

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE REHEARING OF  
PROPOSED AMENDMENTS TO THE COMMISSIONS  
RULES ON FINANCIAL ASSURANCE  
PLUGGING AND ABANDONMENT OF  
WELLS 19.15.8.9 NMAC

Case No. 16078

PRE-HEARING STATEMENT

Larry Marker (pro se) files this pre-hearing statement and notice of appearance.

STATEMENT OF THE CASE

- 1 I, Larry Marker and affected independent operators acknowledge, support and appreciate the amending of the application removing from state administered financial assurance requirements wells covered by federally required financial assurance.
- 2 We request the commission approve the particular proposed amendment to rule 19.15.8.9 part A to exclude Federal assured wells as presented by the OCD.
- 3 The rehearing filed was requested to include amendments proposed of rules 19.15.8.9 NMAC part C paragraph 1 and 2 also part D paragraph 1.
- 4 The rehearing request was accepted and a limited re-hearing was granted by the commission while acknowledging the lack of proper standing of Larry Marker as a "party to the original hearing".
- 5 The rule 19.15.3.7 part B defines a party as an applicant or person filing a pre-hearing statement.

6 The rule 19.15.3.15 part D pursuant to Section 70-2-12.2 NMSA 1978 includes any person adversely affected by a rule adopted under the Oil and Gas Act.

7 The original hearing of this CASE NO. 16078 was held on July 19<sup>th</sup> and 20<sup>th</sup> 2018.

8 Public testimony was provided on July 19<sup>th</sup> by Larry Marker and Rory McMinn, with a written statement also submitted by Larry Marker.

9 The commission began deliberations after hearing testimony and public comments on July 19<sup>th</sup>

10 The commission adjourned on July 19<sup>th</sup> to reconvene July 20<sup>th</sup>.

11 Larry Marker and interested parties known to him left Santa Fe after the hearing adjourned on July 19<sup>th</sup>.

12 On July 20<sup>th</sup> in violation of Rule 19.15.3.13 NMAC part b and 19.15.3.9 NMAC the commission recalled and allowed the OCD to provide testimony and evidence after deliberations had begun.

13 The commission did not allow for public comment prior to the conclusion of the hearing on July 20<sup>th</sup> violating Rule 19.15.3.12 part 2 paragraph f.

14 The commission approved the proposed rule changes as submitted by the OCD on Aug 20<sup>th</sup>

15 An application for rehearing was filed timely by Larry Marker on Sept 6<sup>th</sup>.

16 The transcripts for the hearing were placed in the hearing file Sept 28<sup>th</sup>.

17 The transcripts revealed the fact that the OCD was allowed to provide additional testimony in violation of procedural rules.

18 The OCD testimony of July 20<sup>th</sup> was beyond the scope of the clarification of information requested by the commission on July 19<sup>th</sup>.

19 The OCD testimony of July 20<sup>th</sup> was not rebutted, questioned or exposed to cross examination during the hearing.

20 The OCD testimony of July 20<sup>th</sup> was not known by Larry Marker prior to the deadline and filing of the application for re-hearing on sept 6<sup>th</sup>

21 The testimony of July 20<sup>th</sup> was not known by Larry Marker in time to be examined or rebutted in the text of the rehearing application.

22 The OCD testimony provided post deliberation had it been known would have been used in the application for rehearing.

23 I am including this information in this pre-hearing statement to provide a complete record of the events of this case.

24 A reasonable person would conclude that the testimony the OCC allowed the OCD to present post deliberation far exceeds the threshold of documentation clarifying previous provided testimony and violates administrative rulemaking procedures.

25 The following text will refer to the transcript of the hearing of July 20<sup>th</sup> (Exhibit A) with observations, comments and rebuttal as to attempt to offer an alternative analysis of the information provided by the OCD.

26 Ref –Ex A The transcript of the 2<sup>nd</sup> day of the hearing reinforces our position that the OCD is biased towards the small to medium operators.

27 Ref-Ex A The OCD is using a strictly mathematical approach to demonstrate potential liability. Assuming that is proper and we extrapolate from the 5.9 compliance list (the basis of liability according to the OCD) we find 949 inactive wells under state jurisdiction. Using OCD provided plugging cost data the assumed liability to the State would be about \$30,000,000.00 (30 million dollars). The OCD testified to currently having about 30 million dollars in financial assurance. From a strictly mathematical approach the current assurance would appear to be sufficient.

28 Ref-Ex A page 23, 24 and 57 The OCD testified that our current financial assurance requirements are grossly inadequate compared to other states. The OCD would agree and the OCC stated that other states have similar compliance issues. The logical conclusion would be that if the states that have larger assurance requirements still have the same compliance issues as we do is an indicator that an increase in assurance does not solve the problem.

29 Ref-Ex A page 24 and 25 The OCD testified that the cost to plug a well for the OCD is higher than the cost to plug a well for an operator. The OCC testified that this fact is justification to force the operator to provide additional financial assurance.

30 Ref-Ex A page 30 Commissioner Martin inquired to the witness “You have a compliance problem with the smaller operators. How is increasing their bond going to solve that for you?” Commissioner Martin pressed for an answer twice after asking the original question. That question remains to be answered.

31 Ref–Ex A page 24 and 25. The existence of some amount of contempt, for small and medium operators is displayed by referencing the operators who demonstrated an effort to participate in the rulemaking process as “The people that were here yesterday” and the statement of “My sympathy isn’t really very high”. The text of the exhibited transcript has other examples of this contempt some more subtle than others.

32 Ref–Ex A page 10 The OCD testified that the bonds of larger operators are not actually redeemed. This information needs to be quantified by presenting the evidence of how many bonds of small to medium operators were redeemed.

33 Ref–Ex A page 10 The OCD does not acknowledge and may not know the fact that a letter of credit provided by an operator reduces his ability to borrow by the amount of the credit issued on the letter. In fact, being forced to commit assets to a non-productive part of his business.

34 Ref-Ex A page 30 The OCD testified that they were increasing bonds on every operator in the state. This contradicts previous claims to the contrary.

35 Ref- Ex A. The OCD illogically claims the state is exposed to more liability from the small to medium sized operators (stripper well operators) offering only the 5.9 inactive well list to substantiate this claimed unequitable liability.

## GENERAL STATEMENTS RELEVANT

36 The OCD did not demonstrate an attempt to calculate the cost of this regulation.

37 Most of the small to medium independent producers are unable to offset this increase of costs of regulation.

38 The OCD did not express any concern or even address the number of operators forced to be out of compliance by these proposed increases.

39 The OCD did not demonstrate an effort to research the financial jeopardy to overriding interest owners affected by the implementation of these rules.

40 The commission did not demonstrate an effort to apply a grandfather (ex post facto) clause to these rules.

41 The cost of this regulation will reduce the value of, or completely make worthless, marginally producing properties to the extent of forcing a regulatory takings claim (inverse condemnation) when ripe.

42 Financial resources, cash, credit, assets pledged and premium costs that are committed to financial assurance, will reduce the amount of financial resources available to the operator to operate or grow his business.

43 A fact-specific analysis reveals that the OCC did not ask for or receive enough evidence to make a competent decision on this subject.

#### LIMITED WITNESS CLARIFICATION

44 After discussions with several independent operators, I will not be requesting an appearance or testimony from any independent operators at this hearing

45 Over the past several months, I have been warned by several experienced operators that my attempts to participate in the rule making process would bring retribution from the regulatory agencies.

46 I dismissed these unverified warnings.

47 I was of the belief that the participation of the operators in the rulemaking process is vital, and felt the regulatory agencies shared this belief.

48 I was able to provide my comments and opinion at the hearing of this case on July 19<sup>th</sup> of this past summer. I was not comfortable in such a setting but

60 To offer a snap shot of these or any operator's properties without the full consideration of all of the circumstances is not fair and violates any form of consideration of due process.

61 This act on its face demonstrates an intent of retribution by the OCD.

62 Without more evidence, I cannot claim that the culture of the OCD does or does not endorse or allows this type of retribution.

63 I, in good conscience, cannot expect another operator to expose himself and his business to a culture of retribution by appearing or testifying in front of the Commission in a rulemaking hearing.

#### REQUEST FOR WITNESS

Allison Marks – Former Deputy Director of the OCD

Heather Riley – Director of the OCD and Chairwomen of the OCC

I also request to have the option to cross examine any witness or person of interest that participates in the hearing.

#### EXHIBIT

Exhibit A - A true and correct copy of Reporters Transcript of Proceedings from July 20<sup>th</sup>, 2018 Commissioners hearing.

Respectfully submitted,

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

IN THE MATTER OF THE HEARING CALLED  
BY THE OIL CONSERVATION COMMISSION FOR  
THE PURPOSE OF CONSIDERING:

IN THE MATTER OF THE:

PROPOSED AMENDMENTS TO THE COMMISSION'S CASE NO. 16078  
RULES ON FINANCIAL ASSURANCE AND  
PLUGGING AND ABANDONMENT OF WELLS,  
19.15.2, 19.15.8, AND 19.15.25 NMAC.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

July 20, 2018

Volume 2 of 2

Santa Fe, New Mexico

BEFORE: HEATHER RILEY, CHAIRWOMAN  
ED MARTIN, COMMISSIONER  
DR. ROBERT S. BALCH, COMMISSIONER  
BILL BRANCARD, ESQ.

This matter came on for hearing before the  
New Mexico Oil Conservation Commission on Friday,  
July 20, 2018, at the New Mexico Energy, Minerals and  
Natural Resources Department, Wendell Chino Building,  
1220 South St. Francis Drive, Porter Hall, Room 102,  
Santa Fe, New Mexico.

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EXHIBIT A

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## INDEX

	PAGE
Case Number 16078 Resumes	4
Open-session Deliberations by the Commission Resume	4
NMOCD'S Case-in-Chief:	
Witnesses:	
Allison Marks (Recalled):	
Cross-Examination by Mr. Brancard	7
Cross-Examination by Commissioner Balch	8, 23, 33
Cross-Examination by Chairwoman Riley	22
Cross-Examination by Commissioner Martin	30, 36
Cross-Examination by Mr. Larson	36
Statement by Mr. Larson	34
Open-session Deliberations Resume	39
Proceedings Conclude	77
Certificate of Court Reporter	78

## EXHIBITS OFFERED AND ADMITTED

NMOCD Exhibit Numbers 13, 14 and 15	39
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1 (10:25 a.m.)

2 CHAIRWOMAN RILEY: Let's now move on to the  
3 deliberations of the FA rule.

4 MR. BRANCARD: Madam Chair, before we get  
5 started, Commissioner Balch had asked me at the end of  
6 the discussions yesterday about what was the exact  
7 language that was in the statutory change so that the  
8 Commission could have a sense of just exactly what  
9 they're being asked to do and how it fits in with what  
10 the statute says.

11 CHAIRWOMAN RILEY: Okay. Would you please?

12 MR. BRANCARD: I didn't have that language  
13 in front of me, and I have it now.

14 CHAIRWOMAN RILEY: Okay. Thank you.

15 MR. BRANCARD: Okay? The prior language  
16 said, at the beginning of the sentence, before we get  
17 into talking about temporarily abandoned status -- for  
18 now I'll just focus on the blanket -- the generic  
19 blanket bond. The prior language said, when it talks  
20 about "the division shall establish categories of  
21 financial assurance after noticing such categories  
22 blanket financial assurance in an amount not to exceed  
23 \$50,000." Okay? That's what the statute used to say.  
24 So whereas 50,000 was capped at 50,000, it could have  
25 been less, but by rule, this Commission has set that at

1 50,000, period. Okay?

2 The new statute says: "Such category shall  
3 include a blanket plugging financial assurance which  
4 shall be set by rule in an amount not to exceed  
5 \$250,000." So the "not to exceed" goes from 50- to  
6 250,000, but basically directs the Commission to  
7 establish this rule to implement that.

8 COMMISSIONER MARTIN: Right.

9 MR. BRANCARD: I mean, the other part of  
10 the Act that has not changed but is sort of the basis  
11 for the discussion about the one well, what we call the  
12 single-well bond -- the statute calls it a one-well  
13 bond -- in listing the categories of financial assurance  
14 it says: "Includes a one-well plugging financial  
15 assurance in amounts determined sufficient to reasonably  
16 pay the cost of plugging the wells covered by financial  
17 assurance." Okay?

