on my experience and knowledge of operations in  
11 the industry.

12 MR. TREMAINE: Okay. Do you have any  
13 views on the breakpoint at 30 percent? Would that be  
14 a logical breakpoint, or do you draw the line at 25?

15 MR. PURVIS: There is not as much  
16 evidence to suggest the 30 percent, and I -- I think  
17 in my qualitative experience, it's a high number.

18 MR. TREMAINE: Okay. Thank you.  
19 Earlier today, Mr. Purvis, you shared Applicants'  
20 Exhibit Number 86, variance of actual estimated versus  
21 time for recently plugged orphan wells. Do you recall  
22 that exhibit?

23 MR. PURVIS: Yes, sir.

24 MR. TREMAINE: Okay. And I think as  
25 part of that discussion, there was some questions and

1     answers regarding \$150,000 representing a reasonable  
2     average for wellbore plugging costs across the  
3     industry. Is that fair?

4                     MR. PURVIS: Would you ask again?

5                     MR. TREMAINE: Yeah. So based on your  
6     analysis that's represented in Exhibit Number 86,  
7     would you agree that \$150,000 as kind of like a  
8     placeholder for the average plugging cost, that that's  
9     a reasonable estimate of average plugging costs for  
10    wellbore plugging across the industry in New Mexico?

11                    MR. PURVIS: It's a reasonable estimate  
12    of the average across New Mexico, but 86 doesn't  
13    support that directly.

14                    MR. TREMAINE: Okay. How would you  
15    clarify in response to my question?

16                    MR. PURVIS: Exhibit 86 pertains to the  
17    nature of the overruns, not so much the qualitative  
18    average. But as I've said other times the -- we have  
19    a sample of several hundred wells of actual experience  
20    from the OCD's experience, and that is broadly  
21    representative and easily by far the -- the most  
22    representative data available.

23                    MR. TREMAINE: Okay. So do I  
24    understand the distinct clarification then to be that  
25    you agree with my statement that the 150,000 is a

1 reasonable average, but I wasn't -- I shouldn't have  
2 attributed that to Slide 86?

3 MR. PURVIS: Correct.

4 MR. TREMAINE: Okay. Thank you. When  
5 you break down and perform this analysis and looking  
6 at specific operators like you have broken out in  
7 Slide 86, is \$150,000 as a rough average for wellbore  
8 plugging costs representative of an average for  
9 individual operators? Do you understand the question?

10 MR. PURVIS: I'm not sure I do. Please  
11 ask again.

12 MR. TREMAINE: Okay. So you have Slide  
13 86 broken down with the overruns plotted. They're  
14 broken up by operator. And I was reading this along  
15 with your other testimony to say that 150,000 is a  
16 good average across all of these wells plugged, but  
17 they were plugged -- the wells were registered to  
18 various different operators.

19 So I want to say on a more granular  
20 level, can you make that same finding or determination  
21 if you look at in wells that were registered and  
22 operated by specific operators?

23 MR. PURVIS: I think I understand your  
24 question. We do have data on cost and cost overruns  
25 from a number of different operators. I have not

1 specifically examined that data for variations,  
2 whether some operators are systematically higher or  
3 others systematically lower. But I also have not  
4 observed any sort of trend on 86 or other places that  
5 would suggest that -- that some operators would be  
6 systematically higher or lower.

7 That said, one caveat in my direct  
8 testimony, I said that there will be some variations  
9 from place to place, and I noted in particular the  
10 Raton Basin might be significantly cheaper, and then  
11 a -- an operator that's only in the Raton Basin, which  
12 be some for those 700-ish wells, it would be  
13 different.

14 MR. TREMAINE: Thank you for that,  
15 Mr. Purvis. Earlier today, Mr. Cloutier asked you  
16 some questions about your reliance on the master  
17 orphan spreadsheet. Do you recall those questions?

18 MR. PURVIS: I do.

19 MR. TREMAINE: Do you recall a question  
20 about 75 percent of wells on the MOWS are clustered  
21 within ten operators?

22 MR. PURVIS: I remember some numbers  
23 like that, yes.

24 MR. TREMAINE: Okay. Is it consistent  
25 with your understanding that as a predicate to



1 inclusion on MOWS, OCD must have pursued and resolved  
2 a specific enforcement action?

3 MR. PURVIS: Yes.

4 MR. TREMAINE: Does it follow that all  
5 wells on the MOWS would be associated with the limited  
6 number of operators for which OCD has brought an  
7 enforcement action against?

8 MR. PURVIS: Yes. That's necessarily  
9 the case.

10 MR. TREMAINE: Okay. Would you be  
11 surprised to hear that there are currently over 100  
12 operators with registered wells in New Mexico that  
13 have not reported any production in the last 12  
14 months?

15 MR. PURVIS: I -- I believe I testified  
16 to that fact. No. It would not surprise me at all.

17 MR. TREMAINE: Okay. I want -- I'm  
18 going to apologize in advance because we've done  
19 some -- having witnesses please fact check lawyer  
20 math, and I'm going to ask you some more questions  
21 about that here. Do you recall questions earlier  
22 about the potential for loss of tax revenue in the  
23 order of \$55 million?

24 MR. PURVIS: Yes.

25 MR. TREMAINE: Okay. Following up on

1     that, I believe you had found in your analysis that,  
2     and from the information available through OCD, that  
3     there's approximately 63,000 wells currently in New  
4     Mexico?

5                     MR. PURVIS: That's correct.

6                     MR. TREMAINE: Okay. And --

7                     MR. PURVIS: Unplugged wells.

8                     MR. TREMAINE: Sorry?

9                     MR. PURVIS: Unplugged wells for a  
10     total of about a hundred -- over 110,000.

11                    MR. TREMAINE: Okay. Thank you. I'm  
12     speaking about unplugged wells. So roughly 63,000  
13     unplugged wells, and we've heard a lot of testimony or  
14     presentation about Industry plugging approximately 95  
15     percent of wells over time, historically and on the  
16     national average. Do you recall that?

17                    MR. PURVIS: I do recall that.

18                    MR. TREMAINE: Okay. And it's  
19     consistent with your findings that on a national  
20     basis, approximately 5 percent of wells are orphaned  
21     and have been plugged by orphan well plugging  
22     programs?

23                    MR. PURVIS: Correct.

24                    MR. TREMAINE: Okay. Would you agree  
25     that 5 percent of 63,000 wells is approximately 3,150

1 wells?

2 MR. PURVIS: Yes.

3 MR. TREMAINE: That sounds about right?

4 MR. PURVIS: That's about right.

5 MR. TREMAINE: All right. And so if we  
6 assume that the previous trends of about 5 percent  
7 orphan plugging rate applies to currently unplugged  
8 wells in New Mexico, it would be logical to conclude  
9 that a little over 3000 wells will be plugged as  
10 orphans in New Mexico?

11 MR. PURVIS: That's the math under  
12 those assumptions.

13 MR. TREMAINE: Okay. And we previously  
14 discussed average plugging costs, and I think we got  
15 to a point where we agree that 150,000 is  
16 representative of those average wellbore plugging  
17 costs. If we agree to assume that we're not  
18 incorporating other, like, surface reclamation,  
19 environmental remediation, and that, we're starting  
20 with that number -- sorry. Strike that.

21 That number being based on wellbore  
22 plugging costs, if you were to factor in any other  
23 additional surface reclamation, environmental  
24 remediation, would you agree that \$150,000 as an  
25 assumed average plugging cost is a conservative

1 estimate of plugging costs, factoring in all the other  
2 costs associated?

3 MR. PURVIS: I would characterize it a  
4 little differently. It would be a very -- it is much  
5 less than average decommissioning cost for full scope  
6 of decommission. So the -- the testimony from OCD was  
7 most recently in their experience that a surface  
8 reclamation and remediation with no difficulties runs  
9 30 to 50,000 dollars, but the average was \$225,000 if  
10 memory serves and that the high side run was in the  
11 millions; plus, of course, their time and effort to do  
12 the work.

13 MR. TREMAINE: So 150 is a reasonable  
14 average for wellbore plugging costs, but it is very  
15 conservative if it were to be attached to  
16 decommissioning costs?

17 MR. PURVIS: Correct.

18 MR. TREMAINE: Thank you. We talked  
19 about there being over 3,000 wells based on these  
20 assumptions that I've laid out that are likely to be  
21 plugged as orphans in New Mexico. Would you agree  
22 that that number's consistent with or approximates the  
23 numbers in the LFC report?

24 MR. PURVIS: As I recall the LFC  
25 report. I -- I can double check that if you like.

1                   MR. TREMAINE: That's fine. I can move  
2 on. So let's just assume that number I came up with,  
3 3150. If we assume as we discussed wellbore plugging  
4 costs of approximately 150,000, my lawyer math comes  
5 out to \$472.5 million. Does that check for you?

6                   MR. PURVIS: Yes. I did that math a  
7 minute ago, 472 million.

8                   MR. TREMAINE: Okay. Do you have any  
9 knowledge of how much money is appropriated for OCD to  
10 use on an annual basis for plugging an abandonment  
11 through the Reclamation Fund?

12                  MR. PURVIS: I do not recall.

13                  MR. TREMAINE: If you assumed that that  
14 would be going forward at approximately \$16 million,  
15 would you agree that based on these assumptions we've  
16 outlined, plugging the orphan wells expected to be  
17 plugged under state plugging program would take more  
18 than 29 years?

19                  MR. PURVIS: Yes. Also assuming  
20 nothing else is orphaned besides what is line of sight  
21 right now.

22                  MR. TREMAINE: Thank you. Do you  
23 recall a question earlier where Mr. Rankin was asking  
24 you about the value of the lost oil production if we  
25 lost that two point something percent of production?

1 MR. PURVIS: Yes.

2 MR. TREMAINE: Okay. That total worth?  
3 The total oil production on that slide I believe  
4 represented about 740 million barrels from that fiscal  
5 year. Is that consistent with your understanding?

6 MR. PURVIS: That's my recollection.  
7 Yes.

8 MR. TREMAINE: And using those same  
9 assumptions of \$60 per barrel, the total value of that  
10 oil production would you agree is approximately \$44  
11 billion?

12 MR. PURVIS: Yes.

13 MR. TREMAINE: Okay. One moment.  
14 Nothing further for Mr. Purvis. Thank you.

15 THE HEARING OFFICER: Thank you.

16 Ms. Fox, do you have any redirect?

17 I'm sorry. Mr. Nykiel?

18 MR. NYKIEL: Yeah.

19 THE HEARING OFFICER: Very sorry.

20 MR. NYKIEL: No worries. Just briefly.

21 REDIRECT EXAMINATION

22 BY MR. NYKIEL:

23 MR. NYKIEL: Mr. Purvis, Mr. Rankin had  
24 some questions for you about the financial impact of  
25 the proposed rules. Had a couple questions for you to

1 clarify. Have any industry party experts quantified  
2 the financial impact of the rules on operators?

3 MR. PURVIS: No.

4 MR. NYKIEL: And have any industry  
5 party experts quantified the financial impact of the  
6 rules on production?

7 MR. PURVIS: No.

8 MR. NYKIEL: And have any industry  
9 party experts quantified the financial impact of the  
10 rules on state revenue?

11 MR. PURVIS: No.

12 MR. NYKIEL: What information would you  
13 need of individual operators' financial records to  
14 determine the effect of the proposed rules on  
15 operator-level economics?

16 MR. PURVIS: If one were going to try  
17 to determine operator-level economics, you'd have to  
18 understand the nature of the whole corporate entity.  
19 Some of the information about the companies is  
20 publicly available. Their historical production,  
21 royalty interest, price differentials, and such can be  
22 had from public data.

23 However, the other information that  
24 would be necessary would be things like how much debt  
25 they already have; what assets and obligations they

1 have in other states. The information that would be  
2 necessary to make a by well by company analysis is the  
3 kind of information suggested as possible information  
4 in the transfer provision.

5 MR. NYKIEL: Okay. And in your  
6 experience, are individual non-public operators  
7 typically forthcoming with this sort of financial  
8 information?

9 MR. PURVIS: No.

10 MR. NYKIEL: Finally, you began to  
11 respond to Mr. Rankin about your projection of the  
12 change to recovery based on the proposed rules. Did  
13 you have anything to add or clarify in that?

14 MR. PURVIS: Thank you for asking. I  
15 would like to just unpack that answer. Dr. Arscott's  
16 Exhibit 9 presents a range of possible effects of the  
17 increased cost of the bonding premiums on operating  
18 costs, but it covers an almost irrelevant range of the  
19 scenarios. So he's very clear that Exhibit 9 pertains  
20 to only 61 companies. Those 61 companies that have  
21 only 60 -- only one well each. So the table as a  
22 whole pertains to 61 wells out of 63,000.

23 Second, the rows in the table range  
24 from a 1 percent premium to a 10 percent premium. The  
25 10 percent appears to come from the Raimi study, the



1 least reliable of the sources. The consensus on the  
2 premium value concentrate around 2 to 3 percent. So  
3 to be on the -- the high side, the conservative side  
4 of a central estimate, the relevant line is that third  
5 to bottom line. Now, in that situation, he applies  
6 the cost of \$275 per month to base preexisting  
7 operating costs of 15-, 2500 and 5,000 dollars.

8 Earlier in his testimony, he explains  
9 that flowing conventional gas wells, presumably dry,  
10 range from 1200 to 2,000 dollars per well per month.  
11 That is going to be a very small number of wells.  
12 Probably applies to the Raton Basin, although the  
13 Raton may also include the dry gas, presumably dry gas  
14 with a compressor, which ranges up to \$4,000.

15 Coal bed methane he says ranges from  
16 3500 to 5,000, so now we're beginning to get into  
17 the -- the range of operating costs that are common in  
18 the state. But in the -- he makes no -- draws no  
19 opinion about the operating cost of wet gas wells.  
20 But for oil, he states only a high side of 14,800.

21 By comparison of the high side to the  
22 low side, then the number should be around \$10,000,  
23 which means a median estimate by Dr. Arscott's work of  
24 the monthly operating costs for an oil well, vertical  
25 oil well in the state of New Mexico, is on the order

1 of \$12,000 per well per month, to which, if you only  
2 operate one well, you add two point -- \$275,000.

3 So the -- the 6 percent as shown in the  
4 table applies to a small -- a modest set of the wells.  
5 But if you increase the operating cost to reflect the  
6 71 percent of the wells in the Permian as a proxy for  
7 oil wells, well, then that same \$275 becomes 2.3  
8 percent. But remember this is still for a company  
9 that has only one well.

10 His other related table close by  
11 Exhibit 9 shows the range of incremental per well  
12 costs that different companies suffer. And most of  
13 them are not \$110,000. Most of them are on the order  
14 of \$50,000, 39 to 53 or so thousand dollars. So if  
15 the bond is 200 -- is incremental cost is -- for  
16 \$50,000 is up 110, then the incremental cost to the  
17 average oil well is 1 percent operating costs.

18 And that -- that means that if a well  
19 is declining at a 12 percent decline rate, it will  
20 decline 1 percent more or less per month. So the  
21 incremental cost for most operators on most wells is  
22 on the order of 1 to 2, maybe 3 percent, three months  
23 of production of the lowest rate of production ever in  
24 the history of the life of a well.

25 Now, according to this -- the -- the

1 standard theoretical model we use, setting aside  
2 its -- its accuracy and setting aside the additional  
3 motivation to keep wells on beyond the economic limit,  
4 the direct effect on economic limit is trivial.

5 MR. NYKIEL: Thank you. We have no  
6 further questions. He's available for questions from  
7 the Commission.

8 THE HEARING OFFICER: Thank you,  
9 Mr. Nykiel.

10 Commissioner Ampomah, do you have  
11 questions of Mr. Purvis?

12 COMMISSIONER AMPOMAH: Yes, I do.

13 I do have quite a number of questions  
14 for you. Thank you for your testimony. So I'm  
15 looking at your PowerPoint presentation, and I do have  
16 from page 1 to page 59, so I just want to make sure  
17 that we are all talking about the same document. So  
18 I'll start with page number 5. That will be the  
19 Exhibit 39, Historical Cost of Downhole Plugging for  
20 Orphan Wells in New Mexico.

21 MR. PURVIS: Yes, sir.

22 COMMISSIONER AMPOMAH: So my first  
23 question for you is that, you know, based on all these  
24 proceedings and then the testimony from NMOGA and  
25 IPANM, do you have a fair idea as to how much the

1 industry is saying it'll cost to plug a well in our  
2 state?

3 MR. PURVIS: There's very little -- I  
4 found very little information, Commissioner, in the  
5 testimony about what it would cost on average. My  
6 rebuttal testimony summarizes all the incremental  
7 information that I have from Industry in this setting  
8 about costs.

9 COMMISSIONER AMPOMAH: Yeah. And sorry  
10 about that. You know, I did not see your actual --  
11 you know, I was focusing on the PowerPoint and  
12 little -- I got to know that you've really detailed  
13 your responses. So some of my questions might be that  
14 I've not really spent a lot of effort on that, so just  
15 forgive me on that.

16 MR. PURVIS: No problem.

17 COMMISSIONER AMPOMAH: Okay.  
18 Appreciate that. Now, my question to you again still  
19 on that same Exhibit 39 is, is there any correlation  
20 with depth with regards to these estimates?

21 MR. PURVIS: I have not examined the  
22 relationship of the cost with depth. We know from the  
23 literature that there is some relationship and from  
24 first principles, but it's a weak relationship.

25 COMMISSIONER AMPOMAH: When you say

1     it's a weak relationship -- so let's focus on San Juan  
2     Basin, for instance. Are you familiar with the  
3     formations that oil and gas is being produced from?

4                 MR. PURVIS: The Pictured Cliffs, Mesa  
5     Verde, Fruitland Coal; I am.

6                 COMMISSIONER AMPOMAH: So Fruitland  
7     Coal is about -- the depth, do you know?

8                 MR. PURVIS: It varies. If memory  
9     serves, it's on the order of 5- to 7,000 feet deep.

10                COMMISSIONER AMPOMAH: Fruitland Coal?

11                MR. PURVIS: Please correct me.

12                COMMISSIONER AMPOMAH: No way. I  
13     mean --

14                MR. PURVIS: I'm sorry. The last time  
15     I worked Fruitland Coal was 1992. I apologize.

16                COMMISSIONER AMPOMAH: Okay. So let's  
17     say that the Fruitland Coal is much shallower.

18                MR. PURVIS: Okay.

19                COMMISSIONER AMPOMAH: You know, I  
20     remember when we do our well, probably 1500, 2,000  
21     thereabout, and then Dakota, that one is much deeper,  
22     which is about 7,000 thereabout. So is it your  
23     testimony to the Commission that the cost to let's say  
24     plug a well in Fruitland Coal is going to be more or  
25     less average costs the same as more or less 8,000

1 feet, Dakota?

2 MR. PURVIS: No. There is a  
3 correlation. The greater depths require more plugs in  
4 general and it requires longer trip time to set the  
5 plugs. There is a correlation, but the other  
6 drivers -- there are many other drivers of the cost,  
7 and so it's not a strong correlation.

8 COMMISSIONER AMPOMAH: Okay. Then I  
9 get your point, and we will dig deeper into that  
10 question when we get into the actual proposed rule.  
11 So still on Exhibit 39, so is it your testimony that  
12 the applicants more or less used this analysis to set  
13 the 150,000 bond per one well or per marginal well?

14 MR. PURVIS: The 150,000 was set before  
15 I created this exhibit, but I believe they did rely on  
16 the same original source material that I relied on.

17 COMMISSIONER AMPOMAH: So then can you  
18 tell the Commission where the source of the 150,000,  
19 where it came from?

20 MR. PURVIS: Yeah. It's -- it's in  
21 the -- my work come -- is -- cites the reports of the  
22 OCD, the annual reports of EMNRD, and the  
23 presentations given by OCD to the legislature as --  
24 and some of the lesser data has to do with OCD reports  
25 to the IOGCC.

1 COMMISSIONER AMPOMAH: You touched on  
2 the fact that the depth is a weak correlation, so what  
3 other parameter really contributes to the cost of the  
4 plugging?

5 MR. PURVIS: The nature of the fluids  
6 that have been produced; the age of the well; the  
7 construction of the well, which is strongly correlated  
8 to the company that drilled the well; the nature of  
9 the formations behind pipe, above the producing  
10 formation, below the surface; and the nature of the  
11 access can be an issue, access to the site.

12 COMMISSIONER AMPOMAH: Okay. Let's go  
13 to Slide Number 6, Exhibit 33, History of Daily  
14 Production in New Mexico in Six Categories for Major  
15 Divisions among Basins and Types of Wells Shown on  
16 Four Vertical Scales.

17 MR. PURVIS: Yes, sir.

18 COMMISSIONER AMPOMAH: Okay.

19 MR. CHANG: So I apologize. Just so  
20 that I can follow along with your questions?

21 COMMISSIONER AMPOMAH: Exhibit 33.  
22 Yeah. Right.

23 MR. CHANG: Got it. Thank you.

24 COMMISSIONER AMPOMAH: Okay. So you do  
25 have Permian on the left and then San Juan on the

1 right, just to confirm that?

2 MR. PURVIS: On the right side includes  
3 both San Juan and Permian.

4 COMMISSIONER AMPOMAH: Okay.

5 MR. PURVIS: Actually all six graphs --  
6 all six groups are on all six graphs. But on the  
7 upper right corner, the focus is on the vertical wells  
8 in the San Juan Basin and the vertical wells in the  
9 Permian Basin. If you'd like, I can share my screen  
10 and zoom in.

11 COMMISSIONER AMPOMAH: No. I can see.  
12 Yeah. I appreciate that clarification on that. Thank  
13 you. So my first question to you is that looking at  
14 let's say these production profiles, did you do any  
15 analysis to see if let's say the impact on these  
16 production profiles that we seen here, if these rules  
17 were enacted ten years ago?

18 MR. PURVIS: No, sir, I have not.

19 COMMISSIONER AMPOMAH: Now, would these  
20 proposed rules, new rules, based on your analysis  
21 increase or decrease oil production in the state?

22 MR. PURVIS: There are competing  
23 dynamics, and I have not quantified those.

24 COMMISSIONER AMPOMAH: When you say  
25 there are competing dynamics, can you expand on that?



1 MR. PURVIS: On the one hand, it does  
2 create an incremental operating cost. On the other  
3 hand, it also creates an incentive to keep wells  
4 operating below their economic limit. So on the one  
5 hand there may be more production and on the other  
6 hand there may be less. The one -- the volume that is  
7 affected is de minimis. But and so the -- the effects  
8 one way or the other will be small.

