STATE OF NEW MEXICO
COMMISSIONER OF PUBLIC LANDS

IN THE MATTER OF PROPOSED AMENDMENT TO 19.2.100.23 NMAC (FINANCIAL ASSURANCE)

May 26, 2026

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I submit this comment as the Executive Director of the Independent Petroleum Association of New Mexico in opposition to the proposed amendment to 19.2.100.23 NMAC promulgated by the Commissioner of Public Lands on April 7, 2026 (the "Proposed Rule"). The Independent Petroleum Association of New Mexico ("IPANM") is a trade association representing independent oil and gas producers who operate throughout the State of New Mexico, including on state trust lands administered by the New Mexico State Land Office. This comment is made on behalf of IPANM and its members in opposition to the Proposed Rule, which replaces the existing surety framework governing surface damage bonds for state oil and gas leases with a dramatically expanded regime that imposes a minimum bond of $150,000 per lease—**a 15x increase**—with open-ended "heightened" levels set by the Commissioner's unfettered discretion, and extensive new annual reporting obligations. IPANM solicited and received detailed comments from member operators across a range of company sizes and lease portfolios. The feedback and real-world concerns form the basis of my comments, combined with my experience in negotiations with the Commissioner and the State Land Office over the past decade. The purpose of this comment is to present the practical effects of the Proposed Rule on IPANM's membership and address not only why the Proposed Rule exceeds the

Commissioner's authority, but also how the Proposed Rule is economically destructive, unwarranted, and unworkable.

I agree with and join in all the comments that I relay below, but want to be clear that every substantive concern raised in this testimony was also raised independently by IPANM members who will be directly affected by the Proposed Rule upon adoption as it is now drafted. These collected insights are not abstract or hypothetical objections but instead reflect the operational and financial realities of companies that produce oil and gas on State Trust Lands, pay royalties to the State Land Office, and employ New Mexicans in communities across the state. IPANM supports the responsible use and stewardship of state trust lands and the Permanent Fund for this generation and the next.

I. INTRODUCTION AND HISTORY OF BONDING PROPOSALS

The Proposed Rule does not arrive in a vacuum or a blank slate. The ecosystem of the oil and gas industry in New Mexico is layered, checker-boarded, and complex—complexity which has only increased over the past century of development. While navigating and balancing private, federal, and state interests, laws, and regulations is a challenge, those same dynamics have also put New Mexico at the forefront of energy development, the #2 producer for oil and #3 producer for gas, making New Mexico an outsized player in maintaining the United States' energy independence. I have been at the table for IPANM and with the smaller producers and operators in the state during the Commissioner's repeated lobbying efforts for increased bonding authority. IPANM, among others, participated in the thirteen-plus stakeholder sessions that preceded House Bill 133, and grew just as frustrated as every recommendation was rejected and every concern ignored. HB133 died before it reached the Senate, following a similar fate as

SB164 the year prior. In 2024, both HB48 & SB24 to increase state lease royalty rates stalled in the Senate. In 2025, a suite of proposed reforms[1] were rejected by the Legislature. This is not to say that New Mexico's elected representatives are unwilling to act: in addition to increasing royalty rates for certain state leases last year, in the 2026 Legislative session, HB80 passed both houses unanimously and corrected course by re-allocating the Oil and Gas Conservation Tax to the Reclamation Fund, predicted to capture $1 billion over the next decade. But against this consistent messaging across multiple sessions of a Democrat-controlled Legislature, a consortium of environmental organization still proposed a rulemaking to increase per-well plugging bonds to $150,000, a rule which is still pending deliberation and decision by the Oil Conservation Commission as of the date of this Comment's submission. Next, in the middle of that process, the Commissioner released her initial draft of the Proposed Rule, effectively duplicating the proposed plugging bond.

IPANM attended and participated in the four (4) Stakeholder Sessions held around the state on the Proposed Rule in Fall 2025. IPANM submitted its own redlines for the Commissioner to consider and joined others proposed by the New Mexico Oil And Gas Association and explicitly requested further discussion.[2] A quick comparison shows that

[1] HB34, HB222, HB257, HB258, HB259, HB403, HB481, HB538, HB 581, SB178 all died. Of note, HB257 addressed transfer of marginal wells—an identified concern in the Proposed Rule—died in its first committee hearing in the House Energy, Environment, and Natural Resources Committee, but SB23 was signed into law amending the Development Lease Form to a royalty rate of not less than 1/5th, not more than 1/4th in restricted districts. *See* https://www.nmlegis.gov/Legislation/BillFinder/Number ; *see also* N.M. Laws 2025, Chapter 137, § 1 (codified at NMSA 1978, §19-10-4.3, ¶¶ 1 & 2).

[2] *See* Supplemental Key Concerns from IPANM (January 5, 2026); IPANM and NMOGA Proposed Changes to 19.2.100.23 (January 5, 2026), attached as combined **Exhibit 1**.

very few changes were given serious consideration, much less accepted.[3] IPANM's key concerns included:

(1) The $150,000 minimum lease bond failed to account for lease acreage or development and provided no flexibility or consideration of a lessee's compliance history or good standing;

(2) Because leases and wells undergo several cycles of development, the "Heightened" requirements targeting the age of an asset alone is inexact and unfair. Further, the "Heightened" requirement will also hinder traditional ways of extending the life of well—reworking, recompletion, or converting to an injector. This is in direct conflict with the Well Repurposing Act (§§71-9A-1 et seq. NMSA (2025)) which encourages use of low producing wells for non-traditional uses such as geothermal and batteries.

(3) The Proposed Rule ignores the current landscape of operations on state trust lands, where the Commissioner's own recording policy has lost track of the divisions and assignments of operating rights which will complicate bonding responsibility, reporting, and enforcement.

(4) Although the waiver for no service occupancy is retained, the Proposed Rule makes it subject to Commissioner discretion, infecting application of the rule with uncertainty

(5) The anticipated cumulative, duplicate financial burden for lessees and operators under the OCC's new rule and the SLO Proposed Rule will be significant for those able to comply, and affects small and mid-sized operators disproportionately.

(6) The duplication of bonding and reporting requirements, including for right-of-way leases and business leases, raises questions about efficiency, fairness, and the Commissioner's unauthorized entry and overlap into the Oil Conservation Commission and Oil Conservation Division's sphere of operational regulation.

In its January 2026 submission, IPANM specifically requested that the Commissioner consider a single-lease surface damage bond of $75,000, and a tiered blanket surface damage bond structure ranging from $50,000 per lease (2-9 leases) to $30,000 per lease (50+ leases), levels far more in line with the surface reclamation estimates established

[3] *Compare* Ex. 1 to Final Rule circulated April 7, 2026, attached as **Exhibit 2**; *see also* Draft Oil and Gas Bonding Rule, State Land Office, https://www.nmstatelands.org/bonding/ (last accessed May 22, 2026), attached as **Exhibit 3** ("In developing the proposed rule, the NMSLO considered the comments received on the pre-publication discussion draft during the stakeholder group meetings.").

under the reports the Commissioner has produced in support of the proposed rule.[4] IPANM acknowledges that the final Proposed Rule increased the inactive well production threshold for Heightened FA from 100 BOE to 250 BOE, incorporated an additional period of 90 days for compliance for operators correcting conditions, limited asset retirement plan reporting to Heightened FA Lessees, introduced a bonding cap (albeit at $40 million, a **1600x** increase from current State MegaBond levels[5]), and somewhat clarified bonding under Communitization Agreements.[6] While those modifications may ease the pain for some of the largest operators and lessees in the state, for the majority of independent and smaller companies, are insignificant.

Because the Commissioner has (i) declined to publish her rationale for the Proposed Rule,[7] (ii) yet to respond to fully respond to public records requests submitted by both

[4] *See* Legislative Finance Committee Policy Spotlight: Orphan Wells (June 24, 2025) (evaluating surface reclamation and remediation cost data from OCD and reporting costs as ranging from $23,000 to $40,000), attached as **Exhibit 4,** produced in SLO Response to IPANM Public Records Request on May 3, 2026, attached as **Exhibit 5**..

[5] *Compare* Ex. 2 at 19.2.100.23(C)(4), *to* SLO Bond forms, attached collectively as **Exhibit 6**.

[6] *See* Ex. 2 at 19.2.100.23(I)(5) (adding a limited exception to prevent cancellation of leases committed to Communitization Agreements "at the commissioner's discretion" by acceptance of FA posted by operator *provided* the FA cover the entire lease). What this new "in lieu" exception leaves out is the procedure by which the CA operator is given any notice of cancellation or FA claim because the Proposed Rule is drafted to only require mailing, not delivery, and only to the lessee of record at the lessee's last address of record on file with the commisisoner. *See id.* at 19.2.100.23(J) (proof of receipt not required).

[7] Notwithstanding an April 8, 2026 Press Release available on the SLO website in which the Commissioner is quoted as follows:

> "For too long, New Mexicans have been exposed to unnecessary financial liability because existing bonding levels for oil and gas operations are far too low. That stops now," **said Commissioner Garcia Richard**. "The changes we are proposing make our bonding rule much stronger and finally bring it into the twenty-first century. Having an adequate bond in place is simply the cost of doing the business on state lands so we can ensure that the public doesn't have to pick up the tab if a company goes belly up or isn't willing to clean up properly. Since entering office, I have made a point to hold lessees accountable to ensure that New Mexicans are not left holding the bag for environmental cleanup. Strengthening the oil and gas bonding rule is a critical part of those efforts."

NMOGA and IPANM to better understand the basis for the Proposed Rule,[8] and (iii) refused to make the same documents or "pertinent information" available in advance of the Rulemaking Hearing,[9] this Comment necessarily adopts some assumptions regarding the Commissioner's reasoning for the Proposed Rule.

The first assumption is that the Commissioner is under the same mistaken belief or fundamental misunderstanding that abandoned or orphaned wells become the taxpayer or the public's responsibility. At the state level, this is wrong. *See* Note 7, Ex. 7(arguing that bonding provides insurance so that the "public doesn't have to pick up the tab" and "New Mexicans are not left holding the bag"). Every barrel of oil and cubic-foot of gas produced in New Mexico is subject to the Oil and Gas Conservation Tax, which funds the statewide Reclamation Fund that in turns pays for plugging, reclamation, and remediation of orphaned and abandoned wells in the state. Industry pays for clean-up.

The second assumption is that the Commissioner has not engaged with an unrepresented industry the Proposed Rule will unreasonably burden and inherently relies upon: the Surety industry and market. Having recently heard from surety experts during the Oil Conservation Commission Rulemaking,[10] it is forecasted that in an already tight, difficult

available at https://www.nmstatelands.org/2026/04/08/commissioner-garcia-richard-proposes-stronger-financial-protections-for-state-lands/ (last accessed May 23, 2026) (emphasis in original), attached as **Exhibit 7**.

[8] *See* Public Records Requests submitted by IPANM, Ex. 5, and Public Records Request submitted by NMOGA to the State Land Office Records Custodian on April 20, 2026 and April 27, 2026, and attached as **Exhibit 8**.

[9] *See* NMAC 19.2.16.11 ("At the hearing, all interested persons shall have the opportunity to review all documents or other pertinent information prepared in advance of the hearing."); *see also* Joint Correspondence regarding hearing procedures, attached as **Exhibit 9**.

[10] *See* Direct, Rebuttal and Surrebuttal Testimony of Douglas Emerick and Trevor Gilstrap in Case No., 24683, and Transcript Days 8 and 11 in Case No. 24683, attached as **Exhibit 10**.

market, sureties will likely exit New Mexico along with operators and lessees who can no longer survive under increasing collateral and premium requirements.[11]

The third and final assumption is that the Commissioner has interpreted her limited authority[12]—as carte blanche to ignore the plain directives of the Legislature. This is more of an observation than an assumption because in practice the Commissioner has elected to simply read out five (5) express limitations to her bonding authority: (i) the surface damage bond applies to oil and gas leases on state trust lands with private surface purchasers and lessees, (ii) the condition triggering the requirement for a bond is the commencement of development or operations on the surface premises, note mere lease issuance, (iii) the bond may be posted by the lessee *or* the operator, (iv) the bond runs to

[11] *See* Comment of Julie Alleyne, Surety and Fidelity Association of America in Case No. 24683, attached as **Exhibit 11**. The Surety and Fidelity Association of America is a nonpartisan, nonprofit association that represents over 450 surety and fidelity companies who collectively are responsible for 98% of the public and private bonds in the United States.

[12] *See* Enabling Act of 1910; N.M. Const.Art. XIII & XXIV; NMSA 1978, § 19-10-26 reads (emphasis and notation added):

> " **[i]State lands sold heretofore, or which may be sold hereafter** on any deferred payment plan **under contract** containing a reservation to the state of the minerals therein contained, may be leased by the state for oil, gas or other mineral development or exploitation, as provided by law in the same manner as other state lands.
>
> Provided, that **before** any lessee of minerals on state lands so sold shall **[ii] commence development or operations** thereon **[iii] such lessee or the operator** (being any third party conducting exploratory or development operations authorized by the lessee within the authority granted to the lessee under the provisions of Section 19-10-13 NMSA 1978) shall execute and file with the commissioner of public lands a good and sufficient bond or undertaking in an amount to be fixed by the commissioner, but not less than two thousand dollars ($2,000), in favor of the state of New Mexico [**iv] for the use and benefit of the purchaser holding purchase contract or deed to such lands** on which such development is about to be commenced, his grantees or successors in interest **[v] to secure the payment for such damage to the livestock range, water, crops or tangible improvements on such lands as may be suffered by such purchaser or his successors in interest by reason of such development, use and occupation** of such lands by such lessee.
>
> And provided further, that if any such purchaser shall file with the commissioner of public lands a waiver duly executed and acknowledged by him of his right to require such bond, such development, occupation and use of the lands by a mineral lessee may be permitted without the bond herein required."

the benefit of the private surface owner (the "purchaser"), and (v) bond serves to secure payment for damages to livestock range, water, crops or tangible improvements–not plugging, remediation and reclamation of wells. Why so many departures from the law? The SLO is faced with dwindling high value tracts to lease.[13] The above approach in looks designed to cancel existing leases on an unlawful basis and extract higher royalty rates and additional bonus money by creating the opportunity lease the same lands on new terms.

II. LESSEE AND OPERATOR CONCERNS WITH PROPOSED RULE

This Comment will address the following concerns raised through IPANM member working groups, feedback questionnaires, and the stakeholder discussion groups: (A) the mistaken basis of $150,000 minimum bond and its financial impact on member operators; (**B**) the heightened financial assurance provisions and the problem of uncapped Commissioner discretion; (**C**) implementation concerns with split leasing the problem of liability imposed on non-operating lessees of record; (**D**) the duplicative nature of the Proposed Rule's bonding requirements relative to existing OCD and BLM financial assurance; (**E**) how the Proposed Rule compares to bonding requirements in other producing states; (**F**) the economics of low-producing wells and the royalty implications for the state trust; (**G**) the annual reporting requirements and associated administrative burdens and compliance consequences, and (**H**) how the Proposed Rule increases the burden on responsible operators without capturing the bad actors of concern.

[13] *See* "New Mexico state land office seeks higher oil and gas royalties again", New Mexico Sun (Nov. 5, 2024) (according to Joey Keefe, spokesperson for the State Land Office, "[n]early all high-value land has been leased out."); attached as **Exhibit 12** *see also* ONGARD SLO Reports, Oil & Gas Open Acreage, http://web.slo.state.nm.us/Applications/OilGasOpenAcreage/SearchOilGasOpenAcreage.aspx(last accessed May 22, 2026) (of the 2 million mineral acres of state trust lands in Eddy and Lea County, just under 170,000 acres remain, or 16%, compiled using open acreage search from 19S-34S and 19E-39E),.

A. NMAC 19.2.100.23(A)(1): $150,000 Single Lease Surface Damage Bond

(1) <u>There is no evidence which supports damages on a Lease Basis to Livestock Range, Water and Crops of $150,000</u>

The Commissioner has proposed a single-lease surface damage bond of "not less than" $150,000 for "damage to state trust land," which is defined under the rule to include without limitation: plugging of wells, remediation of spills and contamination, reclamation of surface disturbance and "damage to mineral resources and reservoirs." Setting aside the Commissioner's authority to expand "surface damages" from range, water, crops in Section 19-10-26 to the above categories, there is no basis to assert that the arbitrary $150,000 reflects the average or median cost of surface reclamation. Admittedly, $150,000 is a popular number. Environmental Applicants in the OCC Rulemaking, Case No. 24683, picked $150,000 based on the 2025 LFC Report for OCD orphan well plugging costs of $163,000.[14] According to the Applicants in that matter (without supporting operator testimony or economic analysis on the issue), $150,000 represented the "sweet spot" to incentivize operators to plug rather than abandon wells because of the potential return of financial assurance. However, at current bonding rates, 95% of wells are plugged by operators already, which undermines the "incentive" theory substantially.[15]

[14] *See Revised Application for Rulemaking* filed April 25, 2025 in Case No. 24683 __; *but see also* LFC Report, Ex. 4 (criticism of OCD oversight of Reclamation Fund expenditures); **Exhibit 13**___ (analysis of recently plugged orphaned wells by OCD based on invoices produced in response to public records request); **Exhibit 14** (collected plugging costs from operators); **Exhibit 15** (compiling and analyzing reported plugging costs from OCD Master Orphan Well Spreadsheet, OCD Exhibit 17 in Case No. 24683).

[15] *See* IPANM Closing Submissions file April 3, 2026 in Case No. 24683, attached as **Exhibit 16,** at FOF 39 & 55); *see also* Matthew D. Merrill, et al, USGS Energy Resources Program, *Analysis of the United States Documented Unplugged Orphaned Oil and Gas Well Dataset* Data Report 1167, v 1.1 (April 2023) (reporting orphaning rate of wells at 1-2%), attached as **Exhibit 17**.

OCD's plugging bond for wells under the Oil and Gas Act, NMSA 1978, § 70-2-14, is set at an amount determined to "reasonably pay the cost of plugging" the well it covers. Damages to other surface improvements are excluded.[16] The same LFC Report examined actual and estimated reclamation and remediation costs reported by OCD and found those to range from $23,000 to $40,000.[17] Where the LFC Report used actual New Mexico data, the 2021 CFAR and Vertex reports relied on estimates for work performed in Canada and North Dakota.[18]

On the other hand, the April 2024 Bureau of Land Management Final Rule on individual lease bonds for federal oil and gas leases also picked $150,000 as its benchmark.[19] Thus,

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[16] *See* Public Comment of NMOGA filed May 16, 2026 (cautioning against overlap between OCD plugging authority and SLO surface damages bond); *see also* NMAC 19.15.8.9 "Financial Assurance for **Well Plugging**"; *id.* 19.15.8.9(B)("A financial assurance shall be conditioned for well plugging and abandonment and location restoration and remediation only, and **not to secure payment for damages to livestock, range, crops or tangible improvements or any other purpose**.")

[17] *See* LFC Report, Ex. 4, at 17 (reporting that the average per-site costs for remediation and reclamation to be approximately $40,000 per well, and for the 121 inspected well sites estimates cost at an average of $23,000 per site); *see also* OCD Exhibit 17, Master Orphan Well Spreadsheet in Case No. 24683 (for six wells with environmental remediation and reclamation complete, total environmental expenditures averaged $36,722 per well, for 76 inspected wells estimated total environmental cost of $23,551per well)..

[18] The 2021 Vertex Study based its estimate for surface reclamation costs considering the following variables: age of well by drilling date, well type, and basin, but relied on a majority of wells costs developed from historical or typical estimates for work in Canada and North Dakota. The 2021 CFAR Study reported the range for state wells as $72,100 to $103,100 i and $28,676 to $195,698 for all wells. *See* Vertex Resources Services, Inc. *New Mexico Oil and Gas Liability Assessment* at 15, 26-34, Table 23 & Table 24 (March 2021) (IFR Rev 4) (estimating surface reclamation for oil, gas, and salt water disposal wells on state lands to range from $27,195.88 to $225, 285.14 per well depending on location and type, but the same per well averages for "All Wells in New Mexico" range of $29,712.22 to $195,698.03), attached as **Exhibit 18**.*See* Center for Applied Research, Inc., *An Analysis of the Adequacy of Financial Assurance Requirements for Oil and Gas Infrastructure Located on State Trust and Private Lands in New Mexico* at 3 & Table 2 (April 30, 2021); *see also id. at* 11–12 & Table 9 (citing source as 2021 Vertex Study and NMOCD 2020), attached as **Exhibit 19**

[19] *See* 43 C.F.R. §3104.1; BLM, "Fluid Mineral Leases and Leasing Process," 89 Fed. Reg. 30,916 (April 23, 2024), https://www.federalregister.gov/documents/2024/04/23/2024-08138/fluid-mineral-leases-and-leasing-process, attached as **Exhibit 20**. In September 2025, after a review directed by Executive Order 14154 and Secretarial Order 3418,BLM proposed rescinding and repealing the 2024 rule, which also

at first glance there would appear to be symmetry between the Commissioner's Proposed Rule, which increases single lease bonds from $10,000 to $150,000, and the BLM Final Rule which adopted the same. However, the federal lease bond under the 1920 Mineral Leasing Act is to provide "adequate" bonding before surface-disturbing activities to ensure complete and timely reclamation of the lease tract, land, and surface waters affected by lease operations, to include well plugging and abandonment. 30 U.S.C. §226(g). The Single Lease Bond rationale promulgated by the BLM in support of $150,000,[20] incorporated analysis by the Government Accountability Office on bonding and reclamation and reviewed the average and median number of wells per lease.[21] In short, the BLM $150,000 per-lease bond is driven by well plugging, not surface damage.[22] By evaluating 59 proofs of claim filed by the BLM in connection with operator bankruptcies covering 8,664 wellsites,[23] the 2019 GAO report observed a bimodal distribution of plugging and reclamation costs, with 25% of estimates less than $20,000 and 75% less

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includes other updates to oil and gas leasing that were set by the IRA. The effective date has been postponed to September 2027 for now.