18 It then goes on to talk about: "In  
19 establishing categories of financial assurance, the  
20 agency shall consider the depth of the well involved,  
21 the length or time since the well was produced, the cost  
22 of plugging similar wells and such other factors as the  
23 agency deems relevant."

24 So these are the two things here, is the  
25 increase from 50- to 250- for the blanket and then

1 implementing the provision in the Act requiring that the  
2 one-well bond be in amounts sufficient to reasonably pay  
3 the cost of plugging the well. So that's your statutory  
4 guidance in this situation.

5 CHAIRWOMAN RILEY: Thank you.

6 I think at this point it would be  
7 appropriate to bring back up the witness -- the OCD  
8 witness, Allison Marks. She was tasked with providing  
9 some additional documentation, and it looks like she's  
10 come with that.

11 ALLISON MARKS,  
12 after having been previously sworn under oath, was  
13 recalled, questioned and testified as follows:

14 THE WITNESS: I did also just -- I didn't  
15 make a ton of copies, but I had referred to a global  
16 bonding compliance report. This is what that report  
17 looks like. There are a lot of pages here, but all the  
18 operators who are out of compliance with our current  
19 bonding is here. You can just look at that. It's not  
20 really an exhibit but so you can see there.

21 And then I thought it might be helpful -- I  
22 have lots of copies of these, too. Mr. Marker was here  
23 yesterday. This is what his sites look like  
24 [indicating].

25 MR. BRANCARD: I don't think the Commission

1 asked for that. Okay?

2 THE WITNESS: I thought it might be helpful  
3 to see what the sites look like.

4 MR. BRANCARD: No. The Commission asked  
5 for, I believe, four things yesterday.

6 THE WITNESS: We'll start with -- we'll  
7 start with --

8 MR. BRANCARD: So the first request I think  
9 was what is --

10 Let me get this straight, Commissioner  
11 Balch, and you can step in.

12 CROSS-EXAMINATION

13 BY MR. BRANCARD:

14 Q. Under the current rule, with a \$50,000 blanket  
15 bond, if every operator had to get that blanket bond,  
16 what would be the dollar amount?

17 Is that correct?

18 A. That was a simple calculation. With 613  
19 operators times \$50,000, it's \$30,650,000.

20 Q. 30 million --

21 A. \$650,000. 613 operators times \$50,000, which  
22 is \$30,650,000.

23 I think -- I think -- I also did try --  
24 it's not 100 percent accurate, but with the actual  
25 blanket bonds we do have on file right now, there's like

1 493 bonds, it doesn't add up. It's not completely right  
2 because it's not an even number, but we have about  
3 \$24,837,501 in blanket bonds right now. It should be an  
4 even number. It's not. But this is what comes up when  
5 we queried it from our system.

6 And then in single-well bonds, we currently  
7 have 1,917 bonds, which is \$20,842,382.

8 CROSS-EXAMINATION  
9 BY COMMISSIONER BALCH:

10 Q. What is the total for two then, would be what?  
11 What is the existing amount of bonds?

12 A. Depending on the count [sic], it would be  
13 \$5,000, plus \$1 per foot or \$10,000, plus \$1 per foot.

14 Q. Okay. Were you able to come up with the actual  
15 number in bonds right now, today?

16 A. Yes. Those are the numbers that I was just --  
17 plus, if we added in the amount of TA, temporary  
18 abandoned blanket bonds, that would add an additional  
19 16,900- --

20 Q. Well, I think we're just worried about the  
21 wells that are in Category C right now.

22 CHAIRWOMAN RILEY: Could you repeat those  
23 numbers?

24 THE WITNESS: Sure. Category C, the  
25 active -- well, that would be a little bit of a

1 different query, which I didn't run, because some people  
2 would have single-well bonds for active -- for active  
3 wells, and if you have an active well with just a  
4 single-well bond, you wouldn't then place an additional  
5 single-well bond when the bond becomes inactive after  
6 two years. The single-well bond covers -- and that  
7 would stay the same under the proposed rule. So you  
8 wouldn't need two single-well bonds for an inactive  
9 bond.

10 So the number of single-well bonds, there  
11 could be an overlap because you could have an active  
12 well that becomes inactive. So our single-well bond  
13 total would include active wells under C and single-well  
14 bonds under D.

15 Q. (BY COMMISSIONER BALCH) Okay. So we really  
16 can't use that number effectively right now.

17 A. Right.

18 Q. So the best number we can probably use is  
19 a fixed [sic] \$30 million for everybody having a \$50,000  
20 blanket bond.

21 A. Right.

22 Q. Okay.

23 A. So then I know you had asked for a well  
24 count -- or to take the well count, which is the  
25 spreadsheet before you not labeled "Excluding Federal

1 Wells," and I put the column "Bonding Under OCD  
2 Proposal" and "Bonding Under IPANM Proposal." Put in  
3 all the proposed levels and then used an AutoSum. And  
4 at the bottom, you will see, under OCD's proposal, the  
5 total will be \$51,900,000. And under IAPNM's proposal,  
6 the total would be \$33,825,000. So assuming the  
7 \$30,650,000, there would be just about a 10 percent  
8 increase. However, I also did, when playing with these  
9 numbers, saw that the disproportionate increase would be  
10 borne by the larger operators whose bonds we actually  
11 don't redeem. So the larger operators would put -- they  
12 would put more money into the rec fund, and then they  
13 would share a disproportionate amount of bonding whose  
14 bonds we don't actually redeem. So that did stick out.

15 I did a lot of research. And, actually, if  
16 you're interested, I had a great conversation with  
17 Wyoming this morning, and they have a \$100,000 statewide  
18 blanket bond that's mandatory there. And they're  
19 looking at a tiered approach in Wyoming right now with  
20 keeping that minimum -- minimum \$100,000 and increasing  
21 it to over \$100,000.

22 And then we discussed what they do with  
23 laterals in Wyoming, whether they penetrate on state  
24 land with the increasing lateral depths. They have  
25 three-mile-long laterals near Casper and four-miles in



1 North Dakota. So they're looking at requiring the  
2 bonding for just the laterals going into an estate land,  
3 and they're extremely worried about making sure they  
4 have requisite bonding to cover all those -- to cover  
5 all those laterals.

6 You had asked about the ability to  
7 differentiate between the minerals and the surface. And  
8 so when we went into the -- transferred to ONGARD on our  
9 system, we actually didn't capture all that data, so  
10 we'd have to go through 58,000 or so wells. We don't  
11 have all that data. We haven't captured all that data  
12 in our --

13 Q. That gives us -- so the second document --

14 A. The second document does have "Excluding  
15 Federal Wells." So the well count goes down  
16 significantly. And I did use the -- so there is the OCD  
17 proposal and the IPANM proposal there. And I did use  
18 the AutoSum feature again. And with OCD's proposal, the  
19 sum would be \$38,950,000, and with IPANM's proposal, it  
20 would bring it down to \$24,400,000. So we'd have less  
21 in bonding under IPANM's proposal.

22 Q. So 56.7 percent of operators have less than ten  
23 wells, correct?

24 A. Yeah. I think that was right.

25 Q. And what's the total number of operators?

1 670- --

2 A. 613.

3 Q. 613.

4 A. So what I also -- what I also did -- what I  
5 also did, bearing -- keeping in mind some of the  
6 discussion yesterday and if there was an idea to exclude  
7 federal wells, I did come up with some language, if  
8 that -- if that is still a concern to the Commission, of  
9 how federal wells -- the double-bonding issue could be  
10 addressed. If the Commission would like to hear that  
11 suggestion, I'm happy to --

12 COMMISSIONER MARTIN: I would.

13 THE WITNESS: Okay. If I may approach with  
14 some proposed language?

15 So in the state of New Mexico right now we  
16 have a \$25,000 statewide bond. And I believe what we  
17 could -- what we could do to address the double-bonding  
18 issue -- and -- and for historical purposes, I had some  
19 additional conversations, and we actually have -- to  
20 Commissioner Balch's discussion yesterday, we actually  
21 have plugged a number of federal wells out of the  
22 reclamation fund. I know there was a lot of discussion  
23 during my tenure -- short tenure as the OCD deputy.  
24 We've only had the ELM grant. But as I discussed  
25 yesterday, the ELM has never redeemed any of their

1 bonds, and when we plug any wells out of the reclamation  
2 fund, historically, we just plug those -- we just plug  
3 those wells, and we are not able to redeem those bonds.  
4 And similarly, I know the State Land Office -- I believe  
5 they redeemed one surface -- surface bond ever for  
6 surface reclamation. So those bonds do come out of  
7 the -- out of the OCD bonds.

8           So in order to address the double-bonding  
9 concern, I thought what we could do is -- I'll read the  
10 language. In C.(2) -- 8.9C.(2), we could say something  
11 like: "In determining the blanket plugging financial  
12 assurance, if an operator has federal wells that move  
13 the operator into higher tier, the operator may request  
14 the operator's blanket plugging financial assurance be  
15 reduced by the federal statewide bond" -- which  
16 currently is \$25,000 -- "provided, however, that at  
17 no" -- that should be "no," not "not" -- "at no time can  
18 the amount subtracted from the required financial  
19 assurance make the blanket plugging financial assurance  
20 required less than the amount of financial assurance  
21 required for the operator's total combined state and  
22 private well count."

23           So by example, if, in C.(2), an operator  
24 has 60 wells and 40 of them are state and private wells  
25 and 20 of them are federal wells, they would be moved

1 into the \$125,000 category. If you subtract the \$25,000  
2 that they have, theoretically, to benefit the State of  
3 New Mexico, they would only post \$100,000 with the State  
4 of New Mexico.

5           Contemplating the fact that maybe the  
6 federal government were to increase their bond sometime  
7 in the future, it could be maybe \$75,000. Then you  
8 would take that \$125,000, but we wouldn't add --  
9 subtracting \$75,000 would make that -- make that bond  
10 too low. It would be down to \$50,000. So they would  
11 still be required to post that \$75,000 by the combined  
12 total of their state and private wells.

13           COMMISSIONER BALCH: Ms. Marks --

14           THE WITNESS: Yes.

15           COMMISSIONER BALCH: Can I question her?

16           CHAIRWOMAN RILEY: Yes.

17           Q. (BY COMMISSIONER BALCH, I have a little  
18 calculation here. If you -- if you combined IAPNM's  
19 first category and their second category into 1 to 39  
20 wells and made that \$50,000, that would give  
21 approximately \$42-and-a-half million in all blanket  
22 bonds, while also providing relief to some of the  
23 smaller users. And we had a public commenter yesterday,  
24 a stripper-well operator of 77 wells, for example.  
25 That's kind of a midpoint number between the 30 million

1 right now, if everybody had a \$50,000 blanket bond, and  
2 the \$32 million if we went under the OCD proposal. So  
3 that would be an increase of 12-and-a-half million in  
4 the overall bonding amount, and a lot of that coverage  
5 would come from people in that 100-to-200 range, which  
6 may be a better measure of the small to middle sized  
7 operators than the one to ten wells might be.

8 A. So if you --

9 Q. Basically, if you take away that one to ten  
10 wells -- 56.7 percent of the operators have less than  
11 ten wells. IPANM's proposal is that they pay 25,000.

12 A. Uh-huh.

13 Q. I think we can't do that, from Mr. Brancard's  
14 reading of the statute, because at a minimum, we'd have  
15 to have 25k, plus \$2 per foot to cover the cost based on  
16 curve-fitting the data you gave us yesterday in Exhibit  
17 6. So 25k is not enough to meet the requirement of a  
18 minimal amount to plug a single well --

19 A. Right.

20 Q. -- on average.

21 So if you increase that bottom category for  
22 IPANM to 50,000, their Category A, and leave everything  
23 else the same, you end up with 12-and-a-half million  
24 more in bonds than you have now.