9 COMMISSIONER AMPOMAH: Now another  
10 question for you still on this. Did you compare the  
11 production contribution from major operators and also  
12 from small operators?

13 MR. PURVIS: Yes, I did. To the extent  
14 that I show on Exhibits 37 and if memory serves -- oh,  
15 no; not memory -- 79, the relative contributions by  
16 rank size. Applicants' Exhibit 79 also shows the  
17 relative contributions historically by absolute size  
18 of companies.

19 (Applicant Exhibit 79 was marked for  
20 identification.)

21 COMMISSIONER AMPOMAH: Yeah. So can  
22 you just help me understand what was the contribution  
23 from the small companies?

24 MR. PURVIS: The -- over the last 30  
25 years, the bottom 90 percent of companies by

1 cumulative production have contributed 3.5 percent of  
2 cumulative production in the state. That number is  
3 less in 2024, when the bottom 90 percent of companies  
4 contributed 2.5 percent.

5 COMMISSIONER AMPOMAH: Okay.

6 MR. PURVIS: Companies is really not a  
7 relevant measure of significance.

8 COMMISSIONER AMPOMAH: Well, when you  
9 say company is not a significant measure of relevance,  
10 well, don't you believe that let's say if the  
11 Commission enact this rule, the small companies are  
12 really the ones going to suffer?

13 MR. PURVIS: The small companies do  
14 preferentially own the kinds of wells and the kinds of  
15 portfolios that are affected by the rules. They're  
16 not the ones I would say who suffer. I'd say they're  
17 the ones who are being held accountable. If to the  
18 extent that a company has made adequate provision to  
19 meet their legal liability that's longstanding well  
20 known, then it would not create suffering.

21 COMMISSIONER AMPOMAH: Okay. We will  
22 dive deeper into that. Let's go to Slide Number 10,  
23 Exhibit 38, Schematic of Cash Flow for Hypothetical  
24 Oil and Gas Project to Demonstrate the Economic  
25 Concepts of Payout and Holdback. And, you know, one

1     thing that I really want to clarify, you know, so  
2     there was a back and forth about the SPE paper?

3                 MR. PURVIS:   Yes.

4                 COMMISSIONER AMPOMAH:   Yeah.   I want to  
5     clarify this, that are you aware that after the  
6     abstract has been reviewed and then we put in the full  
7     paper, there is an actual review by the committee  
8     before they allow you to come and present?   Are you  
9     aware of that?

10                MR. PURVIS:   Yes.   I have served on  
11     that committee and that is true.

12                COMMISSIONER AMPOMAH:   Okay.

13                MR. PURVIS:   It is -- it is rare for a  
14     paper to be rejected.   It is also rare, but I have  
15     seen instances where a paper was forcibly withdrawn  
16     for its quality.

17                COMMISSIONER AMPOMAH:   And I do know  
18     that, you know, they provide extensive feedback and  
19     you need to respond to those feedback.

20                MR. PURVIS:   That's true.   I've served  
21     on the committee a number of times, and I have  
22     provided robust feedback.

23                COMMISSIONER AMPOMAH:   Okay.   Let's get  
24     back to your Slide Number 10.   So is it that the  
25     applicant is actually advocating for single well bond

1 and not necessarily the blanket bond requirement?

2 MR. PURVIS: I'm not sure I understand  
3 the question. Certainly the -- the larger part -- the  
4 largest part of the proposal pertains to single well  
5 bonding.

6 COMMISSIONER AMPOMAH: So, you know,  
7 the reason why I'm asking that is that, you know, for  
8 active wells, you still put a 250,000 blanket.

9 MR. PURVIS: Yes, sir.

10 COMMISSIONER AMPOMAH: But for let's  
11 say the marginal wells, you are going one -- after  
12 let's say each well. So I'm just asking that is it  
13 the applicant main objective here is to more or less  
14 do away with the blanket bonding and then just focus  
15 more on single well bonding, especially for the  
16 marginal wells?

17 MR. PURVIS: I'm -- I'm not sure I want  
18 to opine on what the intent of the focus and  
19 motivation is in that way, but I will say that what  
20 the rules as written have much larger impact, the --  
21 the final well provisions are much more significant  
22 than the blanket provisions. Does that answer your  
23 question?

24 COMMISSIONER AMPOMAH: Yeah. There was  
25 a slide that I think will be much helpful, you know,

1 for us to go through that, so I'm not going to push  
2 much on that one. Yeah. But on that one, just on  
3 what we are just discussing, why is the applicant not  
4 advocating for the correct bond right from the onset?

5 MR. PURVIS: I -- I do not know. I  
6 have studied this issue in other places and  
7 recommended that a full cost bond from the point of  
8 drilling is a natural and reasonable solution.

9 COMMISSIONER AMPOMAH: So if let's say  
10 the applicant went for that, don't you believe that  
11 small operators will not necessarily say you are  
12 coming after us?

13 MR. PURVIS: Yes. That would follow.

14 COMMISSIONER AMPOMAH: But why is the  
15 applicant not pushing for that, though? Do you know?

16 MR. PURVIS: I do not know. As I said  
17 before, I was not involved in the original creation or  
18 most of the terms.

19 COMMISSIONER AMPOMAH: Okay.

20 MR. PURVIS: I will say one other thing  
21 though, Commissioner. That provision would not affect  
22 the 63,000 existing wells. There are hundreds of  
23 wells being drilled each year. And if you -- if a  
24 full cost bond was placed in escrow and then could  
25 transfer from operator to operator -- full -- not full

1 cost bond, but a full cost provision -- and could  
2 transfer to operator to operator, it would only apply  
3 to the wells newly drilled each year.

4 COMMISSIONER AMPOMAH: Exactly. So ten  
5 years from now, I mean, we would have solved that  
6 issue right from the onset. Right?

7 MR. PURVIS: Well, it -- it would have  
8 solved the issue for the wells that continue to be  
9 drilled, but we drill on the order of hundreds -- I  
10 believe maybe a thousand wells a year in New Mexico,  
11 but there are 63,000 for which there's not the  
12 opportunity to get the same money at completion.  
13 There's already this backlog.

14 COMMISSIONER AMPOMAH: Yeah. It's  
15 backlogged. So what you are proposing now more or  
16 less solves the backlog. Right? What the applicant  
17 is proposing now will more or less solve the backlog?

18 MR. PURVIS: It's a -- it is an attempt  
19 to solve the backlog.

20 COMMISSIONER AMPOMAH: Yeah. But  
21 still, you know, I'm trying to make a distinction here  
22 with regards to why are we pushing this on the smaller  
23 operators while the big guns who can pay this don't  
24 pay it right upfront.

25 MR. PURVIS: I would -- I would

1 personally support a full cost savings fund, a escrow  
2 fund, for a well at the point of completion. And I  
3 wrote a paper published earlier this year that dealt  
4 with the issue of impecunious wells in Northern  
5 Appalachia and proposed a solution there, which you  
6 can read about later. But that is -- that is beyond  
7 the scope of what we have to deal with today.

8 COMMISSIONER AMPOMAH: Yeah. Let's go  
9 to Slide Number 11. Now, the 180 days and 1,000 BO  
10 within consecutive 12 months determined once per year,  
11 I believe this is OCD's definition or is it the  
12 applicants' definition?

13 MR. PURVIS: It's the definition in the  
14 proposal. I don't recall its origin. I believe that  
15 that did -- I seem to recall it came originally from  
16 the OCD.

17 COMMISSIONER AMPOMAH: Okay. Is this  
18 acceptable by the industry? You know?

19 MR. PURVIS: I -- I do not know.

20 COMMISSIONER AMPOMAH: As I researched  
21 on it, it sounds to me that the definition is a little  
22 bit generous compared to EPA. Is that a fair  
23 statement?

24 MR. PURVIS: I do believe that the  
25 definition of marginal wells is quite generous. If I

1 could point you to Exhibit 40 -- here we go. I don't  
2 believe I'm -- I'm on the share anymore. This is the  
3 cross plot of the two criteria for wells as they  
4 produced in 2024, and the black dots are all wells.  
5 Each dot is a well, and the -- the ones shown in black  
6 are ones that are not captured by the current  
7 definition of marginal.

8 So what we see is that there are a  
9 large number of wells that produce very small volumes  
10 but are reportedly active for more than 180 days, and  
11 they do not qualify as marginal. In my direct  
12 testimony, I point out a particular well on the far  
13 right on the side that produced for 365 days and  
14 produced three barrels of oil reportedly and does not  
15 qualify as marginal or no beneficial use.

16 COMMISSIONER AMPOMAH: So is it your  
17 testimony that the applicant really did a lot of due  
18 diligence to make sure that they minimize the impact  
19 on the industry?

20 MR. PURVIS: I can't speak to their due  
21 diligence. I can say that it does look to me like it  
22 minimizes the impact. It's a -- it's quite a  
23 conservative definition for financial risk.

24 COMMISSIONER AMPOMAH: Let's go to  
25 Slide Number 12, Proposed Systems of Financial



1 Assurance and Safeguards. You know, I want to  
2 understand a little bit more, let's say, under the  
3 active wells, Section 1 or Number 1. So the ones that  
4 have already been crossed out, do you know how that  
5 rule was developed? You know, what was the thoughts  
6 behind the one, the existing rule that we're trying to  
7 correct? Do you know?

8 MR. PURVIS: I do not know the thoughts  
9 behind the existing rule. I -- I will note that if --  
10 if you did like the existing rule, you could set a  
11 base cost of \$135,000 a well and \$2 per foot and/or  
12 140,000 or \$145,000 and \$2 per foot and get to about  
13 the same point.

14 COMMISSIONER AMPOMAH: So don't you  
15 believe that, you know, the original intent of the  
16 rule also took into consideration the depth  
17 disparities in the plugging of the well?

18 MR. PURVIS: I do not know about the  
19 intent, but the wording absolutely does take into  
20 effect that first -- that variable, which we know does  
21 have some effect on cost.

22 COMMISSIONER AMPOMAH: So why did the  
23 applicant not actually try to -- because I'm a little  
24 bit concerned about -- let's say a well in Fruitland  
25 Coal 1500 feet. You don't need to put the same bond

1 compared to 10,000-feet well. I mean, and if you look  
2 at a small producer, smaller take the shallower zones  
3 formations.

4 So I'm a little bit concerned about  
5 putting this blanket bond, which definitely is going  
6 to -- the small producer are the ones really going to  
7 suffer. So don't you -- I mean, why did the applicant  
8 not necessarily look at the original description and  
9 then try to at least work through it to more or less  
10 cover, you know, the small producers?

11 MR. PURVIS: The -- the intent and  
12 reasoning, I can't speak to. The effect I can tell  
13 you is simplicity. In one of the papers in particular  
14 that I cited, the author concluded that efforts by the  
15 regulatory agency to fine tune the bonding costs were  
16 likely a waste, a loss of social benefit. And that  
17 that paper, by the way, did not consider whatever the  
18 statute may be in New Mexico. But I'm saying that the  
19 advantage of it as it's written is simplicity.

20 COMMISSIONER AMPOMAH: So is there any  
21 state with merge oil production? I mean, New Mexico,  
22 we are probably number two, Texas number one, North  
23 Dakota. So is there any other state with merge oil  
24 production that do have this 150,000 more or less  
25 financial assurance that you know?

1 MR. PURVIS: The state of Colorado  
2 adopted a really complex set of rules, the baseline of  
3 which -- and that that was adopted in one -- 2001 or  
4 '2, and the baseline cost assurance was \$130,000 per  
5 well.

6 COMMISSIONER AMPOMAH: You know, do you  
7 know if the applicant more or less did a survey of  
8 virtual producers, you know, and also helping to come  
9 up with the 150,000? I do know you've talked about  
10 Vertex. Was that the one or do you know if other  
11 survey was done?

12 MR. PURVIS: I -- I do not know what  
13 other experts did or did not do, Commissioner, but I  
14 can tell you that I looked in every way I could. The  
15 Vertex report was one that I found. I also tried to  
16 extract from annual reports of oil companies operating  
17 New Mexico and implied cost. I scoured the reports of  
18 operators in the direct testimony.

19 But more importantly, I -- I don't  
20 believe the cost to the operators is the relevant  
21 measure because the financial assurance is meant to  
22 protect the state. So what the relevant measure is,  
23 the harm to the state or the potential harm to the  
24 state.

25 COMMISSIONER AMPOMAH: Yeah. Potential

1 harm; potential harm to the state. But, you know,  
2 these was already been drilled. You know, there is a  
3 producers ongoing. So what you are coming in right in  
4 the middle is more or less going to put that as in out  
5 of business. And I don't know if let's say to the  
6 state, but have you also looked at these companies  
7 that are going to be affected, their contribution to  
8 the community, and then also to the state at large?

9 MR. PURVIS: As I said before, what I  
10 have examined is the production and the wells that  
11 they operate because those are direct indicators of  
12 the financial -- financial economic contributions.

13 COMMISSIONER AMPOMAH: So with regards  
14 to the 150,000, I think we can all agree that based on  
15 OCD's experience plugging orphan wells, so -- and then  
16 even the chart that you showed earlier on, we can  
17 agree on that. What about the number two, the blanket  
18 bond of the 250,000? How was that number -- how did  
19 the applicant come up with that number?

20 MR. PURVIS: As I understand, that  
21 number is constrained by statute.

22 COMMISSIONER AMPOMAH: So that number  
23 is taken from the D, which has been crossed out. Is  
24 that one like 250,000 for more than a hundred wells?

25 MR. PURVIS: The -- the same number

1 does appear in the previous version under D. I'm not  
2 sure I understand the question.

3 COMMISSIONER AMPOMAH: So I'm just  
4 asking, you said that one is based on statute?

5 MR. PURVIS: Yes. As I understand it.

6 COMMISSIONER AMPOMAH: So you cannot go  
7 above that?

8 MR. PURVIS: For blanket bonding.  
9 That's what --

10 COMMISSIONER AMPOMAH: For blanket  
11 bonding, you cannot go above that. And I'm just  
12 trying to look at it and say is does it have any  
13 relationship with D?

14 MR. PURVIS: I imagine -- I'm  
15 speculating -- that D was set for the same reason, but  
16 this -- the -- the origin, the statute is beyond my --  
17 my real expertise.

18 COMMISSIONER AMPOMAH: Okay. On Slide  
19 Number 13, Proposed System of Financial Assurance and  
20 Safeguards, so I'm looking at Number 3 "An operator  
21 with 15 percent or more of their wells in marginal or  
22 inactive well status or a combination thereof shall  
23 provide a well plugging financial assurance in the  
24 amount of 150,000 for each well registered to the  
25 operator until the percentage of the operator marginal

1 and inactive wells is decreased below 15 percent."

2 So there was a back and forth with you  
3 and Mr. Tremaine, so he suggested 25 percent. Do you  
4 agree to that? Was that something that you agreed to?

5 MR. PURVIS: What I -- what I said  
6 before or tried to say was that I think a number  
7 between 15 and 25 percent is a reasonable number.  
8 The -- the higher it goes, the -- the bigger stretch,  
9 the less reasonable it is. But the -- the -- I  
10 certainly would not go below 15 percent. And what I  
11 can say empirically is that most companies, and what I  
12 know from experience anecdotally, is that 10 percent  
13 or less wells that are truly idle is -- is pretty  
14 strict.

15 COMMISSIONER AMPOMAH: Okay. So let's  
16 go to Slide Number 14, the beneficial purposes. And  
17 so we've talked a little bit more about the  
18 speculative purposes, and I saw that you're trying to  
19 link the speculative purposes to the PRMS that is more  
20 or less acceptable to the Petroleum Engineering  
21 Society. I still could not get the linkage between  
22 that.

23 MR. PURVIS: So the Petroleum Resource  
24 Management System is designed for application to oil  
25 and gas volumes that will be produced in the future.

1 And what we're talking about here is a broader scope  
2 of use is beyond just production. But the set of  
3 thoughts that they created about the criteria and the  
4 taxonomy for a project in general is transferrable.  
5 So you could take the definitions, either the -- the  
6 issues that they conceived of or the definitions  
7 directly, and apply those to geothermal or gravity  
8 energy storage.

9 For example, the -- the -- in the  
10 construction of the PRMS, they decided that a project  
11 needs to be justified, both -- both technically and  
12 financially. There must be an intent and there must  
13 be the ability to execute. When you have those, then  
14 you have a project. And as a project is being  
15 developed, you may have one or not the other. And --  
16 and one issue may be -- be met and then -- then lost.

17 But if you use that construct to think  
18 about speculative use, you could define a criteria.  
19 It is, in my opinion, definitely speculative if it has  
20 no technical justification, no economic justification,  
21 no attempt, and no feasibility. So there's -- there's  
22 a gray area. If you have all of them, you clearly  
23 have beneficial use. If you have none of them, I  
24 think it's clearly speculative. My proposal was that  
25 the -- you could consider those criteria in defining

1 a -- a -- more clearly a line.

2 COMMISSIONER AMPOMAH: Okay. Then why  
3 did the applicant not use that to more or less define  
4 the speculative purposes, you know, for the benefit of  
5 the Commission?

6 MR. PURVIS: I first brought that idea  
7 after we received -- after we submitted direct  
8 testimony. I -- I didn't have a problem when I read  
9 the original proposal with the idea of speculative  
10 because I -- I was satisfied that the term is clear  
11 enough. But then with further discussion, we -- I was  
12 able to offer the idea.

13 COMMISSIONER AMPOMAH: Okay. On Slide  
14 Number 15, so there was a discussion about this with  
15 Mr. Alexander, and I want to get your thoughts on  
16 that. So under D, Number 1 "Documentation  
17 demonstrating that the well is reasonably projected to  
18 produce in paying quantities." So I mean, how do we  
19 quantify this, especially if we are dealing with,  
20 like, let's say an injection well?

21 MR. PURVIS: So the -- the economics of  
22 an injection well, of a commercial injection well, are  
23 a little different, but there's still a matter of what  
24 they get paid and what the expenses they incur. If  
25 you're talking about an injection well that's owned by



1 the operator who's using it to dispose of its own  
2 waste, there is a -- a straightforward way to handle  
3 this. It's a group economics.

4 We often do analysis of economic limit  
5 on an individual well by well basis, and that  
6 simplification works in a large majority of cases, but  
7 it's not complex. The most common software for this  
8 kind of analysis in the industry does perform group  
9 economics.

10 COMMISSIONER AMPOMAH: And then there  
11 was a definition somewhere too in the rule that  
12 specifically targets DSWD, where they cannot give the  
13 annual -- injecting like a hundred barrels or  
14 something like that. Do you recall that?

15 MR. PURVIS: Vaguely.

16 COMMISSIONER AMPOMAH: Okay. So would  
17 that more or less cover DSWD's side and this one, this  
18 provision specifically is for production well. Is  
19 that your understanding too?

20 MR. PURVIS: I don't know how the two  
21 interact. I could look at it some more and give you  
22 an answer, but I -- I haven't considered how those two  
23 interact.

24 COMMISSIONER AMPOMAH: So yesterday I  
25 had a back-and-forth discussion with Mr. Alexander

1 about the exceptions that needs to be made, you know,  
2 going through these -- let's say continuous production  
3 cycle in a typical field. He agreed to some  
4 exceptions. I don't know if you recall that  
5 discussion.

6 MR. PURVIS: I think I recall talking  
7 about extending temporary abandonment beyond eight  
8 years, beyond the -- the five-year extension and then  
9 the two-year extension.

10 COMMISSIONER AMPOMAH: So then let's go  
11 to Slide Number 16 and let's discuss that in more  
12 detail. So that'll be 19.15.8.9.E?

13 MR. PURVIS: Yes.

14 COMMISSIONER AMPOMAH: Inactive wells  
15 and wells in approved and expired temporary abandoned  
16 status. So which of these categories will the  
17 exception -- if you agree to the exception, which of  
18 these categories of wells will these exception fall  
19 under?

20 MR. PURVIS: So it -- it's not my  
21 proposal and not my job to make a compromise. I will  
22 say that, oh, I understood the exception to apply to  
23 wells in temporary abandonment status, not wells that  
24 are inactive in contravention of the law.

25 COMMISSIONER AMPOMAH: So when I look

1 at let's say this provision E, and then I try to put  
2 in the exception, it doesn't seem to line up. So the  
3 reason why I'm saying that is that is a well that we  
4 agree that needs to be exempted from let's say this  
5 provision, would that well still need to put up, like,  
6 150 or 150,000 per well bond?

7 MR. PURVIS: Are you asking my opinion  
8 on what it should be?

9 COMMISSIONER AMPOMAH: Yeah. I'm  
10 asking your opinion.

11 MR. PURVIS: Yes. If you're going to  
12 leave a well unplugged for more than eight years,  
13 that's extraordinary, and it certainly should have  
14 financial assurance. Because the -- the longer it  
15 sits there, the lower probability it will be used and  
16 the higher probability of a cost overruns for its  
17 plugging. If you want to keep the -- the option open,  
18 than it only makes sense to me that there's some  
19 security associated with keeping that option.

20 COMMISSIONER AMPOMAH: Yeah. So that  
21 exception that we discussed, when you say that you're  
22 keeping a well -- let's say a TA well for more than  
23 eight years, it's extraordinary. Let's think about it  
24 from production. You know, let's say an operator  
25 would draw like 60 wells to go for production. A

1 subset of that will go for secondary. Are you  
2 following me? Or more or less some of the producers  
3 will be converted to injections.

4 MR. PURVIS: Historically in a  
5 conventional field, some fields have been water  
6 flooded and water -- preventing water flood does  
7 convert some well to injection.

8 COMMISSIONER AMPOMAH: Exactly. And  
9 then not all of them normally, you know, even they do  
10 it pattern based where they look at the performance  
11 and then they move to another line and they move to  
12 another line.

13 MR. PURVIS: Sometimes that's true.

14 COMMISSIONER AMPOMAH: Exactly. So  
15 more or less planned.

16 MR. PURVIS: Sure.

17 COMMISSIONER AMPOMAH: And even you add  
18 CO2 to it. So I would say that eight years is  
19 probably not extraordinary as you are describing it  
20 because you will see that some of these wells will  
21 have more usage into the future depending on the  
22 pattern sizes that the operators like to operate.