[20] *See* 89 Fed. Reg. at 30,934, https://www.federalregister.gov/d/2023-14287/p-253 (last accessed May 22, 2026)..

[21] *See* GAO 19-615, "OIL AND GAS—Bureau of Land Management Should Address Risk from Insufficient Bonds to Reclaim Wells" (Sept. 2019), attached as **Exhibit 21**

[22] 89 Fed. Reg at 30,934("To determine the appropriate minimum lease bond amount, the BLM reviewed its existing lease bonds and the number of wells tied to the lease bonds."). The process disregarded leases where no activity had occurred and yielded 369 single lease bonds that covered existing wells or liability out of 933 single lease bonds on file nationwide. Of those 369 leases, the average number of wells per lease was 14, but the median was one well per lease.

[23] The source of data for the GAO analysis may lend itself to bias, because the operator or lessee undergoing bankruptcy may or may not be actively monitoring, maintaining, or operating its wells. In line with the testimony of OCD Deputy Director Brandon Powell, the kinds and condition of orphan wells that OCD takes over and plugs are much different and do not accurately reflect industry costs where wells are timely plugged and abandoned. *See* IPANM Closing Submission, FOF 39 (April 3, 2026), Ex. 16.

than $145,000. The BLM adopted an average of $71,000 per well for plugging and reclamation costs and set the lease bond sufficient to plug and reclaim two wells based on its wells-per-lease analysis and observed variability in costs. However, the 2024 BLM rule also accounted for and considered inflation. Set in 1960, the BLM's $10,000 single-lease bond is the equivalent of $100,105 in current dollars. *Id.* In contrast, the SLO adopted a $10,000 single lease surface damage bond and $20,000 blanket bond in 1985, which would be $37,385 and $74,770 today. After adjusting for inflation, the BLM increased the actual cost of a single-lease bond by a factor of 0.3 where the Commissioner seeks to impose 4x and 535x multipliers under the Proposed Rule.

While the Commissioner has not yet promulgated a similar analysis as the BLM in support of the Proposed Rule, there are several sources of publicly-available data to construct a rough parallel.[24] Looking at the top ten producing counties in New Mexico yields the following average wells per state lease, without accounting for the surface ownership restriction under Section 19-10-26, possible communitization with federal leases, or examining median wells per lease: Lea (2.5 state wells/ state lease), Eddy (2.4); San Juan (1.4); Rio Arriba (4.3), Sandoval (1.2), Chaves (2.0), Roosevelt (3.8), Harding (0.5); Union (0.5). Thus, current estimates of surface reclamation costs reported by the LFC Report of $23,000-$40,000 support single lease surface damage bonds covering 1-2 wells in in

[24] *See* **Exhibit 22**, State Lease and State Wells. Numbers of active oil and gas leases by county obtained from ONGARD, SLO Reports, "Active Lease by County," http://web.slo.state.nm.us/Applications/NewActiveLease/SearchByCounty.aspx (last accessed May 22, 2026); Numbers of active wells, all types, obtained from Oil Conservation Division Permitting, Well Search, https://wwwapps.emnrd.nm.gov/ocd/ocdpermitting/Data/Wells.aspx (last access May 22, 2026); Production by county reported by New Mexico Tech, Petroleum Recovery Research Center, Go-Tech Website, https://octane.nmt.edu/gotech/Petroleum_Data/allwells.aspx (last accessed May 2, 2026).

the range of $50,000-$75,000 for Covered Leases as defined in the NMOGA's Redline to Rule 19.2.100.23(A)(1).[25]

(2) Financial Impact of a $150,000 Single-Lease Surface Damage Bond with a $40 Million Cap on Independent Operators

The reported impact is severe and, in several cases, potentially fatal to continued operations on state trust lands. One mid-sized operator calculated that its total bonding obligation would increase to approximately $10,950,000 under the Proposed Rule, assuming it must carry bonds for all leases in which it is lessee of record, including almost 40 leases where it operates no active wells. That operator and lessee anticipates in the current deteriorating surety market that it would be forced to use letters of credit rather than surety bond, the $11 million in bonding locks up working capital at an estimated carrying cost of approximately $325,000 per year in interest. This would directly limit the company's ability to expand operations or acquire new wells in New Mexico. The serious constraints on operating capital will affect more than just the lessee. For years, the State Land Office has relied on industry dollars and "compelled" industry to plug abandoned state wells, crowing about the "forced plugging" of 400, 500, 700 – now 840[26] wells. **There is no separate pot of money**. The $11 million LOC that one lessee must now carry under

[25] Alternately, the Commissioner and SLO have recorded Transcript of Judgement in several of their 40 enforcement cases. In Lea County, see **Exhibit 23**, the amounts of judgments reported in those cases, excluding post-judgment statutory interest, are: $9,094, $9,141, $3,150, $5,142,151 (against Northern Pacific Oil and Gas, Inc. a known defunct operator), $60,000; $7,492,229.85 (against Smith & Marrs, Inc, same).

[26] See note 7*, supra* ("Commissioner Garcia Richard launched the Accountability & Enforcement program within the State Land Office in 2020. Since then, the program has compelled companies to plug over 840 abandoned oil and gas wells on state lands, saving New Mexicans at least $84 million in cleanup costs.")

the Proposed Rule at the rate of $325,000 per year simultaneously reduces that operator's capacity to comply with SLO forced plugging demands by the same amount. At industry and BLM estimates, that is 4 to 5 wells per year. Another operator with approximately 400 state leases, calculated that its prior $25,000 blanket bond would increase to approximately $10,000,000—a 400-fold increase — on top of existing bonds already in place with the Oil Conservation Division. For the same operator and many others, the past and existing negative gas prices have made continued economical operation difficult in the interim. The likely result of the Proposed Rule is bankruptcy or surrender wells and leases to the State. An operator holding 50 state leases reported that the bonding increase "creates a tremendous amount of uncertainty and pressure," noting that low natural gas prices in the Permian Basin already strain the economics of its natural gas wells and that the proposed requirements would reduce future investment and likely cause job losses. The specter of "Heightened FA" only magnifies those pressures, where a lessee/operator has duty as a responsible, prudent party to the State, the Trust Beneficiaries, and other interest owners in the well to produce wells in an economically beneficial manner.[27] Here, even the smallest member is affected: one single-state lessee with no existing wells and no surface disturbance will still be required to post a $150,000 surface damage bond before any wells are drilled and at a point when

[27] *Compare to* NMSA 1978, § 19-10-6 (A) (providing that commissioner may shut in wells for up to 2 years because of several reduction in price because "beneficiaries of state trust lands are better served if oil wells are allowed to be temporarily shut in **rather than produced as a low price**…"); *see also* NMAC 19.2.100.71; *see also* Waha Hub Natural Gas Pricing, Exhibit 24, *and* Chris Newman, "Permian Natural Gas Prices Surpass 2025's Negative Run," Natural Gas Intelligence (May 11, 2026); available at: https://naturalgasintel.com/news/permian-natural-gas-prices-surpass-2024s-negative-run/ (last accessed May 25 2026)

there is no corresponding risk to the State. This mismatch demonstrates just one more aspect of the rule that disproportionately affects smaller operator/lessees.

Coupled with a surety market that is unavailable for small oil and gas operators—one member with a strong compliance and production history reported increasing difficulty finding insurance companies willing to underwrite bonds—the FA increases under the Proposed Rule will only make this problem worse. Thus, lessee/operators face rising premiums and 50% collateral requirements for surety bonds versus cash deposits or irrevocable letters of credit. All options remove working capital that would otherwise be used to maintain and develop wells. For example, a LOC at 10% face value interest rates will cost $15,000 per year for the remaining life of the well. A well producing at or near the Proposed Rule's 250-barrel Heightened FA trigger, those carrying costs likely consume any remaining profit-margin making continued operation economically irrational. Lessees and operators are left with little choice but to plug or abandon the well.

The above effects will likely accelerate an already shrinking pool of operators in the state.[28] The same caution was raised during the OCC rulemaking, pointing out how small operators have been unable to continue in Colorado in the wake of FA reform and operations have consolidated into a handful of companies. It is worth pointing out that companies like Ridgeway Arizona and Cano Petro were both sufficiently bonded prior to

[28] *See* **Exhibit 25** (graphs of declining active operators in New Mexico, from 694 in 2000 to 390 in 2025); *but see also* OCD Exhibit 33 in Case No. 24683 (over 100 registered operators in New Mexico that are not reporting production and likely inactive).

bankruptcy, yet now account for __ % of orphan wells on the OCD Master Orphan Well Spreadsheet.[29]

B. 19.2.100.23(B)(1)–(4); HEIGHTENED FA AND UNLIMITED COMMISSIONER DISCRETION

The Heightened FA provisions generated alarm across all size categories of member operators. Their core objection is that Sections B(1), B(2), and B(4) of the Proposed Rule vest the Commissioner with unlimited discretion to demand additional bonding of unspecified amounts, with no rational, cost-based limit. One mid-size operator stated that the absence of any cap is "even more alarming" than the base minimum and said the prospect of unbounded additional bonding on top of the $150,000 minimum "makes our outlook very bleak in the State of New Mexico." Another operator pointed to the Commissioner's uncapped discretion as leading to planning uncertainty that makes investment in New Mexico less attractive. Members identified each of the three independent triggers in Sections B(1), B(2), and B(4) as providing cumulative authority to stack unlimited additional bonding on the same lease, calling the scheme a mechanism for the SLO to impose bonds "of unlimited amounts" without any rational cost basis. There are no limits on the number of times heightened bonding can be increased, on the amounts of permitted increases, the factors to be considered, or any other guardrails. The Proposed Rule's vagueness on this point is also a due process concern: operators cannot plan for investment or development without the meaningful ability to predict whether or how much additional bonding they may face on any given lease, especially when the determination may be driven by well operators the Lessee has no control over.

[29] *See* Written Testimony of Jim Winchester and , Transcript Day 11, in Case No. 24683, attached as **Exhibit 26**.

Indeed the Proposed Rule does not even provide the Lessee to be given notice or opportunity be heard if Heightened FA is being considered. A regulation that gives no guidance on what standard will be applied, what evidence will trigger Heightened FA, or what amount will be required should be considered void for vagueness when the consequence of non-compliance is lease cancellation.

C. 19.2.100.23(B), (D) & (I) SPLIT LEASE COMPLICATIONS FOR NON-OPERATING LESSEES OF RECORD AND OPERATORS

This is one of the most structurally inequitable features of the Proposed Rule, and it was raised forcefully by many members in written feedback and during working group calls. For one lessee of record, it faces liability on about 40 leases where it operates no active wells and has no operational control or day-to-day responsibility. But the Proposed Rule imposes full-cost bonding obligations on the lessee for the conduct of those operators, even though the lessee has no ability to manage or mitigate the associated risk. The structure of the Proposed Rule "creates a material disconnect between liability and control, and could result in significant financial exposure for non-operating lessees without a corresponding ability to mitigate that risk." This disincentivizes responsible operation by shifting liability to the lessee for surface reclamation, a pseudo-indemnification that runs contrary to New Mexico public policy. The practical consequences of this disconnect are not hypothetical. All members are familiar with SLO forced plugging requests. One was required to plug state wells at a cost of approximately $50,000, with additional remediation pending at an estimated total cost of $75,000 to $100,000, after the actual operator declared bankruptcy. The same member faces similar future requests for another six wells and potentially all wells on its 40 state leases. Even the single-lease lessee has similar experience with federal wells, P&Aing a well it did not operate and had

no ownership interest in, solely because it held record title, at a cost of approximately $50,000.

Notably, the only carve out for split lease complexities is under the Proposed Rule's FA claim process, 19.2.100.23(I)(4), where the operator under a Communitization Agreement may step in to provide increased FA. However, with the Proposed Rule's mailing-only notice procedures, it is unlikely that a CA operator in this narrow scenario would be put on notice. There are alternate parts of the Proposed Rule that contemplate "heightened FA" lease postings, but it is unclear how that will be done, how soon, and whether with sufficient time for any lessee to comply. Current practice of the SLO to post batch PDFs of lease and CA terminations makes it time consuming and burdensome to backtrack from the SLO database, and match leases to cancellation notices.[30] Moreover, the temporal disconnect between when notices are mailed and when the same are posted publicly impedes proactive operators and disregards the express language of the law and regulation: that lessees **or** operators may post surface damage bonds.

The implementation schedule for both bonding and reporting under the Proposed Rule does not account for the fractionated ownership in state leases and the time and administrative costs in assembling that information. Put simply, there is no single, comprehensive data clearinghouses by which a lessee can ascertain all that must be reported under the Proposed Rule, or for a lessee or operator to determine whether

[30] State Lease Database, https://secure.slo.state.nm.us/Applications/SLOConnect/LandDetails/LandDetails; *see also* "Lease Termination" and "Com Termination" Notices posted at https://www.nmstatelands.org/divisions/oil-gas-and-minerals/oil-and-gas/notices/ (last accessed May 25, 2026). Moreover, the publication date by the SLO typically lags several weeks to a month.

Heightened FA will apply.[31] As an example, the potential source of information and procedure for just the first—and easiest— of six (6) separate reporting requirements follows:

19.2.100.23.(D)(1)(a) Lessee Reporting Obligations	**Lessee Procedure**
(a) inventory of active and inactive wells on the lease, with reference to well name, API number, operator, date of last production, total reported oil production (in BBLs) and gas production (in BOE) reported during the previous calendar year, and whether the well is part of an oil and gas unit;	1. Search lease on ONGARD, SLO Reports, "Wells Related to Leases" but note posted disclaimer: "***NMSLO makes no representations or warranties about the accuracy of the data."* 2. Because of disclaimer, search wells by location (surface and bottomhole) using OCD Permitting Well Search by location and cross-reference results. May require review of individual well files. 3. Tabulate already reported production to OCD from January to December for each individual well, but December production not available until March of following year. Convert oil and gas production levels into BOE and sum per well. 4. Review well characteristics and categorize as active or "inactive" based on both OCD and SLO definitions and regulations. 5. Regarding unit determination, review BLM files and county records for Unit Agreements, Participating Areas, and notices. To the extent "unit" includes Communitized Areas, review same from State Land Office. Likely obtain external review for determination of unit well pursuant to Unit Agreement and Unit Operating Agreement.

D. THE PROPOSED RULE DOUBLE-BONDS THE SAME OBLIGATIONS

This was one of the most consistent documented concerns across all member comments. One member calculated that for a single inactive well on a state trust land lease, the Proposed Rule could layer up to four separate financial assurance obligations: (1) OCD blanket bonding already in place; (2) OCD inactive well bonding; (3) HB80 reclamation

[31] *See* Proposed Rule, Ex. 2, at 19.2.100.23(B)(1) & (2) (Heightened FA triggered by any inactive well on premises, any well producing less than 250 BOE per year, any unremediated release, FA claims, lawsuit, or out of compliance with ACO or final order).

funds available for orphaned well plugging; and (4) the Proposed Rule's minimum and heightened FA requirements. That member pointed specifically to the OCD Bond Form's existing language, which already expressly secures plugging, abandonment, remediation, reclamation, restoration, monitoring, and post-closure care — the same obligations the Commissioner purports to bond against under the Proposed Rule. Another characterized the rule as calling for "duplicative bonding with existing NMOCD and BLM requirements." Additionally, several members pointed to the recovery prompted by HB80 to the growing Reclamation Fund which adds another layer of protection for orphaned wells on state trust lands, undercutting the claimed "liability gap" of the 2021 CFAR Report.[32] This is not just an economic objection — it reflects a fundamental confusion in the Proposed Rule's drafting about what agency has statutory authority over plugging and reclamation obligations. That authority belongs to the Oil Conservation Division under the Oil and Gas Act, NMSA 1978, § 70-2-14. The Commissioner's bonding authority under Section 19-10-26 has always been limited to surface damage compensation, not well plugging. Expanding it to cover plugging and reclamation not only duplicates existing OCD authority but likely conflicts with it.

Further, OCD regulations expressly exclude from plugging FA wells covered by federal bonds. NMAC 19.15.8.9(A). This language was inserted after the 2018 rulemaking that

[32] Separately, I have reviewed the Commissioner's claim that the State is underfunded by $8 billion when it comes to oil and gas decommissioning. One inherent flaw in that statement is that the 2021 CFAR report made no attempt to predict or account for the abandonment rate—instead the 2021 CFAR Report merely tabulated the scenario where, overnight, every responsible operator and lessee disappeared from the face of the Earth and the Commissioner was left to plug, abandon, remediated and reclaim all 14,000 state wells, every mile of pipeline and decommission every piece of associated well equipment. More accurately, the 2025 LFC Report observes that industry historically has plugged 95% of New Mexico wells. While the Proposed Rule may drive operators out of New Mexico and increase orphaned wells and abandoned leases, there is no forecast for a mass extinction event envisioned by the 2021 CFAR report.

increased the blanket bonding cap to $250,000 because the Oil Conservation Commission members were notedly concerned about subjecting the same lessee or operator to double-bonding.[33] There is no such carveout in the OCD regulation for wells covered by state lease bonds. Moreover, NMAC 19.15.8.9(B) excludes the very same surface improvement damages covered by Section 19-10-26 and the current NMAC 19.2.100.23.

E. PROPOSED RULE DISCOURAGES INVESTMENT AND DEVELOPMENT ON STATE TRUST LANDS

One member who operates in several states provided a detailed comparison of bonding requirements across the regulatory schemes it interacts with. Oklahoma requires a flat blanket bond of $25,000 covering all wells, with a $50,000 net worth self-bonding alternative, and does not scale with well count. Texas uses a well count-based blanket bond structure ranging from $25,000 for operators with 1 to 10 wells to $250,000 for operators with 100 or more wells. North Dakota's standard single-well bond is $50,000, with multi-well blanket bonds ranging from approximately $100,000 to $150,000. Wyoming historically required approximately $10,000 per well or a $100,000 blanket bond for multi-well operators. Colorado, widely considered the most stringent state system, bases its financial assurance on a case-by-case assessment calibrated to actual plugging, reclamation, and cleanup costs. Even Colorado's risk-based system, which is designed to reflect real liability, is justified by actual cost data — something the Commissioner has not provided for the $150,000 minimum. Most important, the above

[33] *See* OCC Case No. 16078, Deliberations Transcript for July 19 & 20, 2018, and OCC Order R- 14383 entered in Case No. 16078, attached as **Exhibit 27**.

bonds are all plugging and reclamation bonds, not the kind of surface improvement damages bond specific to State Trust Lands.

For states with a substantial percentage of state trust lands and hydrocarbon and mineral development, Wyoming, Utah, and Colorado provide the closest parallels for comparison. "Closest", however, does not mean direct. For example, in the past 15 years Colorado collected what the New Mexico recovers in just over seven months. Utah's annual royalties on state oil and gas leases account for 1.5% of New Mexico State Trust Land revenue. Nevertheless, those three other states present reasonable alternatives to the proposed rule, with single lease bonds ranging from $5,000 to $25,000 and blanket or statewide bonds not exceeding $100,000, even in Colorado.[34]

One member operator with activities in both Texas and New Mexico, confirmed that current SLO bonding requirements alone are roughly comparable to Texas blanket plugging bond levels, but stated that if the Proposed Rule is adopted as written, "it will greatly surpass Texas bonding requirements and will likely make operators reconsider where they do business in the future." I want to be direct about what that means: rigs, jobs, royalty revenues, and severance taxes will move to Texas. This is the market-based, rational response of a capital-constrained industry to a regulatory environment that has become economically prohibitive.

[34] *See* Comparison of State Trust Land Oil and Gas lease bonds, attached as **Exhibit 28**.

Overall, the Proposed Rule purports to increase total FA for surface damage bonds from an existing $33 million[35] to $644,190,000.[36] That increase, however, assumes that every lessee can meet the Commissioner's new rule, along with increases from the Oil Conservation Commission and on federal leases, and assumption that must be qualified based on the member feedback reported in this comment.

F. THE ECONOMICS OF LOW-PRODUCING WELLS AND ROYALTY IMPLICATIONS FOR THE STATE TRUST

The Commissioner's fiduciary duty requires her to protect trust lands from waste and degradation, which is the likely rationale offered for the Proposed Rule. First, waste has a very specific meaning as a term of art under the Oil and Gas Act that should apply equally here. Second, the Commissioner also bears a duty to maximize long-term revenues to the trust beneficiaries. A rule that drives independent producers out of New Mexico, causes premature plugging of wells that were generating royalties, depresses lease bid prices, and deters future investment in state trust acreage is not a protective measure. The 250 BOE threshold for Heightened FA puts a very heavy thumb on the scale of well economics, which may be the Commissioner's intended motive to "force plug" in a new method and create newly terminated and surrendered leases. But for every well plugged, the royalty and associated tax revenue is lost forever along with future potential secondary and tertiary recovery that captures an additional 25-45% of Remaining Oil in Place. Waterfloods and CO2 enhanced recovery projects in the Central Basin Platform recover 25 to 45 percent of original oil in place through carefully managed

[35] *See* ONGARD Oil & Gas Bond Listing, attached as **Exhibit 29** (942 Mega Bonds, 383 Blanket bonds, and 171 single lease bonds totaling $32,900,000)

[36] Applying single and bulk bonding rates to existing 5700 leases results in $664,190,00 total FA demand.

injection and production well patterns. Premature plugging of a single low-producing well in such a pattern can disrupt the entire sweep efficiency of the project, stranding recoverable oil that might otherwise have generated royalties for the State trust for decades. The net result of the Proposed Rule for the Permanent Fund on existing leases is lower revenue, not higher protection.