25 A. Assuming everyone posts a bond -- a blanket

1 bond --

2 Q. Only exercise we can do right now?

3 A. Right. Yes. That would be correct, although  
4 then only 12.1 percent of the operators would see an  
5 increase in their current bonding.

6 Q. I think that's not true.

7 A. Well --

8 Q. It would be 23-something percent.

9 A. Well, if you have the 1 to 99 -- 1 to 99 --  
10 because from what I did --

11 Q. 1 to 99 is 79. -- 80.3 percent, if you have  
12 everything between --

13 MR. BRANCARD: That's 1 to 50.

14 COMMISSIONER BALCH: Oh, you're right, 1 to  
15 50.

16 THE WITNESS: Yes, because I had 11 to 99  
17 operators that was 32.1 percent. So total, 1 to 99  
18 would be like 87.9 percent of our operators.

19 Q. (BY COMMISSIONER BALCH) So perhaps you can see  
20 the quandary I'm having right now. The quandary is we  
21 want to increase the bonding, but we also don't want to  
22 impact other parts of our responsibility under the Oil  
23 and Gas Act. The first part of that responsibility is  
24 to prevent waste, which is the leaving of oil in the  
25 ground that could otherwise be produced. The second

1 part is correlative rights. That's the right of  
2 producers to produce the mineral that they have leased  
3 or gained accessed to. Following that, we have a number  
4 of other requirements, but those are the first two  
5 things that we're supposed to consider. After that, we  
6 consider public health, safety, water, the environment.

7 So we have to balance the things that we do  
8 so that we don't negatively impact the ability of  
9 producers to make oil from these existing resources.  
10 And this becomes highly sensitive.

11 I'm also almost done.

12 This becomes highly sensitive in the case  
13 of stripper-well producers. And stripper- or  
14 marginal-well production in New Mexico -- not only  
15 New Mexico, across the United States, is the backbone of  
16 our production. A huge percentage of the oil that is  
17 produced comes from these wells, and we don't want to  
18 endanger the ability for small operators to enter into  
19 those kind of operations.

20 A. I mean, I don't know if that's a comment or a  
21 question. I completely agree.

22 Q. It's a comment and a question. The question  
23 is: How do we address the need for additional bonding  
24 without putting undue burden on those people that are  
25 producing a critical component in the well supply?

1       A.    I agree that small operators and stripper-well  
2 operators are critical to the production of oil and the  
3 economy. I don't know that I would prioritize the  
4 production and the elimination of waste over the  
5 protection of public health, safety and the environment.  
6 I believe that the protection of public health, safety  
7 and the environment is one of our most concerns. When I  
8 do have sites like this (indicating) and if I have  
9 completely inadequate bonding and our regulatory  
10 concerns -- if a ton of -- as the public comment came in  
11 yesterday, a lot of the costs are put into operations as  
12 proposed to regulatory compliance, I don't know that we  
13 can jeopardize the health of New Mexicans to -- to  
14 extract --

15       Q.    An argument was made by Mr. Marker that I think  
16 has some validity, and that is that if he can't afford  
17 the additional bonding, he will have to quit operations.  
18 Now, he seemed like a reasonable person from a business  
19 point of view and probably would close down his  
20 operations cleanly. Maybe he wouldn't, right? But a  
21 lot of people may -- there are other operators that  
22 would not. And you may actually find an increase in the  
23 number of sites that you have to deal with if you chase  
24 these operators out, along with an incremental decrease  
25 in production. So we have to balance those three



1 categories with things, and that's the challenge that we  
2 are facing here.

3 So larger operators -- you're absolutely  
4 right. The people that are paying -- I'm not going to  
5 say the people that are paying the higher fees would  
6 unanimously be the people that are not going to walk  
7 away from an operation.

8 We had an example of a -- well, I'm sorry.  
9 It was not given to us. But there is a case in Wyoming  
10 where an operator picked up 1,000 wells and then walked  
11 away from them. That would be somebody with a blanket  
12 bond in New Mexico. Under the proposed rules, in  
13 anybody's example, that would be \$250,000. So at least  
14 you would have that incremental money from that  
15 operator.

16 So the number of wells I think that defines  
17 the size of an operator and the risk that that operator  
18 will walk from it is something that would really be  
19 better addressed by some detailed analytics on the size  
20 of operator versus their -- their likelihood to go into  
21 a plug-and-abandonment state or an orphan-well state.  
22 And those numbers were not presented to us. So what we  
23 have to go on is the legal requirement that we have from  
24 the legislature to increase the bond to no more than  
25 \$30,000.

1       A.    I do believe that I did give some numbers  
2 yesterday --

3       Q.    Okay.

4       A.    -- on the likelihood of the operators -- the  
5 smaller operators who are out of compliance and the  
6 likelihood to walk away. And during the -- and I'm  
7 happy to, as serving as attorney for the OCD, in my  
8 position as the deputy overseeing the compliance and  
9 those efforts, get into significant detail, based in  
10 New Mexico and other states, as to who constitutes a  
11 significant number of noncompliant operators and who --

12       Q.    I would welcome those numbers.

13       A.    Okay.

14               MR. BRANCARD: Well, I have the numbers in  
15 front of me that Ms. Marks presented yesterday.

16               COMMISSIONER BALCH: Okay. Great.

17               MR. BRANCARD: I mean, looking at the  
18 ranges that OCD proposed, the one to ten, 11 to 50,  
19 51 to --

20               COMMISSIONER BALCH: We know the size of  
21 the operators, but it's looking at the out-of-compliance  
22 part.

23               MR. BRANCARD: For the out-of-compliance,  
24 66 percent of the operators are in the one-to-ten range.  
25 Fifty percent of the out-of-compliance range --

1 twenty-three percent of the operators are in the  
2 11-to-50 range. Thirty-five percent of the  
3 out-of-compliance are in the 11-to-50 range. Okay? And  
4 the 50 to 100, it's 8 percent. And operators, 2.5  
5 percent out of compliance. Greater than 100, 11.7  
6 percent and 12.5 percent are out of compliance. So --

7 Q. (BY COMMISSIONER BALCH) So it's actually the  
8 low end and the high end that has risk.

9 A. It was -- well, in the high-end range, it  
10 was -- I did include two operators who had -- because  
11 they appeared in our global bonding compliance report  
12 and we wanted -- had actually -- they continued to  
13 appear in the report, which should actually exclude two  
14 of them, which would actually significantly lower that  
15 percentage rate because it is such a small amount in  
16 that overall data set, the number in the one-to-ten  
17 range where 50 percent are noncompliant. You can see,  
18 if you graph it out, it is much more so in the lower-end  
19 operators, which is consistent with -- I just had  
20 conversations with North Dakota and Wyoming this  
21 morning, and that's consistent with what you will see in  
22 other states -- they have significant production  
23 there -- that the noncompliant operators are the  
24 smaller -- small-to-midsized operators.

25

1 CROSS-EXAMINATION

2 BY CHAIRWOMAN RILEY:

3 Q. Yeah. So based on those numbers, it's 85  
4 percent that are less than 100 wells?

5 A. That's correct.

6 Q. That are not compliant with the FA rule.

7 MR. BRANCARD: Or 87. -- it's 85, 50 or  
8 less.

9 COMMISSIONER BALCH: Well, unless you're --

10 CHAIRWOMAN RILEY: Oh, okay.

11 COMMISSIONER BALCH: Unless you're more  
12 than 100 wells, in which case you're 12-and-a-half  
13 percent.

14 MR. BRANCARD: And the Commission also has  
15 before it OCD Exhibit 7, which is a list of all the  
16 operators out of compliance with the new -- I assume  
17 it's with the inactive well compliance.

18 THE WITNESS: Right. And then -- and then  
19 from there, we should exclude -- again, Canyon should be  
20 excluded there.

21 MR. BRANCARD: I guess I would just throw  
22 out for comparison purposes, one thing that the  
23 Commission has not been asked to consider is the option  
24 that the legislature gave it, which was to require --  
25 simply move the bond for everybody from 50- to 250-,

1 right? And that would create a number -- instead of  
2 51.9 million, it would create a number of 153 million.  
3 So that's -- that's an option that the division is not  
4 even offering the Commission, and so the division is  
5 offering another option here that is one-third of that.

6 THE WITNESS: And that was actually  
7 something we had contemplated, and that would be  
8 consistent with other states.

9 Like I said this morning, I had a good  
10 conversation with Wyoming, and I had gone to the IOGCC  
11 Exhibit [sic]. I had conversations with all 50 states  
12 on bonding, and New Mexico's was the lowest of every  
13 state. So this -- this was to -- to bring our -- to  
14 bring our bonding up. I know Texas, with their Sunshine  
15 Committee, was looking at increasing their bonding as  
16 well. I don't know where they're at right now. But  
17 our -- our bonding was -- was grossly inadequate. And  
18 so most states do adopt that blanket bonding. So like I  
19 said --

20 CONTINUED CROSS-EXAMINATION

21 BY COMMISSIONER BALCH:

22 Q. Wait. So when you say grossly inadequate, are  
23 you really saying that we're lower compared to everybody  
24 else, or are you saying --

25 A. We are lower and --

1 Q. -- or are you saying that we don't have enough  
2 money to deal with the problem? And to what degree do  
3 we not have enough money to deal with the problem? That  
4 would be the definition of grossly inadequate, in my  
5 mind.

6 A. Well, and are statutory mandated, that  
7 Mr. Brancard read this morning as well.

8 COMMISSIONER BALCH: Okay.

9 CHAIRWOMAN RILEY: I'd like to make a point  
10 about the people that were here yesterday and some of  
11 their claims. And if they -- if they don't have enough  
12 money to post bonding, are they going to have enough  
13 money to plug their wells? And so at any time they  
14 could walk away and leave that for the State. And I  
15 don't know whether the revenue that's generated from  
16 those stripper wells is enough to offset the cost to  
17 plug those at the end of the day.

18 COMMISSIONER BALCH: So Mr. McMinn  
19 testified that he could plug one of his wells for about  
20 10,000.

21 CHAIRWOMAN RILEY: He can, but we can't.

22 COMMISSIONER BALCH: Well, I know that.

23 CHAIRWOMAN RILEY: And that's not -- you  
24 can't -- I don't think you can use those numbers because  
25 that's him doing it by himself.

1 COMMISSIONER BALCH: Sure.

2 CHAIRWOMAN RILEY: Whereas, we have to go  
3 through state -- you know, we're regulated on how it is  
4 that we get these bids and how we do it, and we have  
5 those numbers to back up what it's costing to plug  
6 wells.

7 COMMISSIONER BALCH: Well, there are some  
8 very shallow wells in the Exhibit 6 data that only cost  
9 \$2,200 to close.

10 CHAIRWOMAN RILEY: Well, those are wells  
11 that were set to surface or just some -- what's their  
12 depth?

13 COMMISSIONER BALCH: 45 feet.

14 CHAIRWOMAN RILEY: Yeah. They didn't --

15 COMMISSIONER BALCH: There's not much you  
16 can do but throw two bags of cement in there.

17 CHAIRWOMAN RILEY: Yeah. So those probably  
18 shouldn't even be considered in the analysis because  
19 they're --

20 COMMISSIONER BALCH: I mean, really it  
21 costs the State, very accurately, \$25,000, plus \$2 per  
22 foot to close a well? That -- that fit is as if you  
23 were -- statistical algorithm rather than just Ms. Marks  
24 coming up with a -- mathematical mind in there  
25 somewhere.

1 But to me there's a real challenge here. I  
2 mean, we don't want to discourage these operations, but  
3 realistically, to meet the goals of the OCD here, we  
4 should be putting the \$50,000 bond on Chevron and the  
5 \$250,000 bond on IPPC, right, if you really want to  
6 distribute the risk in a reasonable fashion?

7 The problem is what impact is that -- what  
8 secondary impact is that? And we had some testimony  
9 from the public commenters that it could be hard. And a  
10 question that I didn't ask that was given in information  
11 by Mr. Marker is the cost of these bonds, and 40 percent  
12 of the cash value, plus 2.-something percent per year.