23 MR. PURVIS: I think I understand your  
24 concept. What I observe is a -- a couple of things  
25 there on that matter. First, it's better to implement

1 a water flood earlier in life rather than later. And  
2 you wouldn't want -- you're talking about a -- an  
3 eight year time frame that begins after the well has  
4 been dead eight years; talking about extending it  
5 after well has been dead eight years, which puts it  
6 deep into the life.

7 Second, at a -- at a larger scale, I'd  
8 observed that there has been very little exploration  
9 and very little new fields in -- very few water  
10 floods, very few CO2 floods in the -- in recent  
11 decades. Now, reserve -- shale reservoirs are a  
12 slightly different matter. But the last time I saw a  
13 CO2 flood possibility was 20 years ago, when OXY hired  
14 my firm to investigate a possible water flood in the  
15 Delaware basin.

16 Now, the -- what I do see as potential  
17 use in the future are genuine repurposing, not reusing  
18 from different kinds of production, but genuine  
19 repurposing. For example, the gravity energy storage  
20 is at a point in life where it -- we understand the  
21 technology, but it's not proven to be commercial yet.  
22 It could be eight years before low temperature  
23 generation or gravity energy storage is clearly  
24 understood and its -- and its viability clearly  
25 decided.

1           But that's where the ideas of the PRMS  
2     come in. If the -- if the project is in process as  
3     your example, you're in the process of piloting and  
4     testing and moving through, then that's clearly a  
5     project that's in process and it -- it's at the high  
6     end of the contingent resources and much closer. But  
7     if it's something like gravity energy storage, where  
8     they have not yet proved of an -- an economically  
9     viable commercial model, that's on the low end.

10           So I -- I have more concern about the  
11    possible use of the wells for novel purposes that  
12    remain unapproved than for CO2 and water flood.

13           COMMISSIONER AMPOMAH: Yeah. So  
14    definitely the wealth that could benefit the state,  
15    you know, from more oil, primary -- you know, let's  
16    say the secondary and the tertiary, I don't know how  
17    you're going to describe that in terms of, let's say  
18    your -- the provision under E. Is it inactive wells  
19    or is it wells in approved TA or expired?

20           MR. PURVIS: So I'll -- I'll tell you  
21    what I understand, subject to the folks who understand  
22    the law better. My understanding based on what I did  
23    review is that a well that's inactive is in violation  
24    of the current existing statutes; is not allowed to  
25    exist in that status more than 15 months or -- or not

1 allowed to stand without doing anything for 15 months.

2 So if -- there shouldn't be anything in  
3 that category. Everything that's being preserved  
4 should be preserved under existing statute as a  
5 temporary abandonment.

6 COMMISSIONER AMPOMAH: So then what  
7 we're discussing will probably be part of the wells in  
8 approved TA status?

9 MR. PURVIS: What I was discussing  
10 about extensions?

11 COMMISSIONER AMPOMAH: Yeah. I'm  
12 talking about let's say the wells. That production  
13 wells probably they are not producing a lot, you know,  
14 beyond the primary. So they are produced -- let's say  
15 the cut, the water cut, is about 99. So operator will  
16 shut that one in more or less TA, they're temporary,  
17 until they move to water flood, you know. So that one  
18 will fall under the -- was an approved abandonment  
19 status.

20 MR. PURVIS: Yes. And especially in a  
21 water flood where there's increased mechanical risk,  
22 it would be appropriate to put it in TA status, and it  
23 would be appropriate to provide financial security, in  
24 my opinion.

25 COMMISSIONER AMPOMAH: Exactly. So

1     that financial security, if you look at this provision  
2     that we have here, it sounds like they will also be  
3     subjected to the 150,000 per well. Why not the  
4     blanket 250,000?

5                   MR. PURVIS: I'm sorry. I -- I can't  
6     answer that. I do not -- I do not know the  
7     interaction between the -- the TA status and the --  
8     the blanket bonds for active status.

9                   COMMISSIONER AMPOMAH: Yeah. Because,  
10    like, let's say you have wells in approved TA status,  
11    meaning they had -- they do have -- they've been able  
12    to prove to OCD that they do have beneficiary use.

13                  MR. PURVIS: I see. Are you asking a  
14    hypothetical?

15                  COMMISSIONER AMPOMAH: Yeah.

16                  MR. PURVIS: Okay.

17                  COMMISSIONER AMPOMAH: Well, not  
18    necessarily because Mr. Alexander agreed with the  
19    Commission that at least there has to be some  
20    exceptions. Right? And if there has to be some  
21    exceptions, and we do not have any full description we  
22    do have for active wells where you have the blanket to  
23    be 250,000 bond.

24                  But I feel like this one has to go more  
25    or less for the folks that are not really in



1 compliance, you know, in terms of the e-provision  
2 because you do have wells in approved status. Why  
3 should there be a bond then for these wells 150 each  
4 one?

5 MR. PURVIS: So some -- well, I'll tell  
6 you what -- what I think you're asking. I think what  
7 you're saying is if the well is secured in a temporary  
8 abandonment status, why does it require an incremental  
9 single well bond rather than why would it; what's  
10 conceptually.

11 Okay. A well that is in TA status has  
12 expended a significant portion of the funds that would  
13 need to be required for permanent plugging. They've  
14 pulled -- pulled the string out of the well, set a  
15 temporary plug as I understand the -- the rules, and  
16 removed from the site all of the equipment. So  
17 there -- it is a significant expense.

18 On the other hand, its future use is of  
19 varying certainty. It's not a PDP. It's not  
20 approved, developed, producing well with cashflow.  
21 It's a well about which we have belief that we will  
22 eventually make money. And given the lack of  
23 confidence, I do believe it appropriate to have  
24 initial financial security specifically for that well,  
25 separate from the de minimis \$250,000 blanket bond.

1 COMMISSIONER AMPOMAH: Yeah. I mean  
2 that one, don't you believe that we are going to force  
3 operators to really plug these wells prematurely?  
4 Because think about how much oil we've been able to  
5 recover from a handful of oil recovery projects, you  
6 know.

7 So let's say assuming all these wells  
8 because of the 150,000 bond, they decide to plug it.  
9 I mean, think about how much oil that we are going to  
10 lose, you know, especially from the Permian. I mean,  
11 how much oil are we going to really lose if these  
12 companies has to rush and then plug the well because  
13 it becomes cheaper to plug the well than to probably  
14 go after that oil in the future?

15 MR. PURVIS: I -- I don't believe  
16 that's the case, Commissioner, when the new provisions  
17 provide new break points where additional financial  
18 assurance is required. And to be clear, the rules  
19 require a -- a third-party guarantee. The rules do  
20 not require \$150,000 collateral. The \$150,000  
21 collateral is a judgment made by an independent third  
22 party about the financial risk of the operator.

23 What the rule does require is a premium  
24 on a bond. That does increase the cost of maintaining  
25 the well, but the alternative is always still

1 plugging. In -- in almost all cases, the full -- the  
2 full scope of decommissioning will be less than the  
3 cost of bonding, even with collateral. Bear in mind  
4 that the -- for example, if my well is losing money  
5 and I'm paying \$4,000 a year for a bond to keep it  
6 active, the alternative is hundreds of thousands of  
7 dollars for plugging for full scope of  
8 decommissioning. The 4,000 is an easy choice.

9 If I expand that analysis and consider  
10 a \$4,000 annuity in perpetuity, at a 10 percent  
11 discount rate, the present value is \$40,000. It is by  
12 far more economical for a company to keep a single  
13 well bonded at \$4,000 a year than it is to pay for the  
14 decommissioning.

15 COMMISSIONER AMPOMAH: You know, you  
16 brought up a good important point, where let's say  
17 this 150,000 is not actually cash that is in the bank.  
18 You know, that operator has to say: "No. This is my  
19 capital." But is that not increasing the cost to get  
20 the surety bond? And even some of these wells or  
21 companies will get to a point where these companies  
22 are saying; "No. I cannot assure you because it's so  
23 high. The risk is so high."

24 MR. PURVIS: So the -- the way that the  
25 bonding -- there are other experts on the bonding

1 market. In my experience in the bonding market,  
2 they're going to -- they -- and what I've read from  
3 the testimony -- is that all right if I speak to  
4 that -- is that the -- they charge a premium and then  
5 when the risk is high a collateral.

6 So if they're -- if the bonding company  
7 is providing a -- a guarantee of \$150,000, they can  
8 ask for and require up to \$150,000, in which case they  
9 suffer no risk. They collect the premiums, but they  
10 have in the bank earning -- someone's earning  
11 interest. They have in the bank all the money  
12 necessary to fulfill the obligation.

13 So the -- the question of the  
14 difficulty on an operator is primarily the question of  
15 how much collateral the third party will require of  
16 them. To the extent that this party looks at their  
17 finances and their assets and the whole company and  
18 decides that they're at bad risk, they will require  
19 more capital.

20 COMMISSIONER AMPOMAH: So on the 2,  
21 blanket plugging financial assurance equal to an  
22 average of 150,000 per well, is this really a blanket  
23 financial assurance? Is it really a blanket financial  
24 assurance?

25 MR. PURVIS: I'm sorry. I don't

1 understand the question.

2 COMMISSIONER AMPOMAH: So the Number 2,  
3 a blanket plugging -- I'm still on Slide Number 16. A  
4 blanket plugging financial assurance equal to an  
5 average of 150,000 per well covering all of the wells  
6 of the operator. So I'm asking, is that really a  
7 blanket?

8 MR. PURVIS: Ah. I would not use the  
9 word blanket to describe that, but I would defer to  
10 someone else if they told me that was an appropriate  
11 label to put on that kind of bond.

12 COMMISSIONER AMPOMAH: Yeah. So  
13 definitely you will not use blanket, but it is blanket  
14 right here and when I look at it, it doesn't seem like  
15 a blanket to me. And it sounds like you agree to  
16 me -- you agree with me.

17 MR. PURVIS: I would not characterize  
18 it as a blanket, but I would defer to someone else who  
19 has deeper involvement in those policies.

20 COMMISSIONER AMPOMAH: So is there  
21 someone who can speak to what should be the right  
22 language there?

23 MR. PURVIS: I -- I believe there are  
24 people who can speak to the proper term for that kind  
25 of bond.

1                   COMMISSIONER AMPOMAH: Don't you  
2 believe that this one is quite overstretched compared  
3 to the existing rule where they have A, B, C, and D,  
4 you know, specifying the number of wells here and  
5 there? Don't you believe that the 150,000 per well is  
6 really a stretch?

7                   MR. PURVIS: No. I believe I've said a  
8 number of times, I believe that the proposal as it  
9 stands is quite conservative. Perhaps this is the  
10 disconnect. The -- it is a -- a significant increase  
11 from what it was before, but it remains a significant  
12 deficit to what is needed. My focus is on the -- the  
13 comparison to what is needed.

14                  COMMISSIONER AMPOMAH: So I think the  
15 whole objective here is to make sure that we are  
16 successfully plugging these wells that are not more or  
17 less classified as marginal and then become orphaned.  
18 That is the main objective.

19                  MR. PURVIS: The main objective is to  
20 truly plug all wells by industry as opposed to by  
21 taxpayers.

22                  COMMISSIONER AMPOMAH: Okay. So then,  
23 you know, Mr. Tremaine, when he was going back and  
24 forth with you discussing about how much money they  
25 can get from the Reclamation Fund to -- to plug these

1 wells, don't you believe that probably that should  
2 have been more or less the avenue, you know, to more  
3 or less make some recommendations to more or less  
4 improve that amount that OCD gets on a yearly basis?

5 MR. PURVIS: As I said before, the best  
6 concept I have for a financial assurance regime is  
7 outlined in the paper I wrote earlier this year. What  
8 I like or would like to see or would recommend is not  
9 part of the proposal. I do -- I do think we all agree  
10 that Industry should be paying for the cost and not  
11 the taxpayer.

12 COMMISSIONER AMPOMAH: Yeah. The  
13 Reclamation Fund, isn't all the industry paying for  
14 that?

15 MR. PURVIS: The Reclamation Fund has  
16 its -- it does come on -- from tax on the industry and  
17 it does go to pay the industry. The -- the issue that  
18 I'm concerned about is the shortfall of the  
19 Reclamation Fund to deal with the line-of-sight  
20 orphans and particularly the tens of thousands of  
21 wells that are already near the end of their economic  
22 life.

23 COMMISSIONER AMPOMAH: Yeah. Let me  
24 try to wrap up here. Let's go to Slide Number 29, and  
25 that will be 19.15.8.9.G. So you are describing, you

1 know, amendments or let's say changes to the financial  
2 assurance on a yearly basis. Right? Don't you  
3 believe that Industry needs certainty, you know, in  
4 the process, you know, for them to be able -- because  
5 we also have to be competitive as a state. Right?

6 MR. PURVIS: No. I don't agree with  
7 that.

8 COMMISSIONER AMPOMAH: You don't agree  
9 with that?

10 MR. PURVIS: As I described in my  
11 rebuttal, the literature on tax competition for  
12 mineral resources, the kinds of things that can't  
13 leave the state, is pretty uniform that tax  
14 competition is not effective.

15 COMMISSIONER AMPOMAH: Tax competition  
16 is not --

17 MR. PURVIS: The concept of tax  
18 competition is one jurisdiction will lower their taxes  
19 so that they can compete for and preferentially get  
20 the business of companies rather than a -- an  
21 alternative jurisdiction next door.

22 COMMISSIONER AMPOMAH: So you're saying  
23 that if Texas makes it much easier for operators to  
24 operate in their state, you'll see that -- I mean,  
25 it's not going to be in direct competition with New



1 Mexico if we are setting really strict laws?

2 MR. PURVIS: No. The literature shows  
3 that there is little loss of activity in the state  
4 with the higher costs.

5 COMMISSIONER AMPOMAH: Interesting.  
6 Thank you for your time. I appreciate you. Thank  
7 you.

8 THE HEARING OFFICER: Thank you,  
9 Commissioner Ampomah.

10 Commissioner Bloom?

11 COMMISSIONER BLOOM: Thank you, Madam  
12 Hearing Officer.

13 Welcome, State Representative Mark  
14 Murphy. Nice to see you here.

15 And maybe with -- I know Mr. Murphy had  
16 some comments that were provided as he's a witness for  
17 IPANM, so maybe I'll start there.

18 Mr. Purvis, you haven't talked about  
19 this today, but I did ask this question yesterday.  
20 One of IPANM's witnesses concerns or complaints was  
21 that once a well leaves marginal status and it has  
22 that bond because it's now been -- it was deemed  
23 marginal and it has a single bond, once it leaves  
24 marginal status, under the current rule it's proposed  
25 that single bond would need to be retained because it

1 can't be canceled apparently. Is there any -- do you  
2 see any reason for that?

3 MR. PURVIS: I -- I don't see a reason  
4 for it. I also don't think that's what the rule says  
5 as I have understood the proposal. Thank you. I also  
6 don't --

7 COMMISSIONER BLOOM: You might want to  
8 start your answer over there.

9 MR. PURVIS: Thank you. It -- I see  
10 the reasoning for not maintaining a -- a financial  
11 assurance on a well that's no longer -- no longer  
12 qualifies under criteria, but more importantly, as I  
13 understand the rules and how they're applied, the bond  
14 is only required on the wells that are currently  
15 marginal. A well that is no longer marginal, that has  
16 successfully improved its production, no longer has to  
17 post a single well bond.

18 COMMISSIONER BLOOM: Okay. Yeah. And  
19 I guess the concern was that bonds cannot be canceled  
20 once they're issued. I guess the bonds that are taken  
21 out in New Mexico, according to that witness, said  
22 that they could not be canceled after being issued and  
23 therefore would always be in place even once the well  
24 left marginal status.

25 MR. PURVIS: Yeah. In my experience

1 operating a grand total of three wells, a bond is a  
2 contract for one year at a time.

3 COMMISSIONER BLOOM: Okay. Thank you.  
4 I also noted that two or three of IPANM's witnesses,  
5 many of whom own companies and are operators, said  
6 that they show -- they find substantially lower dollar  
7 figures for plugging and abandoning their own wells  
8 versus OCD's average cost. Might it be the case that  
9 orphan wells are more expensive to clean up because  
10 they were last run by companies that could not or did  
11 not want to care for them?

12 MR. PURVIS: That certainly could be  
13 the case. It could also be the case that they're  
14 talking about data from three or four years ago that's  
15 not relevant.

16 COMMISSIONER BLOOM: And put it another  
17 way, would it be fair to say that perhaps better  
18 companies that don't let their wells deteriorate,  
19 companies that clean up their spills, that always  
20 intended to P&A their wells have ultimately lower P&A  
21 costs?

22 MR. PURVIS: I think that's a fair  
23 theoretical idea. I -- I don't know any way to test  
24 it quantitatively, but a -- but a certainly a fair  
25 idea.

1 COMMISSIONER BLOOM: Yeah. So we might  
2 be dealing with two different sets of companies with  
3 different outcomes?

4 MR. PURVIS: Yes.

5 COMMISSIONER BLOOM: Okay. I'd like to  
6 refer to the applicants' prehearing statement, page  
7 739, if you could pull that up. I have it up here. I  
8 can find it. This hasn't come up, I don't believe, in  
9 our discussions today, but, Mr. Purvis, I believe you  
10 cite two studies, Boomhower, 2019; and Lange and  
11 Redlinger, also in 2019?

12 MR. PURVIS: I think the Lange and  
13 Redlinger is a different year, but I do cite both  
14 those papers.

15 COMMISSIONER BLOOM: Okay. Yeah. And  
16 what these find, I'll quote. I'm looking at page 739  
17 of the prehearing statement. Must have different  
18 pagination.

19 THE HEARING OFFICER: Page 52 of your  
20 direct.

21 MR. CHANG: You have 45 over there on  
22 your page.

23 COMMISSIONER BLOOM: I'm looking at a  
24 PDF. It's 955 pages.

25 MR. PURVIS: May I revise one statement

1 I just made? You said that different costs for  
2 different companies. I might characterize it  
3 differently as different costs based on different  
4 paths to the point of being plugged.

5 COMMISSIONER BLOOM: Thank you.

6 MR. NYKIEL: Commissioner, just to  
7 clarify, the number of the PDF page doesn't align with  
8 the Bates Stamp number, so just to distinguish where  
9 you're locating.

10 COMMISSIONER BLOOM: 732 of the PDF or  
11 of the document and the -- yeah.

12 MR. CHANG: So for the record, the  
13 Bates number is 0732. Is that correct? Right? And  
14 it says page -- you're looking at the page that says  
15 45. It's got two bullet points?

16 COMMISSIONER BLOOM: Yes. Yes.

17 MR. CHANG: So the Bates Number is  
18 0732.

19 COMMISSIONER BLOOM: Yeah.

20 So you quote from your paper,  
21 Mr. Purvis, and said that Boomhower 2019 examined the  
22 effects of increased bonding in Texas in 2012,  
23 especially in 2002, and Lange and Redlinger 2019  
24 examined the effects in 2012, increased bonding and  
25 other costs in North Dakota. Both studies support the

1 conclusion that these policies have little effect on  
2 overall production.

3 And why I'm interested in this is it  
4 gets to some of the waste questions that we're  
5 concerned with at the OCC. Please. Any comments?

6 MR. PURVIS: I would point out that  
7 the -- both these papers found a change in -- in  
8 production that were a fraction of a percent. I would  
9 observe that if the Commission were concerned about a  
10 fraction of a percent, then it should revisit its  
11 rules on venting and flaring waste gas and it should  
12 revisit its rules on spacing of horizontal wells.

13 COMMISSIONER BLOOM: We just redid our  
14 rules on methane.

15 MR. PURVIS: Just a suggestion.

16 COMMISSIONER BLOOM: Thank you. That  
17 was another few months of our lives, but thank you,  
18 Mr. Purvis.

19 MR. PURVIS: Glad to help.

20 COMMISSIONER BLOOM: Not before  
21 Christmas anyhow. Yes. I think you went on to say  
22 that Boomhower observed that a small number of firms  
23 shut down after an increase in bonding requirements  
24 took effect, but most of their production was  
25 transferred to larger operators.

1                   Let's see what else. I think the last  
2     bullet on the page, the primary effect of the policy  
3     was to reallocate wells from small to larger  
4     producers. The bond requirement moved from about 4  
5     percent of wells operated by the smallest 80 percent  
6     of firms to new operators. Another 1 percent of the  
7     wells operated by these firms were shut down,  
8     primarily representing low producing wells where  
9     social cost is most likely to exceed social benefit.  
10    Goes on to say environmental outcomes improve sharply,  
11    so you just stated.

12                  And then we come down on page 733 to  
13    your synopsis of the Lange and Redlinger 2019 study.  
14    You write "Lange and Redlinger 2019 looked back at the  
15    two years of activity after the change compared to the  
16    prior two years in order to normalize for other  
17    factors.

18                  "The authors compared activity around  
19    the state's border with Montana, which did not have a  
20    corresponding change, thus rigorously controlled for  
21    other variables. The authors conclude 'Results find  
22    no statistical change in the pace of drilling wells  
23    after the North Dakota regulations came into effect.'"

24                  And then "'The reduction in production  
25    for small operators in North Dakota after the

1 regulation went into effect relative to production in  
2 Montana is about 0.5 percent. The reduction in  
3 production from small operators seems to be coming  
4 from operator exit.'" You go on to say "The authors  
5 found that 8 percent of operators exited, but still  
6 the effect on drilling and production was trivial at  
7 best." Think I'll leave that there. Any other  
8 comments?

9 MR. PURVIS: I believe that you read  
10 all that correctly. I would only add one other thing.  
11 The article, the -- the journal paper, reproduces a  
12 quote from industry. The president of the North  
13 Dakota Petroleum Council stated about the rules that  
14 had those de minimis effects, "They're the most onerous  
15 regulatory changes we've ever seen, now overly  
16 burdensome and among the most stringent and costly in  
17 the nation." And so I'd just point out the disconnect  
18 between the expectation, the representation of  
19 industry, and the quantitative effect by academics.

20 COMMISSIONER BLOOM: And these were --  
21 and just to kind of recap, we were talking about  
22 changes to financial assurances in Texas and North  
23 Dakota where oil and gas is still doing well?

24 MR. PURVIS: Yes, sir.

25 COMMISSIONER BLOOM: Okay. All right.



1 Yeah. Thank you. I just wanted to explore that  
2 concept of waste and that this potentially would not  
3 lead to waste given what we've seen in these studies  
4 and their looks at Texas and North Dakota.