The collective contribution of New Mexico's low-producing wells to the State economy cannot be ignored or dismissed. Nationally, stripper wells account for 77 percent of all producing oil and gas wells in the United States, and together they produce approximately 10-19 % of total U.S. crude oil output. In New Mexico, marginally producing wells contribute a meaningful share of national production and significant portions of New Mexico's oil and gas portfolio and are not necessarily at end-of-life. Low producing wells are low-risk, high-option value assets that contribute $14 million in tax revenue, 3,160 jobs, and $30 million in royalties in New Mexico. The economic footprint of these wells extends well beyond the wellhead: stripper well operations sustain the field-level employment of pumpers, lease operators, workover crews, chemical treaters, and production technicians — the workforce of Artesia, Hobbs, Roswell, Lovington, and Carlsbad — whose wages circulate through local restaurants, schools, hospitals, and businesses that have no comparable replacement industry. The National Stripper Well Association has estimated that if all U.S. stripper wells were plugged and abandoned, the combined loss in direct production and direct and induced economic effects would total $32.5 billion nationally, with 142,844 jobs eliminated. Premature plugging triggered by an uneconomic bonding obligation does not merely end a marginally producing well — it forecloses all future recovery, strands proved but undeveloped reserves, and

permanently eliminates the royalty stream to the state trust that those reserves would have generated across the remaining productive life of the lease.[37]

G. 19.2.100.23(F) ANNUAL REPORTING REQUIREMENTS

Members raised two principal concerns with the Proposed Rules annual reporting requirements. First, a majority of the reporting specifics are redundant. Production data, well status, spill reporting, and remediation information are already reported to the Oil Conservation Division under existing OCD rules. One member characterized the SLO reporting requirement as calling for "duplicative reporting" of information the State already holds and is easy for anyone to access. Second, and more seriously, the annual report must be certified under penalty of perjury by a person with authority to bind the lessee. In New Mexico, a false statement under oath can constitute a fourth-degree felony carrying up to 18 months imprisonment. Another operator raised this concern directly, questioning whether any reasonable company officer would be willing to accept personal criminal exposure for a good-faith reporting error in an annual report that spans every spill, every violation notice, every civil lawsuit, and every infrastructure item on every lease the company holds. This is not a theoretical concern. Oil and gas operations involve complex, geographically dispersed activities where complete and perfectly accurate reporting across dozens of leases is genuinely difficult. Exposing responsible company officers to felony liability for inadvertent errors will not improve reporting quality — it will deter qualified people from accepting officer positions at smaller companies, degrade reporting quality as companies seek to minimize disclosed information to limit

[37] *See* Testimony of Mike Cantrell on behalf of the National Stripper Well Association; *see also Rebuttal* Testimony of T. Calder Ezzell; Direct and Rebuttal Testimony of Mark Murphy, Demonstrative, Transcript Day 12, Case No. 24683, attached as **Exhibit 30**.

criminal exposure, and impose compliance costs that dwarf the value of the information collected. On those anticipated man-hours, one member predicts that it will have to hire at least one additional full-time employee just to compile and cover the reporting obligations under the Proposed Rule and it would take at least six (6) months to being to assemble the information. The additional ambiguity in whether the reporting requirement applies solely to SLO-lease premises or to all wells the operator holds in New Mexico, could dramatically expand the reporting burden beyond what the Commissioner's statutory authority over trust land operations can support.

H. THE PROPOSED RULE PUNISHES RESPONSIBLE LESSEES FOR THE FAILURES OF A FEW BAD ACTORS

The most consistent theme across all member comments was that the Proposed Rule imposes uniform penalties on responsible parties for the failures of a small number of bad actors, when a targeted, compliance-history-based approach would better serve the State's legitimate interests. One member stated it plainly: "We believe that operators and record title owners with a good history of doing the right thing should not be punished by an across-the-board mandate of increased bonding. If there are operators out there that are walking away from wells, not remediating State lands, have them be subject to increased bonding rules. Do not burden those of us that try to do things the right way with these measures that will only lead to reduced investment, financial loss for both businesses and State Land Office beneficiaries, premature abandonment and job loss in the great state of New Mexico." That is not a self-interested objection to oversight. It is the observation of a responsible operator that the Proposed Rule's flat $150,000 minimum treats a company that has never missed a plugging obligation and has no compliance history with the SLO identically to a company that has abandoned wells and walked away

from remediation obligations. I spent four years at EMNRD and eight years representing independent operators in New Mexico. I can tell the Commissioner that the universe of truly problematic operators — the ones whose conduct motivates this rulemaking — is a small and largely identifiable group. A rule targeted at that group, calibrated to their compliance history and the actual risk their operations present, would accomplish the Commissioner's stated goals without destroying the economics of the responsible independent producers who are the backbone of New Mexico's rural communities and a significant source of royalty revenues to the state trust.

III. CONCLUSION

IPANM's primary position is that the Proposed Rule should be withdrawn in its entirety, because it exceeds the Commissioner's statutory authority and its financial assurance levels have no actuarial or cost-based justification. If the Commissioner determines that some revision to the existing financial assurance framework is warranted, IPANM respectfully suggests that any revised rule: (1) be limited to the surface damage protection authorized by NMSA 1978, Section 19-10-26, without extending into plugging, remediation, and reclamation obligations that belong to the OCD; (2) establish bonding levels based on individual lease and well analysis tied to actual surface disturbance footprint, well count, production history, and comparable plugging costs — not a uniform flat amount; (3) account for the operator's compliance history, providing meaningful relief for operators who have consistently met their plugging and remediation obligations; (4) be calibrated to the current surety market's practical constraints to avoid driving operators to surrender leases and strand recoverable reserves; (5) be coordinated with OCD's

existing financial assurance framework to eliminate duplication; and (6) address the disconnect between bonding liability and operational control by ensuring that record-title lessees with no operational involvement are not required to post financial assurance for risks they cannot manage. IPANM stands ready to participate constructively in a revised rulemaking process that is grounded in these principles.

Date: 5/26/26

JIM WINCHESTER
Executive Director
INDEPENDENT PETROLEUM ASSOCIATION
OF NEW MEXICO

EXHIBIT 1

STATE LAND OFFICE - NEW BONDING DRAFT RULE
SUPPLEMENTAL KEY CONCERNS FROM IPANM *(in addition to the NMOGA/IPANM joint filing)*
Submitted Jan. 5, 2025

Dear Staff of the State Land Office,

Thank you for your input sessions and further consideration of our concerns hereby included in this supplemental submission from IPANM.

Our **General** key concerns which warrant further discussion and consideration, include:

- The **$150,000 minimum bond**, which appears uniform regardless of lease size or acreage, raising issues due to the **diversity in lease sizes** (e.g., 80-acre, 160-acre, full section 640 acres, or split leases).
- There needs to be some reasonable flexibility built-in to this $150,000 minimum bonding amount, including **flexibility for a lower bond if a company is already in good standing with the SLO**.
- **Increasing bonding with age or risk of the assets is both inexact and unfair**. If this is a contingency, then a defined start date would need to be agreed upon and that should not be spud date. Maybe a date at which a recompletion on the lease that extends the useful life, or a new drill on a given lease. Either of these options should "reset" the clock.
- **Split leases with multiple operators** complicate bonding responsibility and enforcement, especially when the record title holder is unclear or absent.
- A **waiver for no service occupancy exists but is subject to commissioner discretion**, making its availability uncertain and a concern for operators.
- Potential **bonding requirements for World War II-era leases**, which may impose significant financial burdens.
- **Additional bonding could be required per well on a lease** due to the timing of OCD's new well bonding increases, potentially doubling the financial impact if multiple wells exist, affecting small and mid-sized operators disproportionately.
- The **duplication of bonding and reporting requirements**, including for right-of-way leases and business leases, raises questions about efficiency and fairness. For example, whether a new lease triggers an additional bond if a right-of-way exists remains unclear.

IPANM believes the proposals put forth in the NMOGA/IPANM consolidated industry submission address a number of the General key concerns raised above, though we believe further discussion is necessary to further convey our concerns.

IPANM Specific Supplemental Redlines *(beyond those submitted by NMOGA/IPANM's joint filing)* include, but are not limited to:

- For Single Lease Bonding, please consider revising the bonding figure from **$150,000** proposed by SLO to **$75,000**, which we consider more representative of the true cost of bonding estimates per lease.
- For Bulk Bonding please consider revising bonding figures **in red:**
    - Lessees ~~holding ten or more leases~~ that are required under this rule to be secured by a bond may, with the commissioner's written approval, submit a single bond to cover multiple leases, according to the following schedule:
        - **Between 2 and 9 leases: $50,000 per lease**
        - **Between 10 and 19 leases: $40,000 per lease**
        - **Between 20 and 49 leases: $35,000 per lease**
        - **Fifty or more leases: $30,000 per lease**

IPANM members fully intend to comply with final rules, but the lower bonding levels proposed above will keep smaller operators from going out of business. Current existing bonding increases represent a 600% immediate increase of bonding costs at minimum, and for multiple wells, represent thousands-of-percent increases that no business could reasonably absorb exception billion-dollar multi-nation corporations. We do not believe it's in New Mexico's best interest for the State Land Office to kill a lot of smaller, state-based, good operators to leave only a handful of supermajors. We hope you agree.

Highest Regards,

Jim Winchester, on behalf of the 350+ members of IPANM

IPA NM
INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO

EXHIBIT 1

19.2.100.23 Financial Assurance

1. **General Requirement for all Lessees**.

Prior to development, use, or occupation of the lease area, an oil and gas lessee or the operator—being any third party conducting exploratory or development operations authorized by the lessee within the authority granted under Section 19-10-13 NMSA 1978—shall execute and file with the commissioner a good and sufficient bond or other approved financial assurance, in an amount to be fixed by the commissioner but not less than one hundred twenty thousand dollars $120,000.

The financial assurance shall be in favor of the commissioner and the state land office, for the benefit of the applicable trust beneficiary, any surface lessee covering the affected acreage, and their respective grantees or successors in interest, to secure payment for and protect against any damage to the *surface of state trust land*, including livestock range, water, crops, tangible improvements, and other surface features, and to ensure full compliance with all surface-use obligations under the lease.

For purposes of this rule, "damage" includes, but is not limited to, failure to remediate spills, reclaim surface disturbance, repair or replace harmed improvements, or otherwise remedy harm to the surface of the land arising from development, use, or occupation of the leased premises. The bond or financial assurance must be written on a form prescribed or approved by the commissioner, issued by a qualified surety, and shall be non-cancellable.

1. **Per-Lease Financial Assurance Requirements**

   A. **Minimum Lease-Specific Financial Assurance**. Each individual lease on which development or operations commence must be covered by financial assurance meeting the minimum requirements set forth in (1) above.

   B. **Single Lease Financial Assurance**. A lessee or operator holding one lease shall post a $120,000 bond (or other approved financial assurance).

2. **Bulk Financial Assurance.** Lessees holding ten or more leases may, with the commissioner's written approval, submit a single instrument to cover multiple leases, according to the following schedule:

Between 10 and 19 leases: $104,000 per lease
Between 20 and 49 leases: $88,000 per lease
Between 50 and 99 leases: $72,000 per lease
Between 100 and 249 leases: $56,000 per lease
250 or more leases: $48,000 per lease

   A. The lessee shall provide a schedule listing all leases subject to the bulk financial assurance, and the wells (regardless of operator) located on each lease.

B. No lease that is subject to heightened financial assurance as outlined in Section B is eligible for inclusion in, or coverage under, a bulk financial assurance.

C. Notwithstanding anything to the contrary contained in [Section 19.2.100.23] the total financial assurance required of any lessee under [____] shall not exceed $14,000,000.00 in total.

3. **Comprehensive Financial Assurance.** In lieu of the General Financial Assurance or Bulk Financial Assurance provided under this [Section 19.2.100.23.A-C] any lessee may submit a single instrument to cover every lease where the lessee holds record title, on the commissioner's written approval, in a total amount equal to $XX,000,000.

4. **Heightened Financial Assurance Requirements**

A. The commissioner may require additional financial assurance, up to 100% of the estimated remediation and reclamation costs for the surface of a specific lease, when certain conditions are met:

i. Releases requiring remediation.

, meaning a release or spill located on a state lease that has not been, within one year after the effective date of this rule or one year from occurrence or discovery, either (a) remediated in accordance with state land office rules or (b) commenced remediation with a plan done with approval by state land office; or

ii. Lessee Compliance History.

a. If the lessee has within the past five (5) years:
   i. Had a bond or other financial assurance successfully claimed by the commissioner; or

   ii. The commissioner has filed suit against the lessee for environmental damage to state trust land.

iii. **Reasonable Cause.** When the commissioner has reasonable cause to believe that the state land office may become burdened with the costs of fulfilling the lease obligations described in this section, based on the environmental condition or compliance status of the lease premises which make the remediation and reclamation of state lands more costly, the commissioner may increase the financial assurance required.

B. Deferment of Heightened Financial Assurance. Upon commitment to correct the condition(s) listed in 2(A)(i-iii), a lessee may receive up to a one-hundred-and-

eighty day deferment of a heightened financial assurance requirement, extendable at the commissioner's discretion based on demonstrated progress or written mutual agreement.

C. Notice. The commissioner shall provide written notice to the lessee of any heightened financial assurance requirement, including the cited basis for such increase and the amount.

5. **Forms of Financial Assurance.**

A. Financial Assurance shall mean either a bond or in lieu of a surety bond, but in the same amounts and subject to the same substantive requirements set forth in this rule, with commissioner approval a lessee may post:

i. An irrevocable letter of credit, on a form prescribed or approved by the commissioner, issued by a federally-insured financial institution either doing business in New Mexico or that has agreed in writing to submit itself to the jurisdiction of New Mexico courts. Irrevocable letters of credit shall require the issuing bank to notify the commissioner in writing of any decision to not renew the letter of credit at least 120 days in advance, and shall provide the commissioner the right to redeem the letter of credit prior to non-renewal.

ii. A cash deposit submitted to the commissioner, which shall be held in suspense unless and until the financial assurance is eligible for release or the commissioner makes a claim against the deposit.

iii. A guarantee of performance based on a lessee's demonstration of sufficient net worth may be accepted in lieu of posting other financial assurance instruments if the lessee meet the eligibility criteria set forth in this Section [_____] Audited financial statements that show current net worth, as demonstrated through financial statements accompanied by an unmodified opinion by an auditor.

iv. Credit Rating of at least [_B_] up to the requisite bond amount or in concert with the bond amount to otherwise lower it for a proportional amount not to exceed [fifty (50%)] of the overall total bond amount.

B. **Limitations.** The commissioner will not accept financial assurance riders or amendments that change the name of the guarantor, that change the scope of coverage, or that add multiple lessees to the same financial assurance without specific written approval of the same. Lessees who under the pre-existing version of this rule are sharing a financial assurance via rider shall obtain their own separate financial assurances in conformity with the phase-in schedule listed in subsection K.

6. **Waivers of Financial Assurance:**

A lessee may request a waiver of the financial assurance requirement, to be granted at the commissioner's sole discretion, if:

(i) the lessee does not intend to conduct or allow any surface development of oil and gas on the lease acreage. Waivers are not available for leases whose surface acreage contains producing or inactive wells, unremediated spills, or infrastructure related to oil and gas development from the lease acreage. In the event a lessee obtains a waiver, but then proceeds, or allows another to proceed, with oil and gas development on the surface of the lease, the lessee must so notify the state land office and post the required financial assurance prior to commencement of such development within 30 days of commencing said development. In the event a lessee obtains a financial assurance waiver, proceeds with oil and gas development on the surface of the lease, but fails to notify the state land office and post the required financial assurance, the lessee shall be ineligible for any financial assurance waiver for a period of at least five years; or

(ii) with a minimum of ten (10) years of good operatorship and stewardship of state lands.

7. **Claims on Financial Assurance**.

A. The commissioner may claim, draw upon, or redeem the bond, letter of credit, deposit or alternative assurance for the lease when necessary to remedy:

i. Lessee's noncompliance with lease surface obligations;
ii. Damage to the state trust land lease;
iii. Failure to remediate, reclaim or otherwise satisfy obligations covered by the financial assurance.

B. Claims may be made in whole or in part, to the extent reasonably needed to address costs for remediation, reclamation or other compliance failures for the specific lease at issue.

C. Refund of Claimed Assurance. If any portion of a lessee's financial assurance claimed under this [Section 19.2.100.23] is not needed to cover the costs of reclamation or remediation the commissioner shall refund the remaining amount to the entity that provided the financial assurance.

8. **Savings Provision Before Lease Termination.**

Before a lease may be terminated due to a financial assurance claim or attempted claim, any operator conducting operations on the lease (including an operator that is not the lessee of record) shall have the right to:

i. Post substitute financial assurance in an amount equivalent to the financial assurance claimed or attempted to be claimed; but only up to the lesser of:

a. the amount of financial assurance required for the lease; or
b. the amount required for the communitized area for which the operator has an approved communitization agreement.

ii. Upon posting such substitute financial assurance, the lease shall not be terminated on the basis of the commissioner's claim or attempted claim, and operations may continue so long as the operator or lessee otherwise remains in compliance with applicable requirements.

9. **Release of Financial Assurance.**

Bonds or other approved forms of financial assurance may only be released under one of the following conditions:

A, The lessee first submits a substitute form of financial assurance that complies with this rule, and the commissioner approves the substitution; or

B. The lessee no longer holds the state oil and gas lease, and the commissioner has confirmed that there are no outstanding compliance or performance issues related to the lease.

8. **Phase-In Schedule**.

The requirements of this rule shall apply immediately upon the effective date to all new oil and gas leases.

For current leases with financial assurance already on file, the rule shall become applicable according to the following Phase-In Schedule:

1. For a single lease, the compliance deadline is within 90 days of the effective date of this rule.
2. For a lessee or operator who meets the bulk financial assurance criteria, leases shall be brought into compliance within 365 days of the effective date of this rule.
3. Any lease subject to heightened financial assurance requirements shall be in compliance within 60 days of receipt of notice of the commissioner deeming said lease as in need of additional financial assurance per section above.

19.2.100.XX – LESSEE PERIODIC REPORTING

A. Reporting and Notification Requirements. The lessee of one or more leases shall file a report on or before April 30th occurring after one year after the effective date of the rule and by April 30th every five years thereafter, certified under penalty of perjury by a person with authority to bind the lessee, detailing the following, for each lease held by that lessee as prescribed in this [Section 19.2.100.XX].

B. Information requirements for the [periodic report]. On the lessee's [periodic report], the lessee shall:

1. List all wells on the lease, as of December 31 of the previous calendar year, and the status of each well on that date;

2. List of other fixed infrastructure on the surface of the lease acreage that is related to oil and gas lease operations, including but not limited to open remediation projects, unresolved spills or releases and unresolved inspection reports with outstanding corrective actions on lease premises, by reference to location (latitude/longitude coordinates);

C. Notwithstanding the foregoing requirements, a lessee who has provided Comprehensive Financial Assurance under Section 19.2.100.XX, shall be exempt from the periodic reporting obligations described in this Section 19.2.100.XX.

D. The commissioner may, by written notice, require the lessee to furnish the information specified in Section 19.2.100.XX within a designated period. Any such request shall be accompanied by a statement articulating the reasonable grounds necessitating the submission of the report, supported by specific facts or circumstances evidencing the need for further disclosure.

The lessee shall respond within a timeframe prescribed by the commissioner, but no less than ninety (90) days after receipt.

E. The commissioner may prescribe a form and submission format (e.g. web portal) for the reports referenced in this Section 19.2.100.XX. To the extent there is no change from the previous report in any particular category or overall, the lessee may so certify in writing, under penalty of perjury, in lieu of filing a full report.

F. Errors in and omissions from the periodic report shall not result in lease cancellation by the state land office. Upon identification of an error or omission, the lessee shall have thirty (30) days to amend and resubmit the periodic report or otherwise make corrections thereto.

EXHIBIT 2

This is an amendment to 19.2.100 NMAC, Section 23, effective 6/1/2026.

19.2.100.23 [~~**SURETY TO PROTECT SURFACE PURCHASER AND LESSEE - WAIVERS:**~~

~~**A.** Before any lessee shall commence development or operations, including any and all prospecting activities upon the lands, such lessee or operator shall execute and file with the commissioner a good and sufficient bond or other surety, in an amount to be fixed by the commissioner but not less than ten thousand dollars ($10,000) in favor of the state of New Mexico for the benefit of the appropriate trust beneficiary and the state's contract purchasers, patentees and surface lessees, to secure payment to the extent allowed by law for such damage to their interests and tangible improvements upon such lands as may be suffered by reason of development, use and occupation of the lands by the oil and gas lessee.~~

~~**B.** A bond or other surety in the minimum amount of ten thousand dollars ($10,000) for each lease shall be deemed sufficient unless and until the commissioner determines, or one or more surface lessees or purchasers show the commissioner, that such an amount is not adequate in a given case. Provided, however, that if a lessee holds more than one oil and gas lease, a blanket bond or other surety in the amount of twenty thousand dollars ($20,000) will be acceptable unless and until the commissioner determines, or one or more surface lessees or purchasers show the commissioner, that such an amount is not adequate in a given case. Provided further, that if any purchaser, patentees or surface lessees shall file with the commissioner a waiver duly executed and acknowledged by the purchaser, patentee or surface lessee of the purchaser's, patentee's or surface lessee's right to require such bond or other surety pursuant to Section 19-10-26 NMSA 1978 the development, occupation and use of the lands by the oil and gas lessee may in the discretion of the commissioner be permitted without said surety.~~

~~**C.** With the approval of the commissioner, in lieu of the single and blanket bonds for oil and gas lessees, a twenty-five thousand dollar ($25,000) bond or other surety may be used at the option of lessee for the use and benefit of the commissioner, to secure surface improvement damage and the performance of the lessee under one or more state leases or permits for minerals, oil and gas, coal or geothermal resources or as holder under one or more state rights of way or easements which the lessee has executed with the commissioner. The lessee will be obligated to perform and keep all terms, covenants, conditions and requirements of all state leases for minerals, oil and gas, coal or geothermal resources and of all state rights of way and easements executed with the commissioner, including the payment of royalties when due and compliance with all established mining plans and reclamation requirements.~~]

FINANCIAL ASSURANCE:

A. Minimum financial assurance requirements.

(1) Prior to the development, use, or occupation of the lease area, an oil and gas lessee shall execute and file with the commissioner good and sufficient bond or acceptable alternative form of financial assurance ("financial assurance") in an amount to be fixed by the commissioner but not less than $150,000, in favor of the commissioner and state land office for the benefit of the applicable trust beneficiary, and contract purchasers and surface lessees of the affected acreage and their respective grantees or successors in interest, to protect the commissioner and state land office against damage to state trust land, and to ensure the lessee's compliance with all lease obligations. Damage to state trust land includes, but is not limited to, the failure to plug inactive wells located on the lease acreage, remediate spills and associated contamination, and reclaim surface disturbance and damage to mineral resources and reservoirs.