13 CHAIRWOMAN RILEY: So I think we ought to  
14 get -- do you have any analytical data on that?

15 THE WITNESS: Yeah. I've had, actually, a  
16 lot of conversations with surety companies about that  
17 and how much it costs to bond, which actually -- what  
18 companies have to -- how much it costs to get a bond  
19 with them. And it does depend on the company. If it's  
20 Concho, they -- the bond may cost 1 -- 1 percent of the  
21 actual bond. And it depends on how well capitalized the  
22 company is and how -- what their risk value is. So it  
23 may cost Mr. Marker that, and they may have to put up  
24 some collateral. And they do a risk-based assessment.  
25 I think it's -- if it is cost -- if there is a



1 significant risk to -- for a surety company, there is  
2 another mechanism they can -- they can explore. They  
3 don't always have to --

4 COMMISSIONER BALCH: Get a credit bond or  
5 something.

6 THE WITNESS: The can get a letter of  
7 credit through the bank, which may cost them 3 percent  
8 per year or 5 percent per year, and they don't have to  
9 put up an all-cash bond. So they're not locked into  
10 going through a surety company and putting up 40 percent  
11 collateral.

12 COMMISSIONER BALCH: We still run into the  
13 same problem where the people you're most needing to  
14 increase the bonding on are the ones that are least  
15 likely to get a good deal on a bond.

16 CHAIRWOMAN RILEY: So, therefore, they're  
17 the highest risk.

18 COMMISSIONER BALCH: Well, it's because  
19 they're the highest risk.

20 CHAIRWOMAN RILEY: So we have the circular  
21 argument.

22 THE WITNESS: But they're the highest risk  
23 to the State of New Mexico, too.

24 COMMISSIONER BALCH: I know. I know. I  
25 just -- I want to be really careful that what we do does

1 not end up with 500 more wells being closed next year  
2 than would have been closed if we didn't change it.  
3 Okay? That's my main concern.

4 CHAIRWOMAN RILEY: Well, another point I  
5 want to make is that weekly -- and this was testified to  
6 yesterday. But weekly, we have increased the activity  
7 on trying to get operators into compliance, and that's  
8 holding their feet to the fire on what is within our  
9 regulations to do. And every week, it's some of the  
10 same operators, and we are trying to figure out how do  
11 we get them to respond, how do we get them to  
12 appropriately have their financial assurance and be in  
13 compliance with the 5.9, which is the inactive well  
14 rule. And I'm sorry, but they're representative of a  
15 good number of those, so my sympathy isn't really very  
16 high.

17 THE WITNESS: And I will say, Commissioner  
18 Balch, we -- we do everything within our powers not to  
19 refer those cases over to Legal, to -- to get them to  
20 clean up their messes, to get them back into compliance  
21 because we don't want to assume that risk. We don't  
22 want to clean up these sites. When they kicking --  
23 kicking fresh soil over dirty soil, we ask them to clean  
24 up those sites. We don't have the manpower. We don't  
25 have the resources. We don't have anything within our

1 power to take on all the, you know, \$56 million in  
2 liability that would be there if we addressed it all.  
3 So we do everything possible to work with these small --  
4 the smallest operators and the small-to-midsize  
5 operators that we can.

6 There's one more point I'd like to address  
7 at some point on the variance idea. I had walked out to  
8 try and reach out to our I.T. I don't know if this is  
9 an acceptable time to do so.

10 CHAIRWOMAN RILEY: On variance?

11 THE WITNESS: Right.

12 CHAIRWOMAN RILEY: Yeah. Could you please  
13 bring up variance because I have some issues I want to  
14 discuss with variance?

15 THE WITNESS: Okay. In closing, I don't --  
16 I love my attorney, but there was not a consultation on  
17 a variance. The OCD vehemently opposes the idea of a  
18 variance.

19 COMMISSIONER BALCH: But that's what this  
20 is, is a variance.

21 COMMISSIONER MARTIN: That's what you  
22 submitted.

23 THE WITNESS: But the idea of the  
24 single-well variance, though, with the \$6,000, this --  
25 this idea of -- this idea based on the federal wells, we

1 are okay with. But variances based off of submitting  
2 cost estimates, we don't have that manpower to review  
3 30, 80, however many.

4 CROSS-EXAMINATION

5 BY COMMISSIONER MARTIN:

6 Q. I have a quick question: How does the division  
7 view this undue burden on smaller operators? How does  
8 the division think that's going to solve their  
9 compliance problem?

10 A. I'm sorry. I couldn't really hear.

11 Q. You have a compliance problem with the smaller  
12 operators. How is increasing their bond going to solve  
13 that for you?

14 A. Since the disproportionate number of operators  
15 who -- let me -- let me -- I don't think that  
16 increasing -- we're increasing the bonds on every  
17 operator throughout the state, and we have determined  
18 that the amount of bonding we currently have is  
19 insufficient.

20 COMMISSIONER BALCH: By how much? How  
21 insufficient is it?

22 Q. (BY COMMISSIONER MARTIN) Let me rephrase it.  
23 How does putting a disproportionate burden on small  
24 operators solve your compliance problem with those same  
25 operators?

1 COMMISSIONER BALCH: Well, actually, it's  
2 not disproportionate.

3 THE WITNESS: I don't think it's  
4 disproportionate.

5 COMMISSIONER BALCH: They're actually only  
6 gaining, from the 50,000, their operator base case  
7 blanket, \$3.6 million for the category of operators that  
8 cover an 85 percent of noncompliance.

9 Q. (BY COMMISSIONER MARTIN) Getting back to my  
10 original question --

11 COMMISSIONER BALCH: So I'm wondering how  
12 much are you short? Is it more than 3 million? Less  
13 than 3 million?

14 THE WITNESS: If we plugged every single  
15 well on -- I mean, we'd have to look at how many  
16 wells -- right now we have --

17 CHAIRWOMAN RILEY: We have 1,738 wells that  
18 are inactive.

19 THE WITNESS: So we have \$17,500,000 right  
20 now of wells that we have to plug, and we have about  
21 \$2 million in bonding. And we have a whole bunch of  
22 more --

23 COMMISSIONER BALCH: So \$15 million short.

24 THE WITNESS: Right now. And we have a  
25 whole bunch of cases sitting in our Legal Bureau. And

1 this is a -- this is because we just had the blessing  
2 recently to take compliance efforts seriously. And this  
3 is, again, just the downhole plugging. I mean, when --  
4 when we have the State Land Office asking us to clean up  
5 these sites and we'd like to actually use the  
6 reclamation fund to clean up sites, we're not going to  
7 have any money in the reclamation fund to actually  
8 address issues that may be of serious health and safety  
9 to the people of New Mexico.

10 MR. BRANCARD: Okay. But remember, this  
11 discussion is about the blanket bond for active wells.  
12 Okay?

13 COMMISSIONER BALCH: Uh-huh.

14 MR. BRANCARD: I mean, if you want to look  
15 at true-cost bonding, right, which is my experience on  
16 the mining side, every mine was bonded for the true cost  
17 of reclaiming that mine. You would take, what, 58,000  
18 wells and you'd multiply it by 33,000. I got 1.9  
19 billion.

20 THE WITNESS: It would actually be a lot  
21 more because you have to factor in site restoration and  
22 reclamation.

23 COMMISSIONER MARTIN: But you're assuming  
24 you're going to have to plug all those wells  
25 simultaneously. That's just not going to happen.

1 COMMISSIONER BALCH: No. I mean, it's an  
2 unlikely occurrence.

3 CONTINUED CROSS-EXAMINATION  
4 BY COMMISSIONER BALCH:

5 Q. So under the OCD proposal, the bottom 85  
6 percent where you have -- I'm sorry -- the bottom 80  
7 percent of producers have 85 percent of the problems,  
8 and the top -- believe it or not, the top 11.7 producers  
9 are the other percent of the problem. So you take the  
10 incremental amount of money, \$100,000, from the top  
11 producers, more than 100 wells under the OCD proposal,  
12 the additional 25,000 for the 11-to-50 well category  
13 under the OCD proposal, that comes up to your  
14 \$17 million. So I would say that the OCD proposal is  
15 addressing the additional need for bonding, but I don't  
16 think it really covers the smallest producers.

17 A. So we should probably go -- follow -- maybe  
18 make it \$100,000 to address what you're concerned -- I  
19 think you're right on. I think what we were trying to  
20 do would be considerate --

21 Q. No. I'm saying that your highest producers,  
22 under your proposal, will generate 17 million more in  
23 bonds.

24 CHAIRWOMAN RILEY: More than current?

25 COMMISSIONER BALCH: More than present.

1 And present if everybody has a 50k bond. So it's not a  
2 perfect number, but 17 million more, which is about the  
3 number you set for the wells you would like to close but  
4 you can't because you don't have the money.

5 MR. BRANCARD: Okay. So I'd like to just  
6 address procedurally where we are with the Commission  
7 here. It's a good discussion here, but the question is  
8 when do you want to close the record and go into formal  
9 deliberation here to discuss, whether there is any  
10 more --

11 COMMISSIONER MARTIN: I don't think there  
12 is anything new that's going to come out of this  
13 discussion.

14 COMMISSIONER BALCH: No. I think I have  
15 everything I need.

16 MR. BRANCARD: Okay. So are you ready to  
17 close deliberation?

18 MR. LARSON: Madam Chair, before you close,  
19 may I make a brief statement about the BLM bonding  
20 requirements?

21 CHAIRWOMAN RILEY: Is that appropriate?

22 MR. BRANCARD: Sure. Since we've allowed  
23 the division, I think it's okay.

24 MR. LARSON: Thank you.

25 I believe Ms. Marks cited yesterday to



1 43 CFR 3104.5, small B, as in boy, and that -- I don't  
2 know if she cited to B. I know she cited to a  
3 regulation. Subsection B authorizes an increase in the  
4 bond amount to the total cost of plugging the well at  
5 the BLM's discretion. And there is a 2014 guidance.  
6 It's Instruction Manual Number 2013-151, which makes it  
7 the responsibility of the state office to do bond  
8 reviews. Those can be done in various stages, at the  
9 APD, the sale of a well. And then there is a ranking  
10 system for increasing a bond. And one of the factors  
11 looked at is the actual total cost of plugging the well.  
12 And based on that formula and the circumstances  
13 presented, the state office has the ability to  
14 significantly increase the cost of the BLM bond.

15 CHAIRWOMAN RILEY: Do you have any  
16 knowledge of whether they have they've actually done  
17 that?

18 MR. LARSON: I know that there are bond  
19 reviews done, and I know from some small operators that  
20 their bonds are increased. Yes. I can't tell you how  
21 often and what circumstances. Again, it's done on a  
22 ranking point system, so it would depend on specific  
23 operators.

24 THE WITNESS: I think with the proposed  
25 language, though, it would still capture -- if there was

1 an increase in the bond, if it was increased to a  
2 million dollars or anything else, it would still be  
3 captured in the language that I just proposed because  
4 the BLM bond amount would still be subtracted from any  
5 tier that the operator would be in.

6 CROSS-EXAMINATION

7 BY MR. LARSON:

8 Q. If there was a million-dollar bond, what  
9 category would it be in?

10 A. Well, what I proposed, if they're in Category  
11 C, for example, because of -- and they're in that  
12 category because of the -- say they normally would be in  
13 Category B because of their state and private wells  
14 combined, but then their federal wells puts them in  
15 Category C, and then they have a million-dollar federal  
16 bond, you would subtract out the million dollars, but  
17 they cannot at any time be at any category lower than  
18 what is required under their state and private wells  
19 together. So they'd still be in Category B, so they'd  
20 be only required to post at \$75,000.

21 CONTINUED CROSS-EXAMINATION

22 BY COMMISSIONER MARTIN:

23 Q. What's your idea on how to implement such a  
24 policy as this? How would you go about doing this?

25 A. If the operator requests that the -- because of

1 their total well count, includes federal wells, submits  
2 a request to --

3 Q. To the division?

4 A. -- to the division with -- with -- we'll assume  
5 it's a \$25,000 bond, but they provide proof of it being  
6 higher, which would be applicable if they were in the  
7 DOC type of category. Then we would lower the bond  
8 amount. And we're great -- we're great at coding over  
9 here at EMNRD, as Commissioner Balch told us yesterday.  
10 We would have no problem implementing that.