5 Finally, we've talked a good bit about  
6 this, but the Vertex study that has been mentioned fed  
7 into a study by the Center for Applied Research, and  
8 that study was called "An Analysis of the Adequacy of  
9 Financial Assurance Requirements for Oil and Gas  
10 Infrastructure Located on State Trust and Private  
11 Lands in New Mexico."

12 MR. PURVIS: Yes. I'm familiar with  
13 that.

14 COMMISSIONER BLOOM: Okay. And that's  
15 something I'm familiar with, you know, being the  
16 representative from the Land Office, and what we found  
17 there was in that study cites \$164 million in bonds  
18 being held at the Land Office, 5.173 billion in  
19 ultimate cleanup cost, P&A costs, with a gap to the  
20 Land Office of just over \$5 billion, and those were  
21 2020 dollars, so it could be 6 or 7 billion dollars  
22 today. Just anything else you'd like to say about the  
23 Vertex study?

24 MR. PURVIS: I have -- I'm familiar  
25 with -- with the study by the Center for Applied

1 Research, and I thought it was a relevant, useful  
2 study.

3 COMMISSIONER BLOOM: Yeah. Thank you.  
4 And, you know, it's important to us too because as  
5 fiduciaries for our state trust lands, at the end of  
6 the day, we -- over the decades or, you know, maybe a  
7 century, we've been able to put aside 30-some billion  
8 dollars into land in our permanent fund, and we'd hate  
9 to see that, you know, be tapped someday or have state  
10 funds, taxpayer funds, go to pay for, you know,  
11 something like \$7 billion in cleanup costs on state  
12 trust lands when -- you know, if and when the oil and  
13 gas industry wraps up in the state.

14 MR. PURVIS: On a -- on a personal  
15 note, I -- I agree with you. I -- I would hate to see  
16 those gains lost.

17 COMMISSIONER BLOOM: Thank you,  
18 Mr. Purvis.

19 No further questions.

20 MR. PURVIS: Thank you.

21 THE HEARING OFFICER: Chair Chang?

22 MR. CHANG: I don't think I need to --  
23 that's okay. I was going to say I'm not going to  
24 belabor this witness anymore. I wonder if we're close  
25 to a break? Should we do that?

1 THE HEARING OFFICER: We are. It was  
2 just to you and then -- but do you have questions when  
3 we come back?

4 MR. CHANG: No. No, I don't.

5 THE HEARING OFFICER: All right.  
6 Terrific. So I think we can excuse Mr. Purvis. Yes?  
7 All right.

8 Thank you very much, Mr. Purvis.

9 Let's take ten minutes. Let's see or  
10 yeah. Come back at 2:35.

11 (Off the record.)

12 THE HEARING OFFICER: All right. We  
13 are back after a short break.

14 Let's see. Ms. O'Grady?

15 MS. M. O'GRADY: Good morning. Good  
16 afternoon. My name is Morgan O'Grady for the  
17 applicants, and we call our next witness, Peter  
18 Morgan.

19 THE HEARING OFFICER: Thank you.

20 MS. M. O'GRADY: And I'd like to share  
21 my screen, please.

22 THE HEARING OFFICER: All right. Would  
23 you please spell your first and last name?

24 MR. MORGAN: Sure. It's P-E-T-E-R  
25 M-O-R-G-A-N.

1 WHEREUPON,

2 PETER MORGAN,

3 called as a witness and having been first duly sworn  
4 to tell the truth, the whole truth, and nothing but  
5 the truth, was examined and testified as follows:

6 THE HEARING OFFICER: Thank you very  
7 much.

8 Go ahead, Ms. Grady.

9 MS. M. O'GRADY: Give me just a moment  
10 to get them set up.

11 THE HEARING OFFICER: Commissioners, in  
12 your exhibit books, Mr. Morgan's testimony on direct  
13 is Exhibit 15.

14 DIRECT EXAMINATION

15 BY MS. M. O'GRADY:

16 MS. M. O'GRADY: Mr. Morgan, please  
17 state your name.

18 MR. MORGAN: Peter Morgan.

19 MS. M. O'GRADY: Where are you employed  
20 and what is your position?

21 MR. MORGAN: I am legal and policy  
22 director for the Center for Asset Retirement  
23 Accountability or CARA whose mission is to address the  
24 national problem of unplugged oil and gas wells,  
25 including through regulatory solutions. My work

1 involves understanding existing regulatory  
2 requirements at the federal and state level,  
3 identifying gaps and flaws with those requirements  
4 that lead to the creation of additional orphaned  
5 wells, and proposing solutions to address those gaps  
6 and flaws.

7 MS. M. O'GRADY: What is your  
8 educational background?

9 MR. MORGAN: I have a bachelor of arts  
10 from Middlebury College, I have a J.D. from Stanford  
11 Law School, and a master of science from Stanford's  
12 interdisciplinary program in environment and  
13 resources.

14 MS. M. O'GRADY: Can you briefly  
15 describe your work background?

16 MR. MORGAN: Prior to my current  
17 position with CARA, I worked for 16 years as an  
18 attorney for the Sierra Club, focusing on issues  
19 around the operation and cleanup of fossil fuel  
20 extraction facilities nationwide with a concentration  
21 on oil and gas operations and coal mines.

22 Through this work, I have expertise in  
23 understanding the strengths and weaknesses in state  
24 and federal regulatory requirements for financial  
25 assurance from oil and gas operators; oil and gas

1 operators' failure to comply with regulatory  
2 requirements and best practices; and the fiscal,  
3 environmental, and public health problems resulting  
4 from orphaned and abandoned wells across the nation  
5 including in New Mexico.

6 I testified before Congress at a 2023  
7 hearing of the House Subcommittee on Energy and  
8 Mineral Resources on the need for improved regulations  
9 to strengthen financial assurances, restrict transfer  
10 of obligations, and address other issues related to  
11 cleaning up fossil fuel extraction sites.

12 MS. M. O'GRADY: Is Applicants' Exhibit  
13 14 an accurate copy of your resume?

14 MR. MORGAN: Yes.

15 MS. M. O'GRADY: Mr. Morgan, you  
16 supplied direct and rebuttal testimony on behalf of  
17 the applicants in this matter, Applicants' Exhibits 15  
18 and 81 respectively?

19 MR. MORGAN: Yes.

20 MS. M. O'GRADY: Is that testimony  
21 accurate to the best of your knowledge and do you  
22 adopt it?

23 MR. MORGAN: Yes.

24 MS. M. O'GRADY: In broad terms, what  
25 opinions will you provide?

1                   MR. MORGAN: I will provide opinions on  
2 Applicants' proposed amendments to 19.15.2 NMAC,  
3 Providing a Definition for Marginal Well; 19.15.5  
4 NMAC, Addressing Well Plugging Requirements; 19.15.8  
5 NMAC, Regarding Financial Assurances; and 19.15.9  
6 NMAC, Regarding OCD's Review of Applications for  
7 Operator Registration and Change of Operator at Well  
8 Transfer.

9                   Overall my recommendations are intended  
10 to help prevent wells being orphaned without adequate  
11 financial assurance in place to provide for plugging.  
12 My goal is to encourage the timely plugging of wells  
13 by operators and ensure OCD has access to adequate  
14 resources to plug any wells that have been orphaned.

15                  MS. M. O'GRADY: Are current oil and  
16 gas regulations in New Mexico adequate to ensure  
17 appropriate and timely plugging of oil and gas wells?

18                  MR. MORGAN: No. Unfortunately, New  
19 Mexico's current regulations allow oil and gas  
20 operators to delay and avoid meeting their asset  
21 retirement obligations. The result is that landowners  
22 and communities must contend with unplugged inactive  
23 wells, many of which leak or pose other threats to  
24 human health and the environment.

25                  When operators go out of business

1 without completing plugging, the responsibility and  
2 associated costs get passed to the state. Because  
3 financial assurances for well plugging are far below  
4 actual costs, the state must use funds from other  
5 sources to pay for plugging. Meanwhile, the oil and  
6 gas industry continues to enjoy substantial profits.

7 Operators often take advantage of New  
8 Mexico's weak regulatory provisions to transfer the  
9 wells and associated cleanup obligations to less  
10 resourced operators, who are much more likely to go  
11 out of business and pass the cleanup costs on to the  
12 public.

13 The New Mexico Legislative Finance  
14 Committee recently issued a Policy Spotlight:  
15 Orphaned Wells report. LFC found that there are  
16 currently 700 non-producing wells in New Mexico that  
17 will not be plugged by their operator and will instead  
18 need to be plugged by the state and another 2100  
19 non-producing wells the state will likely need to  
20 plug. The actual figure is almost certainly at the  
21 higher end of that range. Although New Mexico does  
22 not have a statutory or regulatory definition for the  
23 term, these can be understood to be orphaned wells.

24 LFC reports based on its review of OCD  
25 invoices the average cost for OCD to plug a well in



1 fiscal year 2024 was \$163,000. It will therefore cost  
2 the state between 114 million and 342 million dollars  
3 just to plug this existing inventory of orphaned  
4 wells. This does not include site remediation costs,  
5 which can be much higher. New Mexico's Reclamation  
6 Fund will not cover these costs, which -- which will  
7 include site remediation costs because as of April  
8 2025, the fund contained just \$66.7 million.

9           These figures do not include the  
10 additional thousands of wells almost certain to be  
11 orphaned in coming years. New Mexico has  
12 approximately 63,000 wells that are currently  
13 unplugged and will eventually need to be plugged. Of  
14 these, approximately 3,765 wells were on the OCD  
15 inactive well list as of July 3, 2025.

16           In addition, according to LFC, "There  
17 are more than 3,000 wells on state or private land  
18 producing extremely small quantities of oil and gas  
19 whose expected cleanup costs far exceed their  
20 predicted future revenues. These inactive and low  
21 producing wells are at high risk of orphaning,  
22 particularly when transferred to under-resourced  
23 operators, including operators who already hold a  
24 large number of inactive and low producing wells."

25           MS. M. O'GRADY: Are there specific

1 deficiencies in the current rules?

2 MR. MORGAN: Current New Mexico  
3 regulations contribute to and precipitate this present  
4 and growing orphan well crisis in three ways. First,  
5 the current regulations allow operators to delay and  
6 avoid plugging by allowing wells to be placed in  
7 temporary abandonment status without any demonstration  
8 the wells have future beneficial use.

9 Second, because current financial  
10 assurance requirements are set far below actual  
11 plugging costs, the rules do not provide an incentive  
12 to operators to timely plug wells in order to be  
13 released from financial assurance obligations. The  
14 lack of adequate financial assurances means that when  
15 the wells are orphaned, essentially all the plugging  
16 and remediation costs must be borne by the state.

17 Third, the current regulations  
18 facilitate and encourage the practice of transferring  
19 inactive and low producing wells away from the  
20 operators who profited from their earlier production.  
21 OCD lacks the information and authority to take  
22 meaningful action to scrutinize and reject proposals  
23 to transfer inactive and low producing wells to  
24 under-resourced operators most likely to orphan those  
25 wells rather than plug them. Applicants' proposed

1 amendments address all of these issues.

2 MS. M. O'GRADY: Turning to Applicants'  
3 specific proposals, Applicants propose to amend  
4 19.15.5.9.A NMAC, Enforcement and Compliance. What is  
5 the purpose of this section, and what amendments are  
6 proposed?

7 MR. MORGAN: This section lists  
8 criteria for a compliance determination for purposes  
9 of certain regulatory actions in the rules, including  
10 whether to release financial assurances and whether to  
11 approve operator registration and change of operator.

12 First, the proposed amendments would  
13 eliminate existing language allowing operators to  
14 maintain a specified number of wells out of compliance  
15 with well plugging requirements. The proposed  
16 amendment restores needed clarity by requiring that  
17 all wells must be plugged when plugging obligations  
18 are triggered. This does not leave operators without  
19 recourse for a well that may be returned to service  
20 because the existing regulations already allow an  
21 operator to secure designated temporary abandonment  
22 status for such a well.

23 Second, the proposed amendments would  
24 add an additional criterion requiring operators to  
25 meet the requirements for venting and flaring of

1 natural gas at wells. Operators who regularly vent  
2 and flare natural gas in violation of regulatory  
3 requirements may also lack capacity to properly  
4 operate and plug their wells, and the inclusion of the  
5 reference in the compliance provisions provides OCD  
6 with the opportunity to address these operational  
7 deficiencies and to determine whether the operator has  
8 the resources and ability to assume additional well  
9 operating and plugging obligations.

10 MS. M. O'GRADY: Before you discuss  
11 Applicants' specific proposals to amend financial  
12 assurance requirements, could you discuss the role of  
13 financial assurance in general and the problems that  
14 arise when financial assurance is not adequate?

15 MR. MORGAN: Before an oil or gas well  
16 is even drilled, it's known that one day it will stop  
17 producing in economic quantities and must be plugged.  
18 The nature of oil and gas operations is that the  
19 obligation to plug comes due at the point when the  
20 well has stopped generating revenue. Plugging and  
21 decommissioning is expensive and represents a pure  
22 cost with no potential to produce additional revenue.

23 This stark economic reality increases  
24 the likelihood that an operator will go out of  
25 business or otherwise walk away from its obligations

1 before completing plugging. At that point, even if  
2 the regulator were to sue the operator, the operator  
3 would be effectively judgment proof with no assets  
4 left for the regulator to claim. This risk increases  
5 the more inactive wells an operator holds.

6 Regulators can address this dynamic by  
7 requiring operators to post financial assurances prior  
8 to drilling or acquiring operating authority over a  
9 well sufficient to cover the costs of plugging or at  
10 least sufficient to shift the incentives so that the  
11 operator prioritizes well plugging.

12 Effective financial assurance programs  
13 facilitate timely and effective decommissioning in  
14 three ways. First, the financial assurance assures  
15 that some resources will be available for reclamation  
16 if the operator fails to clean up the site. This  
17 financial backstop is particularly important in  
18 industries such as oil and gas extraction that are  
19 subject to boom and bust cycles that can lead  
20 operators to drill wells when prices for oil and gas  
21 are high but can contribute to bankruptcies when  
22 prices are low.

23 Second, effective financial assurance  
24 creates an incentive for the operator to complete the  
25 plugging as soon as the well is no longer economic by

1 imposing ongoing costs, annual premiums, and  
2 collateral requirements that are only released once  
3 plugging is complete. The desire to free up capital  
4 and avoid these ongoing costs should offset an  
5 operator's desire to avoid or delay the cost of  
6 plugging.

7 Third, financial assurance requirements  
8 shift risk away from the state and onto a third party,  
9 such as a surety bond provider, which conducts its own  
10 analysis of an operator's reliability and likelihood  
11 of default. Financial assurance providers screen  
12 operators and set premiums and other fees based on  
13 observable indicators of factors including regulatory  
14 compliance and the number of non-producing wells held  
15 by the operator.

16 MS. M. O'GRADY: Under current  
17 regulations, what percentage of plugging costs for  
18 orphaned wells are covered by forfeited financial  
19 assurances in New Mexico?

20 MR. MORGAN: Almost none. According to  
21 OCD's annual reports on the Reclamation Fund for  
22 fiscal years 2019 through 2024, although OCD expended  
23 \$15 million plugging 193 wells, it recovered only  
24 \$250,000 from financial assurance forfeitures,  
25 salvage, and recovery from operators. That works out

1 to only 1.6 percent of total plugging costs recovered  
2 by the state.

3 In three of the five years analyzed,  
4 OCD recovered \$0. LFC found that OCD has not  
5 successfully redeemed any financial assurance since  
6 2018. This dramatic gap is attributable to the fact  
7 that the low amounts recoverable via bond forfeiture  
8 may lead OCD to conclude that it is not worth the time  
9 and effort to complete bond forfeiture.

10 MS. M. O'GRADY: Why is it important to  
11 maintain policies that promote prompt plugging of  
12 non-producing oil and gas wells?

13 MR. MORGAN: Unplugged oil and gas  
14 wells can leak numerous harmful pollutants into the  
15 air and water. Pollutants may escape when the well  
16 casings or wellheads of unplugged wells rust or crack,  
17 which can happen over time through corrosion, improper  
18 maintenance, subsidence, or from other causes.

19 Oil and gas wells can emit air  
20 pollutants including methane, nitrogen oxide, sulfur  
21 dioxide, and hazardous air toxins like benzene,  
22 toluene, ethyl benzene, and xylene. These pollutants  
23 are known or suspected to cause cancer or other  
24 serious health effects such as reproductive diseases  
25 or birth defects.

1           Methane leaks are a particular concern  
2   from unplugged wells because at high levels methane  
3   can pose an asphyxiation and explosion risk and is a  
4   potent greenhouse gas driving global climate change.  
5   Researchers have observed increased concentrations of  
6   air pollutants at distances of 4 kilometers downwind  
7   of wells.

8           Leaking wells can also pollute  
9   groundwater and surface water, including contaminating  
10  drinking water sources. Oil and gas wellbores pass  
11  through shallower strata that may contain groundwater  
12  used for drinking or other purposes. Unplugged  
13  non-producing wells can facilitate migration of  
14  pollutants from deeper hydrocarbon producing strata  
15  into this groundwater or up to the surface.

16          The communities most likely to be  
17  exposed to pollutants from unplugged oil and gas wells  
18  include historically marginalized groups. This  
19  includes communities in northwest New Mexico living in  
20  close proximity to high density of wells. Proximity  
21  to wells is associated with a range of negative health  
22  outcomes including increased risk of cancer, birth  
23  defects, and cardiac and pulmonary impairment.

24          Wells that are plugged have roughly 100  
25  times lower average emissions than wells that are



1 unplugged. The longer a non-producing well sits idle,  
2 the more opportunity there is for air, land, and water  
3 pollution. Wells that already leak will produce more  
4 pollution, and non-leaking wells may deteriorate to  
5 the point where they begin to leak.

6 MS. M. O'GRADY: Does inadequate  
7 financial assurance impact regulators' decision  
8 making?

9 MR. MORGAN: Yes. When financial  
10 assurances are set too low, regulators may become wary  
11 of taking any form of enforcement action, including  
12 enforcing plugging requirements, out of concern that  
13 such actions will push the operator toward bankruptcy.  
14 When financial assurances are adequate, regulators are  
15 free to enforce regulations without concern that an  
16 operator could respond by filing for bankruptcy.

17 MS. M. O'GRADY: How much does it cost  
18 OCD to plug a well in New Mexico?

19 MR. MORGAN: LFC reviewing invoices for  
20 OCD directed plugging has reported the average  
21 plugging cost for fiscal year 2024 as \$163,000 per  
22 well. Other calculations of well plugging costs in  
23 New Mexico have resulted in similar or higher figures.  
24 In its 2021 Notice of Intent to Apply to the U.S.  
25 Department of the Interior for Orphaned Well Plugging

1 Program Grants, OCD reported spending an average of  
2 \$167,000 per well. In its 2024 Phase 2 work plan  
3 proposal to DOI, OCD reported recent average plugging  
4 costs of \$180,000 per well.

5 MS. M. O'GRADY: How do these actual  
6 plugging costs compare to the financial assurance  
7 levels in New Mexico's current regulations?

8 MR. MORGAN: Currently, financial  
9 assurance amounts in New Mexico fall far below the  
10 average cost to plug a well. Under the existing  
11 regulations, single well financial assurances are  
12 expressed in terms of the depth of the well as \$25,000  
13 plus \$2 per foot of the projected depth of a proposed  
14 well or the depth of an existing well. For even a  
15 10,000-foot well, that would equal only \$45,000 in  
16 financial assurance, less than a third of the actual  
17 average plugging cost.

18 The current blanket bonding provisions  
19 allow for significantly lower financial assurance  
20 amounts. The currently allowable blanket bond for an  
21 operator with 100 active wells is \$125,000, working  
22 out to just \$1,250 per well. If an operator with 100  
23 wells were to default and orphan its wells, the  
24 shortfall between the bonded amount and the well  
25 plugging cost using the \$160,000 average would be

1     \$16,175,000.

2                   MS. M. O'GRADY:   Turning to Applicants'  
3     specific proposals for 19.15.8 NMAC, Governing  
4     Financial Assurance, what amendments do Applicants  
5     propose to subsection 19.15.8.9.A NMAC, Setting Forth  
6     the Scope of Applicability of the Part?

7                   MR. MORGAN:   Applicants propose adding  
8     the sentence "The Division shall not approve and the  
9     operator shall not proceed with any proposed drilling  
10    or acquisition until the operator has furnished the  
11    required financial assurance."

12                  This amendment prevents a situation  
13    where an operator may incur a plugging obligation by  
14    drilling or acquiring operating authority over a well  
15    before it is provided the required financial  
16    assurance. Under that scenario, there would be a  
17    chance that the operator could then default on its  
18    obligation and there would be no financial assurance  
19    available to OCD to put toward the cost of finishing  
20    the work and plugging the well.

21                  MS. M. O'GRADY:   What amendments do  
22    Applicants propose to financial assurance requirements  
23    for active wells at 19.15.8.9 NMAC?

24                  MR. MORGAN:   The proposed amendments  
25    would increase the one well financial assurance amount

1 for active wells to \$150,000 and would set all blanket  
2 financial assurances to the statutory maximum of  
3 \$250,000. The Oil and Gas Act requires OCD to  
4 "Establish a one well plugging financial assurance in  
5 amounts determined sufficient to reasonably pay the  
6 cost of plugging the wells covered by the financial  
7 assurance."

8 A one well financial assurance of  
9 \$150,000 per well closely approximates an amount  
10 sufficient to reasonably pay the cost of plugging the  
11 wells. OCD's average cost to plug a single orphan  
12 well is \$163,000, and while there will always be some  
13 variation in actual plugging costs from well to well,  
14 it's reasonable to use a figure close to the average  
15 plugging cost, and because the vast majority of  
16 operators maintain multiple wells, this averaging is  
17 likely to work out across the operator's well  
18 inventory.

19 Although the use of a \$150,000 per well  
20 figure is still likely to result in a gap between  
21 financial assurance amounts and actual plugging costs,  
22 the significantly smaller scale of this gap can be  
23 addressed through use of the Reclamation Fund. In  
24 contrast, the current approach to calculating a one  
25 well financial assurance, the \$25,000 plus \$2 per foot

1 of the well's depth, is not sufficient to reasonably  
2 pay the cost of plugging a well. In almost all cases,  
3 actual plugging costs will far exceed a financial  
4 assurance calculated on this basis.