(2) A lessee of a mineral-only lease may execute and file with the commissioner minimum financial assurance in an amount to be fixed by the commissioner but not less than $100,000.

B. Heightened financial assurance requirements.

(1) If a lease includes on its premises any of the following conditions, the commissioner may require the lessee to file an additional financial assurance, in an amount to be determined by the commissioner (not to exceed one-hundred percent of estimated applicable plugging, remediation, and reclamation costs).

(a) An inactive well (a well for which no production or injection has been reported for a continuous period of one year or more), except for a well:

(i) that has been in approved temporary abandonment status with the New Mexico oil conservation division for a period of five years or less, but this exception shall not apply to any lessee or well operator which has ten percent or more of all wells it operates on state trust lands in approved temporary abandonment status;

(ii) that has received an approved shut-in from the commissioner; or

(iii) that is on a lease and the lease has received an approved shut in from the commissioner.

(b) a well that has produced 250 barrels of oil or less in the past year or the equivalent volume of gas; or

(c) a release, whether or not reported to the oil conservation division, that has not been completely remediated pursuant to state land office rules and requirements within the latter of one year of occurrence or discovery, or one year from the effective date of this rule.

(2) If any of the following conditions have occurred in the past ten years, the commissioner may require the lessee to file an additional financial assurance, in an amount to be determined by the commissioner (not to exceed one-hundred percent of estimated applicable plugging, remediation, and reclamation costs):

(a) the commissioner or another government agency has claimed the lessee's financial assurance filed with the commissioner or such other government agency to redress the lessee's compliance deficiencies related to operations in New Mexico;

(b) **t**he commissioner has filed suit against the lessee for failing to remedy damage to state trust land caused by oil and gas operations on a lease held by the lessee; or

(c) the lessee is out of compliance with an agreed compliance order, stipulated final order, or other final order of the oil conservation division, or a final order of another agency of the state that pertains to the lessee's oil and gas operations in New Mexico.

(3) A lessee may submit written documentation showing that the conditions that trigger the heightened financial assurance requirement are being diligently addressed. In the commissioner's sole discretion, the commissioner may defer the heightened financial assurance requirement for a period of up to 180 days upon determining that there are sufficient efforts being taken to plug wells, remediate releases, or address other conditions that trigger the heightened financial assurance requirement by a date agreeable to the commissioner. The deferment may be extended in the commissioner's sole discretion based on the lessee's progress addressing the compliance deficiencies, provide that any subsequent deferment period shall not exceed 90 days.

(4) In addition to the heightened financial assurance factors identified in (1) and (2), the commissioner may require a higher level of financial assurance on an individual lease basis, based on the commissioner's assessment of other factors pertinent to the lessee's oil and gas operations in New Mexico, the environmental condition or compliance status of the lease premises or other state leases held by the lessee, or significant changes in compliance costs.

(5) In the event a higher level of financial assurance is required under any provision of this rule, the commissioner will provide written notice by certified mail or courier to the lessee of the required amount and the reasons for the higher financial assurance requirement and the lessee shall have 90 days from the date of the mailing to update its financial assurance; except that in instances where the commissioner requires a higher level of financial assurance because the commissioner has been paid on a claim against the lessee's prior financial assurance, or because the commissioner has filed a claim against the lessee's prior financial assurance and the surety, bank, or other third party issuing the financial assurance has been unresponsive to the commissioner's claim, the lessee shall have 30 days.

(6) Leases subject to heightened financial assurance requirements may be subject to additional reporting requirements, including, but not limited to, an estimation of asset retirement obligations for wells and associated infrastructure located on such leases.

(7) A list of leases subject to heightened financial assurance requirements shall be made public on the agency's website.

C. Bulk financial assurance.

(1) Lessees holding ten or more leases that are required under this rule to be secured by bulk financial assurance may, with the commissioner's written approval, submit a single bond or other financial assurance instrument to cover multiple leases, according to the following schedule:

between 2 and 9 leases: $150,000 per lease;
between 10 and 19 leases: $130,000 per lease;
between 20 and 49 leases: $110,000 per lease;
50 or more leases: $100,000 per lease.

(2) In the event the commissioner accepts one or more bulk financial assurance instruments from a particular lessee, the lessee shall provide a schedule listing all leases subject to the bulk financial assurance instrument, and the wells (regardless of operator) located on each lease. No lease that is subject to heightened financial assurance requirements is eligible for inclusion in, or coverage under, a bulk financial assurance instrument.

(3) The commissioner shall require the lessee to update such schedules annually, or upon any lease assignment, expiration or termination as the commissioner may require.

(4) Excluding any lease subject to a heightened financial assurance requirement, the total amount required of a single lessee shall not exceed $40,000,000.

D. Reporting and notification requirements.

(1) Each lessee shall file an annual report on or before July 1 of each year, certified under penalty of perjury by a person with authority to bind the lessee. The report shall cover activities for the previous calendar year (January 1 – December 31) and include the following for each lease held by that lessee:

(a) inventory of active and inactive wells on the lease, with reference to well name, API number, operator, date of last production, total reported oil production (in BBLs) and gas production (in BOE) reported during the previous calendar year, and whether the well is part of an oil and gas unit;

(b) inventory of other fixed infrastructure on the lease acreage that is related to oil and gas lease operations, including but not limited to tank batteries, ponds, separators, but not including transient equipment such as vehicles;

(c) list of any hydrocarbon or produced water releases on lease premises, whether or not reported to the oil conservation division, by reference to location (latitude/longitude coordinates), substance released, estimated quantity, responsible party, and status of remediation, to the extent known by the lessee;

(d) identification of any wells plugged in the previous twelve months and a summary and cost of remediation and reclamation performed for associated areas of operations;

(e) identification of any warning letters, notices of violation, fines, penalties, civil actions, criminal actions, or judgments issued or initiated by any governmental entity with respect to oil and gas operations on the lease premises, by reference to date, nature of the alleged violation or action, and issuing or initiating entity; and

(f) identification of any civil litigation not initiated by a governmental entity concerning or arising out of oil and gas operations on the lease premises.

(2) For a lease for which the lessee holds the record title and is not the operator of wells on the lease, the lessee shall include information to the extent known by the lessee after performing reasonable due diligence and inquiry of operator(s) on the lease.

(3) The commissioner may prescribe a form and submission format (e.g., web portal and template) for the annual report. To the extent there is no change from a prior year's report in any particular category or overall and the lessee has performed reasonable due diligence, the lessee may so certify in writing, under penalty of perjury, in lieu of filing a full report.

(4) In the event that any errors or omissions are identified, the lessee shall have 30 days from notification to amend and resubmit the annual report. Reporting errors or omissions that are corrected within the 30-day period shall not provide a basis for lease cancellation.

(5) Lessees shall notify the state land office within 30 days of any change of name or change of address of a surety or financial institution issuing a letter of credit or in the event lessee is informed of any change to or non-renewal of the financial assurance or the insolvency of the surety or other entity issuing the financial assurance.

(6) Lessees shall reasonably cooperate with the commissioner's inquiries regarding all matters pertaining to state land office financial assurance requirements or to the related reporting requirements of this rule. Based on compliance issues related to a particular lease or lessee, the commissioner may request, and the lessee shall provide, additional information to be submitted in a lessee's annual reporting.

E. Periodic adjustment and review of financial assurance levels.

(1) The monetary amounts of all financial assurances shall be adjusted every five years for inflation based on the preceding calendar year's change in the consumer price index for All Urban Consumers (CPI-U), United States City Average for All Items, published by the United States Department of Labor. The effective date of the adjustment shall be January 1 of the sixth year (the first day following each five-year review cycle).

(2) The commissioner will periodically, but no less than every five years, review the sufficiency of each lessee's financial assurance. Factors the commissioner may consider include the status of the lease (e.g., number of active and inactive wells, lease acreage, number of operators on the lease), the compliance history of lessee with respect to the specific lease in question and other state land office instruments, and changes to actual or estimated costs of plugging, remediation, reclamation, and other compliance activities. In the event the commissioner determines a given financial assurance is inadequate financial assurance to protect the state land office and applicable beneficiary, the commissioner shall send written notice by certified mail or courier to the lessee of the change and lessee shall have 90 days from the date of mailing to update its financial assurance. Failure

of the commissioner to engage in financial assurance sufficiency review of any particular lease or lessee in accordance with this paragraph shall not be evidence or an admission of the commissioner's acceptance of the lessee's current financial assurance as adequate and shall not prevent any subsequent financial assurance sufficiency review.

(3) In the event that a well bond or other financial assurance on file with the New Mexico oil conservation division covers operations on a particular lease and provides the commissioner access to such financial assurance, the commissioner may adjust downward the monetary value of the financial assurance required under this rule by up to the amount of the bond or other financial assurance on file with the New Mexico oil conservation division that is applicable to wells on state trust land.

F. Forms of financial assurance.

(1) A surety bond shall be written on a form prescribed or approved by the commissioner. The surety must be certified by the United States department of the treasury to issue surety bonds and must be authorized to do business in New Mexico. The bond shall be non-cancellable.

(2) In lieu of a surety bond, but in the same amounts and subject to the same substantive requirements set forth in this rule, with commissioner approval a lessee may post:

(a) an irrevocable letter of credit, on a form prescribed or approved by the commissioner, issued by a federally-insured financial institution either doing business in New Mexico or that has agreed in writing to submit itself to the jurisdiction of New Mexico courts. Irrevocable letters of credit shall require the issuing bank to notify the commissioner in writing of any decision to not renew the letter of credit at least 120 days in advance, and shall provide the commissioner the right to redeem the letter of credit prior to non-renewal;

(b) a cash deposit submitted to the commissioner, which shall be held in suspense unless and until the financial assurance is eligible for release or the commissioner makes a claim against the deposit. Any interest on a cash deposit shall incur to the benefit of the commissioner; or

(c) other alternative forms of financial assurance, which may be considered on a case-by-case basis, at the commissioner's sole discretion.

G. Waivers. A lessee may request a waiver of the financial assurance requirement if the lessee does not intend to conduct or allow any development of oil and gas on the lease acreage, which is at the commissioner's sole discretion. Any request for a waiver must be made within 30 days of lease issuance or assignment. Waivers are not available for leases whose acreage contains producing or inactive wells, unremediated spills, or infrastructure related to oil and gas development from the lease acreage. In the event a lessee obtains a waiver, but then proceeds, or allows another to proceed, with oil and gas development on the lease, the lessee must so notify the state land office and post the required financial assurance 30 days prior to commencement of such development. In the event a lessee obtains a waiver of the financial assurance requirement, proceeds with oil and gas development on the lease, but fails to notify the state land office and post the required financial assurance, the lessee shall be ineligible for any financial assurance waiver for a period of five years.

H. "Riders" limited. The commissioner will not accept riders or amendments to financial assurance instruments that change the name of the guarantor (the lessee), that change the scope of coverage, or that add multiple lessees to the same financial assurance instrument without specific written approval of the same. Lessees who under the pre-existing version of this rule are sharing the same financial assurance instrument via rider shall obtain their own separate financial assurance in conformity with the phase-in schedule listed in Subsection K.

I. Claims on financial assurance.

(1) The commissioner shall provide written notice to a lessee by certified mail or courier of any claim made against a financial assurance instrument on file with the commissioner, at the lessee's last address of record on file with the state land office's oil, gas, and minerals division. The commissioner may, but has no obligation to, notify any party other than the surety or issuing financial institution, and lessee of record, regarding any financial assurance claim.

(2) In the event financial assurance is paid out to the commissioner, the affected lease will be canceled unless, after the commissioner provides 30 days written notice by certified mail to the lessee, the lessee cures the default by posting replacement financial assurance in conformity with this rule. The commissioner may require a higher or different form of financial assurance based on payment of the financial assurance claim or other compliance deficiencies of the lessee.

(3) In the event a surety (for a surety bond) or issuing bank (for a letter of credit) fails to respond to a claim against the bond or letter of credit, or fails to honor a substantiated claim, the commissioner may reject the bond or letter of credit and require the lessee to obtain within 30 days a new form of financial assurance that is in conformity with this rule.

(4) The commissioner's claim against financial assurance for any particular lease does not affect the status of financial assurance instruments the same lessee may have submitted for the coverage of other leases.

(5) In the event a lease lacks adequate financial assurance and the lease acreage is included in a communitization agreement, at the commissioner's discretion the commissioner may accept financial assurance posted by an operator of a well subject to the communitization agreement in lieu of the lessee, provided the financial assurance is written to cover the entire affected lease and is not limited to the communitized well or the communitized well operator. An operator providing a financial assurance in lieu of a lessee shall not transfer the operatorship of the communitized well(s) without the prior consent of the commissioner.

J. Notifications. A notification by the agency under this rule section (Section I) that a lease will be canceled for failure to file adequate financial assurance shall be made by certified mail. A notification under this rule section that heightened financial assurance is required (Section B, E, or L), or that a claim is made against a financial assurance instrument (Section I) shall be made by certified mail or courier. Proof of receipt is not required. All other notifications or communications by the agency may be made certified mail or courier, regular mail, or electronic mail.

K. Release of financial assurance. Financial assurance may only be released upon one of the following events: (1) the lessee first submits a substitute form of financial assurance in compliance with this rule and the commissioner approves the substitution; or (2) the lessee no longer holds any state oil and gas leases and the commissioner has confirmed there are no outstanding compliance or performance issues with respect to lessee's lease(s). No financial assurance shall be released unless all plugging, remediation, reclamation and other lease obligations have been completed to the commissioner's satisfaction, unless the commissioner, in the commissioner's sole discretion, authorizes the release of the financial assurance for the specific purpose of meeting such obligations.

L. Phase-in schedule. The requirements of this rule section shall apply to all new oil and gas leases, or existing leases for which no financial assurance acceptable to the commissioner has been filed (but which is required to be filed), immediately upon the effective date of the rule section. The requirements of this rule section shall become applicable to all oil and gas leases pre-existing the effective date of the rule section, and for which financial assurance acceptable to the commissioner has been filed, according to the following schedule (the "Phase-in Schedule"):

(1) any lease subject to any heightened financial assurance requirements shall be in compliance within 90 days of written notice of the commissioner by certified mail or courier that heightened financial assurance is required (subject to any authorized deferral by the commissioner); except that in instances where the commissioner requires a heightened level of financial assurance because the commissioner has been paid on a claim against the lessee's prior financial assurance, or because the commissioner has filed a claim against the lessee's prior financial assurance and the surety, bank, or other third party issuing the financial assurance has been unresponsive to the commissioner's claim, the lessee shall have 30 days;

(2) lessees holding 50 or more oil and gas leases shall bring all their leases into compliance with this rule by December 1, 2026;

(3) all other lessees shall bring their leases into compliance with this rule May 1, 2027.

[19.2.100.23 NMAC - Rp, 19.2.100.23 NMAC, 6/30/2016; A, 6/11/2019; A, 6/1/2026]

EXHIBIT 3

BONDING

Do you need some help?

The quickest way to reach us is to contact us through the contact form on the website.

Address:
310 Old Santa Fe Trail, Santa Fe NM 87501

Phone:
505-827-5760

Draft Oil and Gas Bonding Rule

Background: The New Mexico State Land Office (NMSLO) has begun formal rulemaking on a proposed rule to update bonding requirements for oil and gas development on state trust lands. The draft rule intends to provide more adequate financial assurances to mitigate the risk of abandoned oil and gas wells and any damage to state trust lands that may occur during oil and gas operations.

On October 23, 2025, the NMSLO released a pre-publication discussion draft to informally receive public input regarding its oil and gas bonding rule. The NMSLO held stakeholder meetings in Santa Fe on November 6 and 12, 2025, in Hobbs on November 14, 2025, and in Farmington on November 17, 2025. In developing the proposed rule, the NMSLO considered the comments received on the pre-publication discussion draft during the stakeholder group meetings.

The NMSLO has now started the formal rulemaking process to hear from the public on the draft rule. The draft rule is available for download below and was posted to the New Mexico Sunshine Portal and published in the New Mexico Register on April 7, 2026, in accordance with state law.

Public Hearing

The NMSLO will host a public hearing on the proposed bonding rule:

May 27-28, 2026 at 9:00 a.m. (and continuing thereafter as necessary)
New Mexico State Land Office, Morgan Hall, Room 101
310 Old Santa Fe Trail, Santa Fe, NM 87501

EXHIBIT 3

Virtual Option

May 27: **Register to attend via Zoom**

May 28: **Register to attend via Zoom**

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid (such as a sign language interpreter) to attend or participate in any aspect of the proposed rulemaking process or the public rule hearing are asked to contact Selena Romero at least 10 days prior to the hearing by phone at (505) 827-5790 or by email at sromero@nmslo.gov.

Public Comments

Written public comments may be emailed to info@nmslo.gov by **11:59 p.m. MT on May 26, 2026.**

Documents for Download

Proposed Oil and Gas Bonding Rule

Proposed Bonding Rule Overview

Notice of Public Hearing

NMSLO Rulemaking Procedures

NMSLO Press Release

EXHIBIT 3

The New Mexico State Land Office
310 Old Santa Fe Trail, Santa Fe NM 87501 // P.O. Box 1148, Santa Fe, NM 87504 // 505-827-5760 // 505-827-5766 (Fax)

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EXHIBIT 4

New Mexico Legislative Finance Committee
Policy Spotlight

Policy Spotlight: Orphaned Wells

June 24, 2025

EXHIBIT 4

Legislative Finance Committee

Representative Nathan P. Small, Chair
Senator George K. Muñoz, Vice Chair
Representative Jack Chatfield
Representative Meredith A. Dixon
Representative Rebecca Dow
Representative Susan K. Herrera
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Senator Benny Shendo Jr.
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Contents

Summary **1**

New Mexico faces significant and growing financial liabilities for oil and gas well cleanup. 1

Background **4**

New Mexico has long recognized the importance of plugging wells at their end of their lives, but there is no consensus on when that is. 4

Since the 1970s, the state has stepped in to plug oil and gas wells when the operator does not. 7

OCD spent $46.4 million between FY19 and FY24 on plugging and reclamation of 360 wells and their associated infrastructure. 12

Current Orphaned Wells Will Cost the State More Than $200 Million; Future Liability Very Likely Exceeds $700 Million **14**

Plugging and reclaiming the well sites and associated infrastructure OCD currently has responsibility for will likely cost between $200 million and $400 million. 15

OCD expects to plug and reclaim most wells on its inactive well list, which would cost close to $500 million. 18

In addition to fully inactive wells, thousands of extremely low-producing wells have minimal revenues and hundreds of millions of dollars in outstanding cleanup liabilities. 20

Reforms That Prioritize Operator-Led Cleanup can Limit the State's Financial Exposure **24**

OCD struggles to control both the cost and quality of state-contracted plugging. 24

Despite recent increases, financial assurance posted by operators is typically insufficient to cover the costs of plugging and remediating orphaned well sites. 31

Regulators in other states and countries reduce their liability for plugging and remediating orphaned wells through various mechanisms. 32

Appendix A. EMNRD Report Card Updates on Orphaned Well Plugging **38**

Appendix B. Other State Financial Assurance Amounts **40**

Appendix C. History of the Oil and Gas Conservation Tax and the Oil and Gas Reclamation Fund **41**

Appendix D. Texas Plugging Costs **42**

Appendix E. OCD Well Plugging Prioritization System **43**

Appendix F. OCD Organizational Structure **44**

Summary

New Mexico faces significant and growing financial liabilities for oil and gas well cleanup.

Properly plugging and decommissioning wells at the end of their productive lives is important to protect health and safety, the environment, and future resource development.

New Mexico has more than 60 thousand oil and gas wells that will eventually need to be plugged. Properly plugging and decommissioning those wells at the end of their productive lives is important to protect health and safety, the environment, and future resource development.

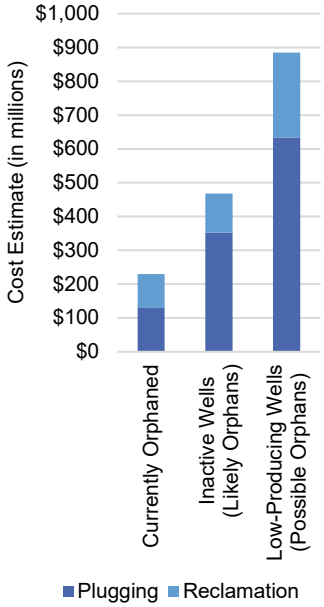
While operators plug most wells in New Mexico, the Oil Conservation Division (OCD) of the Energy, Minerals and Natural Resources Department (EMNRD) can intervene to plug wells that operators leave inactive and unplugged without authorization. In the past 20 years, OCD has plugged approximately 1,000 of those "orphaned" wells, or 5 percent of all wells plugged in the state. However, the number of wells the division is authorized to plug has consistently outpaced its plugging efforts.

Currently, OCD has plugging authority for roughly 700 wells on state and private ("fee") lands. The state likely will need to plug an additional 1,400 inactive wells for which OCD has not yet pursued plugging authority. On top of that, there are more than 3,000 wells on state or private land producing extremely small quantities of oil and gas whose expected cleanup costs far exceed their predicted future revenues, increasing their risk of being orphaned.

At recent state-contracted rates, plugging, remediating and reclaiming currently orphaned wells and their associated infrastructure will likely take close to a decade and cost more than $208 million. Plugging and reclaiming the other 1,400 inactive wells on state and private land could cost more than $468 million. Should additional extremely low-producing wells be orphaned by their operators, the costs for plugging and reclaiming them could approach $1 billion. Altogether, the state's current and near-future liability for well plugging and site remediation is estimated at $700 million to $1.6 billion.