11 CHAIRWOMAN RILEY: The other thing I think  
12 they would need to provide would be proof of mineral  
13 ownership of that well because we don't have a way to  
14 track that. So that puts the burden on the operator,  
15 and they have their own records to know that.

16 Q. (BY COMMISSIONER MARTIN) Could the division  
17 conceivably refuse to grant that exception?

18 A. I think that's for you folks to determine. But  
19 if the concern is double bonding, I think that addresses  
20 the idea of double bonding.

21 Q. My concern is including the federal wells at  
22 all. If you allow them to deduct the amount of federal  
23 wells from their well count, that would be preferable to  
24 me.

25 In this instance, absent a million-dollar

1 bond, you're allowing them to only deduct an admittedly  
2 insufficient federal bond amount, which still leaves  
3 them liable, I think, for some of the federal plugging.  
4 Well, at least that figures in with the mix. You see  
5 what I'm saying?

6 COMMISSIONER BALCH: It cuts their cost by  
7 potentially 25,000, which on the smaller end would  
8 probably maybe be fairly useful. I'm very comfortable  
9 with the compromise that the division presented here.

10 COMMISSIONER MARTIN: It's better than it  
11 was.

12 CHAIRWOMAN RILEY: Do you have anything  
13 else you wanted to say, Mr. Larson?

14 MR. LARSON: I do not.

15 CHAIRWOMAN RILEY: Okay. Thank you.

16 So you're released, Ms. Marks. Thank you.

17 And we are back in deliberation.

18 Does anybody need a break?

19 COMMISSIONER MARTIN: Yeah. Let's --

20 CHAIRWOMAN RILEY: Mr. Brooks?

21 MR. BRANCARD: Can we admit these as  
22 exhibits? Would you like to move --

23 MR. BROOKS: Yes. I don't know what  
24 exhibit numbers you have there.

25 MR. BRANCARD: I think the last one we had

1 is the definition of "true vertical depth" proposal as  
2 12. So we have 13, 14 and 15, then, and 15 being the  
3 proposed language change on federal wells.

4 CHAIRWOMAN RILEY: And how are you doing 13  
5 and 14?

6 MR. BRANCARD: 13 would be the first  
7 document under the current proposal.

8 MR. BROOKS: This is without the notation  
9 "Excluding Federal Wells."

10 MR. BRANCARD: Right. And 14 would be the  
11 one that says "Excluding Federal Wells."

12 MR. BROOKS: Okay. We'll tender Exhibits  
13 13, 14 and 15, with that understanding.

14 CHAIRWOMAN RILEY: Mr. Larson?

15 MR. LARSON: No objection.

16 CHAIRWOMAN RILEY: Those exhibits are  
17 admitted to the record.

18 (NMOCD Exhibit Numbers 13, 14 and 15 are  
19 offered and admitted into evidence.)

20 (Recess, 11:15 a.m. to 11:24 a.m.)

21 (Open-session deliberations resume, 11:24  
22 a.m.)

23 COMMISSIONER MARTIN: Now that we're on the  
24 record, everybody shut up.

25 CHAIRWOMAN RILEY: I know (laughter). It's

1 like --

2 COMMISSIONER BALCH: So the reality is the  
3 OCD is short about \$15 million to plug the wells that  
4 are on the list right now.

5 COMMISSIONER MARTIN: I'm having trouble  
6 equating the compliance problem and the bonding.

7 COMMISSIONER BALCH: Well, I did some  
8 numbers on compliance from the bonds, and under OCD's  
9 proposal, if you assume that everybody's paying the  
10 blanket 50k bond right now, which they're not, then the  
11 one-to-ten category, which is more than half the  
12 operators, is going to pay no more additional bond.

13 The 11 to 50, which is about 20 percent of  
14 the operators that pay 3.6 million, incrementally more  
15 because they're in that \$75,000 category.

16 COMMISSIONER MARTIN: As a group.

17 COMMISSIONER BALCH: So that number of  
18 operators tends to -- incremental amount for the  
19 bonding.

20 51 to 100, the same, 3.5 million more.

21 And the greater-than-100 category is paying  
22 about 14.3 more, which is the lion's share.

23 The problem is 85 percent of the risk is in  
24 less than 50 wells and 12-and-a-half percent of the  
25 greater-than-100. So you take those two categories and

1 you add up to about 18 million, which is enough to meet  
2 OCD's requirements, but it may be disproportionately  
3 hitting the higher other well producers with the biggest  
4 risk. They are the second highest risk category, but  
5 they are still 12-and-a-half percent of the risk  
6 compared to 85 percent of the risk on the bottom scale.

7           So in that sense, the OCD proposal does  
8 come up with enough additional bonding money, probably  
9 even within the highest risk categories, except for the  
10 shift to a relatively lower-risk group at the high end.  
11 Probably effectively they're getting 4- or \$5 million  
12 more for the wells that need to be closed.

13           COMMISSIONER MARTIN: Most of the problem  
14 with those multiple companies, wells drift down -- as it  
15 becomes less economical, drift down to the lower  
16 brackets.

17           COMMISSIONER BALCH: Right. So I'm not  
18 sure if this is really giving them the money that they  
19 need in the risk categories that they have. And to get  
20 the money that they need from the risk categories that  
21 they have, I think we'll probably add the number of  
22 wells that's needed to close, which then increase the --  
23 there are an increasing number of people that walk away  
24 from orphaned wells, wells that need to be plugged,  
25 which would then actually increase that 18 million

1 more --

2 COMMISSIONER MARTIN: Absolutely.

3 COMMISSIONER BALCH: -- while cutting off  
4 some production as well. So it's really an ugly  
5 situation. It's one of those things where you raise the  
6 taxes enough in the community that the people start  
7 moving out, so you raise the taxes some more so more  
8 people move out.

9 CHAIRWOMAN RILEY: So what's the solution?

10 COMMISSIONER MARTIN: That's the problem.  
11 I don't have an answer.

12 I'm still kind of philosophical about the  
13 problem with the federal wells. I'd like to see a  
14 compromise fair and reasonable to that, but it has to  
15 be -- I'm not sure what that is.

16 COMMISSIONER BALCH: That would reduce  
17 actually -- first of all, it's unfair to double bond  
18 them -- require them to double bond. So it should  
19 reduce it. At least reduce their liability, as to this  
20 language, by the amount of their federal bond.

21 COMMISSIONER MARTIN: Right.

22 COMMISSIONER BALCH: I think that makes  
23 sense. But all that really does, though, is shift more  
24 people into the other categories where they're not  
25 paying any more bonding, so that reduces your



1 3-and-a-half million probably to a couple million  
2 dollars. So the problem doesn't go away.

3 COMMISSIONER MARTIN: And the only target  
4 is to get it company by company. You deem a company a  
5 high-risk company, which I could name a few, I'm sure as  
6 you could, right off the bat.

7 COMMISSIONER BALCH: There are certainly  
8 those companies that are repeat problems in a number of  
9 areas, so those are known.

10 COMMISSIONER MARTIN: But I don't know how  
11 you manage that situation.

12 COMMISSIONER BALCH: They'll have a bigger  
13 bond for operating, or they just walk away.

14 COMMISSIONER MARTIN: Right.

15 CHAIRWOMAN RILEY: Uh-huh. But it's kind  
16 of back to the point if they don't have the money to do  
17 the bond, they're not going to have the money to plug  
18 appropriately either.

19 COMMISSIONER MARTIN: But you don't put  
20 them out of business. If you do, then you're cutting  
21 off the nose to spite the face. You cut out production.  
22 And who is to determine --

23 COMMISSIONER BALCH: And then those wells  
24 go on to the orphaned-need-to-be-plugged wells, which  
25 compounds the problem.

1 I was kind of -- last night I was thinking  
2 about this. I'm wondering if there is some way to apply  
3 a sliding scale, not make the jump so big. Right? Go  
4 50- to 75- to 125- to 250-, over just the 1-to-100-well  
5 range.

6 CHAIRWOMAN RILEY: Does that help?

7 COMMISSIONER BALCH: Probably not.

8 CHAIRWOMAN RILEY: I mean, that just  
9 creates more administrative burden for the --

10 COMMISSIONER BALCH: I don't think that the  
11 number of categories changes the administrative burden.

12 COMMISSIONER MARTIN: You have a team  
13 behind you.

14 CHAIRWOMAN RILEY: It does on the -- you  
15 know, your number of wells is going to change, and so  
16 then you're going to be chasing bonds all the time,  
17 chasing additional bonding.

18 COMMISSIONER BALCH: I mean, what -- again,  
19 a lot of times what we're presented with in  
20 rulemaking -- we're given data, but we're not given a  
21 full analysis of the data, and we're kind of left to do  
22 that with what's given to us. So I don't have a  
23 histogram that shows -- well, maybe we do have a  
24 histogram of number of operators per -- I think there is  
25 one around here. No. Those are fixed costs. A

1 histogram of number of operators by bins of 50 or  
2 something that might have been useful to show us the  
3 real distribution of operators.

4           So what we're left with is 53. -- 56.7  
5 operators are in the one-to-ten category. 23.5 percent  
6 are in the 11-to-50. 7.8 percent are in the 51-to-100,  
7 and 11.7 are in the more-than-100. Those are the  
8 only four things that we have that we can compare to --  
9 and for whatever reason -- and it's probably just the  
10 way the statistics are distributed. The 51-to-100 well  
11 category is the lowest risk, for whatever reason. I  
12 mean, it's a small sample of statistics that do things  
13 like that. So a more continuous distribution of number  
14 of operators by number of wells would have been useful.

15           MR. BRANCARD: Well, my suggestion is that  
16 if -- that you need to look at these, sort of, issues  
17 one by one, okay? And each set of issues will have a  
18 ripple effect on how much of a change this proposal is  
19 to the current reality here.

20           And so the first proposal you might want to  
21 look at is what Commissioner Martin has proposed, which  
22 is looking at excluding the federal wells, which we have  
23 a dollar amount that -- what the impact of that is.  
24 Then if you make that change -- it's a pretty  
25 significant change -- do you want to make any more

1 changes after that?

2 COMMISSIONER BALCH: My concern with  
3 federal wells is really the double jeopardy on  
4 bonding --

5 COMMISSIONER MARTIN: Mine, too.

6 COMMISSIONER BALCH: -- which I think this  
7 addresses pretty reasonably. How that's going to impact  
8 the overall numbers is to be determined.

9 MR. BRANCARD: Well, we have an estimate  
10 based on if you reduce -- if you eliminated the federal  
11 wells from the calculus, what the bonding would be.  
12 This proposal lessens that a bit by focusing on the  
13 double-bonding aspect.

14 COMMISSIONER BALCH: I'll hate myself in  
15 the morning.

16 MR. BRANCARD: So in 8.9C, there are  
17 basically, as I can see it, three things on the table.  
18 One is the tiers and the alternative proposal from  
19 IPANM, which you don't have to go for one or the other.  
20 You can go for anything in between or do a hybrid.

21 The second is to exclude federal wells from  
22 the calculation, which would have an impact both on the  
23 IPANM -- significantly on the IPANM and on the state  
24 proposal.

25 And the third issue, which I'm assuming is

1 still on the table, is the question of whether to allow  
2 an operator to come in and propose a different number  
3 with a single-well financial assurance, which OCD  
4 expressed its opposition to this morning.

5 COMMISSIONER BALCH: There's no  
6 mathematical basis for doing that. I took the proposed  
7 numbers from the small operators that did come in, and I  
8 plotted them on Exhibit -- Exhibits 9 or 10? -- Exhibit  
9 10. And I don't know if you want to submit this for the  
10 record, or I can just describe it.

11 MR. BRANCARD: Describe.

12 COMMISSIONER BALCH: Okay. So Exhibit 10  
13 has a plot of cost to complete by depth of well, and  
14 there is a red line on that plot of numbers, which is  
15 the \$25,000, plus \$2-per-foot equation that's proposed  
16 by OCD. That line fits the distribution of the data  
17 extremely well. If you plot the \$5,000, plus  
18 \$4-per-foot number proposed by I think Mr. Marker, that  
19 number falls on the very outside bottom of that  
20 distribution of data and would probably be inadequate.  
21 I can show you what that number looks like. This is the  
22 5,000 number -- 5,000, plus the 4, and that's the  
23 25,000, plus 2.