5 While the Commission must consider the  
6 well depth in setting financial assurance amounts,  
7 there is no statutory requirement that the financial  
8 assurance amount be directly pegged to the depth of  
9 the well. Furthermore, the primary cost drivers in  
10 well plugging are not related to the depth of the  
11 well. Much more important are factors including the  
12 condition of the well and issues related to access to  
13 the well.

14 All of these cost factors, including  
15 well depth, are inherently incorporated into the  
16 \$150,000 based on average plugging costs, but are not  
17 captured by an approach based purely on one variable,  
18 well depth. The proposed amendments would also  
19 replace the current scaled approach to calculating  
20 blanket financial assurance amounts for active wells  
21 with a single blanket financial assurance set at the  
22 statutory maximum rate of \$250,000.

23 MS. M. O'GRADY: What is the basis for  
24 the new financial assurance category for marginal  
25 wells?

1                   MR. MORGAN:   OCD first proposed this  
2   category.   Marginal well is defined under the proposed  
3   amendments as "An oil or gas well that produced less  
4   than 180 days and less than 1,000 barrels of oil  
5   equivalent within a consecutive 12-month period."

6                   Such marginal wells pose a significant  
7   risk of being orphaned because the revenue they will  
8   produce over their remaining production may be less  
9   than the cost of plugging and remediating the well.  
10   This creates a powerful incentive for operators,  
11   particularly new operators who did not enjoy the  
12   original -- the original profitable period of higher  
13   production, to avoid these costs.

14                  The proposed definition of marginal  
15   well includes components related to both the amount of  
16   production and the number of days the well produces.  
17   Each component is critical.   The total amount of  
18   production relates directly to the revenue generated  
19   by that well.   The number of days producing is also  
20   important because operators can manipulate well  
21   production to make wells appear artificially  
22   productive but only over short periods of time, giving  
23   a false impression that a well is economic when it is  
24   not.

25                  According to Mr. Purvis's analysis,

1 approximately 2200 wells would be categorized as  
2 marginal wells under the new rules, exclusive of wells  
3 presumed not to have beneficial use, constituting 3.7  
4 percent of the well population and 0.045 percent of  
5 production. The proposal recognizes that marginal  
6 wells carry a high risk that should be reflected in  
7 the amount of financial assurance the state requires  
8 to protect against the well becoming orphaned.

9           The phased in approach proposed by  
10 Applicants gives operators with existing marginal well  
11 inventories currently covered under blanket financial  
12 assurances until January 1, 2028, to plug these wells,  
13 return them to a higher level of production so the  
14 marginal wealth financial assurance requirement no  
15 longer applies, or secure individual well financial  
16 assurances.

17           The one well financial assurance would  
18 apply immediately for any marginal well being  
19 transferred to a new operator, recognizing that  
20 transfer of low producing wells to under-resourced  
21 operators is a major contributor to well orphaning.  
22 The transfer requirement also precludes operators from  
23 avoiding the January 2028 deadline by transferring  
24 away their marginal wells rather than plugging them or  
25 providing the one well financial assurance.

1           At least two other states, Arkansas and  
2   California, require operators to provide one well  
3   plugging financial assurances at the time a low  
4   producing well is transferred. The proposed amendment  
5   represents a common sense approach to financial  
6   assurances for low producing wells at the time of  
7   transfer, consistent with the approach already  
8   employed by other states.

9           MS. M. O'GRADY: What is the basis to  
10   require an operator with over 15 percent of their  
11   wells in marginal and/or inactive status to provide a  
12   one well plugging financial assurance of \$150,000 for  
13   all of their wells?

14          MR. MORGAN: Operators with a  
15   significant proportion of marginal and inactive wells  
16   pose a heightened threat of failure because they may  
17   not be able to generate sufficient cash flow to meet  
18   their well plugging obligations. Operators with a  
19   higher proportion of marginal and inactive wells  
20   generate less revenue at the same time they face  
21   higher costs from plugging.

22          Requiring a one well financial  
23   assurance set at an amount pegged to the actual cost  
24   of plugging to OCD is not a penalty imposed on  
25   operators. It is a common sense means by which the



1 state can protect its own interests and those of its  
2 residents. Financial assurances set at levels at or  
3 near the actual cost of plugging protect the interests  
4 of the state by providing a financial backstop in the  
5 event of operator default and providing an incentive  
6 for operators to complete timely plugging.

7 Some jurisdictions, including New  
8 Mexico, have made the determination that such  
9 protections and incentives are not necessary for  
10 certain types of operators. Some operators, the  
11 theory goes, generate sufficient ongoing revenue that  
12 they should not have any trouble covering their  
13 plugging costs and therefore represent a low risk of  
14 default and do not require a full financial assurance  
15 backstop.

16 This is a benefit extended to certain  
17 operators which must be weighed against the  
18 corresponding increased risk borne by the state. The  
19 logic underlying the policy of allowing certain  
20 operators to provide less than adequate bonding simply  
21 does not hold for operators who have more than 15  
22 percent of their wells inactive or producing at only  
23 marginal levels. Such operators face the simultaneous  
24 pinch of reduced revenues at the same time they faced  
25 increased immediate plugging costs.

1                   The proposed amendment discourages  
2 operators from specializing in the acquisition of low  
3 producing wells. Such operators who take this  
4 approach may be betting on a dramatic increase in  
5 commodity prices that would render their wells  
6 profitable or may be betting that they can pocket  
7 whatever remaining revenue their wells can produce  
8 while avoiding the plugging costs. In either case,  
9 the state and public monies should not be compelled to  
10 underwrite this risk.

11                   MS. M. O'GRADY: Why is it necessary to  
12 increase the required bonding for inactive wells and  
13 wells in approved and expired temporarily abandoned  
14 status as the applicants propose?

15                   MR. MORGAN: By increasing the bonding  
16 required for inactive wells and wells in TA, the  
17 proposed amendment ensures that New Mexico will have  
18 adequate financial assurances for the categories of  
19 wells at highest risk of being orphaned.

20                   The Interstate Oil and Gas Compact  
21 Commission, a body representing and made up of state  
22 regulators, has specifically highlighted the risk of  
23 well orphaning posed by inactive wells and by  
24 operators with a high percentage of inactive wells.  
25 In a 2021 report, the IOGCC noted that "The number of

1 idle wells in a state or province is a concern because  
2 of the potential for the wells to deteriorate over  
3 time or become orphans."

4 An even more critical factor is the  
5 number of idle wells held by an individual operator,  
6 especially as a percentage of the operators' total  
7 wells that have been drilled but not plugged. A high  
8 percentage of idle wells may indicate an increased  
9 vulnerability of the state or province to the operator  
10 becoming insolvent and leaving orphan wells. States  
11 and provinces use various approaches to ensure  
12 operators actively manage their idle well inventories  
13 and plug wells with no future beneficial use.

14 The proposed amendment is therefore in  
15 line with regulations of many other oil and gas  
16 producing states. The New Mexico legislature has  
17 already recognized that wells in TA inactive status  
18 represent a higher risk by setting a minimum blanket  
19 bond amount of \$50,000 for wells in TA status, but  
20 there is no maximum, and by requiring a one well  
21 financial assurance on any well that has been held in  
22 a temporary abandonment for more than two years.

23 MS. M. O'GRADY: Why do the proposed  
24 amendments restrict the use of blanket financial  
25 assurances for some categories of wells?

1 MR. MORGAN: Under the proposed  
2 amendments, blanket financial assurance where the per  
3 well coverage varies depending on the number of wells  
4 is only available for active wells. Financial  
5 assurances for all other categories of wells are  
6 calculated based on a per well cost of \$150,000,  
7 including under the blanket financial assurance in  
8 subsection E for inactive wells and wells in approved  
9 and expired TA status.

10 These changes are appropriate because  
11 these wells have the greatest chance of being  
12 orphaned. Imposing individual well financial  
13 assurance requirements for these wells should lead  
14 operators to plug these wells sooner to avoid ongoing  
15 fees and carrying costs required to maintain those  
16 bonds.

17 The first problem with blanket  
18 financial assurances is it results in a very limited  
19 per well coverage. Under the amounts in New Mexico's  
20 financial assurance regulations, coverage under a  
21 blanket financial assurance can be \$1,250 per well or  
22 even lower. That's less than 1 percent of OCD's  
23 actual averaging plugging cost of \$163,000. When an  
24 operator who has provided only a blanket financial  
25 assurance defaults and orphans its wells, almost all

1 of those plugging costs must be covered by the state.

2 Blanket financial assurances provide  
3 very little incentive for operators to plug their  
4 wells as they cease producing. This is because when  
5 an operator plugs a well covered under a blanket  
6 financial assurance, it does not receive a  
7 corresponding decrease in the carrying costs  
8 associated with maintaining the blanket financial  
9 assurance.

10 Instead, the operator continues to pay  
11 the same costs to maintain the same blanket financial  
12 assurance for its remaining wells. This encourages  
13 operators to delay plugging these wells, potentially  
14 until all wells covered under that blanket financial  
15 assurance has stopped producing.

16 Blanket bonding also poses a high risk  
17 because bankruptcy occurs at the operator level, not  
18 the individual well level, so when an operator  
19 defaults all of its wells, particularly its inactive  
20 and marginal wells are likely to be orphaned. This  
21 poses only a minimal problem for the regulator when  
22 those wells are all covered by individual bonds, but  
23 it poses a massive problem when those wells are  
24 covered by a single blanket financial assurance.

25 MS. M. O'GRADY: Why do applicants

1 propose expressly including approved and expired  
2 temporarily abandoned wells in 19.15.8.9.E NMAC?

3 MR. MORGAN: The proposed amendment  
4 provides better consistency between the language of  
5 the regulation and the language of the statute. The  
6 statute expressly references wells in temporarily  
7 abandoned status.

8 The current regulations omit several  
9 important categories of inactive and temporarily  
10 abandoned wells, including one, wells that are  
11 inactive but for which the operator has not sought  
12 temporarily abandoned status; two, wells that have  
13 received approved temporarily abandoned status but  
14 have been in the status for less than two years; and  
15 three, wells in expired temporarily abandoned status.

16 The proposed amendment closes this gap  
17 by expressly including such wells among the categories  
18 of wells to which the financial assurance requirements  
19 of 19.15.8.9.E NMAC apply.

20 MS. M. O'GRADY: Will increased  
21 financial assurance requirements harm small businesses  
22 and hurt New Mexico's economy?

23 MR. MORGAN: The experiences of  
24 regulators in other jurisdictions make clear that  
25 increasing financial assurance requirements leads to

1 decreases in well orphaning and better environmental  
2 compliance among operators with no or minimal impact  
3 to overall oil and gas production in the state.

4           The economic analysis by Boomhower of  
5 the effect of the 2001 increase to Texas's financial  
6 assurance requirements for oil and gas producers  
7 concluded that "Despite affecting small firms, the  
8 bond requirement yielded large environmental  
9 improvements because small producers caused a  
10 disproportionate share of environmental problems."  
11 The bond requirement reduced the industry-wide orphan  
12 well rate by 65 percent.

13           The study also found that the new  
14 financial assurance requirement had a negligible  
15 impact on production. "Notably, the state's total  
16 output of oil and gas was essentially unaffected by  
17 the policy." This is because the firms affected by  
18 the policy accounted for a small fraction of  
19 production and because most of the valuable production  
20 associated with exiting firms was reallocated to other  
21 producers instead of shutting down.

22           A separate study looking at the effects  
23 of changes to oil and gas regulations in North Dakota,  
24 including increased financial assurance requirements,  
25 observed nearly identical results. The study found

1 "No statistical change in the pace of drilling wells  
2 after the North Dakota regulations came into effect,"  
3 and that "The reduction in production for small  
4 operators in North Dakota after the regulation went in  
5 effect relative to production in Montana is about 0.5  
6 percent."

7                   Although the Texas and North Dakota  
8 laws reviewed in the two studies required bond amounts  
9 that are lower in absolute terms than the adjusted  
10 financial assurance amounts in the proposed  
11 amendments, each law represented a significant  
12 increase compared to prior requirements. I believe  
13 the proposed amendments would have a similar effect in  
14 New Mexico. Irresponsible operators may be pushed out  
15 of the market, but the overall impact to the industry  
16 and overall production will be small and the companies  
17 who continue to operate will have better compliance  
18 records.

19                   MS. M. O'GRADY: If financial assurance  
20 amounts are increased, will the full cost of the  
21 increases be borne by operators?

22                   MR. MORGAN: Most operators satisfy  
23 financial assurance requirements by posting surety  
24 bonds. Surety bond providers charge an annual premium  
25 typically between 1 and 5 percent. Note that in my



1 original direct testimony, I cited a range of between  
2 1 and 2.5 percent. Industry witnesses provided an  
3 updated range based on recent data, and I incorporate  
4 that here.

5 Surety providers may also require  
6 operators to pledge collateral, which would be  
7 released once the well is plugged and the bond no  
8 longer needed. These are costs to the operator, but  
9 amount to less, often far less, than the face value of  
10 the bond.

11 The surety bonding industry is a  
12 competitive market with multiple providers competing  
13 for the business of operators. Surety providers set  
14 the terms of individual bonds depending on the risk of  
15 default they perceive from the operator balanced  
16 against the risk that a different provider will offer  
17 more favorable terms.

18 To the extent an operator may only be  
19 able to secure a bond under onerous terms with higher  
20 premiums and more collateral required, this is a clear  
21 signal that the surety industry perceives that  
22 operator to represent a high risk of default. Such  
23 operators also pose a high risk to the state's  
24 interests in that they are more likely to default and  
25 orphan wells and depose other compliance problems.

1                   If the market makes it difficult or  
2 impossible for such operators to secure the bonds  
3 needed to operate, that is to the benefit of New  
4 Mexico by protecting the state against high risk  
5 operators.

6                   MS. M. O'GRADY: Why do Applicants  
7 propose to provide for adjustments to financial  
8 assurance requirements based on inflation?

9                   MR. MORGAN: It's widely recognized  
10 that plugging costs increase over time, including as a  
11 result of inflation. In a 2021 report, the IOGCC  
12 noted that "Plugging and restoration costs rise over  
13 time due to inflation and in some cases due to  
14 improved and more stringent regulatory requirements  
15 for materials and methods."

16                   The Federal Bureau of Land Management  
17 in its recent rulemaking, Increasing Bond Amounts for  
18 Wells on Federal Land, similarly cited the role of  
19 inflation in necessitating adjustments to financial  
20 assurance amounts, and Wyoming's regulatory bonding  
21 requirements for oil and gas wells provide the bond  
22 amounts shall be "adjusted every three years based on  
23 the Wyoming consumer price index or actual plugging  
24 costs."

25                   MS. M. O'GRADY: In addition to the

1 financial assurance requirements, New Mexico maintains  
2 the Reclamation Fund. Why not just rely on the  
3 Reclamation Fund to make up any shortfall rather than  
4 amend the financial assurance requirements?

5 MR. MORGAN: There's simply not enough  
6 money in the Reclamation Fund to cover the shortfall  
7 between existing financial assurance levels and the  
8 current and anticipated inventory of orphan wells.  
9 According to LFC, the Reclamation Fund contained \$66.7  
10 million as of April 2025. LFC further estimates the  
11 state's potential liability far exceeds that total  
12 finding that "Altogether, the state's current and near  
13 future liability for well plugging and site  
14 remediation is estimated at \$700 million to \$1.6  
15 billion."

16 Some of the plugging costs for those  
17 existing orphan wells may be covered by federal funds  
18 administered by DOI under its orphan well plugging  
19 program, but not nearly the full amount. LFC lists  
20 New Mexico's total federal funding eligibility as  
21 \$167.3 million. Accordingly, federal funds will not  
22 cover the shortfall.

23 Relying on the Reclamation Fund to  
24 cover the cost of plugging newly orphaned wells also  
25 creates a negative incentive and moral hazard for

1 operators. If operators know OCD will not seek to  
2 enforce plugging requirements and will not seek to  
3 recover plugging costs from operators themselves, this  
4 will create a powerful incentive for operators to  
5 continue and even increase the practice of orphaning  
6 wells to OCD. Why would an operator choose to bear  
7 the cost of plugging a well itself if it knows that  
8 its competitors are avoiding that cost category?

9 MS. M. O'GRADY: Applicants propose a  
10 number of changes to the change of operator rules at  
11 19.15.9.9 NMAC. Before you discuss the specific  
12 amendments, can you describe the increased risk of  
13 well orphaning that is associated with well transfer?

14 MR. MORGAN: Well transfers,  
15 particularly of inactive, marginal, or other low  
16 producing wells, dramatically increase the risk that  
17 the well will be orphaned. This is because such  
18 transfers create a separation between the operator who  
19 profited from the well's highest production and the  
20 operator who must bear the cost of plugging and  
21 decommissioning the well.

22 Often at the time a low producing well  
23 is transferred, the remaining revenue the well will  
24 generate will be less than the cost of plugging and  
25 decommissioning that well. The economics of the

1 transfer of such a well only make sense if the  
2 transferee operator can avoid the cost of plugging,  
3 and yet such transactions regularly occur.

4 A variety of oil and gas regulators  
5 have recognized the risk of orphaning inherent in the  
6 transfer of low producing wells. The IOGCC has found  
7 that "It is common for operators to transfer wells and  
8 associated facilities and pipelines to other  
9 companies." State and provincial regulators have a  
10 special concern with transfers of wells with declining  
11 production because of the increased risk that such  
12 wells may become orphans.

13 Many states and provinces have  
14 implemented measures to reduce this risk by setting  
15 additional requirements for financial assurance and by  
16 evaluating corporate solvency and compliance history  
17 and the status and condition of the wells and  
18 associated facilities and pipelines before approving a  
19 transfer. An effective regulatory program for oil and  
20 gas operations must include provisions addressing the  
21 transfer of wells, particularly inactive, marginal,  
22 and other low producing wells.

23 MS. M. O'GRADY: Why isn't it  
24 sufficient to just increase the amount of financial  
25 assurance required as other parts of the proposed

1 rulemaking do?

2 MR. MORGAN: In theory, a fully  
3 effective financial assurance program would address  
4 the primary risks posed by the transfer of inactive,  
5 marginal, and other low producing wells. The proposed  
6 changes to financial assurance requirements in this  
7 rulemaking are a step in the right direction, but  
8 still fall short of what would be required.

9 Several factors prevent New Mexico from  
10 maintaining a fully effective financial assurance  
11 program at this time. These include one, average  
12 plugging costs are just that, an average. Some number  
13 of wells will have actual plugging costs that exceed  
14 the average.

15 Two, financial institutions, including  
16 the providers of surety bond coverage, may fail. This  
17 risk is particularly high for surety bond providers  
18 who specialize in providing financial assurances for  
19 the oil and gas industry. And three, New Mexico  
20 statute currently places limits on the state's  
21 authority to require full cost financial assurances,  
22 including by allowing blanket bonding for some wells,  
23 but capping the coverage amount.

24 An effective regulatory program  
25 designed to prevent the creation of additional orphan

1 wells will both require adequate financial assurances  
2 and restrictions on the transfer of wells. A  
3 peer-reviewed economic study of the law and economics  
4 of reclamation bonding found that compliance with  
5 plugging requirements "can be induced with bond levels  
6 that are below the expected reclamation costs if  
7 regulators have the authority to block permits for any  
8 operator that has a record of non-compliance."

9 MS. M. O'GRADY: Let's turn to 19.15.9  
10 NMAC, Well Operator Provisions. What is the general  
11 purpose of this section and what amendments do  
12 Applicants propose?

13 MR. MORGAN: This section governs OCD's  
14 registration and approval of new operators and changes  
15 of operator for specific wells; essentially, well  
16 transfers. It specifies the types of information OCD  
17 may collect when considering operator applications and  
18 provides the grounds on which OCD may deny an  
19 application. This section therefore authorizes OCD to  
20 evaluate the qualifications and capacity of an  
21 operator to meet the requirements of New Mexico's oil  
22 and gas program.

23 The proposed amendments add a new  
24 criterion for approval of initial operator  
25 registration. After I submitted my direct testimony,

1 Applicants and OCD engaged in discussions with OXY  
2 regarding this amendment and negotiated changes to the  
3 original proposal with OXY.

4 Under the updated proposal, an  
5 applicant would have to disclose whether it is subject  
6 to any forfeiture demands from a state or federal  
7 agency, has forfeited financial assurance to a state  
8 or federal agency, or has any unresolved adjudicated  
9 orders or unresolved settlement agreements for any  
10 state or federal violations. OCD would also be  
11 authorized to deny operator registration on this  
12 basis.

13 The required disclosure is important  
14 because many oil and gas operators do business in  
15 multiple jurisdictions. OCD currently has the  
16 capacity to track operator compliance at wells and  
17 sites within New Mexico, but has no means to  
18 efficiently collect that information outside the  
19 state.

20 OCD should be able to know if an  
21 operator has a past history of forfeiture and  
22 non-compliance at its facilities out of state. Among  
23 other things, this is necessary to prevent bad actor  
24 operators from seeking refuge in New Mexico after  
25 running afoul of regulators in other jurisdictions.



1 More fundamentally, it allows OCD to gauge the  
2 likelihood of an operator's capacity and willingness  
3 to satisfy the obligations associated with operating  
4 oil and gas wells in New Mexico.

5 The proposed amendment also requires  
6 operators to disclose officers, directors, partners,  
7 and persons with an interest in the new operator  
8 exceeding 25 percent who are or have been within the  
9 previous five years part of a company not currently in  
10 compliance with the well plugging requirements of  
11 19.15.5.9 NMAC. This prevents individuals who  
12 incurred violations at one company from walking away  
13 from that company and its liabilities and starting a  
14 new company or seeking operator status as an  
15 individual.

16 The approach of tracking officers,  
17 directors, and other interested parties across  
18 companies is common in the regulation of resource  
19 extractors. For example, the Federal Surface Mining  
20 Act prohibits issuance of a new permit to any  
21 applicant who owns or controls mining operations  
22 having unabated or uncorrected violations anywhere in  
23 the United States until those violations are abated or  
24 corrected or are in the process of being abated or  
25 corrected, and DOI maintains a national applicant

1 violator system to track these violations.