Recent federal grants have increased OCD's plugging capacity, but the division is still unable to plug wells at a rate that would allow it to clear its existing orphaned well list in a timely fashion, even without accounting for additional wells that are likely to become orphaned. The division has also struggled to control the costs of plugging and reclamation. Given that, it would be prudent for the state to reduce its future liability for orphaned wells, which could be accomplished through a variety of mechanisms, including revising its financial assurance system to incentivize operators to plug wells before they become fully inactive.

Chart 1. Liability Estimates for Plugging and Reclamation



*Note: Only wells on state or private lands; categories are mutually exclusive; plugging based on actual depth, $43.85/foot, gas wells costing 9 percent more than oil wells; reclamation at $83 thousand per well site.

Source: LFC

Project Objectives

- Assess the current scope of the orphaned well problem in New Mexico, including the environmental, economic, and health and safety impacts.
- Evaluate the adequacy of the state's current regulatory framework for preventing wells from becoming orphaned, and the efficacy of its current efforts to plug and abandon orphaned wells.
- Estimate the state's potential future liability for orphaned wells and accompanying infrastructure.

Key Findings

- Current orphaned wells will cost the state more than $200 million; future liability very likely exceeds $700 million.
- Reforms that prioritize operator-led cleanup can limit the state's financial exposure.

Key Recommendations

The Legislature should consider:

- Amending statute to define "orphaned" and "abandoned" wells, aligning the definitions with their common use in the oil and gas industry and clarifying that "orphaned" wells are oil and gas wells for which the state has pursued and received plugging authority;
- Amending Section 70-2-14 NMSA 1978 to specify that wells producing below certain thresholds set in rule require additional financial assurance;
- Amending Section 70-2-14 NMSA 1978 to allow an operator to meet its financial assurance obligations by fully funding a third-party trust or escrow up to OCD's site- or operator-specific estimated plugging and remediation costs; and
- Amending statute to clarify OCD's authority to review and disallow the transfer of wells should the division determine, through processes outlined in rule, the purchaser is unlikely to be able to fulfill its asset retirement obligations.

The Energy, Minerals and Natural Resources Department should:

- Promulgate rules defining "low-producing" wells (such as wells producing less than 750 BOE annually or ~ 2 BOE per day);
- Promulgate rules to expand the definition of "inactive" wells to include consistently ultra-low producing wells (such as wells that produce less than 180 BOE annually or ~0.5 BOE per day for more than three years);
- Promulgate rules specifying that low-producing wells require individual well financial assurance, posted within two months of

notice, and clarifying that their transfer is contingent on regulatory approval;

- Publish a list of orphaned wells monthly, including both wells the state has already plugged and those it is planning to plug and the costs associated with their plugging and reclamation, to ensure transparent tracking of state expenditures on orphaned wells; and
- Ensure the presence of a "company man" for all state-contracted well plugging who is responsible for filing daily reports on the activities undertaken by the contractor, the materials used, and the estimated plugging cost.

Background

New Mexico has been an oil and gas producing state for more than a century. During that time, companies have drilled at least 121 thousand oil and gas wells in the state, mostly in the northwest (San Juan Basin) and southeast (Permian Basin). Wells must be plugged at the end of their productive lives to protect the environment, health and safety, and future resource production. For wells still producing any volume of oil or gas, the state typically leaves it to operators to decide when the well should be plugged—in recent years, the average well produced roughly two barrels of oil equivalent a day in the year before it was plugged. However, if a well becomes fully inactive for more than a year, the Oil Conservation Division (OCD) of the Energy, Minerals and Natural Resources Department (EMNRD) can require an operator to plug the well or pursue authority to plug it itself to mitigate potential risks. Since the 1970s, OCD has largely paid for state-contracted plugging using money from the oil and gas reclamation fund, which receives a portion of the oil conservation tax. Since 2022, the state has also received $55.5 million in multiyear federal grants to address unplugged orphaned wells on state and private lands.

New Mexico has long recognized the importance of plugging wells at their end of their lives, but there is no consensus on when that is.

Oil and gas wells, by design, tap into subsurface reservoirs that are often more than a mile deep. When active production ceases, the wells can become pathways for hazardous substances to escape, including gases like methane and hydrogen sulfide and fluids like produced water and residual hydrocarbons. Those leaking gases and fluids can contaminate groundwater, endanger nearby homes, and impede future development of oil and gas resources. Modern plugging involves using cement to seal off oil, gas, and water-bearing formations to prevent leaks to the surface or adjacent strata, while site remediation and reclamation involve removing contaminated soil and disposing of surface infrastructure. Since the 1930s, New Mexico has required operators to plug wells at the end of their productive life.

Plugging wells mitigates the risk of a variety of hazards, including groundwater contamination. In the early 20th century, most states started requiring companies to plug oil and gas wells that were no longer producing or otherwise inactive with the goal of oil conservation because unplugged wells can lead to pressure drops or water intrusions that impede oil recovery. However, over time, regulators also recognized the importance of plugging for conservation of other resources, including groundwater. Improperly sealed wells can act as a conduit for fluids and gases to migrate into underground aquifers. A 2011 study by the Groundwater Protection Council, an organization whose members are state groundwater regulators, found inactive and unplugged wells were responsible for 22 percent of oil-

Terms and Definitions

Many terms used in the oil and gas industry are inconsistently defined. For example, "abandoned well" means different things in different parts of New Mexico statute. For this report, the following definitions apply, unless otherwise specified:

Orphaned well
A well for which the state has received plugging authority, either through a settlement agreement, order, or intergovernmental agreement.

Abandoned well
A well that has been properly plugged, either by the state or its operator.

Inactive well
A well that has not produced or injected for at least 15 months.

Plugging
Placing cement plugs at specific depths inside the wellbore to prevent migration of fluids and gas.

Remediation
Removal or treatment of contaminated soil and groundwater.

Reclamation
Removing infrastructure and returning the land to a condition as close to its original state as possible.

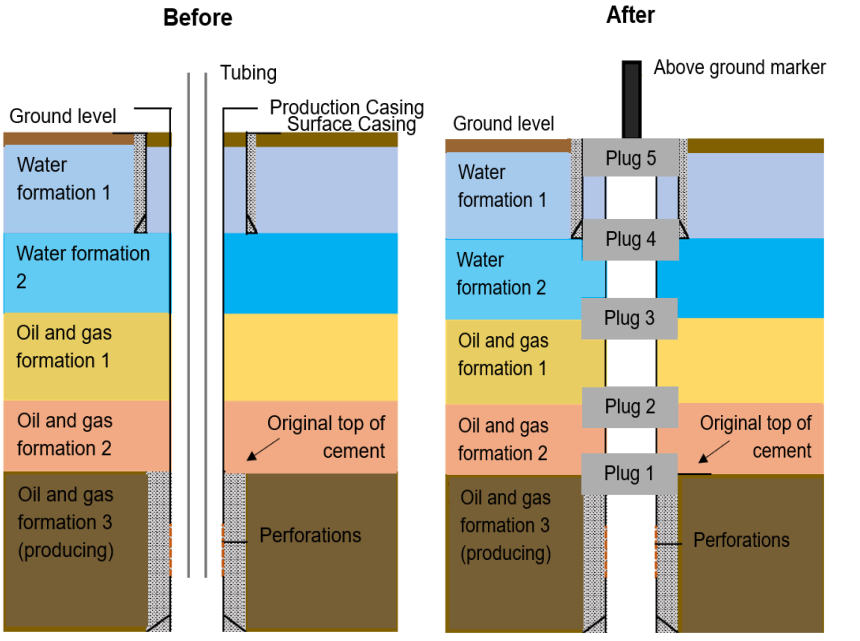
Produced water
Water that is brought to the surface alongside the oil and gas produced from a well. Produced water is also called "saltwater" because it typically contains high levels of salts, hydrocarbons, and other contaminants.

Barrel of oil equivalent (BOE)
A standardized unit that combines oil and gas into a single measure; one barrel of crude oil or 6,000 cubic feet of natural gas (6 mcf) equals one BOE

and gas-related groundwater contamination incidents in Ohio and 14 percent in Texas over a 16-year study period. Improperly plugged or unplugged wells have also been implicated in surface contamination incidents, including recently near the Texas-New Mexico border, where the wells have served as conduits for large leaks of produced water and hydrocarbons. Unplugged or improperly plugged wells can also leak gases, including hydrogen sulfide, which is toxic and highly corrosive, and methane, which is both a potent greenhouse gas and explosive. The federal Environmental Protection Agency estimates annual methane emissions from the nation's inactive and unplugged oil and gas wells are comparable to adding an additional 2 million gas-powered cars to the road. Although rare, methane leaks from oil and gas wells have also caused buildings to explode.

OCD regulations for plugging require placing cement at various depths inside the wellbore. Cement is the primary material used in oil and gas wells to prevent fluid and gas migration. When a well is constructed, companies anchor the steel casing that lines the well in place by filling sections of the space between the casing and the surrounding rock formation with cement. Similarly, when a well is plugged, cement is used to both seal off the producing formation and any hydrocarbon- and water-bearing formations above it. OCD may also require other types of mechanical barriers to be set inside the wellbore. The location of plugged wells must be marked with a 4-inch-wide, 4-foot-tall steel post, unless OCD grants a waiver to place the marker below ground.

Figure 1. Well Plugging



Source: OCD

Rising Incidence of State-Contracted Emergency Well Plugging in Texas

In November 2024, Texas' oil and gas regulator, the Texas Railroad Commission (RRC), requested an additional $100 million appropriation for FY26-27 for well plugging, saying, "Emergent issues have developed that have made [the initial $234 million request] insufficient to protect groundwater and the environment." While the request did not cite any specific incidents, RRC has reported responding to a number of well emergencies in the region of west Texas bordering New Mexico in recent years. For example, in December 2023, an unplugged well on a ranch in west Texas began leaking produced water at 14,000 gallons an hour. The water eventually covered more than 300 acres and pooled to as deep as a foot. Testing found the water contained 10 times the EPA's allowable amount of benzene, a chemical found in crude oil that is a known carcinogen. With no existing operator associated with the well, RRC paid $2.5 million to plug the well and clean up the spill.

After a well is plugged, OCD may require remediation and reclamation of the well site. During active production, wells may leak oil, produced water, or drilling fluids, either from the well itself or from associated pits and tanks. When spills occur, operators are required to remediate the site promptly. However, a second round of remediation is often necessary at the end of a well's life to ensure the site is clean before closure. Remediation focuses on removing polluted soil and, if necessary, addressing impacts to surface water or groundwater. When remediation is necessary, OCD regulations require the top 4 feet of soil be free of contamination, usually achieved through excavation and replacement of the affected soil. Reclamation is usually characterized as restoring the land to its prior physical and ecological condition. Prior to well closure, OCD requires operators to level the site, remove equipment and debris, and close pits and tanks. OCD does not have a requirement for the operator to restore native vegetation or remove roads. The State Land Office (SLO) has its own requirements for reclaiming well sites on state trust land, which include erosion prevention, removal of infrastructure and roads, and revegetation.

Figure 2. Remediation and Reclamation



Remediation involves cleaning up surface and groundwater contamination, as at the Chaves County site on the left. Reclamation involves leveling the site and removing any equipment, as at the Eddy County site on the right.

Source: LFC files

Roughly half of wells drilled in New Mexico have already been plugged, although not always to modern standards. Of the roughly 121 thousand wells drilled in New Mexico, OCD records compiled by the energy analytics firm Enverus show at least 54 thousand have been plugged. Sixty-four percent of those wells have a plugging date, indicating there is an administrative record associated with their abandonment. The remaining wells in "plugged and abandoned" status have either blank or placeholder plugging dates. According to OCD, placeholder dates may mean they were plugged prior to modern recordkeeping or they remain unplugged. For wells plugged prior to the 1990s, the plugs may not meet modern plugging standards. While most modern plugging techniques were well-understood by the 1990s, the American Petroleum Institute, which publishes technical standards for the industry, did not release a manual of recommended practices for wellbore plugging and abandonment until 2021.

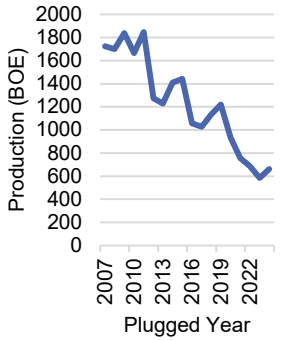
Figure 3. Modern Plugging Rig



Source: LFC Files

For wells producing any volume of oil or gas, OCD has historically left it to the discretion of operators to decide when to plug and reclaim the well. While state statute authorizes OCD to "require dry or abandoned wells to be plugged" to prevent oil, gas, or water from migrating between underground formations, neither "dry" nor "abandoned" is defined. In regulation, OCD requires operators to plug a well that is "no longer useable for beneficial purposes; or a period of one year in which a well has been continuously inactive." "Beneficial purpose" is not defined, leaving operators with considerable discretion to decide when a well producing in any quantity has reached the end of its useful life. Operators may weigh different variables in their decision-making, including oil and gas prices, produced-water disposal costs, the potential for reworking the well to increase production, and the opportunity to drill new wells nearby, which often requires plugging older wells. In recent years, the average well produced roughly two barrels of oil equivalent (BOE) a day in the year before it was plugged, a decline from the mid-2000s. When wells stop producing altogether for an extended period, they become "inactive," and must be either plugged, approved for temporary abandonment, or returned to production within a year.

Chart 2. Average Production in Year Prior to Plugging
n = 13,134



Source: Enverus

Since the 1970s, the state has stepped in to plug oil and gas wells when the operator does not.

When a well becomes inactive and is not plugged by its operator, OCD can pursue authority to plug the well itself. Once it receives that authority, OCD contracts with a plugging company. The division pays those contractors using funds from several sources, including forfeited financial assurances, the oil and gas reclamation fund, and, recently, federal grant funding through the Infrastructure, Investment and Jobs Act (IIJA). Since FY19, OCD's contractual services spending has grown more than 2,000 percent, primarily as a result of plugging and reclamation of orphaned wells and their associated infrastructure. Most of that money has come from federal grants.

Plugging and reclamation account for a growing majority of OCD's spending. OCD has broad authority to regulate oil and gas activity in New Mexico. Its statutory responsibilities include conducting inspections, overseeing drilling operations, and ensuring wells are properly plugged at the end of their productive life. State law also requires OCD to collect financial assurance from operators before drilling begins, to help insulate the state from future plugging and reclamation liability. As New Mexico has grown into the second-largest oil-producing state in the country, behind only Texas, OCD has also expanded, in both budget and personnel, although it remains relatively small compared to regulators in other oil- and gas-producing states. OCD regularly reports challenges with recruitment and retention, which has contributed to the division consistently underspending its budget. In recent years, plugging and reclamation of orphaned wells and their associated infrastructure have become a major part of OCD's budget and responsibilities; contractual services spending, which

In recent years, plugging and reclamation of orphaned wells and their associated infrastructure have become a major part of OCD's budget and responsibilities.

is primarily for addressing orphaned wells, has far exceeded any other spending category in the division's budget in recent years.

Table 1. OCD Sources and Uses
(in thousands)

	FY19	FY20	FY21	FY22	FY23	FY24	FY25 (budgeted)	FY26 (allocated)
Sources								
General Fund Transfers	$5,020.9	$5,835.3	$6,203.1	$6,451.1	$7,163.1	$8,836.6	$10,374.6	$10,439.3
Other Transfers	$0.0	$0.0	$3.5	$88.1	$348.8	$394.9	$0.0	$0.0
Federal Revenues	$673.8	$510.7	$214.7	$325.7	$10,093.6	$15,913.9	$25,930.2	$30,861.5
Other Revenues	$3,040.8	$4,523.6	$5,333.2	$19,384.6	$30,353.4	$24,698.8	$21,475	$25,192.8
Fund Balance	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$722.1	$0.0
Total Sources	$8,735.5	$10,869.6	$11,754.5	$26,249.5	$47,958.9	$49,844.2	$58,501.9	$66,493.6
Uses								
Personal Services and Employee Benefits	$4,305.3	$4,303.7	$4,891.2	$5,291.0	$6,548.1	$7,173.7	$9759.9	$9,759.9
Contractual Services	**$1,711.6**	**$1,415.3**	**$3,136.8**	**$10,607.9**	**$13,219.0**	**$28,546.7**	**$44,990.9**	**$52,983.9**
Other	$716.5	$1,244.5	$911.3	$1,503.3	$2,228.4	$2,368.6	$3,451.4	$3,450.1
Other Financing Uses	$119.9	$132.0	$123.9	$91.8	$0.0	$144.8	$299.7	$299.7
Total Uses	$6,853.3	$7,095.5	$9,063.2	$17,494.0	$21,995.5	$38,233.8	$58,501.9	$66,493.6

Source: LFC files

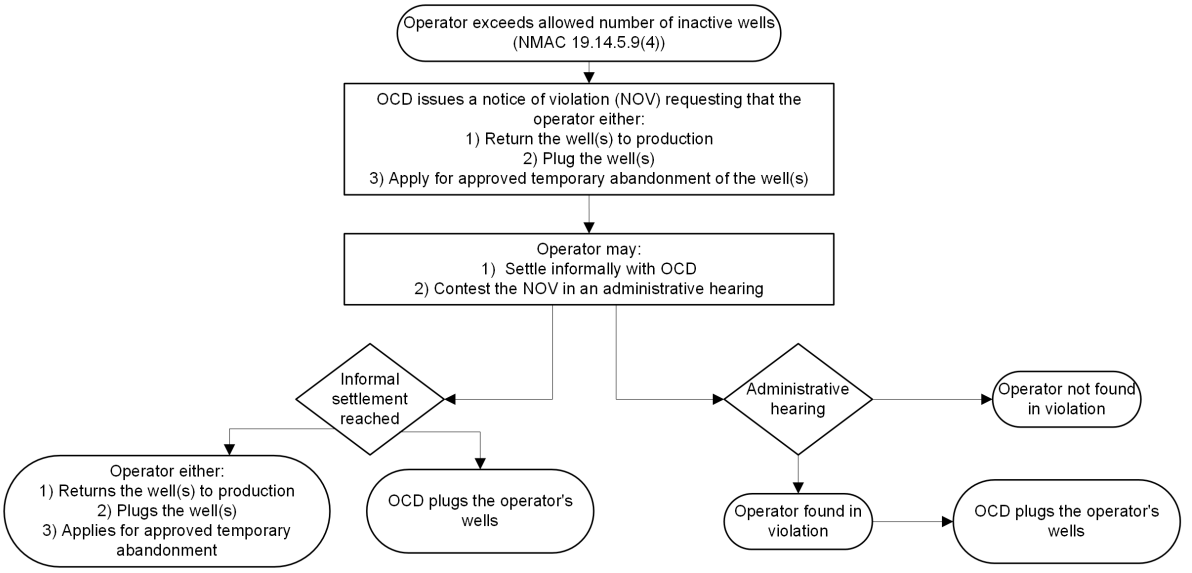
OCD typically pursues plugging authority for a well only when the operator is unresponsive to enforcement action. OCD can issue a notice of violation (NOV) to any operator that has more inactive wells than they are allowed under NMAC 19.15.5.9 A(4). Inactive wells are any production in 15 months and which are not plugged or approved for tem NOV, OCD offers operators the option to informally resolve the situation via ("agreed compliance order") prior to a formal administrative law hearing. O an informal agreement with OCD may contest the NOV in an administrative much like a civil trial. In practice, many operators simply do not respond to a default judgment in OCD's favor at hearing. Following the hearing, if the violation of the law, OCD's director may issue an order directing the operato days or have them plugged by the state (Figure 4). OCD can also plug wells government and tribal governments as requested, using either state funding, 1978, or through intergovernmental cost-sharing agreements.

Table 2. Number of Allowed Inactive Wells

Size of Operation	Number of Wells
100 wells or less	Two or fifty percent, whichever is less
101 to 500 wells	Five or less
501 to 1000 wells	Seven or less
More than 1000 wells	10 or less

Source: NMAC 19.15.5.9

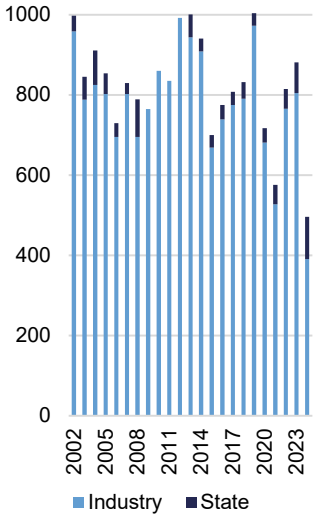
Figure 4. How Wells are "Orphaned" in New Mexico



Source: LFC

OCD has not kept detailed records of state-contracted plugging, but the division has plugged at least 967 wells since 2002, or approximately 5 percent of all wells plugged in New Mexico during the same period. Historically, OCD has not kept robust records of the wells it has plugged, making it difficult to evaluate trends in state-contracted well plugging over time. However, the division began reporting the number of orphaned wells plugged during a fiscal year as part of its budget performance measures starting in 2002. According to those records, OCD has plugged at least 967 wells since then, although the actual number is likely higher because reporting was not required for fiscal years 2009-2012. That equates to approximately 51 wells per year and 5 percent of all wells plugged in the state since 2002. However, OCD has always had a plugging backlog, meaning the percentage of state-plugged wells would be higher if OCD were able to plug all wells it had the authority to plug in any given year. In past performance reports to LFC, OCD has cited a number of reasons for delays in plugging, including contractor availability, funding shortfalls, weather conditions, well conditions, and delays in procurement contracting (see Appendix A).

Chart 3. Wells Plugged by Year
FY02-FY24



Note: OCD was not required to report to the LFC on state-contracted well plugging between FY09 and FY12.