24 Also, the statutory requirement that was  
25 given to us by Mr. Brancard earlier today says that by

1 no means can we be under the cost to complete a well,  
2 which is, on average, 3,200. So you cannot have a  
3 category of 25,000 blanket bond. It would not be  
4 adequate to close an average well.

5 So I think that -- I think we can't  
6 entertain using that other number, the 5,000, plus  
7 \$4 per foot.

8 MR. BRANCARD: And I think the 5,000, plus  
9 4 was only for inactive wells. For active wells, it was  
10 5,000, plus 2.

11 COMMISSIONER BALCH: Which would be even  
12 lower. So the \$5,000, plus \$4-per-foot number only  
13 meets the closing requirements of very deep wells,  
14 essentially.

15 MR. BRANCARD: And I have a bit of concern  
16 with Mr. Marker's proposal because, again, he did not  
17 submit that modification in advance of the hearing, as  
18 we normally require.

19 COMMISSIONER BALCH: Fortunately, I was  
20 able to vet it myself.

21 Is that satisfactory to you?

22 CHAIRWOMAN RILEY: Yes.

23 COMMISSIONER BALCH: 25-, plus 2 is really  
24 the number for a single well, given the four-year data  
25 set that we have.

1 CHAIRWOMAN RILEY: Well, I think in the  
2 future, that may have to go up based on the wells that  
3 are going to start coming in from the big guys.

4 So how about the federal well issue?

5 COMMISSIONER MARTIN: This one?

6 CHAIRWOMAN RILEY: Uh-huh.

7 COMMISSIONER MARTIN: I don't have a  
8 problem with that. It's nondiscretionary on the  
9 division's part.

10 COMMISSIONER BALCH: There's maybe another  
11 approach we could take than what's presented by OCD.  
12 And then IPANM has a different version, which is a  
13 tiered approach, terminating at 250,000 maximum bond.  
14 You could apply smaller bond levels as appropriate to  
15 the risk level associated with each of these, and then  
16 hold the 250,000 number as something that could be  
17 applied to high-risk operators irregardless of size.  
18 And we would have to come up with definitions for that.

19 MR. BRANCARD: So eliminate the 250- as an  
20 automatic to anybody?

21 COMMISSIONER BALCH: Yup.

22 CHAIRWOMAN RILEY: How would we manage  
23 that?

24 COMMISSIONER BALCH: So here are the  
25 numbers that I just ran. If you have one to ten, at

1     \$75 -- 75 --

2                   MR. BRANCARD: No party has proposed that,  
3     okay?

4                   COMMISSIONER BALCH: I know. But we have  
5     considerable latitude, don't we?

6                   MR. BRANCARD: Well, a certain amount of  
7     latitude within the proposals that are out there.

8                   COMMISSIONER BALCH: No greater than 250-?

9                   MR. BRANCARD: Yes. You cannot go beyond  
10    250-. But, again, you know, people participated in the  
11    hearing assuming what the proposals are.

12                  COMMISSIONER BALCH: Well, if you keep it  
13    that way, put the one to ten at 75,000 blanket bond,  
14    that generates 8.7 million; 11 to 50 at \$100,000 blanket  
15    bond, that's 7.2 million. Those numbers for the bond  
16    are 16 million, which is a majority of the shortfall,  
17    also the majority of the problem. Eight-five percent of  
18    noncompliant operators are in those two categories. All  
19    right?

20                  CHAIRWOMAN RILEY: So you've essentially  
21    increased Tier 1 and Tier 2 by \$25,000.

22                  COMMISSIONER MARTIN: Was this included in  
23    the OGD proposals?

24                  COMMISSIONER BALCH: Well, with that  
25    included, we don't know that the overall --



1 COMMISSIONER MARTIN: I know. But your  
2 proposal is to change those amounts --

3 COMMISSIONER BALCH: I'm not sure if it's a  
4 proposal. I'm just showing you some numbers that make  
5 sense for the problem. I'm not sure if it's the best  
6 solution overall.

7 I think the 1-to-100 range, where the  
8 lowest risk is, 2-and-a-half percent of operators there  
9 are noncompliant. So that generates an additional 4.8  
10 million. And the greater-than-100, where 12-and-a-half  
11 percent of the problem is, generates 14 million. So  
12 those are redistributing the additional bonding  
13 essentially to the groups that have the biggest  
14 problems.

15 CHAIRWOMAN RILEY: Well, you didn't change  
16 these numbers, though, right?

17 COMMISSIONER BALCH: No, I did.

18 CHAIRWOMAN RILEY: Actually, you increased.  
19 That's an increase (indicating).

20 COMMISSIONER BALCH: Yes. This one could  
21 you could actually leave it 125-, but I kept it, kind of  
22 scaling up in a geometric progression.

23 CHAIRWOMAN RILEY: And then that's the  
24 same? That's the 250-?

25 COMMISSIONER BALCH: Uh-huh, 250-.

1                   So this is something that would meet the --  
2   that would match the solution to the problem. The  
3   problem there is what are the additional impacts of that  
4   type of solution?

5                   CHAIRWOMAN RILEY: Yeah.

6                   COMMISSIONER BALCH: If you want the  
7   majority of your bonding to come from the 85 percent  
8   risk group, this is the way to do it.

9                   MR. BRANCARD: So what's the proposal  
10   again?

11                  COMMISSIONER BALCH: It's not a proposal  
12   yet. It's a discussion item.

13                  CHAIRWOMAN RILEY: Tier 1 and Tier 2  
14   increased by 25,000. Kept the numbers the same. Tier 3  
15   on here, he's increased 25,000. Tier 4 is the same.

16                  COMMISSIONER BALCH: I'm not proposing.  
17   I'm pointing out that this is what you would have to do  
18   to meet the problem based on mathematics. The majority  
19   of the problem is in the 1-to-50-wells category of  
20   operators. Eight-five percent of noncompliant wells are  
21   in this category. So you want to get 85 percent of your  
22   \$17 million from that group. And this is about 15.9.  
23   It's pretty close to that number. That's reality.

24                  CHAIRWOMAN RILEY: Uh-huh.

25                  COMMISSIONER BALCH: The problem is what

1 does reality do?

2 CHAIRWOMAN RILEY: And what are the  
3 impacts?

4 COMMISSIONER BALCH: What does reality do?  
5 And I am completely unhappy with this  
6 because I'm afraid of what it will do to small  
7 operators. But that's -- that's how you distribute the  
8 additional risk appropriately.

9 COMMISSIONER MARTIN: Well, appropriately  
10 in a state government sense. To do anything more exact  
11 would take a lot more administration.

12 COMMISSIONER BALCH: Yeah. Which is why I  
13 also threw out the idea of perhaps you could go with  
14 something like this but reduce the rates and allow based  
15 on some criteria of higher-risk bond level for  
16 higher-risk operators. Then you could apply it directly  
17 to the problem perceived by the OCD.

18 COMMISSIONER MARTIN: Could you handle  
19 that?

20 CHAIRWOMAN RILEY: It's fraught with  
21 problems.

22 COMMISSIONER MARTIN: Could you handle that  
23 as a division-director-hat person?

24 CHAIRWOMAN RILEY: I don't think so. I  
25 don't see how we would -- we'd have to add all kinds of

1 employees to just manage that. And then you get into  
2 the whole issue of undue process and, you know --

3 COMMISSIONER BALCH: Well, I think you  
4 could do it the way that Mr. Larson described the BLM's  
5 process, where it's maybe a review of the -- of the  
6 bonding. So you don't have to do it for everybody.  
7 Just do it when you have a high-risk case.

8 CHAIRWOMAN RILEY: My guess is -- and I  
9 know that Mr. Larson doesn't have those numbers. But  
10 the federal government isn't any better off than we are  
11 in terms of pursuing this stuff, and my guess is they  
12 haven't done many bond reviews. But --

13 COMMISSIONER MARTIN: That's not to say we  
14 couldn't do that. I mean, I kind of like the idea.

15 COMMISSIONER BALCH: I mean, do -- put in  
16 there as a way to deal with particular operators or to  
17 mitigate the risk from a particularly bad operator.

18 COMMISSIONER MARTIN: Right, as  
19 exemplified -- as evidenced by some criteria spills over  
20 a period of time or remediation plan over a period of  
21 time.

22 COMMISSIONER BALCH: You want to make --  
23 you want them to be nonarbitrary as possible because  
24 division directors change, energy secretaries change,  
25 directors change, ODE changes.

1 COMMISSIONER MARTIN: Right.

2 COMMISSIONER BALCH: And you want it to be  
3 as clear as possible, which would trigger that  
4 possibility than somebody just -- blanket everybody at  
5 250-.

6 CHAIRWOMAN RILEY: I think determining that  
7 criteria is your -- what the risk is.

8 COMMISSIONER BALCH: We don't have  
9 testimony for it, really.

10 CHAIRWOMAN RILEY: Yeah.

11 So what do you guys think with the small  
12 operator? I mean, I know that they're going to come in  
13 and say, "Oh, yeah, we can't do this, we can't do this."  
14 But is that really the reality?

15 COMMISSIONER BALCH: These guys are -- the  
16 good ones, they're scrappy. They'll figure out a way.  
17 But I'm more afraid of the people that are right on the  
18 edge just saying, "I'm done," and they walk away.

19 CHAIRWOMAN RILEY: So why wouldn't they  
20 sell to the operator that is capable of providing that?

21 COMMISSIONER BALCH: Well, now that  
22 operator has less capital because they're putting more  
23 money into bonding.

24 COMMISSIONER MARTIN: I think that is a  
25 good point, too. And this group that we're talking

1 about is not all bad operators. There is a sizable  
2 portion that are bad operators, but there are --

3 COMMISSIONER BALCH: Well, how big is the  
4 list of bad operators? We have Exhibit 7, right? How  
5 many people are on that list?

6 CHAIRWOMAN RILEY: It's down to, because  
7 we've been working through them, about 139.

8 MR. BRANCARD: I mean, that's the operators  
9 who have inactive well problems in excess of the  
10 requirements of Rule 5.9. So Rule 5.9 allows you to  
11 have inactive well problems up to a certain amount.  
12 These are the ones that have exceeded those ratios.  
13 It's not going to include environmental problems.

14 (All Commissioners speaking at one time.)

15 COMMISSIONER BALCH: Okay. A list of wells  
16 waiting to be plugged, how many operators on that list?

17 CHAIRWOMAN RILEY: Like 10 or 11.

18 COMMISSIONER BALCH: So it's a small  
19 fraction of the 613 operators?

20 CHAIRWOMAN RILEY: Uh-huh. All the ones  
21 that we've been able to get through all of the due  
22 process, you know, that we've talked about. Our legal  
23 group is only capable of doing so much, and it takes a  
24 long time to get them through. I'm getting your  
25 plugging order, and then if they file bankruptcy, you

1 have go to through the whole district process with the  
2 bankruptcy court, whatever. I mean, it's -- yeah. It's  
3 a small group that we've taken care of. And there  
4 wasn't a push, I don't believe, in previous  
5 administrations to do that. It was kind of just left.

6 And I'll just -- this is just philosophical  
7 on my part, but with going to the IOGCC meeting earlier  
8 this year, that was the number one topic from all of the  
9 states, was this inactive or idle well problem across  
10 the United States, and every state is trying to figure  
11 out a way to resolve this. Because looking down the  
12 road, every state could potentially have all of these  
13 orphaned wells that they're having to deal with. And so  
14 being proactive somewhere on the front end of this is  
15 critical.

16 MR. BRANCARD: I mean, the Chair is right,  
17 because there is a whole due process issue here. The  
18 division can't just say, "You're out of compliance.  
19 We're going to plug your well." We have to go through a  
20 whole process to get a hearing, and that hearing deals  
21 with one of the issues that I think was brought up  
22 during this rulemaking, which is oh, you don't want to  
23 plug wells that are still, you know, good wells. Well,  
24 that's what the hearing process is for, you know. I  
25 mean, so you have a hearing examiner looking at that

1 well. And my recollection in the past -- maybe not  
2 recently, but in the past, hearing examiners have denied  
3 plugging orders because they thought the wells were  
4 still good wells.