2 The proposed amendment also expands the  
3 existing regulatory provision, allowing OCD to require  
4 an operator to disclose its current and past officers,  
5 directors, and partners, and its current and past  
6 ownership interest in other operators. The proposed  
7 amendment would make such disclosures mandatory,  
8 specify the form of disclosure as a certification, and  
9 require operators to update that certification  
10 annually.

11 MS. M. O'GRADY: What amendments do  
12 Applicants propose to applications for change of  
13 operator?

14 MR. MORGAN: The proposed amendment  
15 requires the same certification regarding the  
16 operator's history of forfeiture in other  
17 jurisdictions and tracking the compliance history of  
18 associated entities that also applies to new operator  
19 registrations, and it also requires change of operator  
20 applicants to provide a certified plugging and  
21 abandonment plan.

22 The justification for the certification  
23 of the operator's forfeiture record and the compliance  
24 history of associated entities is the same as for the  
25 amendments pertaining to new operator registration.

1 The same rationale applies to applications for change  
2 of operator associated with well transfers. The  
3 plugging and abandonment plan requirement is necessary  
4 to prevent the scenario where a new operator plainly  
5 lacks the resources to satisfy the plugging  
6 obligations it is assuming.

7 For existing operators who may already  
8 hold inactive and marginal wells, it allows OCD to  
9 consider those existing plugging liabilities in  
10 addition to the new liabilities being assumed through  
11 the proposed transfer. It also allows OCD to verify  
12 an operator's claims that future production from  
13 existing wells and the wells to be transferred will be  
14 adequate to produce revenue sufficient to satisfy the  
15 operator's aggregate plugging obligations.

16 It also allows OCD to consider the new  
17 operator's actual history of compliance and success at  
18 eliciting additional production from wells other  
19 operators consider spent, including the operators  
20 history of inactive wells and returning wells to  
21 production. These amendments authorize OCD to take  
22 appropriate action when a proposed transfer of wells  
23 raises questions about whether the new operator will  
24 have the resources and capacity to actually satisfy  
25 the well plugging obligations it is assuming.

1 MS. M. O'GRADY: Why is it appropriate  
2 for OCD to consider factors including a transferee's  
3 financial condition?

4 MR. MORGAN: When OCD issues a permit  
5 or approves a transfer, it is effectively extending  
6 credit to the operator because OCD is assuming the  
7 ultimate responsibility to ensure well plugging. This  
8 is just the same as the credit a bank extends to the  
9 holder of a credit card. If you don't pay your credit  
10 card bill, the bank is still obligated to pay the  
11 vendors for the charges you made.

12 And just as a bank considers an  
13 applicant's credit score and other indicators of  
14 credit worthiness before issuing a credit card or a  
15 mortgage, OCD as the issuer of credit must be able to  
16 ensure the credit -- credit worthiness of the  
17 operator.

18 MS. M. O'GRADY: What amendments do  
19 Applicants propose to 19.15.9.9.E NMAC?

20 MR. MORGAN: The proposed amendment  
21 focuses on the conditions of the well rather than the  
22 operator and prohibits transfer of wells that are  
23 overdue for plugging or have unaddressed spills or  
24 otherwise have outstanding remediation needs unless  
25 OCD determines that the well is in compliance or there

1 is an approved schedule of compliance.

2 Transfer of a well can dramatically  
3 increase the chances of that well being orphaned.  
4 That is particularly true for wells with higher  
5 remediation costs or with plugging and remediation  
6 obligations that are due immediately before the well  
7 can generate any revenue to offset those costs. The  
8 proposed amendment creates an opportunity for OCD to  
9 monitor the status of the wells to be transferred and  
10 to take steps to minimize the chance of those wells  
11 being orphaned.

12 MS. M. O'GRADY: Thank you for that  
13 summary of your direct testimony. We will now move to  
14 your summary of rebuttal testimony.

15 And, Madam Hearing Officer, I have  
16 some -- I'd like to pass out Exhibit 88.

17 (Applicant Exhibit 88 was marked for  
18 identification.)

19 THE HEARING OFFICER: Thank you.

20 MS. M. O'GRADY: Thank you.

21 BY MS. M. O'GRADY:

22 MS. M. O'GRADY: Mr. Morgan, do you  
23 have any general comments at the outset about the  
24 direct testimony filed by the industry parties in this  
25 matter?

1                   MR. MORGAN: Significant portions of  
2     the testimony of NMOGA and IPANM experts confirm the  
3     fundamental premises identified by Applicants that  
4     established the need for the proposed amendments, and  
5     yet only Applicants proposed solutions to these  
6     problems.

7                   Industry experts acknowledge that oil  
8     and gas production in New Mexico has entered its  
9     decline phase. Mr. McGowen states "The likelihood  
10    that Permian shale production has already peaked is  
11    more than just speculation. It is becoming the  
12    prevailing light motif for the industry's evolving  
13    dynamics." This decline means that action must be  
14    taken immediately to ensure that existing revenue from  
15    these wells is put towards satisfying plugging  
16    obligations.

17                  Industry experts also acknowledge that  
18    the practice of transferring low producing wells from  
19    highly profitable initial producers to under-resourced  
20    small operators is a fundamental part of the  
21    industry's business model. Mr. McGowen describes the  
22    role small operators play in "de-risking legacy assets  
23    that the larger companies no longer prioritize." Under  
24    the current rules, that risk is passed to the state.

25                  Industry experts also all but conceded

1 that operators of marginal wells have not set aside  
2 funds to cover the cost of plugging their wells and do  
3 not have the resources to satisfy those obligations.  
4 Mr. Emerick states "For these sizes of operators,  
5 working capital and investment capital are generally  
6 minimal. The minimal working capital referenced  
7 includes the capital needed to plug wells."

8 Industry witnesses state that operators  
9 are unlikely to be able to satisfy surety provider  
10 requirements that they have working capital equal to  
11 25 percent of a \$150,000 bond. That's just three --  
12 \$37,500 per well. Industry experts cite to the Raimi  
13 study, which provides a national median plugging and  
14 remediation cost of \$76,000. Even assuming that  
15 figure is accurate, that means New Mexico operators  
16 maintain working capital per well of less than half of  
17 that plugging cost and one quarter of OCD's average  
18 cost of \$163,000 per well.

19 The available working capital is even  
20 insufficient to cover the plugging costs of \$40,000 to  
21 \$60,000 per well cited in Mr. Arthur's rebuttal  
22 testimony. In other words, operators do not have the  
23 capital to plug their wells. That means the cost of  
24 plugging these wells will fall to the state.

25 Finally, industry experts implicitly

1 acknowledge that the surety bonding industry has  
2 concluded that under the current rules, New Mexico oil  
3 and gas operators pose an extremely high risk of  
4 defaulting on their plugging obligations.

5 Mr. Gilstrap states "Currently we are in one of the  
6 hardest surety markets I've experienced in my career."

7 Mr. Emerick states "The simple fact is that the surety  
8 market today is very demanding and difficult to  
9 navigate. Surety companies have become more  
10 restrictive in their underwriting guidelines to  
11 minimize the risk that a bond will be called."

12 Surety providers are sophisticated,  
13 profit motivated firms. To the extent sureties are  
14 imposing stricter collateral requirements, it is  
15 because of the risk they see from marginal operators  
16 in New Mexico. If surety has perceived these risks,  
17 then New Mexico's regulators must also and must take  
18 immediate action to protect the state from defaults.

19 Even if industry parties fail to  
20 expressly acknowledge the existence of the orphan well  
21 crisis in New Mexico, they have acknowledged each of  
22 the dynamics that has led to the crisis. This means  
23 the only remaining question for the Commission is what  
24 steps to take to address this crisis.

25 MS. M. O'GRADY: Before we turn to



1 Applicants' specific proposals, can you address  
2 general concerns raised by industry witnesses  
3 regarding the ability of operators to secure surety  
4 bonds under applicant's financial assurance proposals?

5 MR. MORGAN: New Mexico must ask why an  
6 operator wouldn't qualify for a surety bond that  
7 covers the anticipated liability. Wouldn't the surety  
8 want to collect premiums? When determining whether to  
9 offer bonds and on what terms, sureties consider  
10 factors such as the remaining revenue in the  
11 operator's wells, the operator's expenses, and the  
12 operator's cash reserves.

13 If a surety declines to issue a bond or  
14 requires higher premiums or higher amounts of  
15 collateral, that means the surety has concluded that  
16 that operator poses a higher risk of default. That  
17 should sound an alarm prompting more action from state  
18 regulators, not less.

19 Furthermore, surety providers are  
20 unlikely to treat the entire oil and gas industry as a  
21 monolith. New Mexico operators who can demonstrate a  
22 history of plugging wells and setting aside funds for  
23 plugging should still have ready access to the surety  
24 market. To the extent the proposed amendments help  
25 identify the operators with the riskiest wells, that

1 will only assist New Mexico's responsible operators.  
2 Those responsible operators should be able to acquire  
3 wells and continue production as the highest risk  
4 operators exit the market.

5 MS. M. O'GRADY: NMOGA witnesses claim  
6 the surety market isn't equipped to issue the volume  
7 of surety instruments that would be needed to comply  
8 with these rules. What is your response?

9 MR. MORGAN: Surety bonding is a robust  
10 and sophisticated industry with hundreds of firms  
11 providing bonds for a wide range of industries  
12 including oil and gas. There are 245 distinct surety  
13 providers on the U.S. Treasury Department's Circular  
14 570 listing companies vetted by the Department and  
15 deemed qualified to do business with the United  
16 States. Almost all those sureties are licensed to do  
17 business in New Mexico.

18 Sureties are always happy to collect  
19 premiums. Sureties keep the premiums they collect,  
20 regardless of whether they ultimately pay out the  
21 bond. If the operator completes the plugging and the  
22 regulator releases the bond, the surety still keeps  
23 the collected premiums, which can be considered a pure  
24 profit.

25 The larger the bond, the more premiums

1 may be collected, and if the operator defaults, the  
2 surety can recover the bond amount on top of the  
3 premiums collected by foreclosing on collateral and  
4 filing a collection action against the operator.

5           Given the established capacity within  
6 the surety bonding industry and the inherent desire to  
7 collect premiums, concerns about the ability of surety  
8 providers to satisfy an increased demand for bonding  
9 are overstated, at least for responsible operators.

10           MS. M. O'GRADY: IPANM and NMOGA  
11 witnesses claim that the unintended consequences of  
12 the proposed amendments include premature plugging of  
13 marginal wells, bankruptcies, increased orphaning,  
14 increased bank debt, and operators exiting the state.  
15 What is your response?

16           MR. MORGAN: These predictions are  
17 contrary to the actual outcomes described by Boomhower  
18 and Lange and Redlinger in their respective economic  
19 studies describing the effects of increased bonding in  
20 Texas and North Dakota. Those studies found no  
21 meaningful decrease in production following adoption  
22 of the increased bonding requirements.

23           Specifically, Boomhower observed that  
24 "The state's total output of oil and gas was  
25 essentially unaffected by the policy." This is

1 because the firms affected by the policy accounted for  
2 a small fraction of production and because most of the  
3 valuable production associated with exiting firms was  
4 reallocated to other producers instead of shutting  
5 down. I would expect to see the same in New Mexico.

6 Although the Texas and North Dakota  
7 laws reviewed in the two studies required bond amounts  
8 that are lower in absolute terms than the adjusted  
9 financial assurance amounts in the proposed  
10 amendments, each law represented a significant  
11 increase compared to prior requirements.

12 It is likely that certain high risk  
13 operators will see a decrease in access to capital and  
14 may choose to exit the market, but it's not accurate  
15 to say that the industry as a whole will be impacted  
16 the same way. The financially capable operators who  
17 remain will be able to acquire and continue producing  
18 economic wells.

19 To the extent any additional wells are  
20 orphaned following adoption of the proposed  
21 amendments, the changes to the regulations would not  
22 be to blame. These wells are likely already going to  
23 be orphaned, regardless of what action the Commission  
24 takes. Operators of these wells have failed to set  
25 aside the funds necessary for plugging.

1           The only question is timing. Under the  
2     current regulations, operators are encouraged to kick  
3     the can down the road, but the outcome will be well  
4     orphaning. To the extent the amended regulations  
5     accelerate this process, the amendments are merely  
6     exposing this reality and allowing the state to take  
7     action sooner to address the need to plug those wells.

8           MS. M. O'GRADY: NMOGA witnesses claim  
9     the proposed rules are a one-size-fits-all approach in  
10    contravention of the statute. What is your response?

11          MR. MORGAN: In relevant part, the  
12    statute states "In establishing categories of  
13    financial assurance, the Oil Conservation Commission  
14    shall consider the depth of the well involved, the  
15    length of time since the well was produced, the cost  
16    of plugging similar wells, and such other factors as  
17    the Oil Conservation Division deems relevant."

18          The listing of multiple factors to  
19    together with inclusion of the additional catchall  
20    "such other factors as the Oil Conservation Division  
21    deems relevant" directs the Commission to consider  
22    relevant available information, and the ultimate  
23    mandate of the statute is that the one well plugging  
24    financial assurance be sufficient to reasonably pay  
25    the cost of plugging the wells covered by the

1 financial assurance.

2           The proposed amendments fully satisfy  
3 the statutory requirements. Under the existing  
4 regulations, one well financial assurances are  
5 determined solely on the basis of a single statutory  
6 factor, the depth of the well. None of the parties  
7 opposing the proposed amendments have suggested that  
8 this existing regulation contravenes the statute by  
9 focusing on a single statutory factor nor have any of  
10 the parties offered testimony demonstrating that the  
11 current standard of \$25,000 plus \$2 per foot of well  
12 depth bears any relationship to actual well plugging  
13 costs.

14           Indeed, under that formula, a  
15 10,000-foot well would require only a \$45,000 bond or  
16 less than one third OCD's actual average plugging cost  
17 of \$163,000. The current approach of focusing solely  
18 on well depth fails to capture additional significant  
19 cost drivers including the age of the well, how long  
20 since the well stopped producing, the condition of the  
21 wellbore, and any challenges in accessing the well  
22 site.

23           Those factors, including well depth,  
24 are inherently incorporated into the approach adopted  
25 in the proposed amendments, where the \$150,000 one

1 well financial assurance is based on OCD's actual  
2 average cost of plugging wells. This approach of  
3 relying on OCD's actual plugging costs is the most  
4 effective way to ensure that the one well plugging  
5 financial assurance is sufficient to reasonably pay  
6 the cost of plugging the wells covered by the  
7 financial assurance.

8 MS. M. O'GRADY: NMOGA and OXY  
9 witnesses claim that OCD lacks the legal authority  
10 under the statute to require the large blanket bonding  
11 amounts that would be required under the proposed  
12 rule. What is your response?

13 MR. MORGAN: Applicants' proposal does  
14 not conflict with any of the Act's requirements,  
15 including the requirement to establish a blanket  
16 plugging financial assurance capped at \$250,000.  
17 Applicants' proposal still includes a \$250,000 blanket  
18 plugging financial assurance for active wells.

19 Applicants also propose to add  
20 additional categories of financial assurance, all of  
21 which come within the Commission's authority to  
22 establish different categories of financial assurance,  
23 and none of which are blanket bonds that exceed the  
24 statutory maximum.

25 For the administrative convenience of

1 operators, Applicants and OCD propose that for  
2 marginal wells, an operator may furnish all necessary  
3 one well plugging and financial assurance in the form  
4 of a single instrument. Allowing a single instrument  
5 instead of multiple instruments for marginal and  
6 inactive wells does not turn the one well plugging  
7 financial assurance required into a blanket plugging  
8 financial assurance.

9           There is an important distinction  
10 between a blanket plugging financial assurance and the  
11 allowance that an operator may satisfy its cumulative  
12 financial assurance obligations through a single  
13 instrument. Under the former, the operator is allowed  
14 to provide coverage for multiple wells at a fixed  
15 amount such that as the number of covered wells  
16 increases, the per well coverage decreases.

17           In contrast, under the single  
18 instrument approach, the total amount of financial  
19 assurance required is calculated, including both  
20 eligible blanket financial assurance amounts and one  
21 well financial assurance amounts, and then the  
22 operator secures a bond or other financial assurance  
23 instrument for that total combined figure.

24           Just because an operator qualifies for  
25 use of a blanket financial assurance for some of its



1 wells does not mean that the \$250,000 cap applies to  
2 all of the financial assurances required for that  
3 operator.

4 MS. M. O'GRADY: IPANM and NMOGA  
5 witnesses object to the proposed amendment -- or  
6 excuse me -- object that the proposed amendment  
7 preventing drilling or acquisition until the operator  
8 has furnished the required financial assurance is  
9 vague and broad and would inject a new pre-acquisition  
10 approval power. What is your response?

11 MR. MORGAN: The Hearing Officer  
12 addressed a similar argument in her recent  
13 recommendation on the motion to dismiss, noting that  
14 the movement suggest insertion of the phrase  
15 "operating authority" to remove any confusion over the  
16 effect of this provision. Applicants support  
17 insertion of the phrase "operating authority" or  
18 related phrases at three points in Section 19.5.8.9.A  
19 NMAC, both in the proposed additional language and in  
20 existing portions of the provision.

21 MR. SUAZO: Madam Hearing Officer, I  
22 object to this testimony from the witness. I know  
23 that there's a handout that was circulated on this  
24 rule, and I guess in my mind this constitutes an  
25 untimely new rule.

1                   You know, NMOGA has not had the chance  
2                   to review it with Industry. We have not received  
3                   feedback from our experts. This has not been subject  
4                   to public notice, and I think if Applicants want to  
5                   raise this in post-hearing arguments or something like  
6                   that, that's fine. But, you know, that's based on the  
7                   feedback of what we learned at the hearing, and I  
8                   don't think it's appropriate for them to be providing  
9                   these rule changes at this juncture.

10                  THE HEARING OFFICER: So I invited them  
11                  to do that in my recommendation, and I understand the  
12                  Commission didn't take a final action on the motion.  
13                  But because the applicants and NMOGA and IPANM, the  
14                  movements of the motion seemed to just be in agreement  
15                  that this was the appropriate interpretation of this  
16                  language. I believe --

17                  MR. SUAZO: Well, I'm not sure that  
18                  that is a fair characterization of our position. I  
19                  mean, operating authority is not a defined term.

20                  THE HEARING OFFICER: Okay. Well, let  
21                  me put it this way. I invited them to do this during  
22                  their case.

23                  MR. SUAZO: Understood.

24                  THE HEARING OFFICER: So I'm going to  
25                  accept it, and the Commission is going to have to

1     decide what to do with it. You can certainly offer  
2     your response later, but truly because my reading of  
3     both the applicants' legal argument and the movement's  
4     legal argument was that this is, you know, all  
5     effectively agreed that this is what drilling and  
6     acquisition meant. Was not about real property; it  
7     was about operating authority.

8                     So, Ms. Fox, do you have anything to  
9     add?

10                    MS. FOX: We would just add that this  
11     is both within the scope of the rulemaking and  
12     responsive to NMOGA's filings.

13                    THE HEARING OFFICER: That's my take as  
14     well.

15                    So again, if you'd like to address this  
16     in the next three weeks before the hearing ends, that  
17     would be great. And I'm sorry if I misunderstood your  
18     argument. I actually thought you believed that this  
19     was the right language. In fact, at the top of page  
20     6 -- is it the top of page 6 in your reply -- I think  
21     you suggested exactly -- well, now I'd have to find  
22     it.

23                    MR. SUAZO: Well, we offered that as a  
24     potential clarification, but, you know, even still,  
25     you know, this belies kind of the inherent problems

1 with the rulemaking in terms of not getting industry  
2 feedback. And so, you know, again, I feel like this  
3 is a new rule proposal that's in front of the  
4 Commission. I understand you're admitting it over our  
5 objection, and the Commission has the authority to  
6 assess this going forward.

7 I guess at some point we will have some  
8 sort of oral argument on the motion to dismiss and the  
9 authority and all that kind of thing, but I just  
10 wanted to note our objection to this for the record.

11 THE HEARING OFFICER: All righty.

12 So, Ms. O'Grady, I forgot to look at  
13 the time when Mr. Suazo raised his objection, and now  
14 we are on the cusp of public comment. How much longer  
15 would you have?

16 MS. M. O'GRADY: We have, I would  
17 guess, more than ten minutes, so we're fine to  
18 continue after public comment.

19 THE HEARING OFFICER: All righty. So  
20 let's break then. I have just one person on the  
21 platform desiring to make public comment.

22 And, Sheila, can you say whether there  
23 are others reaching out to you on the platform? I  
24 think I see two more. Okay. And let me ask if  
25 there's anyone in the room here to offer public

1 comment during the four o'clock session. No.

2 All right. So, Sheila, the Spanish  
3 interpreter sent a text asking that you unmute her so  
4 that in the event someone would like interpretation  
5 between English and Spanish, she can provide that.

6 MS. APODACA: She's on the platform.  
7 Her name is Lisa O'Grady, and she's unmuted now.

8 THE HEARING OFFICER: She is unmuted?

9 MS. APODACA: Yeah.

10 THE HEARING OFFICER: All right, Lisa.  
11 You're unmuted.

12 MS. L. O'GRADY: May I test just to see  
13 if I can be heard?

14 THE HEARING OFFICER: I can hear you.

15 MS. L. O'GRADY: Perfect. Thank you.

16 THE HEARING OFFICER: Thank you.

17 So let's turn to public comment. Is  
18 Walter Gerstle on the platform?

19 MS. APODACA: I'm not seeing him.

20 THE HEARING OFFICER: You don't see  
21 him? All right. So let me make a few comments then  
22 about public comment at this four o'clock session.  
23 This is one of the sessions in which interpretation is  
24 being provided between English and Spanish and Spanish  
25 and English. We will have one or two more of those.

1 The next one will be October 27th.

2 Lisa, would you like to say something  
3 in Spanish in the event someone is listening?

4 MS. L. O'GRADY: Of course, Madam  
5 Hearing Officer.

6 THE HEARING OFFICER: Thank you very  
7 much. So just a few things. I'll ask you to spell  
8 your first and last name. I'll ask you to swear or  
9 affirm that you will tell the truth. I'll ask you to  
10 keep your oral comments to three minutes. You may  
11 certainly add to whatever you say orally in writing.  
12 Written public comments go to Sheila Apodaca, the  
13 Commission administrator, and thank you all.