Source: OCD, LFC Report Cards

Statute requires operators to provide financial assurance to OCD before drilling to insulate the state from well plugging and reclamation liability, but the maximum allowable amounts do not cover actual costs. Financial assurance requirements for oil and gas operations in New Mexico are set partly in statute and partly in rule. Section 70-2-14 NMSA 1978 requires operators to post financial assurance before they can drill or

produce a well, in an amount "sufficient to reasonably pay the cost of plugging the wells covered." However, the statute caps total financial assurance at $250 thousand per operator for all active wells, even though plugging a single well can often exceed $100 thousand, and most operators in the state have more than five wells. The statute also requires higher bonding amounts for wells in "temporarily abandoned status," although that term is not defined. In practice, for the purposes of financial assurance, OCD considers wells "temporarily abandoned" when they have reported no production for more than two years or when operators apply for official permission to shut-in a well temporarily. In rule, OCD sets the maximum financial assurance for temporarily abandoned wells at $1 million, which reflects their higher risk of being orphaned. According to a study examining 40 years of oil production in California, the chance a dormant well will resume production is 50-50 after just 10 months of dormancy and 25 percent after five years of dormancy. (See Appendix B for other states' minimum and maximum financial assurance amounts).

Even if OCD plugs an operator's well or wells, its financial assurance remains intact unless the division actively pursues forfeiture. Operators can use one of several financial instruments to fulfill the state's financial assurance requirements. Surety bonds, typically issued by specialized surety companies, are the most commonly used type of financial assurance. They are paid for with annual premiums and secured by varying amounts of collateral; typical premium rates are 1 to 5 percent of the total bond amount annually. Regulations state OCD will not approve the transfer of a well to a new operator until appropriate financial assurance is in place. Once a new operator provides the required financial assurance, the previous operator can request release of its own bond or policy. When OCD plugs an operator's wells, it can seek forfeiture of the financial assurance. In the case of a surety bond, OCD must file a claim with the surety company that is the third-party guarantor. The surety will then initiate an investigation to determine the validity of both the bond and the claim. Investigations can be lengthy and may involve site visits and requesting evidence from OCD. At the end of the process, if the surety company finds the claim is valid, it will try to get the operator to pay and, only failing that, pay the claim itself. If the operator is bankrupt or the surety disputes the validity of the bond, the process can be complicated and involve litigation. In most cases, the funds recovered through forfeiture fall short of the actual cleanup cost. Although OCD is authorized by statute to sue operators for the remaining balance, it has not done so.

Table 3. Estimated Annual Premiums for Surety Bonds

Premium Rate	100+ Active Wells	25+ Temporarily Abandoned Wells
2%	$5,000	$20,000
4%	$10,000	$40,000

Source: LFC files

Financial Assurance Tiers for Wells on Private and State Lands

Active wells

- One well: $25 thousand plus $2 per foot depth.
- One to 10 wells: $50 thousand.
- 11 to 50 wells: $75 thousand.
- 51 to 100 wells: $125 thousand.
- More than 100 wells: $250 thousand.

Temporarily abandoned wells

- One well: $25 thousand plus $2 per foot depth.
- One to five wells: $150 thousand.
- Six to 10 wells: $300 thousand.
- 11 to 25 wells: $500 thousand.
- More than 25 wells: $1 million.

Source: NMAC 19.15.8.9

Allowable Types of Financial Assurance

Surety bond
A three-party agreement in which a surety company guarantees the operator will fulfill its plugging and reclamation obligations.

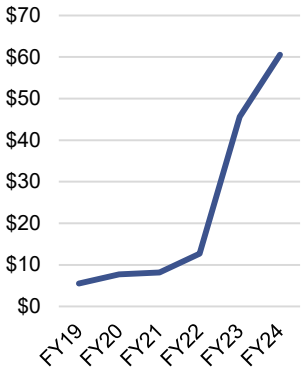
Cash bond
A cash deposit held by the state to guarantee the operator fulfills its obligations.

Irrevocable letter of credit
A financial guarantee issued by a bank, ensuring payment to the state under specified conditions and with appropriate documentation.

Insurance policy
A two-party contract in which an operator pays a premium in exchange for an insurer guaranteeing a defined well cleanup benefit.

Historically, OCD has used the oil and gas reclamation fund to pay for plugging orphaned wells; as of April 2025, the fund's balance was $66.7 million. The Legislature established the oil and gas reclamation fund in 1977 as a nonreverting fund "for use by the oil conservation division in carrying out the provisions of the Oil and Gas Act." Among the currently enumerated purposes of the fund is ensuring the proper plugging and reclamation of "abandoned oil and gas wells and associated facilities" (Section 70-2-38 NMSA 1978). While the statute does not define "abandoned," the fund has historically been used primarily for plugging and reclamation of wells and associated infrastructure without a locatable or financially viable operator. At the time of its creation, the fund received 0.01 percent of oil and gas conservation tax revenues. Today, the reclamation fund receives 10.5 percent of conservation tax proceeds when the price of West Texas Intermediate crude oil is less than $70 and 19.7 percent when it is above $70. Those distributions represent the highest percentages of the conservation tax the reclamation fund has received since the fund was created (see Appendix C). The remainder of the oil and gas conservation tax goes to the general fund. The reclamation fund also receives financial assurances the state has forfeited from oil and gas producers that fail to meet their reclamation obligations, but those are a minor contributor. The fund's balance grew 998 percent between the end of FY19 and the end of FY24, to $65 million, because of high oil and gas prices and production. Despite those record balances, the state has made minimal expenditures from the fund in the last two years, instead using federal grants to pay for plugging orphaned wells.

Chart 4. Oil Reclamation Fund Balance
(in millions)



Source: LFC cash balance

Table 4. Reclamation Fund Sources and Uses
(in thousands)

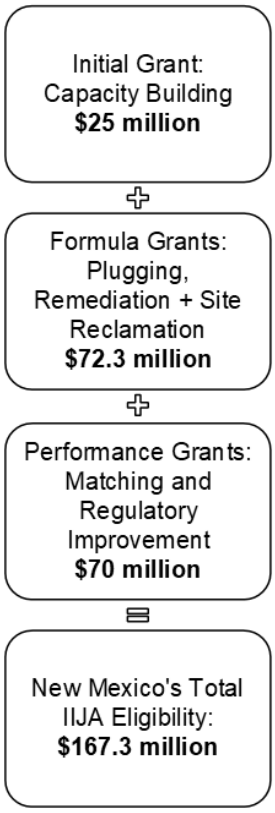
	FY19	FY20	FY21	FY22	FY23
Beginning Cash Balance July	**$4,226.4**	**$6,322.7**	**$7,777.7**	**$9,073.2**	**$26,995.0**
Oil and Gas Conservation Tax Revenue	$3,529.5	$3,340.3	$4,656.3	$22,222.6	$26,933.7
Bond Forfeitures, Salvage, and Reimbursement Recoveries	$88.5	$0.00	$0.00	$161.3	$0.00
Total Revenue	$3,617.9	$3,340.3	$4,656.3	$22,383.9	$26,933.7
Total Expenses Directly from Fund	$1,521.6	$1,885.4	$3,361.3	$4,462.1	$3,030.7
Ending Cash Balance June	**$6,322.7**	**$7,777.7**	**$9,072.7**	**$26,995.0**	**$50,898.1**

Source: OCD

Since 2022, New Mexico has received $55.5 million in federal grants to identify and plug orphaned oil and gas wells and is eligible for up to $111.8 million more. The federal Infrastructure Investment and Jobs Act, (IIJA) or bipartisan infrastructure law, signed into law in 2021, allocated more than $4 billion toward identifying, plugging, and remediating orphaned wells on state, federal, and tribal lands. The law specifies that for the purposes of wells on state and private lands, the term orphaned "has the

meaning given the term by the applicable state." Under IIJA, states became eligible for three types of grants: an initial grant, formula grants, and performance grants. The initial grant was intended to strengthen states' existing well-plugging programs. New Mexico received an initial grant of $25 million. The formula grants provide additional financial assistance for plugging and reclamation on state and private lands. New Mexico is eligible for up to $72.3 million in formula grants; it received $25 million in 2024. Finally, performance grants are intended to reward states for meeting specific targets; matching performance grants of up to $30 million are available to cover the cost of any spending on orphaned well plugging in a single fiscal year that exceeds historic state averages, while regulatory improvement performance grants provide up to $40 million to states that improve their standards and procedures around well-plugging and strengthen their regulatory frameworks to avoid future orphaned well liability. New Mexico received a $5.5 million performance matching grant in January 2025 based on the average of its spending on well plugging between 2010 and 2019. A federal review of grants briefly paused funding in early 2025, but it has since resumed.

Figure 5. New Mexico's IIJA Funding Eligibility



Source: Orphaned Well Program Office

OCD spent $46.4 million between FY19 and FY24 on plugging and reclamation of 360 wells and their associated infrastructure.

With federal funding to plug and remediate orphaned wells, OCD has recently increased its yearly plugging rate from 30 to 50 wells a year to over 100 in FY24. Historically, OCD has not consistently or systematically tracked the costs incurred by the state for plugging and reclamation, complicating the assessment of long-term trends in spending on orphaned wells. However, at a high level, OCD has spent more in the last five years on plugging and reclamation than it did in the previous 10. As spending has increased, the costs for plugging and remediation have also risen dramatically.

Plugging costs are highly site-specific but depth, type of well, and other variables typically affect costs. Numerous studies have found the cost of plugging can vary widely between different well sites. However, a 2021 study of more than 19 thousand wells across several states found certain factors to be predictive of increased costs, including well depth, well age, and the elevation of the well site. Additionally, the study found gas wells were, on average, 9 percent more expensive to plug than oil wells because of additional time and equipment often needed to stop the flow of natural gas during plugging operations. In testing those findings on recent well plugging costs in New Mexico, the relationships between plugging costs and depth and plugging costs and well type hold true; deeper wells were more expensive to plug and gas wells were more expensive than oil wells. (In FY24, the average gas well cost 101 percent more to plug than the average oil well, but the sample size was only 10 wells). Wells at higher elevations, however, were not more expensive in FY24 than lower elevations, and older wells were not significantly more expensive than more

Scan the QR code for an interactive map of wells plugged by the state

recently drilled wells. New Mexico's current financial assurance regulations account for the increased cost of depth in requirements for single well bonds, but not all-well or blanket bonds, and do not differentiate between oil and gas wells.

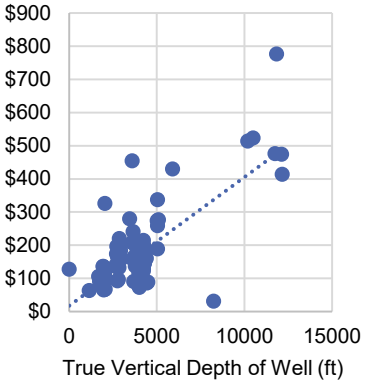
The average per-well cost of state-contracted plugging has risen nearly 450 percent since FY19 and the average per-foot cost has risen 270 percent, more than eight times the rate of overall oilfield inflation. OCD does not systematically track the cost of well plugging, but LFC analysis of available invoices from FY19 onward shows the per-well cost of state-contracted plugging rose 443 percent between FY19 to FY24, from an average of $30 thousand to $163 thousand. In FY24, costs ranged from $31 thousand to $778 thousand. Because deeper wells, which take more time and require more cement, are typically more expensive to plug, many cost comparisons use cost-per-foot instead of a per-well average. Since FY19, per-foot costs for state-contracted plugging have risen roughly 270 percent. In FY24, the average per-foot cost of state-contracted plugging in New Mexico was $43.85. The Texas Railroad Commission (RRC) has reported comparable costs for state-contracted plugging in RRC District 8, a region that borders New Mexico. However, RRC attributes those high costs primarily to complex emergency plugging incidents in District 8. While New Mexico has had a handful of emergency plugging incidents, its costs for nonemergency plugging are similarly high (see Appendix D for more on Texas' plugging costs).

Table 5. FY24 Average Cost to Plug by Well Type

Well Type	# of wells	Average Cost
Overall Average	106	$163,000
Oil	81	$150,634
Gas	10	$303,063
Injection	13	$120,634
Salt Water Disposal	2	$259,965

Source: OCD, SHARE

Chart 5. FY24 Cost of Plugging by Depth of Well
(in thousands)



Source: OCD, SHARE

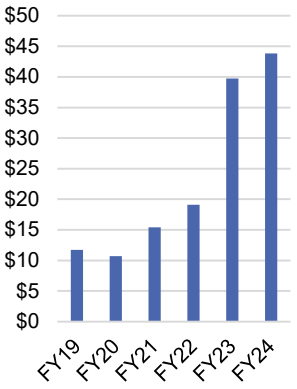
Table 6. OCD Reclamation and Remediation Costs for Orphaned Tank Batteries
FY23-25

Cato San Andres Tank Battery #6	$ 623,024.02
Double L Queen Tank Battery	$ 5,151,041.47
Hal J Rasmussen Tank Battery	$ 7,607,260.24
Total	**$13,381,325.73**

*Note, all totals are as of May 1, 2025

Source: SHARE

Chart 6. Average Per-Foot Cost for State-Contracted Plugging
FY19-24



Source: LFC analysis of OCD and SHARE data

While OCD spent more overall on well plugging between FY19 and FY24, per-project costs were highest for remediation and reclamation of infrastructure associated with oil and gas production, not well plugging itself. In FY23, OCD began remediation and reclamation work on three tank batteries—groups of tanks typically used to collect, separate, and store crude oil and produced water—in Lea and Chaves countries. The tank batteries were previously owned and operated by Canyon E&P Company, Cano Petro of New Mexico, and Hal J Rasmussen Operating, and all three were selected for remediation because of suspected or confirmed leaks of petroleum hydrocarbons. Two of the three projects are ongoing, but the most expensive project to date has been the Hal J Rasmussen site, known as the Reed Estate #001 tank battery. A site assessment conducted prior to remediation efforts found soil with

hydrocarbon levels 10 times the state limit and chloride levels double the state limit. However, the most recent leak at the site was more than a decade ago and there is no evidence spills at the site have contaminated groundwater or a nearby playa (seasonal lake). Similarly, a contamination delineation assessment of the Double L Queen Tank battery (Canyon E&P) found evidence of hydrocarbon and chloride contamination above state thresholds from past leaks, but no evidence the spills had impacted groundwater resources or caused any additional health or safety issues. At the third site, known as the Cato San Andres tank battery #6 (Cano Petro), OCD documents do not indicate that similar soil sampling or groundwater assessment have occurred to date, but photographs submitted to the division by the contractor responsible for cleanup show pools of standing oil at the site. In a 2021 report for the New Mexico State Land Office, Vertex Resources estimated the decommissioning and reclamation costs of a storage tank site at $9.5 million, based principally on an assumption of a large site surface area and the need to remove substantial volumes of contaminated soil. Invoices from the tank battery sites show that removal of contaminated soil is by far the largest line-item expense.

Figure 6. Orphaned Tank Batteries



Double L Queen tank battery in Chaves county



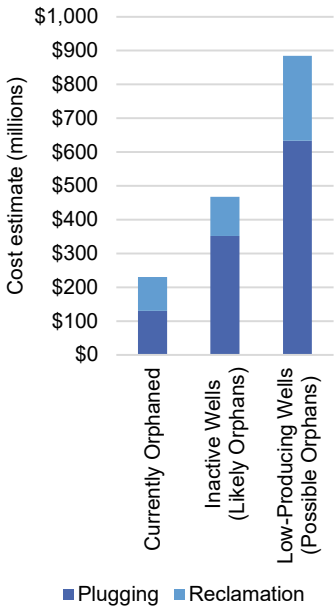
Cato San Andres tank battery #6 in Chaves county

Source: Envirotech/Frontier Development

Current Orphaned Wells Will Cost the State More Than $200 Million; Future Liability Very Likely Exceeds $700 Million

New Mexico does not define "orphaned well" in statute or rule, resulting in different estimates of both the number of orphaned wells and the resulting state liability, depending on the context and source. For this report, orphaned wells are those for which OCD has already pursued and received plugging authority, either through a settlement agreement or administrative hearings, because those represent the most immediate and certain costs. However, in addition to wells the state already has legal authority to plug, thousands of inactive and low-producing wells are at risk of being orphaned, potentially increasing the state's liability by many orders of magnitude. OCD considers a well "inactive" if it has not reported production in 15 months. OCD does not currently have the authority to plug approximately 1,400 inactive wells on state or private land that it considers likely to be orphaned. In addition to those inactive wells, thousands of wells produce extremely low volumes of oil and gas—less than a barrel of oil equivalent per day. For many of those wells, the expected cost of cleanup far exceeds predicted future revenues, increasing their risk of being orphaned. Altogether, the state's current and near-future liability for well plugging and site remediation is estimated to be between $700 million and $1.6 billion.

Chart 7. Liability Estimates for Plugging and Reclamation



*Note: Only wells on state or private lands; categories are mutually exclusive; plugging based on actual depth, $43.85/foot, gas wells costing 9 percent more than oil wells; reclamation at $83 thousand per well site.

Source: LFC analysis

Plugging and reclaiming the well sites and associated infrastructure OCD currently has responsibility for will likely cost between $200 million and $400 million.

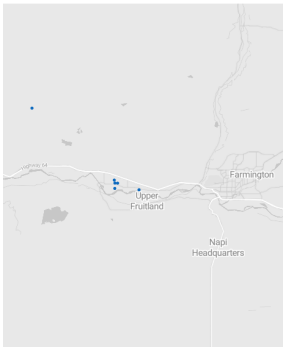
Based on internal OCD data, the division is currently responsible for plugging close to 1,000 orphaned wells, including roughly 700 on state or private land. At recent rates, plugging those wells will take close to a decade, not including well site remediation and reclamation. OCD is also responsible for remediation and reclamation of an additional 500 well sites and 18 infrastructure sites, including a number of tank batteries. In total, plugging, remediation and reclamation of all currently orphaned wells and infrastructure on state and private land is estimated to cost a minimum of $208 million, and likely more.

Scan the QR code for an interactive map of current, likely, and possible orphaned wells

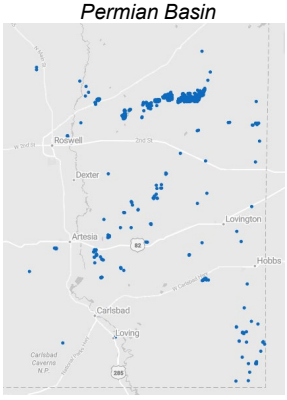
The term "orphaned well" is not defined in either statute or rule, complicating efforts to estimate the state's liability. While orphaned wells are commonly understood in the oil and gas industry to mean wells that have no viable operator and, therefore, have become the responsibility of the state or federal government, New Mexico does not define the term anywhere in statute or rule, and OCD does not use the term consistently. Public estimates of the number of orphaned wells in New Mexico vary widely, depending on how the term is defined. In some contexts, OCD cites around 700 orphaned wells; in others, it references 1,700 or more than 3,000. The disparity results from whether OCD includes only wells the state has pursued and received permission to plug or also those it does not currently have legal authority to plug but believes it will have to plug in the future. It also depends on whether the count refers only to state and private (fee) wells or also includes federal and tribal wells. While limiting the definition to only wells OCD currently has plugging authority for runs the risk of obscuring the magnitude of the state's liability, it is important to distinguish between certain liability and expected liability. For that reason, this report considers those categories separately. Also, while OCD contracts for well plugging on state, private, tribal, and federal land under different circumstances, state funds are primarily used for plugging wells on state and private land[1], so those wells are the focus of this analysis.

Figure 7. Maps of Orphaned Wells in New Mexico

San Juan Basin



Permian Basin



OCD does not publish a list of wells the state has plugged or is planning to plug and does not track them consistently in internal documents. As a result of requirements associated with federal IIJA grant funding, OCD has recently begun compiling an internal list of wells the state has plugged or plans to plug, along with associated infrastructure requiring cleanup. That list represents the most comprehensive effort to understand the scope of state-contracted well plugging. However, the list is not publicly available and is frequently inconsistent with publicly available data. However, because it is the only available data source that tracks wells for which OCD has received plugging authority, LFC staff used the list to determine the number of currently orphaned wells in New Mexico and refined the number by removing incorrectly labeled data. Wells were included if they did not have a plugged date and if they were located on state or private land.

At current rates, plugging the 702 wells the state is currently responsible for will likely cost more than $130 million and take close to a decade. According to OCD's internal list, OCD currently has plugging authority for 702 wells that have yet to be plugged on state and private land. Based on the average per-foot cost for state-contracted well plugging in

[1] Per *Section 70-2-37 NMSA* 1978, OCD does have authority to plug wells on federal land using the reclamation fund; however, most orphaned wells on federal land are plugged using federal money. Additionally, OCD does not have authority to plug wells on tribal land without a request from the corresponding tribal government. Therefore, this analysis of state liability only includes wells with state or private surface ownership; it excludes orphaned, inactive, and low-producing wells with federal surface ownership and private or state mineral ownership, which are rare.

FY24 ($43.85) it will cost OCD over $130 million just to plug those wells. That figure is based on actual well depths and an estimate that gas wells cost 9 percent more to plug than oil wells, although, as noted above, recent actual costs for plugging gas wells have been 101 percent higher than oil wells. If that trend holds, the total cost could be closer to $141 million for those 702 wells. Saltwater disposal wells could also be more expensive to plug based on previous OCD spending, and there are currently 11 of those wells on OCD's plugging list. However, the state has plugged too few in recent years to draw clear conclusions. If the state's per-foot plugging costs could be brought closer to those of other states, like Texas's FY24 average of $15.60 statewide, or back to OCD's average of $19.10 in FY22, plugging currently orphaned wells could be closer to $46 million to $57 million. The state holds $5.6 million in financial assurance associated with currently orphaned wells or their operators, meaning most of the funding for plugging the wells is likely to come from federal IIJA grants or the reclamation fund. If FY24 plugging rates of approximately 100 wells per year are maintained, it would take OCD seven years to plug its current orphan well population. However, these estimates do not include the added time and cost of site remediation.