5 CHAIRWOMAN RILEY: Or they come with  
6 information that somebody is looking to buy it or  
7 whatever. I mean, there is still that opportunity to  
8 allow business to take place.

9 COMMISSIONER MARTIN: There is a possible  
10 waste issue that enters into it at some point to me. I  
11 think that's basically why the examiners don't issue  
12 plugging orders, because they don't want to leave those  
13 resources in the ground if they are there.

14 MR. BRANCARD: Yeah. So that you have to  
15 balance against the fact that a well is not being taken  
16 care of and potentially becomes a threat to fresh water,  
17 to the environment, et cetera.

18 CHAIRWOMAN RILEY: Which goes into the  
19 inactive well rule and why we require the approved  
20 temporary abandonment status. And with that is -- we  
21 haven't even gotten to -- this other tier not at dispute  
22 today, thankfully. But, you know, in other words, to  
23 have those on ATA status, they have to provide that  
24 additional bonding. But wells just sitting out there  
25 shut in, I think are a huge risk.



1 COMMISSIONER MARTIN: It's good indicator  
2 of a problem.

3 CHAIRWOMAN RILEY: Uh-huh. And right now  
4 this snapshot in time, this exhibit, is 1,738 wells that  
5 fall on the inactive well list. So those are just the  
6 wells -- I have to think about this. This list includes  
7 the wells that are beyond the threshold.

8 COMMISSIONER BALCH: And two of those --  
9 two operators make up 1,500 wells on that list. Nah.  
10 It's got to be more than that. Got to be more than  
11 1,700. There are thousands of wells on this list. But  
12 you're on a different list.

13 CHAIRWOMAN RILEY: I'm looking at 7.

14 COMMISSIONER BALCH: Number of inactive  
15 wells?

16 CHAIRWOMAN RILEY: Yeah. You've got to  
17 look at the second column. Some of these -- Blue Sky,  
18 we're in court with them. Cano -- Cano is --

19 COMMISSIONER MARTIN: Cano just filed.

20 CHAIRWOMAN RILEY: I think Cano is the  
21 poster child for what can go wrong.

22 COMMISSIONER MARTIN: I agree. I mean,  
23 there are plenty of posters for that poster child, but  
24 Cano is a good one.

25 CHAIRWOMAN RILEY: Uh-huh. Cano's at the

1 top of the list.

2 COMMISSIONER BALCH: Cano.

3 CHAIRWOMAN RILEY: DeLong is on here. That  
4 was one of the gentlemen sitting up front.

5 COMMISSIONER BALCH: He's only got one  
6 well. So if it's inactive --

7 CHAIRWOMAN RILEY: Yeah. I don't  
8 understand. Maybe he has more than one company.

9 MR. BRANCARD: That could be.

10 COMMISSIONER BALCH: True.

11 CHAIRWOMAN RILEY: He testified he had 16  
12 wells.

13 COMMISSIONER BALCH: He had the very small  
14 state wells, and the rest were federal.

15 COMMISSIONER MARTIN: Right.

16 COMMISSIONER BALCH: Maybe that's why it's  
17 not on the list. It's federal.

18 CHAIRWOMAN RILEY: This should pull all  
19 that in for purposes of 5.9 when we look at federal  
20 wells as well.

21 COMMISSIONER MARTIN: That's true.

22 CHAIRWOMAN RILEY: Another thing we didn't  
23 even bring up is that they're constantly closing this  
24 company down and moving assets to another company and  
25 then starting over again or your principals are just

1 changing names to start -- restart clocks.

2 COMMISSIONER MARTIN: I guess you could say  
3 whatever we do in this rule, that's still going to  
4 happen.

5 CHAIRWOMAN RILEY: Uh-huh. Just goes to  
6 the idea that risk is going to be difficult to manage  
7 because of those kinds of --

8 COMMISSIONER BALCH: The problem is 85  
9 percent of your risk is in operators with less than 50  
10 wells.

11 CHAIRWOMAN RILEY: Well, I mean, if we were  
12 to go with the idea of having to assess a risk number to  
13 a company --

14 COMMISSIONER BALCH: They'll just change --  
15 yeah.

16 MR. BRANCARD: Okay. The legislature has  
17 authorized you to -- they have increased the cap by 500  
18 percent after 40 years and authorized you the ability to  
19 implement. How do you want to implement?

20 CHAIRWOMAN RILEY: "Land the plane,"  
21 Mr. Brancard is saying (laughter). "Land the plane."  
22 We just don't want to fly it into a cliff.

23 MR. LARSON: "De plane! De plane!"

24 (Laughter.)

25 CHAIRWOMAN RILEY: I liked the numbers that

1 Bob came up.

2 COMMISSIONER BALCH: You can propose them.

3 COMMISSIONER MARTIN: Read those again one  
4 more time.

5 CHAIRWOMAN RILEY: But they haven't been  
6 vetted.

7 COMMISSIONER BALCH: Well, I mean, they've  
8 been calculated with the numbers we've been provided by  
9 the OCD.

10 So one to ten wells, \$75,000 on a blanket  
11 bond generates 8.7 million more in bond money compared  
12 to a blanket current 50k bond.

13 COMMISSIONER MARTIN: I mean just your new  
14 amounts, not what it brings in, just --

15 COMMISSIONER BALCH: 11 to 50, 100-; 51 to  
16 100, 150-. And greater than 150, 250,000. We can  
17 probably even spread those ranges out. But the problem  
18 is we don't have -- I don't have statistics on the  
19 binning of those groups.

20 CHAIRWOMAN RILEY: Why not leave C at 125-  
21 because they're 2.5 risk?

22 COMMISSIONER BALCH: But that's a  
23 statistical anomaly. It's because we are looking at  
24 just operators basically with less than or more than 100  
25 wells. I'm not sure that's the appropriate dividing

1 point. What do you call a small, medium and large  
2 operator by a well? We don't have that distribution in  
3 front of us. I mean, more appropriately, that \$250,000  
4 number should apply to a larger set of operators, maybe  
5 more than 100 wells. I don't know. But we don't have a  
6 way to come up with that number.

7 But if you want to apply the additional  
8 burden on the people with the additional -- with the  
9 heightened risk, that's how you do it, and I'm not too  
10 happy about it, because then that problem is in the  
11 order of \$19 million shortfall right now, the reason why  
12 I presume that the Secretary went to the legislature and  
13 increased the number.

14 CHAIRWOMAN RILEY: Uh-huh.

15 COMMISSIONER BALCH: Keep in mind I have to  
16 go to IPANM next week where I'll get lynched.

17 COMMISSIONER MARTIN: I was going to go,  
18 but I may not.

19 COMMISSIONER BALCH: The other testimony  
20 from Ms. Marks is basically this still puts us below  
21 everybody else.

22 CHAIRWOMAN RILEY: Uh-huh.

23 MR. BRANCARD: Well, I have two comments --  
24 well, one concern and one comment.

25 My concern is that by increasing the lowest

1 category, 50- to 75-, you now have 56, 57 percent of the  
2 operators who didn't think this rulemaking was going to  
3 increase the blanket bond for them, and you just  
4 increased the blanket bond for them. So I'm a little  
5 worried about the notice issue.

6 CHAIRWOMAN RILEY: Notice.

7 MR. BRANCARD: Okay?

8 On the other hand, in terms of increasing  
9 the contribution of people in that category of one to  
10 ten, what hasn't been discussed here is the obvious  
11 ripple effect of increasing the single-well bond on  
12 people in this category.

13 COMMISSIONER BALCH: I wonder what the  
14 average single-well bond is now.

15 MR. BRANCARD: I think we had numbers of  
16 people talking about, you know, 7-, \$8,000, which if you  
17 look at \$5,000, plus \$1 a foot, a 3,000-foot well is  
18 going to cost you \$8,000. And a lot of the wells that  
19 have been cleaned up are actually 3,000-foot wells, so  
20 8-, \$9,000. So those folks are now going to be paying  
21 33,000 or \$31,000.

22 COMMISSIONER BALCH: Or a blanket bond of  
23 50-.

24 MR. BRANCARD: Or they'll move them to the  
25 blanket bond. Exactly. So a lot of people who had

1 single-well bonds in that one-to-ten category will move  
2 to the blanket bond. Okay? So it's not that those  
3 folks are not getting an increase, which is what you  
4 seem to be worried about, Commissioner.

5 COMMISSIONER BALCH: Uh-huh.

6 MR. BRANCARD: They are getting an increase  
7 because their single-well bonds will go up, or they will  
8 then just below go to blanket bonds, because the blanket  
9 bond is less than four single-well bonds. Previously,  
10 the blanket bond was greater than four single-well  
11 bonds.

12 COMMISSIONER BALCH: All right. So you  
13 take that 57.6 percent of the operators that have less  
14 than ten wells. You assume they have two single-well  
15 bonds at \$12,000 or three at -- whatever number adds up  
16 to 25-. Then you are increasing their bond total by  
17 25,000. That would generate the \$8.8 million also. But  
18 we don't have complete numbers on single bonds.

19 MR. BRANCARD: No, we don't. We don't know  
20 the range in the one-to-ten bonds and how many have  
21 single-well bonds.

22 COMMISSIONER BALCH: And I think those  
23 numbers would follow for the second category being  
24 75,000 -- Category B, 75,000, for 11 to 50.

25 MR. BRANCARD: So logically, the people in

1     that category --

2                   COMMISSIONER BALCH:   Probably they're more  
3     likely to already have a blanket bond.

4                   MR. BRANCARD:   Exactly.

5                   COMMISSIONER BALCH:   So they would be  
6     adding about 3- or \$4 million to the pool.

7                   MR. BRANCARD:   Going from 50- to 75-.

8                   COMMISSIONER BALCH:   Going from 50- to 75-.  
9     And they are 35 percent of the risk, and the one to ten  
10    is 50 percent of the risk.

11                  CHAIRWOMAN RILEY:   Well, that does worry  
12    me, about the notice issue.   That's a pretty significant  
13    change from what was proposed.

14                  COMMISSIONER MARTIN:   Right.

15                  COMMISSIONER BALCH:   I only present these  
16    numbers to show you what is part of the problem as it  
17    was presented to us.

18                  CHAIRWOMAN RILEY:   Yeah, but I like them.  
19    That was the problem.

20                  COMMISSIONER BALCH:   Some bigger analytics  
21    before they came to us.   We have more numbers to work  
22    with.   Seemed like there was a significant number of  
23    wells that are single-well bonded right now.   Ms. Marks  
24    gave some numbers.

25                  MR. BRANCARD:   1,900.   I caught that



1 number. That number will go down.

2 COMMISSIONER BALCH: Yup.

3 COMMISSIONER MARTIN: Well, the division  
4 proposal was to add this language, not change any of  
5 these numbers. Maybe we go with that. Maybe we tweak  
6 this like we like it, and go with that. Leave it like  
7 it was, allow them to come in --

8 MR. BRANCARD: That will have a significant  
9 impact on the total amount coming in. It will go well  
10 below the 51.

11 COMMISSIONER MARTIN: I know, but it was  
12 the division's proposal.

13 MR. BRANCARD: Well, you-all asked for  
14 language, so yes, they gave it to you.

15 COMMISSIONER BALCH: Well, yeah. So if you  
16 take -- take the federal wells out of consideration, but  
17 you assume that their other bonding takes care of those  
18 wells, then that mitigates that problem. And without  
19 federal wells, the OCD proposal generates about  
20 9 million more than the blanket's 50k number.

21 COMMISSIONER MARTIN: Okay.

22 COMMISSIONER BALCH: I don't think every  
23 operator would try for that exception. Many of them  
24 would still -- because we're only dealing with basically  
25 less than 100 or more than 100, a lot of operators will

1 already be stuck in that category. It would be more  
2 likely to people on the small scale, which is where all  
3 of your risk is and where you should have additional  
4 bonding, unfortunately.