14 So, Sheila, who is our -- is our first  
15 person Sherry Morrison?

16 MS. APODACA: Yes. That's number one.

17 THE HEARING OFFICER: All right.

18 Ms. Morrison, can you unmute yourself?  
19 Ms. Morrison? Let's see. You may need to press  
20 Control, Shift, M to unmute.

21 Sheila, I see someone named Paul  
22 Morrison has his hand up. Would you unmute Paul  
23 Morrison instead, please?

24 Mr. Morrison, can you unmute yourself?  
25 You may need to hit Control, Shift, M. Okay. Can you

1 unmute yourself now, Mr. Morrison? No. All right.

2 Sheila, I'm not sure what's happening  
3 with the Morrisons, but I see that Senator Townsend is  
4 on the platform. Would you allow him to unmute  
5 himself, please?

6 MS. APODACA: Okay. He's been given  
7 permission.

8 THE HEARING OFFICER: Senator, can you  
9 unmute yourself? You may need to hit Control, Shift,  
10 M.

11 MR. TOWNSEND: Can you hear me now?

12 THE HEARING OFFICER: Yes. Yes. Thank  
13 you very much. Thank you.

14 MR. TOWNSEND: Okay. Thank you very  
15 much.

16 THE HEARING OFFICER: So, Senator, I  
17 see that your name is J-I-M T-O-W-N-S-E-N-D. That's  
18 for the transcript.

19 WHEREUPON,

20 JIM TOWNSEND,  
21 called as a witness and having been first duly sworn  
22 to tell the truth, the whole truth, and nothing but  
23 the truth, was examined and testified as follows:

24 THE HEARING OFFICER: Thank you. Go  
25 ahead.

1                   MR. TOWNSEND: You bet. Thank you for  
2 the opportunity.

3                   My comments today are in opposition to  
4 the increase that's being proposed. Today, operators  
5 in New Mexico pay a substantial fee into the  
6 Reclamation Fund. That fund has been used and  
7 diverted for many other purposes over the years, and  
8 it has been drawn down and not used as it was  
9 originally agreed upon, one.

10                  Two, this issue has been debated by the  
11 legislature on more than one occasion. The last time  
12 I think was in about 2018 or '19. And there was a  
13 decision made then to increase it, and that increase  
14 at that particular time was substantial. And I  
15 believe it is sufficient, and when you take that  
16 increase of just a few years ago and the -- the proper  
17 use of the Reclamation Fund, that effort would be more  
18 than funded.

19                  And the third thing I'd like to say is  
20 that when issues like this are debated and a  
21 conclusion is reached in the legislature, I don't  
22 believe it is proper for this to be taken in another,  
23 you know, kind of around the back door and try to do  
24 something that the -- when they don't get the right  
25 answer or when they don't get an answer that they



1 agree on, whether a secretary wants to go have a  
2 rulemaking over here or rulemaking over there or  
3 somebody wants to take it around and go through the  
4 courts, that's not what this process is about.

5 And so I strongly oppose this. I think  
6 we have the tools within our tool chest to use to  
7 address the issue. And if we would straighten out the  
8 misuse of the Reclamation Fund first and we would give  
9 that time to recuperate, we would have more than  
10 enough to do to meet the needs of any wells that might  
11 need to be plugged.

12 So those are my comments, and that's  
13 the reason I strongly oppose.

14 THE HEARING OFFICER: Thank you very  
15 much, Senator.

16 MR. TOWNSEND: Thank you.

17 THE HEARING OFFICER: Sheila, would you  
18 go back -- oh, all right.

19 Rod Montoya, can you unmute yourself?

20 MR. MONTOYA: I think. Can you hear  
21 me?

22 THE HEARING OFFICER: Yes, I can. And  
23 for the transcript, your name is spelled R-O-D  
24 M-O-N-T-O-Y-A.

25 WHEREUPON,

1                                ROD MONTOYA,  
2        called as a witness and having been first duly sworn  
3        to tell the truth, the whole truth, and nothing but  
4        the truth, was examined and testified as follows:

5                                THE HEARING OFFICER:    Thank you.  
6        Please go ahead.

7                                MR. MONTOYA:    Okay.    And by the way,  
8        I'm House Representative Rod Montoya.    I'm the ranking  
9        member on the House Energy Committee for the  
10       Republicans.

11                               THE HEARING OFFICER:    Oh, thank you.

12                               MR. MONTOYA:    So I wanted to follow up  
13        a little bit on what Senator Townsend just said.    And  
14        further than just the fact that the dollars that are  
15        going into the Reclamation Fund are being diverted,  
16        they have been diverted for -- for years and years.  
17        So this year, Representative Mark Murphy, myself,  
18        Democrat Representative Meredith Dixon, and a couple  
19        of others, we introduced House Bill 403, and it made  
20        it through the Energy Committee unanimously.    And  
21        there are -- there are six Democrats on that committee  
22        and four Republicans and -- I'm sorry.    Seven  
23        Democrats and four Republicans, and it was unanimous.

24                               And what that House Bill 403 did is it  
25        started to divert money back to the Reclamation Fund,

1 which is supposed to be for financial assurance. And  
2 the amount of money that's being diverted or at least  
3 the amount of money that was diverted last year out of  
4 the fund to the general fund was \$129 million. If  
5 those dollars would be -- would have remained in the  
6 fund, we would have more than enough money to plug the  
7 approximately 2,000 wells that are out there.

8 As a matter of fact, if we just  
9 diverted the money back to the fund the way it's  
10 supposed to be instead of going to the general fund,  
11 which is not the purpose, the -- it would take about  
12 four years for all of the wells that are currently  
13 needing to be plugged could be plugged. So this  
14 rulemaking is unnecessary in part because we were  
15 working towards a solution in the House Energy  
16 Committee, and we had the agreement of every member of  
17 that committee to move forward.

18 So quite frankly, you're preempting the  
19 actual process that we have because there's more than  
20 enough money coming into the general fund that we  
21 could completely backfill the money if it were to go  
22 to where it's supposed to go. So I would suggest that  
23 even if you're wanting to do this, shouldn't do it  
24 before the 30-day session because we are planning on  
25 addressing this. And if you want to look it up, House

1 Bill 403, and it's something we're trying to negotiate  
2 right now.

3 So please let the legislature do our  
4 job, and as Senator Townsend said, don't usurp our  
5 authority. Thank you.

6 THE HEARING OFFICER: Thank you,  
7 Representative Montoya.

8 Should we go back to the Morrisons,  
9 Sheila? They're still on.

10 MR. MORRISON: Okay. My name is Paul  
11 Morrison.

12 THE HEARING OFFICER: Oh, hello. I can  
13 hear --

14 MR. MORRISON: What's that?

15 THE HEARING OFFICER: I can hear you.  
16 Thank you.

17 MR. MORRISON: Oh.

18 THE HEARING OFFICER: So for the  
19 transcript, I see your name is spelled P-A-U-L  
20 M-O-R-R-I-S-O-N.

21 WHEREUPON,

22 PAUL MORRISON,  
23 called as a witness and having been first duly sworn  
24 to tell the truth, the whole truth, and nothing but  
25 the truth, was examined and testified as follows:

1 THE HEARING OFFICER: Thank you. Go  
2 ahead. Go ahead. Please go ahead.

3 MR. MORRISON: I just tell the truth  
4 naturally, but okay. My name is Paul Morrison, and I  
5 want to thank you for the opportunity to make some  
6 comments here. I have lived in New Mexico for 23  
7 years, and during that time, our son earned his Ph.D.  
8 at UNM and he is now chief economist for the  
9 Department of Transportation.

10 His department is very concerned with  
11 the oil and gas industry. As you may know that the  
12 Department of Transportation is pretty well self-  
13 funded, and his job is to help find out how much money  
14 is going to be coming in his and -- and -- but so and  
15 it's important to him so they can get funding there.

16 And -- and my work before I came down  
17 here as a retiree was in -- put me in touch with the  
18 oil and gas industry through my underwriting career.  
19 My econ degree is helpful for that, and I -- I can  
20 analyze and -- analyze risk and price for it. But  
21 this is something completely different, and -- and --  
22 but I -- but I know from my work that there's so many  
23 different skills and crafts involved in production of  
24 oil and gas and all the ancillary things to it and  
25 further down the line.

1           And that includes -- and that does make  
2     it so that there's an awful lot of employees depending  
3     on oil and gas, and more regulations don't help. So I  
4     would like to say I'm opposed to any more regulations,  
5     and maybe we could get rid of a few of them that --  
6     that are not really useful.

7           So and I also worked with the oil and  
8     gas industry in Alaska, where the jobs are very  
9     similar but slightly different, and it's all -- it's  
10    all very close, and there's a lot of federal  
11    regulations as -- as well. It -- it -- and the oil  
12    and gas production in New Mexico provides an awful lot  
13    of energy for our country, and we cannot make it on  
14    the renewables.

15           The solar and wind do not help the base  
16    power, and they're not going to help anything as much  
17    as they -- they help a little, but we still need power  
18    plants running on natural gas, as they're doing a  
19    great job now in different parts of the country. And  
20    so it's -- so we need to promote oil and gas industry  
21    here in New Mexico rather than trying to limit it,  
22    which I think more -- more regulations would do.

23           And so I -- again, I thank you and I  
24    think other people ought to get involved to help and  
25    this end of my comments. Thank you.

1 MS. MORRISON: This is Sherry. Can I  
2 just speak right now?

3 MR. MORRISON: Yeah.

4 THE HEARING OFFICER: Yes. Yes, you  
5 may. Is your first name spelled S-H-E-R-R-Y?

6 MS. MORRISON: Yes.

7 THE HEARING OFFICER: All right.  
8 Sherry Morrison.

9 WHEREUPON,

10 SHERRY MORRISON,  
11 called as a witness and having been first duly sworn  
12 to tell the truth, the whole truth, and nothing but  
13 the truth, was examined and testified as follows:

14 THE HEARING OFFICER: I'll start your  
15 time. Thank you. Go ahead.

16 MS. MORRISON: Okay. Like I said, my  
17 name is Sherry Morrison, and thank you for giving  
18 me -- me the opportunity to present my concerns. I've  
19 lived in New Mexico for the last 23 years. My family  
20 immigrated to this -- to the U.S. when I was three  
21 years old. My father was so thankful to America  
22 because he fulfilled his dream by building two  
23 successful small businesses.

24 Transportation was critical to both  
25 business. One business was where he made box springs,

1 and he had to transport the box springs all over the  
2 West. The second one was making and distributing  
3 Mexican food. They would go to Hatch to get the  
4 chilies. And again, transportation was critical, to  
5 move the products, to make the spices, the salsas, the  
6 beans, et cetera to be sold and then to distribute the  
7 final products around the area.

8 When energy prices increased, I saw  
9 that what resulted were higher costs for consumers and  
10 also sometimes loss of jobs for the employees. I know  
11 small businesses are the backbone of New Mexico, and  
12 many of the small communities only have small  
13 businesses and transportation is critical. If more  
14 regulations cause gas prices to go up, then many small  
15 businesses will be forced to close due to the high  
16 regulations and higher prices.

17 New Mexico residents will be the last  
18 to be affected, which will lower their quality of  
19 life. In addition, they will end up being the losers.  
20 So I urge you to consider the impact these increased  
21 regulations will have on New Mexico and its residents.  
22 And I thank you very much.

23 THE HEARING OFFICER: Thank you very  
24 much, Ms. Morrison.

25 "RH." Rebecca -- Rebecca Haulenbeek?



1 Can you unmute yourself? You may need to press  
2 Control, Shift, M. Rebecca Haulenbeek? No? All  
3 right.

4 Shall we try "SM" first? Let's see.  
5 Where did "SM" go? Oh, I think "SM" was Sherry  
6 Morrison. Sorry.

7 Ms. Haulenbeek, are you able to unmute  
8 yourself? Apparently not.

9 MS. APODACA: And Walter Gerstle, I  
10 believe, is on the line.

11 THE HEARING OFFICER: Oh, is that  
12 Mr. Gerstle? Hello. Can you unmute yourself,  
13 Mr. Gerstle? You might have to press Control, Shift,  
14 M. We're not hearing you.

15 MS. APODACA: Let's try something else.  
16 Let's see if he can do it now.

17 THE HEARING OFFICER: You can unmute  
18 yourself. Perhaps Control, Shift, M? We're pressing  
19 the unmute button.

20 MR. GERSTLE: Now do you hear me?

21 THE HEARING OFFICER: Yes. Thank you.

22 MR. GERSTLE: Okay.

23 THE HEARING OFFICER: Is your name for  
24 the transcript W-A-L-T-E-R G-E-R-S-T-L-E?

25 MR. GERSTLE: Yes.

1 WHEREUPON,

2 WALTER GERSTLE,

3 called as a witness and having been first duly sworn  
4 to tell the truth, the whole truth, and nothing but  
5 the truth, was examined and testified as follows:

6 THE HEARING OFFICER: Thank you. Yeah.  
7 Please begin.

8 MR. GERSTLE: Hi. Hello, New Mexico  
9 Oil Conservation Commissioners. My name is Walter  
10 Gerstle. I am a professor emeritus of civil  
11 engineering at the University of New Mexico. These  
12 are my personal comments regarding the necessity to  
13 adequately clean up the environmental destruction  
14 created when extracting oil and gas from deep -- deep  
15 underground.

16 It is clear that until now and  
17 currently the requirements for cleanup from gas and  
18 oil extraction are inadequate. When we talk about  
19 sustainability and circular economy, we cannot afford  
20 to allow gas wells to be left unplugged and orphaned  
21 after they become uneconomical to operate.

22 On a more general note, the burning of  
23 fossil fuels is unacceptably damaging our environment.  
24 Drought, excessive heat, wildfires, and flooding have  
25 been clearly exacerbated by climate change caused by

1 the burning of fossil fuels since the advent of the  
2 Industrial Revolution. The public pays dearly for  
3 these effects of the climate -- of climate change.  
4 We've seen a lot of forest fires and flooding in New  
5 Mexico and -- as well as drought, which are linked to  
6 climate change.

7 New Mexico is in the difficult position  
8 of relying in the short term upon revenues from oil  
9 and gas extraction while at the same time seeking to  
10 limit carbon emissions in an effort to save the  
11 environment. These goals are in conflict. One small  
12 step that we can take is to at least make sure that  
13 the companies that profit from oil and gas extraction  
14 clean up their operations once their wells stop  
15 producing.

16 The proposed rules must ensure that all  
17 oil and gas wells are plugged at no cost to the state  
18 of New Mexico. People's health has been shown to be  
19 negatively affected by proximity to oil and gas wells.  
20 Please set the strongest possible rules for plugging  
21 of oil and gas wells. We should strive to leave the  
22 state of New Mexico better than we found it.

23 Thank you.

24 THE HEARING OFFICER: Thank you,  
25 Mr. Gerstle.

1                   Is Rebecca Haulenbeek able to unmute  
2 herself at this point?

3                   MS. HAULENBEEK: Yes, ma'am.

4                   THE HEARING OFFICER: Oh, terrific. I  
5 can hear you. Is your name spelled R-E-B-E-C-C-A  
6 H-A-U-L-E-N-B-E-E-K?

7                   MS. HAULENBEEK: Yes, ma'am.

8 WHEREUPON,

9                   REBECCA HAULENBEEK,  
10 called as a witness and having been first duly sworn  
11 to tell the truth, the whole truth, and nothing but  
12 the truth, was examined and testified as follows:

13                  THE HEARING OFFICER: Please go ahead.

14                  MS. HAULENBEEK: Hi. My name is  
15 Rebecca Haulenbeek, and I have lived in New Mexico for  
16 50 years. I was raised in Alaska, so the energy  
17 industry has played a prominent role in my life. My  
18 father, brother, and I have had the unique experience  
19 of working in construction. Having worked in  
20 construction, I have seen the impact oil and gas has  
21 made on the economy of the entire state. Every person  
22 in business requires goods to be transported to their  
23 location.

24                  I support the industry because both of  
25 my children went to our public school system and

1     therefore I'm very concerned about funding being  
2     pulled from our schools.  Currently we are 50th in the  
3     nation in education, and I would like to continue to  
4     see funding for our next generation.  I can no  
5     longer -- I'm sorry.  I can see no other industry  
6     being able to step in with the additional support that  
7     the oil and gas industry has provided to us.

8                     I would appreciate the Commission  
9     rejecting this regulation since it would not only put  
10    small business oil and gas companies out of business  
11    because they would not be able to afford the new  
12    regulations, and when they go out of business, then it  
13    affects other companies to be going out of business as  
14    well, examples being construction companies,  
15    restaurants, housing projects, banks, and mom and pop  
16    shops.

17                    Having lived and worked on and near  
18    military installations, I can also see how the oil and  
19    gas industry affects our national security as well as  
20    our standing in the world economy.  Thank you very  
21    much.

22                    THE HEARING OFFICER:  Thank you,  
23    Ms. Haulenbeek.

24                    Sheila, do we have anyone else on the  
25    platform desiring to make public comment at this time?

1 There'll be another opportunity tomorrow at nine in  
2 the morning. Another opportunity tomorrow at four in  
3 the afternoon.

4 MS. APODACA: I don't see any other  
5 hands raised.

6 THE HEARING OFFICER: Well,  
7 Ms. Haulenbeek's hand is raised, but no others?

8 MS. APODACA: I -- I don't see any  
9 others.

10 THE HEARING OFFICER: All right. And  
11 no one has joined us in the room.

12 All right. So here's the thing. We've  
13 been going a little more than 90 minutes, about a  
14 hundred minutes, and we need a brief standup break.  
15 So let's come back at 4:30, and we'll return to  
16 Mr. Morgan. Thank you.

17 MS. L. O'GRADY: And, Madam Hearing  
18 Officer, may the interpreter be excused?

19 THE HEARING OFFICER: Thank you, Lisa.  
20 Yes. Thank you.

21 MS. L. O'GRADY: Thank you. Have a  
22 good afternoon, everyone.

23 (Off the record.)

24 THE HEARING OFFICER: Let's come back  
25 from the break, please. I know that was a really

1 short break, but we can only go about another 30  
2 minutes, so wanted to keep us cooking along, as  
3 Mr. Tremaine said.

4 Let's see. I see Mr. Morgan on the  
5 stand.

6 Ms. O'Grady?

7 MS. M. O'GRADY: I apologize. My  
8 computer is shut down unexpectedly and is restarting.  
9 Please give just a moment, but I do believe we only  
10 have about 10 to 15 more minutes of his testimony, so  
11 should fit perfectly for the rest of this afternoon.  
12 Thank you.

13 THE HEARING OFFICER: Yep.

14 MS. M. O'GRADY: Sheila, Tannis Fox  
15 would like to share her screen, please.

16 MS. APODACA: Okay. She has  
17 permission.

18 MS. M. O'GRADY: Really appreciate  
19 everyone's patience there. I think that we have the  
20 slide deck up. Perfect. And I am going to restate  
21 the question that we were on when we received an  
22 objection.

23 BY MS. M. O'GRADY:

24 MS. M. O'GRADY: So, Mr. Morgan, IPANM  
25 and NMOGA witnesses object to the proposed amendment

1 that prevents drilling or acquisition until the  
2 operator has furnished the required financial  
3 assurance, claiming that the proposed new language is  
4 vague and broad and would inject a new pre-acquisition  
5 approval power. What is your response?

6 MR. MORGAN: So as we just discussed,  
7 the Hearing Officer addressed a similar argument in  
8 her recent recommendation on the motion to dismiss,  
9 noting that the movements suggest insertion of the  
10 phrase "operating authority" to remove any confusion  
11 over the effect of this provision. Applicants support  
12 insertion of the phrase "operating authority" or  
13 related phrases at three points in Section 19.15.8.9.A  
14 NMAC, both in the proposed additional language and in  
15 the existing portions of the provision.

16 This newly proposed language is  
17 reflected in Applicants' Exhibit 88, which has been  
18 handed out to the commissioners and all parties. I'll  
19 note it is not reflected on the slide here, but I'm  
20 going to describe where it fits within there. So in  
21 all cases, the phrase "operating authority" follows  
22 and modifies the phrase "drilled or acquired" or  
23 similar phrase. So this occurs twice in the existing  
24 language and then in the language that's highlighted  
25 in red in the -- in the slide and again is reflected



1 in Exhibit 88.

2 This approach of modifying "drilled or  
3 acquired" with the phrase "operating authority" is  
4 entirely consistent with Applicants' original intent,  
5 which has always been to require financial assurances  
6 prior to a change in operating authority, which  
7 already falls under OCD's authority.

8 Nothing in the proposed language  
9 suggests that OCD would or could have a role in  
10 approving the sale of a well. Operators engaged in  
11 the sale of wells should, however, continue to be  
12 aware that even after a well is sold, if the parties  
13 wish to change the -- the designated operator, that  
14 step does involve OCD oversight and review.

15 It is inherent in any financial  
16 assurance scheme that the financial assurance must be  
17 provided before the obligation is incurred, whether it  
18 be drilling the well or becoming the operator of an  
19 existing well. It would defeat the entire purpose of  
20 financial assurance where it otherwise.

21 For example, what would happen if a  
22 well were drilled and then the operator could not  
23 secure a bond or other financial assurance? OCD would  
24 be without recourse because it would be too late to  
25 undo the activity giving rise to the obligation. You

1 cannot undrill a well. If the operator were not then  
2 able to provide the required financial assurance, OCD  
3 would still be responsible for covering the full  
4 plugging cost in the event of orphaning.

5 MS. M. O'GRADY: NMOGA, IPANM, and OXY  
6 witnesses object to the proposed new categories of  
7 financial assurance for marginal wells, claiming that  
8 the one well financial assurance of \$150,000 for  
9 marginal wells, inactive wells, and wells in approved  
10 or expired temporarily abandoned status would be  
11 prohibitively expensive for many operators and may  
12 disproportionately affect smaller operators. What is  
13 your response?

14 MR. MORGAN: Because it is OCD that is  
15 responsible for plugging wells that have been orphaned  
16 and subject to financial assurance forfeiture, the  
17 only relevant figure for determining the typical cost  
18 to plug and abandon a New Mexico well is the cost to  
19 OCD. The current average cost to plug a well in New  
20 Mexico is \$163,000, though OCD has reported average  
21 costs as high as \$180,000 per well.

22 To the extent witnesses for NMOGA or  
23 IPANM claim that the \$163,000 is artificially high and  
24 attributable to factors that OCD is in the process of  
25 correcting, that potential is already factored into

1 the proposed amendments. The proposed amendments set  
2 one well financial assurance amounts at \$150,000, not  
3 \$163,000.