Table 7. Orphaned Well Plugging Cost Estimates

Estimate	Per-foot Cost	Oil and Other Wells (in millions)	Gas Wells (9% increase) (in millions)	Total Cost (in millions)
NM FY24 Average	$43.85	$118.7	$12.1	$130.8
NM FY24 Median	$40.30	$109.1	$11.1	$120.2
NM FY22 Average	$19.10	$51.7	$5.3	$57.0
Texas Statewide FY24 Average	$15.60	$42.2	$4.3	$46.5

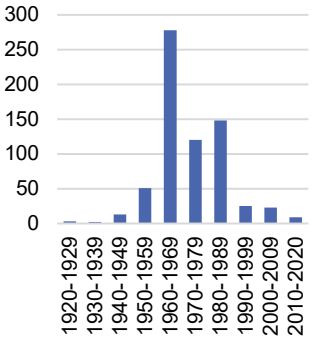
Source: OCD, SHARE, Enverus

In addition to plugging, OCD is currently responsible for remediation and reclamation of roughly 1,200 well sites; the estimated cost is $48 million to $100 million. In addition to the 702 unplugged wells, 499 wells plugged by the state between 2013 and 2024 are awaiting environmental remediation and reclamation. OCD records show the division has only remediated and reclaimed five of the wells it has plugged since 2013. That work cost a total of $205 thousand, including performance bond premiums paid by contractors but reimbursed by OCD The average per-site cost was approximately $40 thousand. All those projects were completed in FY24 for wells plugged in FY18. At $40 thousand per site, remediation of all roughly 1,200 well sites the state currently has authority for would cost an estimated $48 million. OCD has inspected 121 well sites to date and has estimated the cost of remediation and reclamation for those sites at $2.8 million, or an average of $23 thousand per site. However, based on past averages and other studies, that estimate is likely low. The 2021 Vertex Resources study for the State Land Office estimated well site remediation and reclamation at $83 thousand per-site, on average, which would put the total at $100 million, not including cleanup of infrastructure associated with the well sites, like tank batteries.

Ridgeway Arizona Settlement Agreement

Among the orphaned wells OCD is currently plugging are a number of wells owned by Ridgeway Arizona Oil Corporation, an active operator. In 2023, OCD reached a settlement agreement with Ridgeway Arizona to plug 299 of the company's wells, Under the terms of the agreement, the state is paying upfront to plug the wells, with Ridgeway Arizona reimbursing the state "at a rate of $2.00 per gross barrel of oil sold by Operator," with a minimum payment of $30 thousand per month. According to OCD contracts, the state paid $1.3 million to plug six of Ridgeway's inactive wells in FY24, for an average cost of $210 thousand per well. If future costs are similar, the total for the remaining inactive Ridgeway wells could exceed $60 million. Paying $30 thousand per month, it would take Ridgeway Arizona 170 years to make the state whole in that scenario.

Chart 8. Orphaned Wells by Year Drilled



Note: Does not include orphaned wells missing a drilling date (30 out of the 700)

Source: OCD

OCD is also responsible for decommissioning, remediation, and reclamation of 18 infrastructure sites; the estimated cost is $30 million to $140 million. The infrastructure sites include both tank batteries and a waterflood facility, which are facilities that treat, store, and pump (usually produced) water for injection into oil and gas wells to increase reservoir pressure and boost oil recovery. As noted above, the cost for remediation and reclamation of tank batteries has varied widely in the past. The three already-commenced projects have collectively cost the state $13.4 million since FY23, and two are ongoing. Two of the tank battery sites listed for future reclamation are considered "highest" priority by OCD, although no public documents indicate how the division arrived at that assessment. OCD has not yet had to reclaim a waterflood facility, and its public database lacks information about the facility, making it difficult to estimate the potential costs associated with its decommissioning and reclamation. Given that the only completed tank battery project cost OCD $5.2 million and a nearing-completion project has already cost $7.6 million, a very conservative estimate for the remaining 15 tank batteries would be $30 million, at $2 million per site. On the high end, using the $9.5 million estimate from the Vertex Resources report, the costs could be more than $140 million.

OCD expects to plug and reclaim most wells on its inactive well list, which would cost close to $500 million.

OCD rules require it to keep a publicly available "inactive well list" that is updated daily. The list records wells that have reported no production or injection for 15 months, a period encompassing both the 12 months of inactivity that renders a well out of compliance with the Oil and Gas Act and a 90-day grace period for the operator to remedy the problem and report production. Inactive wells become orphaned wells when OCD issues a notice of violation (NOV), and the operator fails to bring its inactive wells into compliance. While virtually all wells on the inactive list are eligible for enforcement action, OCD has historically prioritized issuing NOVs to operators with large numbers of inactive wells. However, the division considers the entire inactive well list likely orphans. In its application for federal IIJA funding, OCD estimated New Mexico has 1,700 orphaned wells, a number encompassing all inactive wells on state and private land, including wells for which OCD has not yet pursued plugging authority.

Table 8. April 2025 Inactive Well Count by Surface Owner

Surface Owner	Inactive Wells
State	749
Private/ Fee	1307
Federal	955
Tribal	336

Source: OCD Inactive well list

Twenty-nine percent of operators are out of compliance with the Oil and Gas Act because they have too many inactive wells. Under administrative code, an operator is allowed to have a certain number of wells that are nonproducing and unplugged for more than a year while remaining in compliance with the Oil and Gas Act, depending on the size of its overall well portfolio. About 60 percent of the 576 oil and gas companies operating in the state have at least one well that has not produced anything in the past 15 months; 29 percent of all operators are out of compliance with the Oil and Gas Act because they hold too many inactive wells. Of those out of compliance, 121 companies have no wells that have produced any oil or gas in the last 15 months; they collectively hold 1,034 inactive, unplugged wells. About 70 percent of those operators could be considered very small, with five wells or less.

Table 9. Years Since Last Production for Inactive Wells

Years since last production	Number of inactive wells
1 to 5	928
6 to 10	283
11 to 20	140
21 to 40	47
More than 40	3

Source: OCD

Table 10. Operators Out of Compliance Due to Inactive Well Counts

Size of Operation	# of inactive wells to be out of compliance	# of operators out of compliance
100 wells or less	Two or fifty percent, whichever is more	139
101 to 500 wells	Six or more	20
501 to 1,000 wells	Eight or more	7
More than 1,000 wells	11 or more	1

Note: As of March 2025.

Source: OCD Inactive Well List

Currently, the state does not have plugging authority for 1,400 wells on state or private land that appear on the inactive well list; they could cost the state $468 million to plug and reclaim. The inactive well list is updated daily and is not archived, making it difficult to track trends in the data over time, but past presentations and reports from OCD indicate the overall number of inactive wells has been increasing. A 2008 LFC report card for EMNRD indicates roughly 2,000 wells were inactive at the time. In 2021, OCD reported the state had over 3,000 inactive wells, similar to the number of inactive wells on the list when it was exported for analysis in this report in April 2025. Of those, roughly 2,000 are on state and private land and 1,400 are not currently orphaned. Plugging those 1,400 inactive wells would cost $352 million at the FY24 per-foot average of $43.85, assuming gas wells cost 9 percent more. However, if gas-well costs follow recent trends, the total would be closer to $416 million. Site remediation would cost an additional $116 million based on Vertex's per-site estimate of $83 thousand. OCD currently holds $66 million in financial assurance associated with the operators of those wells, although not all of that would likely be available for plugging and reclamation. At the rate OCD plugged orphaned wells in FY24, about 100 wells, it would take the division over 30 years to plug all the wells on the inactive well list. About 14 percent of the remaining wells on the inactive well list have not produced or injected in the last decade.

Table 11. Estimated Costs to Plug Remaining Inactive Wells
(in millions)

Per- foot Estimate	Total Cost (9% more for gas wells)	Total Cost (101% more for gas wells)
NM FY24 Average ($43.85)	$352.5	$416.4
NM FY24 Median ($40.30)	$323.9	$382.7
NM FY22 Average ($19.10)	$153.5	$181.4
Texas Statewide FY24 Average ($15.60)	$125.4	$148.1

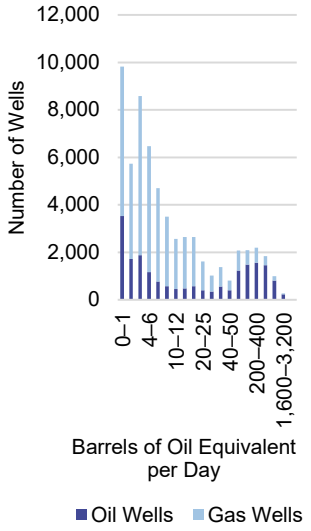
Source: OCD Inactive Well List, SHARE, Enverus

In addition to fully inactive wells, thousands of extremely low-producing wells have minimal revenues and hundreds of millions of dollars in outstanding cleanup liabilities.

New Mexico oil and gas production has climbed precipitously in recent years, driven by a small subset of very high-volume unconventional wells in the Permian Basin. Meanwhile, a growing majority of wells in the state are "stripper" wells, nearing the end of their productive lives. While low-producing wells can generate significant revenues for both operators and the state, wells below certain production thresholds are unlikely to generate sufficient revenues in their remaining lifespan to be able to fund their own plugging and reclamation, putting those wells at greater risk of being orphaned.

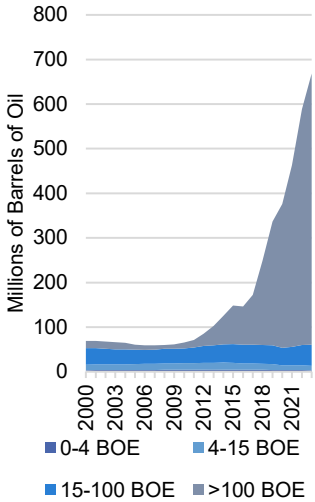
Wells producing extremely low volumes pose a financial risk to the state because they may not generate sufficient revenues to fund their own end-of-life plugging and abandonment. Stripper wells are defined in Section 7-29B-3 NMSA 1978 as an oil well producing less than 10 barrels of oil a day, a gas well that produces less than 60 thousand cubic feet of gas a day or an oil and gas well that produces less than 10 barrels of oil equivalent (BOE) per day. The federal government uses the term to refer to wells that produce less than 15 BOE a day. According to production data from the energy analytics firm Enverus compiled by the federal Energy Information Administration, 64 percent of active wells in New Mexico produced 10 BOE a day or less in 2023. Those 38,817 stripper wells accounted for 1 percent of the state's oil production and 7 percent of its natural gas production in 2023 and generated roughly $890 million in revenue based on average commodity prices. However, most of those revenues are attributable to wells producing at the higher end of the range, with just $48.8 million, or an average of $5 thousand per well attributable to the 9,824 wells that produced 1 BOE a day or less in 2023. Revenues for those ultra-low producing wells likely vary widely, depending on the oil/gas ratio of the well (oil-heavy wells are more profitable), pipeline availability, and location, among other things. However, even at the high end, those wells are unlikely to be generating sufficient revenues to finance their own end-of-life plugging and abandonment. While companies with diversified well portfolios may be able to fund plugging and abandonment out of revenues from other wells, companies with concentrated portfolios of ultra-low-producing wells may struggle to meet their end-of-life asset retirement obligations.

Chart 9. New Mexico Oil and Gas Wells by Production Volume, 2023



Source: EIA (Enverus)

Chart 10. New Mexico Oil Production by Well Production Volume, 2000-2023

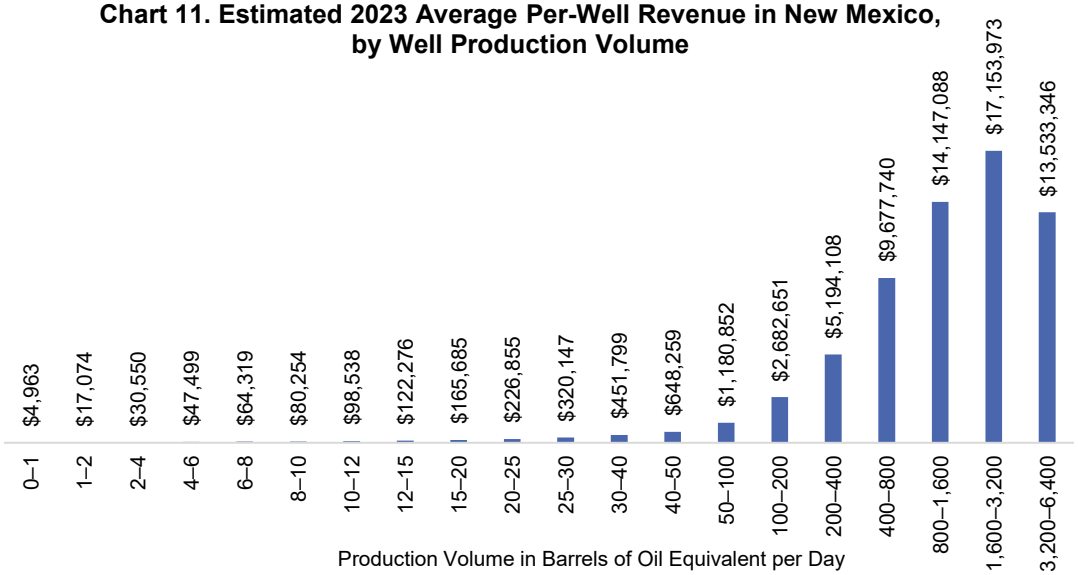


Source: EIA (Enverus)

There is no specific threshold at which a well becomes uneconomic, but production of less than 2 BOE a day may be an appropriate threshold for additional regulatory scrutiny. Determining the specific point when a well becomes uneconomic—i.e., when a well's liability surpasses the value of its potential future production—is challenging for several reasons, but principally because of fluctuating prices for oil and gas. For example, a well producing 2 BOE per day might be profitable at $100 per barrel but uneconomic at $50 per barrel. However, as noted previously, in New Mexico, the average well plugged in recent years produced approximately 2 BOE per day in the year prior to abandonment. Because most wells are plugged by the industry, that suggests operators may find it uneconomic to maintain production from wells producing less than 2 BOE a day—roughly 750 BOE a year. In Colorado, wells producing less than two barrels of oil or 10 mcf of gas per day are considered "low-producing" and are subject to additional scrutiny because of their risk of being orphaned. New Mexico should consider adopting a similar standard. In 2023, 15,558 wells produced less than 750 BOE. Of those, 9,016 produced less than 750 BOE a year from 2021 to 2023 and are not currently on the state's orphaned or inactive lists, including 4,969 on state or private land. Given when industry plugs wells and Colorado's regulations, that group of persistently low-producing wells likely represents those most at risk of being orphaned in the future.

In Colorado, wells producing less than two barrels of oil or 10 mcf of gas per day are considered "low-producing" and are subject to additional scrutiny because of their risk of being orphaned.

Chart 11. Estimated 2023 Average Per-Well Revenue in New Mexico, by Well Production Volume

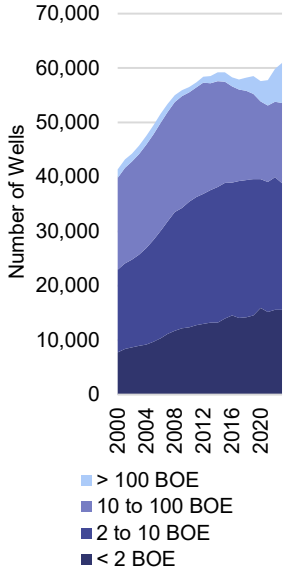


*Note: Estimates are based on EIA's 2023 average WTI price of $77.58/barrel and Henry Hub spot price of $2.53/MMBtu. EIA classified wells based on peak production, without accounting for well downtime, so for categories with a small sample size (11 wells produced 3,200 boe +/day), well downtime has a large effect on overall production volumes, and per-well revenue estimates.

Source: LFC analysis of EIA (Enverus) data.

The roughly 3,000 wells on state and private land in New Mexico that have produced less than 1 BOE per day over multiple years are likely at the end of their lives. Wells may temporarily dip into ultra-low production levels for a variety of reasons. However, wells that consistently produce less than 365 barrels of oil equivalent a year (1 BOE a day) are likely at the end of their productive lives, given the average production of wells in the year before they are plugged. More than 5,000 oil and gas wells in New Mexico fall into that category based on annual production data for 2021, 2022, and 2023. (This analysis excludes enhanced oil recovery injection wells and saltwater disposal wells, which also require plugging at the end of their lives.) While some of those wells are currently on the inactive list, a majority are not. Of the wells not on the inactive list, 3,024 are located on state or private land, meaning they could become the responsibility of the state if their operators fail to plug them. Seventy percent of those wells are oil wells while 30 percent are gas wells, and they are of widely varying vintages, with some of the wells drilled more than a century ago, according to OCD records, and others drilled as recently as 2020. Most were drilled between 1950 and 2010. The vast majority of the wells—87 percent—are owned by private companies whose financial health is difficult for regulators to assess. New Mexico should consider updating its definition of "inactive" to include wells producing fractions of a barrel a day for multiple years, to minimize the incentive for operators to delay plugging of wells.

Chart 12. New Mexico Oil and Gas Wells by Production Volume 2000-2023



Source: EIA (Enverus) data

Potential liability for extremely low-producing wells greatly exceeds potential tax contributions. While wells can continue producing in very low quantities for extended periods of time, the financial risk those wells pose to the state far exceeds potential tax revenues. At an 8 percent effective tax rate on oil and gas, the 3,024 wells producing 365 BOE a year would generate a maximum of $6 million in tax revenue annually with West Texas Intermediate crude oil at $70 per barrel. The 1,828 wells producing 180 BOE would generate a maximum of $1.8 million in tax revenue annually under the same scenario. At current state-contracted plugging and reclamation costs, using actual depth and assuming gas wells cost 9 percent more to plug than oil wells, plugging and reclaiming those wells would cost $531 million to $885 million.

Table 12. Estimated Plugging Costs for Wells Producing <365 BOE Annually Between 2021 and 2023

	Number of Wells	Estimated Plugging Cost
< 90 BOE	1,135	$235,000,000
<180 BOE	1,828	$379,000,000
<365 BOE	3,024	$634,000,000

*Note: Only currently active wells on state or fee land; categories are inclusive; plugging estimate based on actual depth, $43.85/foot, and gas wells costing 9% more than oil wells

Source: LFC Analysis of OCD data

Recommendations

The Legislature should consider:

- Amending statute to define "orphaned" and "abandoned" wells, aligning the definitions with their common use in the oil and gas industry and clarifying that "orphaned" wells are oil and gas wells for which the state has pursued and received plugging authority.

The Energy, Minerals and Natural Resources Department should:

- Archive and publish a quarterly inactive well list to enable longitudinal analysis and better cost estimating.
- Create a system that formally reminds operators of stripper wells of state statute and rule requiring them to plug and properly abandon their wells;
- Promulgate rules defining "low-producing" wells (such as wells producing less than 750 BOE annually or ~ 2 BOE per day); and
- Promulgate rules to expand the definition of "inactive well" to include consistently ultra-low producing wells (such as wells that produce less than 180 BOE annually or ~0.5 BOE per day for more than three years).

Reforms That Prioritize Operator-Led Cleanup can Limit the State's Financial Exposure

Requiring financial assurance is currently the state's primary tool to discourage operators from orphaning wells, but in practice, it is insufficient. Even when OCD can successfully forfeit an operator's financial assurance, the amount recovered is typically far below the actual costs of plugging and reclamation. The gap between actual plugging costs and the required financial assurance weakens the incentive for operators to plug their own wells, especially older, low-value wells where cleanup costs are high. As a result, operators are more likely to walk away from those wells, leaving OCD to manage the most complex and least desirable sites. Managing those projects has proven difficult: OCD was not designed to act as a large-scale plugging contractor and has struggled to control costs and ensure consistent quality. To reduce future liabilities and discourage a reliance on state-contracted plugging, the Legislature should consider regulatory mechanisms beyond financial assurance that would better align incentives and keep well closure in the hands of the industry, which is generally better equipped to do the work efficiently and cost-effectively.

OCD struggles to control both the cost and quality of state-contracted plugging.

As noted in earlier in this report, per-foot and per-well costs for state-contracted plugging have increased sharply in recent years. There are a number of possible explanations for that increase. Oil field inflation has increased industry costs across the board. Also, with increased funding, OCD has taken on a backlog of plugging and remediation work that involves more complicated and expensive wells and associated infrastructure. However, OCD's lack of systematic cost-tracking mechanisms and its procurement process have also likely contributed to the rapid increase in New Mexico's per-foot plugging costs, which are higher on average than neighboring states. Since FY19, OCD has managed well plugging and reclamation through four separate statewide price agreements (SPAs), each amended multiple times. Instead of issuing contracts for individual projects, OCD uses SPAs as rate sheets, allowing contractors to bill for work based on pre-approved unit prices. That approach has resulted in limited price competition and inconsistent cost control, with multiple projects requiring change orders exceeding $1 million. Plugging designs and costs have also varied widely across sites with similar characteristics, suggesting gaps in both quality oversight and financial accountability.

OCD Contracting Procedure for Standard Well Plugging Operation:

1. OCD requests and receives a plugging price estimate from a vendor on the statewide price agreement.
2. OCD issues a purchase order (PO) to the vendor.
3. The vendor designs a plugging plan and wellbore diagram based on available information.
4. The vendor submits a sundry notice to OCD for review and approval.
5. OCD reviews the sundry and may add additional conditions of approval, depending on the well.
6. The vendor plugs the well and submits a plugging and abandonment report for the OCD well file.
7. The vendor invoices OCD with line items for each per-unit charge, by day.

Source: OCD

Records associated with orphaned wells may be missing or incomplete, making it more difficult to anticipate problems that might arise during plugging. Operators are required to file paperwork with OCD about various well operations, including drilling, well completions, and well conversions. Many of those records are digital or have been digitized and are available as PDFs on OCD's website. However, those public well files usually contain far less detail than the files available to operators themselves when they purchase a well. Older wells also often have incomplete OCD well files, resulting in situations where OCD's plugging contractors encounter unanticipated problems as they commence plugging. Those problems can result in orphaned wells being more expensive and dangerous to plug than wells plugged by the industry.