5 COMMISSIONER MARTIN: I don't much like  
6 lumping them all together, but I see what you're saying.

7 CHAIRWOMAN RILEY: We are making some broad  
8 generalizations, but --

9 COMMISSIONER MARTIN: Very broad.

10 COMMISSIONER BALCH: More analytics.

11 I actually don't think, without increasing  
12 the rates on the one to ten and 11 to 50, that you're  
13 going to have that group meeting their proportional  
14 share of the risk.

15 COMMISSIONER MARTIN: Probably not.

16 COMMISSIONER BALCH: Not with 1,900 wells  
17 at a single out of 50-some-thousand wells total. That's  
18 just the way it is.

19 COMMISSIONER MARTIN: So in some sense,  
20 you're not penalizing the good operators in the small  
21 group by penalizing the bad operators, which I think is  
22 fair.

23 COMMISSIONER BALCH: But the goal is to  
24 generate more money for the actual risk, which in this  
25 case, I don't think it really does. I think it adds a

1 few million dollars effectively.

2                   However, if those 1,900 wells are all  
3 underbonded by \$20,000, then that's \$38 million. So  
4 that is a chunk of change considering the well closing  
5 cost could 32,400, on average, which disproportionately  
6 hits the smaller operators because the larger ones are  
7 going to hit the blanket bond pretty fast if they're  
8 going to single bonding, right?

9                   MR. BRANCARD: Yeah.

10                  COMMISSIONER BALCH: Actually, the  
11 one-to-ten category is the one with the most single  
12 bonding. It would have to be.

13                  COMMISSIONER MARTIN: That would be my  
14 guess.

15                  MR. BRANCARD: That would be logical. And  
16 some operators may have single-well bonds, historically,  
17 that they've maintained even though they can lump them  
18 all. We see very odd things in financial assurance.

19                  CHAIRWOMAN RILEY: Uh-huh.

20                  MR. BRANCARD: But I think by and large,  
21 from a logical point, people with single-well bonds --

22                  CHAIRWOMAN RILEY: Okay. Should we --

23                  COMMISSIONER BALCH: Okay. Well, I think  
24 if we go with the OCD table, with the change in language  
25 for federal bonding, that I can probably at least go to

1 sleep tonight.

2 COMMISSIONER MARTIN: With the proviso that  
3 this be mandatorily approved by the OCD. If they apply  
4 for it, they get it.

5 COMMISSIONER BALCH: Not a variance.

6 COMMISSIONER MARTIN: It's  
7 nondiscretionary. It kind of alleviates my concern with  
8 the federal --

9 COMMISSIONER BALCH: They will probably  
10 have to generate a form they can use to show how much  
11 they're paying in federal bonds, how many wells they  
12 have, does the math. I can go along with that.

13 COMMISSIONER MARTIN: Okay.

14 MR. BRANCARD: Okay. So how about if we  
15 flip it around then to read: "If an operator can  
16 demonstrate to the division that it has federal wells  
17 which move the operator into higher tier, the division  
18 shall reduce the operator's blanket plugging financial  
19 assurance by the amount of the federal statewide bond"?

20 COMMISSIONER MARTIN: I'm okay with that.

21 COMMISSIONER BALCH: Yeah.

22 CHAIRWOMAN RILEY: And then leave the  
23 "however" statement.

24 MR. BRANCARD: Right.

25 COMMISSIONER MARTIN: Yeah. I think that

1 needs to be in there.

2 COMMISSIONER BALCH: Right.

3 CHAIRWOMAN RILEY: Okay. So that's going  
4 to get added.

5 MR. BRANCARD: I would make that like a new  
6 Section C.(3).

7 COMMISSIONER BALCH: C.(3).

8 COMMISSIONER MARTIN: Sounds reasonable.  
9 Yeah. Makes sense.

10 COMMISSIONER BALCH: Right below the  
11 blanket bond.

12 MR. BRANCARD: The tiers.

13 COMMISSIONER BALCH: Well, the C will  
14 probably become D. We can actually move E above C.  
15 Sounds like we're ready for a clean copy.

16 CHAIRWOMAN RILEY: Yeah, clean copy.

17 COMMISSIONER MARTIN: Page 4?

18 CHAIRWOMAN RILEY: Uh-huh.

19 COMMISSIONER BALCH: Nobody said anything  
20 about the other category, so --

21 CHAIRWOMAN RILEY: Yeah. I think that one  
22 is okay.

23 COMMISSIONER MARTIN: Okay.

24 COMMISSIONER BALCH: Talking about moving  
25 this E above C somehow.

1 MR. BRANCARD: Right. The B.(2) categories  
2 are from the current rule.

3 COMMISSIONER BALCH: Yeah. So there was no  
4 discussion -- no proposed changes.

5 Okay. I think we had some slight language  
6 changes elsewhere that you may have tracked.

7 CHAIRWOMAN RILEY: I think everything else  
8 we talked about yesterday.

9 MR. BRANCARD: And then on the effective  
10 date, we were going to go with the first date being the  
11 effective date of the rule and the second date being  
12 four months later.

13 COMMISSIONER MARTIN: Right. That's what  
14 we talked about.

15 COMMISSIONER BALCH: Okay. Are you ready  
16 for a new pile of noncompliant operators after the rule  
17 is filed? If they don't have a bond, they can't  
18 operate, right, can't produce?

19 COMMISSIONER MARTIN: That's the theory.

20 CHAIRWOMAN RILEY: Well, we have to take  
21 them through due process.

22 COMMISSIONER MARTIN: See, that's kind of a  
23 problem I'm having, with forcing compliance from just a  
24 rule by itself. There are compliance problems not just  
25 in this, but -- based on lack of personnel, lack of

1 rules, regulations covering that kind of stuff.

2 Unfortunately, those problems aren't going to go away.

3 CHAIRWOMAN RILEY: Bill, how much time do  
4 you need to put together a clean copy?

5 MR. BRANCARD: I can do it over the lunch  
6 hour.

7 CHAIRWOMAN RILEY: It's 12:15 now.

8 MR. BRANCARD: So we accepted the proposed  
9 change to true vertical depth, Exhibit 12.

10 COMMISSIONER BALCH: Yes.

11 MR. BRANCARD: And then we had other  
12 language for 25.12.

13 COMMISSIONER BALCH: On 25.12, I think I  
14 saw you writing something down on that.

15 MR. BRANCARD: I know. I have to find it.  
16 Do you want to come back after lunch then,  
17 and I will get you a new draft?

18 CHAIRWOMAN RILEY: Let's adjourn until  
19 1:30 --

20 COMMISSIONER BALCH: Yeah.

21 CHAIRWOMAN RILEY: -- for everybody's  
22 plans.

23 COMMISSIONER MARTIN: Yeah.

24 CHAIRWOMAN RILEY: Okay. Adjourn until  
25 1:30. We are off the record.

1 (Recess 12:17 p.m. to 1:34 p.m.;  
2 open-session deliberations resume.)

3 MR. BRANCARD: Okay. I have prepared a  
4 revised draft of the rule proposal. It incorporates the  
5 changes the Commission has suggested. It's highlighted  
6 in yellow. It looks a little different than what you  
7 had before just because it's already in the format for  
8 filing. So, therefore, we have all of Section 7, not  
9 just the relevant parts of Section 7 of 19.15.2 right at  
10 the beginning.

11 And you might want to take a look at some  
12 of these because I did try to reword some of these to  
13 try to make them flow better or work better.

14 COMMISSIONER BALCH: There is one  
15 grammatical thing here.

16 MR. BRANCARD: Okay. So 8.9C.(3), I  
17 reworded that, I think, to try to get the concept down,  
18 "an operator."

19 COMMISSIONER BALCH: There's only one  
20 blanket bond amount for the federal, right?

21 MR. BRANCARD: For a statewide blanket  
22 bond. I think that was the -- there is a nationwide  
23 blanket bond, but there is only one statewide blanket  
24 bond.

25 COMMISSIONER BALCH: I noticed the missing



1 word "it" is there.

2 MR. BRANCARD: Right.

3 COMMISSIONER BALCH: But I'm wondering if,  
4 after the "amount of federal statewide blanket bond," we  
5 want to say "held by that operator," which would make  
6 sure they actually paid their federal bond.

7 COMMISSIONER MARTIN: What's the change?

8 MR. BRANCARD: So on 8.9C.(3) in the  
9 federal language, in the middle it says, "The division  
10 shall reduce the amount of the operator's blanket  
11 plugging financial assurance by the amount of the  
12 federal statewide blanket bond." Commissioner Balch is  
13 suggesting adding to the end of that "held by the  
14 operator."

15 COMMISSIONER BALCH: "Held by that  
16 operator" or "the operator." Yeah.

17 COMMISSIONER MARTIN: Okay. I like the way  
18 you incorporated E into C.(1) and D.(1).

19 MR. BRANCARD: And then 25.12, I reworded  
20 that to try to make it flow.

21 COMMISSIONER MARTIN: Looks better to me.

22 COMMISSIONER BALCH: Yeah, which I think  
23 really covers everything.

24 CHAIRWOMAN RILEY: That's good. Well, that  
25 was easy. What took us so long?

1                   COMMISSIONER MARTIN: This wasn't one of  
2 the changes, but back on the second page, lest you run  
3 afoul of the infamous Records Division, do we want to --  
4 the bottom-hole pressure, or was that the way it was  
5 originally, page 2?

6                   MR. BRANCARD: Oh, yeah. I want to make  
7 sure that that -- okay.

8                   COMMISSIONER MARTIN: God forbid.

9                   MR. BRANCARD: I know. They will reject it  
10 and force us to --

11                  COMMISSIONER BALCH: Oh, yeah. Good catch,  
12 Ed. I kept not seeing it because it wasn't in bold.

13                  CHAIRWOMAN RILEY: That's the problem.

14                  COMMISSIONER BALCH: Nicely done.

15                  MR. BRANCARD: But we will run these by the  
16 Records Center again before we file these outside of  
17 normal practice and --

18                  CHAIRWOMAN RILEY: Time for a motion?

19                  COMMISSIONER BALCH: Well, I guess the  
20 motion would be to adopt the order as amended in the  
21 last few minutes by the Commission.

22                  COMMISSIONER MARTIN: Second.

23                  COMMISSIONER BALCH: Vote on this?

24                  MR. BRANCARD: So you're adopting the  
25 proposed rule changes, with the order to come later.

1 STATE OF NEW MEXICO  
2 COUNTY OF BERNALILLO  
3

4 CERTIFICATE OF COURT REPORTER

5 I, MARY C. HANKINS, Certified Court  
6 Reporter, New Mexico Certified Court Reporter No. 20,  
7 and Registered Professional Reporter, do hereby certify  
8 that I reported the foregoing proceedings in  
9 stenographic shorthand and that the foregoing pages are  
10 a true and correct transcript of those proceedings that  
11 were reduced to printed form by me to the best of my  
12 ability.

13 I FURTHER CERTIFY that the Reporter's  
14 Record of the proceedings truly and accurately reflects  
15 the exhibits, if any, offered by the respective parties.

16 I FURTHER CERTIFY that I am neither  
17 employed by nor related to any of the parties or  
18 attorneys in this case and that I have no interest in  
19 the final disposition of this case.

20 DATED THIS 28th day of August 2018.  
21

22  
23 MARY C. HANKINS, CCR, RPR  
24 Certified Court Reporter  
25 New Mexico CCR No. 20  
Date of CCR Expiration: 12/31/2018  
Paul Baca Professional Court Reporters

1 COMMISSIONER BALCH: Order to come later.  
2 Motion to adopt the proposed rule changes  
3 as moved.

4 COMMISSIONER MARTIN: Second.

5 CHAIRWOMAN RILEY: Okay. Can I have a  
6 raise of hands those that are in favor?

7 (Ayes are unanimous.)

8 CHAIRWOMAN RILEY: Opposed?

9 There is no opposition, so this passes.

10 COMMISSIONER BALCH: Hold on. So if it  
11 comes back before we sign, we can still make changes?  
12 It's happened before.

13 MR. BRANCARD: Right.

14 (Case Number 16078 concludes, 1:40 p.m.)  
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