4 Nothing in the proposed amendments  
5 targets small operators. Small, medium and large  
6 operators are all subject to the financial assurance  
7 requirements. That said, smaller operators should be  
8 required to comply with the same regulatory  
9 requirements as any other operator and should not be  
10 exempted.

11 These requirements, including financial  
12 assurance requirements, are intended to protect New  
13 Mexico's communities, environment, and economy. If an  
14 operator cannot comply with these requirements, it  
15 should not be in the oil and gas business. It's also  
16 worth emphasizing that wells that enter into marginal  
17 well status can also come out of marginal well status  
18 if production sufficiently increases. Such wells  
19 would no longer be subject to the increased financial  
20 assurance amount.

21 The proposed amendment at  
22 19.15.8.9.D(2) NMAC, which is reflected in Applicants'  
23 Exhibit 72, provides that "Each operator with a  
24 marginal well or wells shall annually review the  
25 number of marginal wells registered to the operator

1 and shall update the one well plugging financial  
2 assurance by May 1 of each year. Any marginal well  
3 that was plugged or where production increased above  
4 the threshold would no longer be included in the  
5 operator's marginal well count following that annual  
6 review." This was language Applicants and OCD  
7 negotiated with OXY.

8 MS. M. O'GRADY: NMOGA witnesses object  
9 to the inflationary adjustment provision in the  
10 proposed rules, claiming that it would lead to a  
11 conflict with the statutory cap for blanket financial  
12 assurance. What is your response?

13 MR. MORGAN: The opposition to this  
14 proposed amendment overlooks that the proposal  
15 expressly provides OCD with discretion to decline to  
16 adjust financial assurance amounts in any given year.  
17 The proposal says only that "The Division may adjust  
18 the financial assurance amounts." This inherent  
19 discretion is adequate to address concerns related to  
20 actual costs experienced within the oil fields and  
21 other practical considerations.

22 The \$250,000 cap on the amount of  
23 blanket financial assurance is not relevant to the  
24 proposed amendment allowing for adjustments to  
25 financial assurance amounts because the proposed

1 language expressly excludes blanket financial  
2 assurances for active wells.

3 The blanket financial assurance amount  
4 for active wells is set at 19.15.8.9.C(2) NMAC. This  
5 subsection is excluded from the list of financial  
6 assurance categories subject to the adjustments. That  
7 provision applies only to the financial assurance  
8 amounts provided by subsections C(1), D, E, and F of  
9 this section.

10 MS. M. O'GRADY: After negotiations  
11 with OXY, Applicants proposed to amend 19.15.9.8,  
12 Operator Registration, and 19.15.9.9 NMAC, Change of  
13 Operator. Correct?

14 MR. MORGAN: Yes. The amended proposal  
15 makes three fundamental changes that appear and recur  
16 in the proposed amendments to Sections 19.15.9.8 and  
17 19.5.9.9 NMAC. First, the amended proposal replaces  
18 "Officer, director, or partner" with "authorized  
19 official." This provides the operators with greater  
20 flexibility in determining who is most suited to  
21 provide the required certification and accommodates a  
22 broader range of company structures and position  
23 titles.

24 The amended proposal also eliminates  
25 the phrase "is in compliance with federal and state

1 oil and gas laws and regulations" and replaces it with  
2 a list of more specific and concrete actions and  
3 statuses. The focus on forfeiture demands and actual  
4 forfeited financial assurance provides a very specific  
5 and easily trackable metric.

6 No operator can claim to be unaware of  
7 a forfeiture demand or a past forfeiture, as this is a  
8 serious consequence that would be obvious and well-  
9 known within a company. Forfeiture also occurs at the  
10 end of an administrative process where an operator has  
11 multiple opportunities to correct an innocent mistake  
12 or paperwork violation.

13 Similarly, the reference to "unresolved  
14 adjudicated orders or unresolved settlement  
15 agreements" captures instances where operators have  
16 been unable or unwilling to comply with program  
17 requirements even after being duly notified and given  
18 an opportunity to correct. Such are the operators and  
19 scenarios most likely to warrant increased attention  
20 and action by OCD.

21 To the extent the proposed amendments  
22 reference oil and gas statutes and regulations in  
23 other jurisdictions, this is merely to provide  
24 information to inform purely New Mexico focused  
25 actions by OCD regarding operators seeking to do

1 business in New Mexico. Nothing in the proposed  
2 amendments authorizes or requires OCD to take any  
3 action outside of its jurisdiction.

4 MS. M. O'GRADY: IPANM and NMOGA  
5 witnesses claim that the proposed not -- excuse me --  
6 the proposed compliance provisions could lead to  
7 unfair treatment of operators based on a former  
8 employers non-compliance and that the proposed  
9 provisions would delay development and acquisitions.  
10 What is your response?

11 MR. MORGAN: The parties opposing these  
12 proposed amendments fail to explain why it is in the  
13 interest of New Mexico or the industry itself to  
14 facilitate the continued employment of bad actors.  
15 The proposed amendments bear only on executives or  
16 investors who have participated in companies that have  
17 accrued violations.

18 If the industry is responsible and  
19 self-policing as claimed, and if documented violations  
20 are attributable to a small number of bad actor  
21 operators, the proposed amendments should not  
22 materially impact the vast majority of operators.  
23 Industry participants should already be tracking this  
24 information and should already be vetting the  
25 background of executives.

1 MS. M. O'GRADY: NMOGA witnesses claim  
2 that the proposed additional certifications  
3 effectively act as a prohibition on some transfers and  
4 in so doing violate New Mexico's ban on the impairment  
5 of obligations of contracts. What is your response?

6 MR. MORGAN: OCD clearly already has  
7 authority to block the transfer of oil and gas assets.  
8 Under current regulations, OCD may deny a change of  
9 operator if the new operator is out of compliance with  
10 19.15.5.9.A NMAC or is acquiring facilities that are  
11 subject to an existing compliance order and the new  
12 operator has not entered into an agreed compliance  
13 order.

14 The proposed amendments provide  
15 additional grounds for OCD denial but do not impose a  
16 new authority where one did not previously exist.  
17 Furthermore, and as addressed in the newly proposed  
18 language recently discussed, nothing in the  
19 regulations applies to the actual sale of a well; only  
20 to the change of operator for regulatory purposes.

21 MS. M. O'GRADY: IPANM and the NMOGA  
22 witnesses claim that the terms "substantial risk" and  
23 "good standing" in the disclosure requirements are  
24 vague and subjective. What is your response?

25 MR. MORGAN: Existing provisions



1 already authorize OCD to deny operator registration or  
2 change of operator. These are already inherently  
3 discretionary provisions and nothing in the proposed  
4 amendments changes that. The crux of any  
5 discretionary determination as to whether to approve  
6 or deny a change of operator would be assessment of  
7 whether the applicant poses a "substantial risk that  
8 the new operator would be unable to satisfy the  
9 plugging and abandonment requirements."

10 Furthermore, the substantial risk  
11 determination is not open-ended, but is grounded in  
12 OCD's assessment of the information operators are  
13 required to provide and whether that specific  
14 information reveals that the new operator will be  
15 unable to satisfy the plugging and abandonment  
16 requirements.

17 Good standing is a well-defined term of  
18 art under New Mexico law. The Secretary of State  
19 office is specifically empowered under New Mexico  
20 statute to issue a certificate of good standing for a  
21 corporation, limited liability company, or other  
22 entity.

23 The inclusion of the reference to in  
24 good standing with the New Mexico Secretary of State  
25 is a recognition that a corporation or other entity

1 may have registered with the Secretary of State's  
2 office but then fallen out of good standing, for  
3 example, by failing to pay certain fees or file  
4 certain required reports. The proposed amendment  
5 merely closes that loophole by requiring that an  
6 operator be both registered and in good standing.

7 MS. M. O'GRADY: Thank you for the  
8 summary of your rebuttal testimony.

9 Madam Hearing Officer, we anticipate  
10 roughly 15 minutes of surrebuttal. Would you like to  
11 hear that today?

12 THE HEARING OFFICER: I think that's a  
13 good idea. We have 11 minutes to five. Is it okay if  
14 we go four minutes over?

15 All right. Please go ahead.

16 MS. M. O'GRADY: Okay. Thank you.

17 DIRECT EXAMINATION

18 BY MS. M. O'GRADY:

19 MS. M. O'GRADY: Mr. Morgan, NMOGA  
20 witness Douglas Emerick claims on pages 10 through 12  
21 of his rebuttal testimony that the W&T Offshore  
22 litigation shows that changes to regulations will  
23 automatically lead sureties to increase collateral  
24 demands on operators, including as a means to get free  
25 of non-cancelable surety contracts. What is your

1 response?

2 MR. MORGAN: Like Mr. Emerick, I have  
3 also been closely following the W&T Offshore  
4 litigation. I disagree with Mr. Emerick's  
5 characterization of the facts and significance of that  
6 litigation. Mr. Emerick repeatedly frames the lawsuit  
7 as arising out of surety provider's demand for  
8 increased collateral as a direct response to changes  
9 to the Department of Interior's financial assurance  
10 regulations for offshore facilities.

11 The actual statements of the surety  
12 providers in the litigation show that they were not  
13 specifically responding to that rule change, but were  
14 instead motivated by the financial condition of the  
15 W&T entities together with other existing economic  
16 trends within the industry.

17 Here's how the sureties described the  
18 reasoning behind their demands for additional  
19 collateral. "Since Lexon issued the surety bonds at  
20 the center of this litigation, W&T has reported  
21 significant deterioration of its financial health.

22 "That development, coupled with  
23 numerous other industry-wide issues, including  
24 relevant court rulings, losses sustained across the  
25 industry, and reinsurance considerations, led Lexon to

1 send a collateral demand notice to W&T.

2 "W&T's other sureties, who each have  
3 their own indemnity agreements with W&T, apparently  
4 observed the same financial trends and independently  
5 decided to demand collateral payment from WNT."

6 This is from Lexon's partial motion to  
7 dismiss, which is Document 57 in the litigation.

8 There is no reference in that statement to the DOI  
9 rule, despite the surety's listing of multiple factors  
10 to which they were reacting. This articulation of the  
11 surety bonding industry's general concerns with the  
12 health of the oil and gas industry and the risk of  
13 operator default is consistent with Mr. Emerick's own  
14 statements.

15 In his direct testimony, Mr. Emerick  
16 observed that "The simple fact is that the surety  
17 market today is very demanding and difficult to  
18 navigate. Surety companies have become more  
19 restrictive in their underwriting guidelines to  
20 minimize the risk that a bond will be called."

21 In that same W&T litigation filing, the  
22 sureties also articulate why a surety provider would  
23 not respond to a financial assurance rule change by  
24 dramatically increasing demands on operators under  
25 existing surety bond contracts, noting "It would make

1 no sense and be economically irrational for the  
2 sureties to take any action that would threaten W&T's  
3 financial viability such that it could not perform its  
4 obligations because the sureties would then be on the  
5 hook for those obligations."

6 W&T does not explain why the sureties  
7 would be motivated to force potential customers out of  
8 the market. It would be economically irrational for  
9 the sureties to require impossible collateral  
10 payments, cripple their customers, and demand  
11 collateral terms that would effectively prevent  
12 smaller oil and gas companies from obtaining  
13 government mandated bonding.

14 The same logic would apply to surety's  
15 expected response to a rule change in New Mexico. Far  
16 from establishing that a change to financial assurance  
17 regulations will prompt a negative response from  
18 surety providers, the W&T litigation confirms that  
19 surety providers already have significant concerns  
20 about oil and gas operators defaulting on their  
21 plugging obligations. The Commission should share in  
22 those concerns and take common sense actions to  
23 protect the state by amending New Mexico's regulations  
24 as proposed by the applicants.

25 Mr. Emerick's repeated emphasis on the

1 non-cancelable nature of financial assurance  
2 requirements in New Mexico is also telling because it  
3 completely ignores the needs and priorities of the  
4 beneficiary of the financial assurance, the state.  
5 Mr. Emerick emphasizes that for surety bond providers,  
6 "The ability to cancel or non-renew is a critical risk  
7 management tool."

8 That may be true, but what the  
9 statement omits is that as the surety's risk goes  
10 down, the state's risk goes up. Were the state to  
11 allow operators to provide cancelable surety bonds,  
12 there would be no financial assurance to call on by  
13 the end of a well's productive life.

14 Under that scenario, sureties would've  
15 every incentive to provide bonding during the first  
16 few years of a well's initial profitable production.  
17 That's basically free money for the surety, where they  
18 can pocket the annual premium payments while bearing  
19 essentially zero risk of having to pay out the cleanup  
20 bond.

21 But as soon as the wells production  
22 goes down, the surety's calculus changes. As  
23 production declines, the risk of having to pay out the  
24 bond goes up. At that point, a rational surety would  
25 cancel the bond or decline to renew a term limited

1 bond. Once the initial surety cancels its bond, no  
2 rational surety would be willing to provide a  
3 replacement bond.

4 As Mr. Emerick stated in his direct  
5 testimony "For a host of reasons, surety companies  
6 have become more restrictive in their underwriting  
7 guidelines to minimize the risk that a bond will be  
8 called." Once the initial bond is canceled, the state  
9 will be left with no recourse and no protection.

10 It should be noted, however, that as  
11 surety contract is a three-party contract, and OCD, as  
12 one of the parties, may release a bond. For example,  
13 if a well increases production and no longer qualifies  
14 as a marginal well, OCD could release the extra  
15 marginal well bonding.

16 MS. M. O'GRADY: With regard to new  
17 single well financial assurance provisions for  
18 marginal wells, IPANM witness Trevor Gilstrap claims  
19 on pages 5 through 6 of his rebuttal testimony that  
20 Applicants have not offered evidence that marginal  
21 well operators are more likely to be out of compliance  
22 or more likely to abandon wells. What is your  
23 response?

24 MR. MORGAN: Applicants' proposal to  
25 require one well financial assurance for marginal

1 wells is motivated by the heightened risk that these  
2 low producing wells will be orphaned to the state.  
3 That risk is the product of simple economics.

4           Marginal wells produce little revenue,  
5 particularly as compared to plugging costs, and much  
6 of that revenue is already committed to other  
7 purposes, including royalty payments and well  
8 maintenance unrelated to plugging. So even if all  
9 remaining revenue from these wells were set aside only  
10 to pay for plugging, the funds would be inadequate for  
11 the purpose.

12           Now, some operators may be able to use  
13 revenue from higher producing wells to cover the costs  
14 of plugging marginal wells, but the question remains  
15 as to how -- excuse me -- the question remains as to  
16 where the funds will come from to plug the last of  
17 those operators' wells. No industry witness has  
18 provided any testimony that operators of marginal  
19 wells are in the practice of setting aside such  
20 plugging funds during periods of higher production.

21           To the contrary, both Mr. Emerick and  
22 Mr. Gilstrap state in their testimony that marginal  
23 well operators maintain very low levels of working  
24 capital, such that they could not satisfy a surety  
25 provider's requirement that they have the equivalent



1 of \$37,500 in available working capital per well.

2 Plugging wells costs money. If  
3 marginal wells will not cover their own plugging costs  
4 and if operators have not otherwise set aside the  
5 funds, then the only reasonable conclusion is that  
6 these wells will not be plugged by their operators.  
7 That plain reality gives rise to the need for the  
8 state to protect itself by requiring single well  
9 financial assurances adequate to cover the cost of  
10 plugging.

11 Finally, the proposal to require one  
12 well financial assurances for marginal wells is  
13 unrelated to marginal well operators' compliance with  
14 regulatory provisions other than the requirement that  
15 they complete well plugging. The heightened risk that  
16 motivates the need for one well financial assurance is  
17 the risk that the operator will orphan the well, not  
18 other risks related to operation or maintenance of the  
19 well.

20 MS. M. O'GRADY: NMOGA witness Dan  
21 Arthur objects to your use of OCD's average plugging  
22 costs on page 73 of his rebuttal testimony.  
23 Specifically, he claims that you emphasize headline  
24 averages without analyzing median costs, trimmed  
25 means, or stratification by depth or well type, and

1 that by his analysis, removing even the top 10 percent  
2 of cost outliers drops the average far below the  
3 \$150,000 figure that you cite. What is your response?

4 MR. MORGAN: First, it's worth  
5 emphasizing that the \$150,000 single well financial  
6 assurance amount already incorporates a significant  
7 reduction from OCD's actual average plugging cost of  
8 \$163,000 per well. Further, the \$163,000 plugging  
9 cost figure represents the actual average cost to OCD  
10 to plug wells.

11 There's no question that some wells  
12 will cost less and some will cost more.  
13 Unfortunately, OCD doesn't have the luxury of ignoring  
14 the top 10 percent of most expensive orphan wells.  
15 They must plug them all. Under this average based  
16 approach, the bond coverage will be less than the  
17 actual cost to OCD in many instances. That's a risk  
18 to the state, but one that it is reasonable to ask the  
19 state to bear as balanced against the cost to  
20 individual operators of securing and maintaining the  
21 required financial assurance.

22 Mr. Arthur would tip this balance so  
23 that it is overwhelmingly tilted in favor of operators  
24 and to the detriment of the state, ensuring inadequate  
25 bond coverage in the majority of cases. Such an

1 approach is unfair and unjustified and pushes the cost  
2 of cleaning up after a profitable industry onto the  
3 communities who must live with unplugged wells and who  
4 are deprived of the alternative uses to which state  
5 funds that could go to plugging would otherwise be  
6 put.

7 Finally, it's worth noting that  
8 operators are not required to pay the full financial  
9 assurance amount out of pocket. Instead, operators  
10 pay a fraction of that cost in the form of annual  
11 premiums and collateral requirements. To secure a  
12 financial assurance such as a surety bond, for  
13 example, an operator with 100 marginal wells would not  
14 pay \$15 million out of pocket. Instead, assuming an  
15 annual premium of 2.5 percent, the annual cost would  
16 be closer to \$375,000.

17 MS. M. O'GRADY: NMOGA witness  
18 Mr. Arthur recommends on page 85 of his rebuttal  
19 testimony that operators with proven compliance  
20 records and strong safety performance should be able  
21 to qualify for reduced bonding or blanket bond  
22 options.

23 Similarly, he recommends that  
24 flexibility extend to recognition of well specific  
25 conditions. Mr. Arthur claims that such an approach

1 would be consistent with your testimony regarding the  
2 incorporation of an compliance incentives into  
3 financial assurance systems. What is your response?

4 MR. MORGAN: Nothing in my testimony,  
5 including on the pages cited by Mr. Arthur, endorses a  
6 compliance incentive approach to financial assurances.

7 Setting that aside, there are two  
8 problems with Mr. Arthur's recommendation. First,  
9 consideration of operator or well specific conditions  
10 would dramatically increase the administrative burden  
11 on OCD. Given current agency resources and staffing  
12 levels, this is simply not practical.

13 Second, properly structured financial  
14 assurance programs with bonding levels tied to the  
15 actual cost of plugging inherently provide appropriate  
16 incentives for operators. The costs of maintaining  
17 financial assurance instruments, including premiums  
18 and collateral requirements imposed by surety bond  
19 providers, serve as a counter to the economic  
20 pressures that motivate operators to avoid and delay  
21 plugging for as long as possible.

22 MS. M. O'GRADY: NMOGA witnesses  
23 Ms. Felix on pages 65 through 66, Mr. Sporich on pages  
24 14 through 17, and Mr. Arthur on page 104 of their  
25 respective rebuttal testimony claim that the proposed

1 requirement at the point of registration or transfer  
2 that operators certify compliance with other states  
3 laws is unauthorized by statute. What is your  
4 response?

5 MR. MORGAN: Nothing in the proposed  
6 amendments either before or after incorporation of the  
7 changes negotiated among OXY, Applicants, and OCD  
8 authorizes or requires OCD to take any action outside  
9 of its jurisdiction.

10 The disclosure of forfeitures,  
11 adjudicated orders, and settlement agreements in other  
12 jurisdictions applies to final determinations already  
13 reached by regulators in those jurisdictions and  
14 merely provides OCD with information to inform purely  
15 New Mexico focused actions regarding operators seeking  
16 to do business in New Mexico.

17 It's important for OCD to know if an  
18 operator has a history of non-compliance at its  
19 facilities out of state, such as would be identified  
20 by bond forfeiture or by an adjudicated order or  
21 settlement agreement, as this allows OCD to gauge the  
22 likelihood of an operator's capacity and willingness  
23 to satisfy New Mexico's program requirements.

24 MS. M. O'GRADY: This ends Mr. Morgan's  
25 testimony.

1 THE HEARING OFFICER: Thank you very  
2 much, Ms. O'Grady and Mr. Morgan.

3 We will break for the day.

4 Yeah. Oh, yes, Mr. Cloutier?

5 MR. CLOUTIER: Since Mr. Morgan's  
6 testimony was kind of coming fast and furious at us on  
7 the surrebuttal and it appears to be written out, can  
8 we get a copy of it?

9 MS. M. O'GRADY: I don't believe that  
10 is a requirement. I'm sorry. Thank you.

11 MR. CLOUTIER: Okay.

12 THE HEARING OFFICER: All right. We'll  
13 resume again at nine in the morning and begin with  
14 public comment. Thank you.

15 (Whereupon, at 5:06 p.m., the  
16 proceeding was concluded.)

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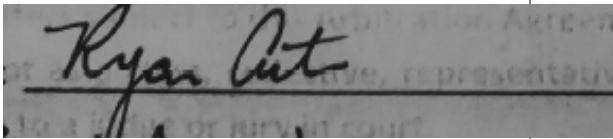
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CERTIFICATE

I, RYAN AUTEN, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

A rectangular box containing a handwritten signature in black ink. The signature appears to read "Ryan Auten".

RYAN AUTEN  
Notary Public in and for the  
State of New Mexico

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CERTIFICATE OF TRANSCRIBER

I, RACHEL HUFF, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



RACHEL HUFF



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[advance - alternative]

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[alternative - analysis]

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[conservancy - contribution]

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[contribution - cost]

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[covid - data]

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[determine - discretion]

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[discretionary - dramatic]

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**[percent - plan]**

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**[planned - plugging]**

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**[plugging - potential]**

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[potential - prevailing]

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**[prevent - producing]**

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[providers - purvis]

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[sufficient - systematically]

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**[thank - threatened]**

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