Figure 9: Incomplete Well File

OIL CONSERVATION DIVISION
P. O. BOX 2088
SANTA FE, NEW MEXICO 87501

DATE 1/31/84

RE: Proposed MC
Proposed DHC
Proposed NSL
Proposed NSP
Proposed SWD V
Proposed WFX
Proposed PMX

Gentlemen:

I have examined the application for the:

Alpha Twenty One Prod. Co Buckskin Fed. #2-N 18-24-38
Operator Lease and Well No. Unit, S - T - R

and my recommendations are as follows:

SOME OF THE P&A WELLS
TO NOT ISOLATE DISPOSAL ZONE.
THE CASE SHOULD BE SET FOR
HEARING OR DENIED

The OCD file for the Buckskin Federal #002 well contains a document from 1984 indicating OCD had concerns at the time about converting the well to a saltwater disposal well. The file does not contain information about how those concerns were resolved, but it was ultimately converted. Plugging the well cost the state $5.2 million.

Source: OCD

OCD does not have a comprehensive monitoring system for regularly assessing the relative risk of a well. As a condition of the federal IIJA grants, OCD is required to measure the amount of methane a well is emitting pre- and post-plugging, the state's first attempt at monitoring leaks from orphaned wells. While methane is just one type of potential leak, it can indicate larger problems with the well that may not be otherwise easily detectable, making it a powerful diagnostic tool. To date, OCD has sampled 172 wells pre-plugging, most of which have since been plugged. Thirty-eight percent of the wells had no detectable methane leakage, and another 35 percent were leaking in very low quantities. However, 27 percent were leaking more than the IIJA reporting threshold of 1 gram per hour. Leaking wells are supposed to be considered the top plugging priority in OCD's prioritization framework, which combines field observations with other

Figure 8. Corroded Production Tubing



When pluggers pulled the production tubing from this well prior to plugging, they found it was full of holes, likely caused by either prolonged contact with saltwater or hydrogen sulfide. Holes can cause the tubing to part or split as it is removed from the hole, which then necessitates expensive fishing operations.

Source: LFC files

Table 13. Pre-Plugging Methane Emissions

Emissions Rate (g/hr)	Count of Wells
0	66
< 1	60
1-100	37
100-1,000	4
1,000 +	5

Source: OCD

data to assign wells a plugging priority (see Appendix E for more on the scoring system). OCD has scored 271 or 39 percent of the 702 currently orphaned wells. Despite measured methane leaks at some of those sites, OCD has not assigned any of the currently orphaned wells to its top priority category. Also, OCD's priority rankings are time-sensitive, meaning low-priority wells may become high priority in the future. Factors like whether a well is inside a municipal boundary and the type of well are unlikely to change over time, but development can encroach on wells, and inactive and unmaintained wells are more likely to develop integrity issues that could lead to leaks or other problems. Roughly 80 percent of the 702 currently orphaned wells have not produced oil or gas in the last five years. Given that OCD has been able to plug roughly 100 wells a year in recent years, the lowest-priority wells on its list may not be plugged for close to a decade. Unmaintained and unplugged wells are more likely to develop integrity issues, which not only can pose an environmental and safety hazard but has the potential to make the wells more expensive and difficult to eventually plug. To reduce the risk of currently low-priority wells becoming safety or environmental emergencies, OCD should develop a system for consistently monitoring orphaned wells awaiting plugging.

Table 14. Statewide Purchase Agreements for Plugging and Reclamation

SPA	Start Date	End Date	Amendments	Spending Authorized Through SPA
60-521-16-05813	12/1/2016	12/1/2020	4	$4,971,170
10-00000-20-00038	10/1/2020	10/1/2022	2	$6,707,646
10-52100-21-06041	6/1/2021	6/1/2023	1	$3,049,040
30-00000-22-00001	2/1/2023	(ongoing)	9	$48,438,853

Source: LFC Analysis of SHARE data

Frequent changes to the statewide price agreements obscure pricing and make it difficult to pinpoint specific cost drivers. A statewide purchase price agreement (SPA) is a contract with one or more vendors to provide specific goods or services at a predetermined price for a set period. In theory, SPAs can allow the state to leverage its purchase power for discounts on bulk goods or services, but past LFC evaluations have found agencies often use them to make direct purchases that might be provided more economically through separate contracts. However, agencies often favor SPAs because they allow for faster procurement, without the need for individual bids. . OCD has used SPAs, administered for agencies by the State Purchasing Division of the General Services Department (GSD), for all of its plugging and remediation work in recent years, and the division says this allows it to respond quickly to emergency plugging situations. However, the division's use of SPAs reduces pricing transparency and cost control. Because of frequent changes to the invoiceable line items covered by the SPAs, it is extremely difficult to track changes to the costs of goods

and services over time. For example, cement retainers and cast iron bridge plugs—both used to help place cement plugs in the wellbore—have been categorized differently across the last four SPAs. Some agreements list them separately, others group them together, and the latest agreement includes different bid options based on whether they are set via tubing or wireline. However, where comparable, costs for the same goods and services have in many cases doubled or even tripled since FY19. Analyzing a single contractor's invoices from 2023 shows that prices for identical line items increased by more than 20 percent between March and November of that year, at a time when the producer price index for oilfield services, a measure of inflation, was declining. For example, the cost of a "supervisor/cementer" rose from $500 per day to $750 per day, "backhoe services with operator" increased from $100 per hour to $150 per hour, and the price for a "wireline unit on location" jumped from $500 to $2,000.

Figure 10. Vendor Costs for Specific Line Items within the Statewide Purchase Price Agreement

			(AO)	$1,730.00
			(AS)	$5,100.00
61		Each	Wireline set CIBP, 7.625", includes setting tool rental	
			(AB)	$3,500.00
			(AE)	$2,850.00
			(AL)	$5,000.00
			(AO)	$2,345.00
			(AS)	$5,600.00
62		Each	Tubing set CIBP, 7.625", includes setting tool rental	
			(AB)	$3,800.00
			(AE)	$5,250.00
			(AL)	$5,000.00
			(AO)	$1,925.00

Source: GSD

Without internal cost estimates or requirements to select the lowest bid, OCD may be paying more for plugging and reclamation than necessary. In the latest statewide purchase agreement, GSD requested vendor "bids" or rate proposals on 156 items and services related to the plugging, remediation and restoration of orphaned oil and gas wells and facilities. That process is similar to what Colorado requests as part of its "main service agreement" and Texas as part of its "request for qualifications." The items and services in the SPA range from the per-item cost of sacks of Class B cement to the discount a vendor will offer if it provides items not covered by the SPA. Companies were not required to submit bids on all items, but only on the items and services they intended to provide. A total of 31 vendors were awarded under the agreement, ranging from oilfield service companies to environmental consulting firms. According to the terms of the SPA, awarded vendors effectively form a "pre-approved" vendor list.

OCD is not required to contract for the lowest rate proposed under the agreement but can choose the contractor it believes is best suited to a

particular job. Texas and Colorado follow similar models, but both states then issue separate, detailed contracts for specific plugging projects. Colorado's contract includes a per-unit, line-item breakdown of the estimated cost. In Texas, the Railroad Commission can negotiate the details of the contract. Before issuing a purchase order, OCD does not negotiate or develop its own internal price estimates for plugging and remediation work but instead relies on the approved vendors to submit estimates. Plugging costs frequently exceed estimates, with 236 recently plugged wells costing $10.4 million more than originally budgeted. While some of those cost overruns may be unavoidable, requiring more detailed information from contractors upfront and having more structured processes for internally estimating costs could save the state hundreds of thousands of dollars if they help reduce project totals by even a fraction of a percent.

OCD has approved multiple change orders exceeding $1 million on projects contracted through the statewide purchase price agreement. Change orders are used to adjust the total authorized by a purchase order to accommodate alterations in scope, timeline, or cost. It is considered procurement best practice to limit change orders and for any change order involving significant increases or decreases to include supporting documentation and an estimate of the projected total cost. OCD frequently issues multiple change orders for plugging and reclamation projects, and often the justification for the change order is "additional work was required." In many cases, the division also issues change orders after receiving invoices for total amounts higher than the initial purchase order, which, while not prohibited, is considered a poor procurement practice.

Ballooning Costs as a Result of Plugging Problems

The most expensive well OCD plugged in FY24 was the BRC Madera #001 well (API 30-015-22372), a gas well drilled in 1977. The well is between an RV park and a residential neighborhood on the south side of Carlsbad and prior to plugging was leaking significant quantities of methane. OCD's contractor began plugging the well on August 23, 2023. According to a plugging summary filed with OCD, the contractor encountered a number of issues during plugging, including problems with cementing that resulted in the company having to drill out cement plugs it had previously set before replacing them, extending the time and equipment needed to completely plug the well. While the original cost estimate was $250 thousand, it ultimately cost $778 thousand to plug the well.

Table 15. Change Orders for Plugging the Buckskin Federal #002 Well (API: 30-025-27024)

Date	Event	Plugging	Bond Premiums	NM GRT	Total Authorized
7/5/2024	Purchase Order Issued for Plugging 2 Wells (Buckskin #001 and #002)	$ 372,031.37	$ 18,601.57	$ 20,508.23	$ 411,141.17
Undated	Change Order Issued	$ 1,183,069.91	$ (6,267.33)	$ 61,802.00	$ 1,649,745.75
1/29/2025	Change Order Issued	$ 1,157,000.00		$ 83,159.38	$ 2,889,905.13
2/21/2025	Change Order Issued	$ 2,750,000.00		$ 342,617.63	$ 5,982,522.76

*Note: The values associated with NM GRT in the latter two change orders do not correspond to a line item in the original purchase order but are assumed to be for NM GRT. The total is listed incorrectly in the 02/21/2025 change order but is correct in the table.

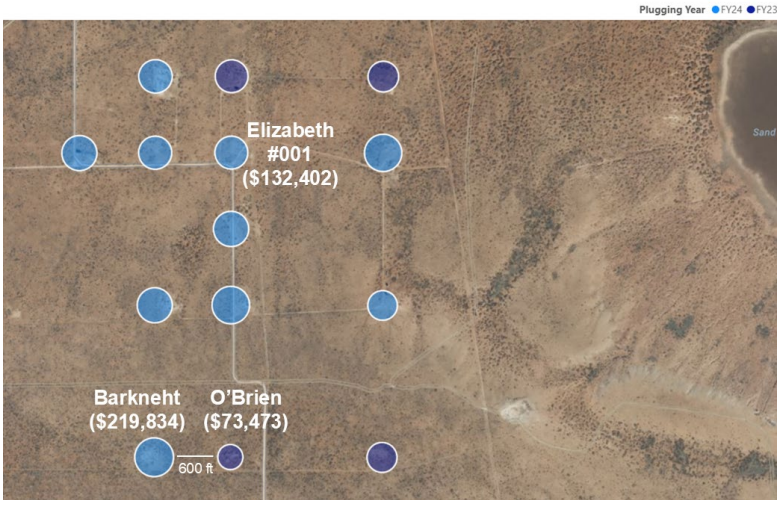
Source: SHARE

OCD has paid at least $1.3 million between FY23 and FY25 to reimburse contractors for performance bond premiums but has no guidelines for nonperformance. The purpose of a performance bond is to ensure that only qualified, financially stable contractors take on public projects and that the contractor fulfills the obligations outlined in their contract. The terms of the most recent state purchase price agreement

governing plugging and reclamation work specify that companies are required to obtain performance bonds covering 50 percent of the project total for any project estimated to cost more than $25 thousand. The agreement also specifies that the state will pay "the premium cost for the performance bond without markup." Section 13-4-18 NMSA 1978 requires contractors to provide performance bonding for public works construction contracts valued at $25 thousand or more. Public works contracts are defined as "a contract for construction, construction management, architectural, landscape architectural, engineering, surveying or interior design services." While performance bonds can theoretically help insulate the state from liability associated with incomplete or poorly executed work, OCD has no record of ever pulling a contractor's performance bond and does not specify under what circumstances it would do so in the statewide purchase price agreement. Nevertheless, according to invoices, OCD has paid at least $1.3 million in bond premiums between FY23 and FY25. Some states do not require performance bonding for plugging and reclamation projects. The Colorado Department of Natural Resources only requires performance bonds for federally funded projects but not state projects; the Texas Railroad Commission's contract management guide notes that performance bonds are "discouraged unless there is a compelling need or statutory requirement."

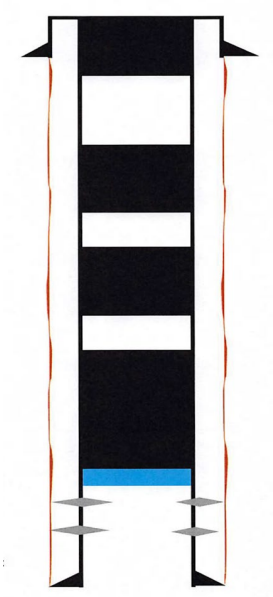
Plugging costs and designs vary widely between sites with similar characteristics, suggesting inadequate quality and financial controls. Examining a set of 12 oil wells plugged between March and November 2023 within a half-mile radius by the same contractor, total plugging costs ranged from $73 thousand to $220 thousand (Figure 13). The wells are largely identical in their depth, design and age. For example, the lowest and highest cost wells are 600 feet apart and were drilled in the same year, to the same depth (Table 15). While the final plugging design is also almost identical (Figure 11 and Figure 12), the OCD plugging report for the Barkneht well indicates the contractor had trouble with cementing

Figure 13. Plugging Cost Variation Within an Oil Field



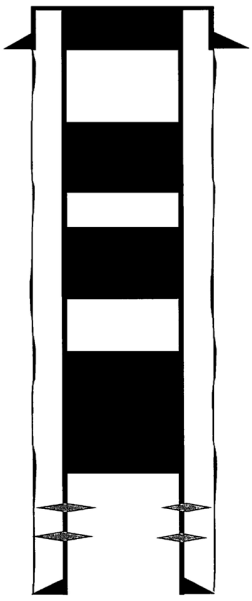
Source: OCD, SHARE

Figure 11. Plugged Wellbore Diagram: Barkneht #001 $219,834



Source: OCD

Figure 12. Plugged Wellbore Diagram: O'Brien Lightcap 7 #001 $73,473



Source: OCD

equipment that resulted in needing to drill out a previously-set plug, and that it had to pump much more cement to cover the same vertical distance because of cement loss to the surrounding rock formation. The contractor ran a cement bond log—a tool used to determine how well cement is bonded to the casing and surrounding formation—prior to plugging the Barkneht well, but not the O'Brien, and used a device called a cement retainer below the first plug on the Barkneht, but not on the O'Brien. OCD attributes the differences in plugging costs and procedures to differences in the conditions encountered downhole, as well as staff turnover. While downhole conditions do vary across wells, differences of the magnitude observed in this small group of wells suggest OCD has inadequate financial and quality controls.

Table 16. Adjacent Well Plugging Comparison

Well Name	O'Brien Lightcap	Barkneht
API	30-005-60815	30-005-60817
Date Drilled	12/2/1980	12/15/1980
Well Depth	2860	2861
Well Type	Oil	Oil
Date Plugged	3/18/2023	10/12/2023
Plugs Placed	4	4
Days to Plug	5	9
Purchase Order Estimated Cost	$78,974.00	$150,000.00
Actual Plugging Cost	$ 73,472.95	$ 219,834.41

Source: OCD, SHARE

Having a designated agency representative on site for state-contracted plugging, as is done by the industry and other states, could result in significant cost savings and would ensure plugging standards are followed. It is common practice for the industry to have a representative on site during well-plugging operations, often called a "company man." The representative might either be a direct employee of the company or a contracted third party, but the job is to be an on-site supervisor, sending frequent updates to the operator on actions taken to plug the well, materials used, and any issues that arise. The practice ensures all plugging standards are followed and that billing is accurate. Eight states require a representative of the regulator to be on site for well plugging, including Texas and Colorado, but New Mexico does not. While different states have different reasons for requiring a representative of the regulator on site during plugging operations, the practice has both potential quality and cost-saving benefits. Improperly plugged wells may leak, requiring re-plugging, which is time-consuming and expensive, so it is in the state's interest to ensure wells are plugged properly the first time. There is also the potential for cost savings from more accurate invoicing. At the anticipated total cost for plugging all wells currently under OCD's purview, a 1 percent cost savings would translate to $1.3 million, which would cover the cost of OCD hiring a third-party contractor to be the division's representative at state-contracted plugging operations.

OCD Plugging Oversight

Although many staff at OCD play some role in the state's well-plugging efforts, only one person currently provides dedicated oversight of state-contracted plugging. That petroleum engineer in the engineering special projects group reviews contractor-provided plugging plans and diagrams and communicates with the plugging contractors over the phone about problems that arise, as well as any modifications to the plugging plan. However, the engineer is not in the field and must rely on accurate reporting from the contractors. Field oversight is handled by a rotating group of inspectors, who visit plugging sites as their broader duties allow but who are typically not present for any extended period of time at a site. Using IIJA funding, OCD is currently attempting to hire a new staff member whose sole focus would be on-the-ground oversight of plugging operations, but the division has struggled with recruitment and retention (see Appendix F for OCD's organization structure).

Despite recent increases, financial assurance posted by operators is typically insufficient to cover the costs of plugging and remediating orphaned well sites.

In 2015, the Legislature amended statute to create separate financial assurance requirements for "temporarily abandoned" wells, and in 2018, it increased the maximum amount of financial assurance that can be required for active wells from $50 thousand to $250 thousand. The result has been operators posting an additional $53 million for temporarily abandoned wells and increased overall financial assurance. However, the financial assurance posted by some operators remains as low as $105 per well, with only one operator in the state having more per-well financial assurance than the current average cost of state-contracted plugging.

Operators have posted a total of $117 million in financial assurance with OCD, but that translates to less than $1,000 per well for some operators. OCD records show the division currently holds unreleased financial assurance from 1,580 operators totaling $117 million. There are currently 576 operators in New Mexico with unplugged wells. Of the financial assurance that has not been released by OCD, $17 million is associated with operators that OCD records show no longer have any unplugged wells in the state. The largest amount held by OCD for a single operator with active wells is $1.5 million, or $20 thousand per well. The median financial assurance held by OCD for an individual operator with active wells is $75 thousand, or an average of $7,000 per well. However, some operators have much lower per-well financial assurance; more than three dozen operators have less than $1,000 per well in posted assurance, and the company with the least has just $105 per well. Because financial assurance is tied to specific operators, the per-well financial assurance amount is much more significant than the statewide total; OCD can only access funds from the individual operator whose wells it has plugged.

According to OCD records, the state has successfully redeemed a total of $870 thousand in financial assurances since 2000, which represents just a fraction of the costs of state-contracted well plugging over the same time period. As noted previously, OCD does not have a comprehensive record of the wells it has plugged historically, making it difficult to evaluate how much financial assurance should have been available to OCD for plugging. However, according to OCD records, the state has successfully "redeemed" $869,863 in financial assurance since 2000 from 15 different operators backed by 10 banks or sureties. OCD has not successfully redeemed any financial assurance since 2018; available data does not indicate whether the division has pursued forfeiture in the interim. Of the financial assurance that has been forfeited since 2000 (the furthest extent of OCD records), roughly a third ($304 thousand) came from a single operator, Canyon E&P, which orphaned 227 wells in 2015 (see sidebar). There are 34 operators on OCD's orphaned well list with wells on state or private land that are being or have been plugged by the division.

Canyon E&P: Insufficient and Unforfeited Financial Assurance

Canyon E&P, a foreign limited liability company, purchased many of its 227 wells in 2010 from an operator going through bankruptcy proceedings with the stated intent of using waterflooding to restore production from the wells, which had been depleted of conventional oil resources. However, the waterflooding never commenced and Canyon E&P also went bankrupt.

In 2015, OCD issued the company a notice of violation (NOV), noting that none of the company's wells had reported production for two years and many of its wells had not produced for much longer, putting the company out of compliance with the Oil and Gas Act. After an administrative law hearing, the OCD director issued an order compelling Canyon E&P to plug the wells within 30 days, or barring that, giving OCD the authority to plug them itself. OCD began plugging the wells shortly thereafter, in the first quarter of fiscal year 2016.

At the time OCD began plugging Canyon E&P's wells, the state held **$957 thousand** in financial assurance from the operator. It has successfully forfeited **$304 thousand**, while **$644 thousand** is listed as unredeemed, without a release date. While OCD does not have records that would allow for analysis of the total amount spent by the state on plugging Canyon E&P's wells, since FY18, it has been at least **$10 million**.

A decade later, the division has fully plugged and remediated 25 of Canyon E&P's wells, plugged but not remediated an additional 171, and **32 remain unplugged and unremediated.** Those unplugged wells have been sitting idle for at least 11 years, and in some cases as long as 30 years.

Together, those operators have $5.8 million in unredeemed financial assurance, but the totals for individual operators vary widely, from $16 thousand to more than $1 million. The administrative burden of pursuing small amounts of financial assurance could be seen as outweighing the value, but not pursuing forfeiture may communicate that there are no consequences for orphaning wells.

While statute authorizes OCD to sue operators for indemnification of costs associated with state-contracted plugging, the division has no record of ever having done so. Section 70-14 NMSA 1978 allows OCD to sue operators to recover plugging costs paid out of the reclamation fund. However, there is no record of OCD ever bringing suit against an operator to recover costs incurred by the state through the plugging of its wells. The State Land Office (SLO) brought suit against an operator in 2016 for recovery of damages associated with spills and unpaid fees. In 2020, a judge ruled in SLO's favor and ordered the operator to pay $2.4 million, with interest. In 2023, the company filed for Chapter 11 bankruptcy and in 2024, for Chapter 7. Despite the judgement, the state has not recovered any money beyond the operator's original financial assurance.

Regulators in other states and countries reduce their liability for plugging and remediating orphaned wells through various mechanisms.

Current financial incentives are poorly aligned to encourage operators to properly plug and abandon their wells because requirements for financial assurance per well are less than the typical plugging cost, and OCD does not consistently seek forfeiture of financial assurance. Regulators in other states and countries have attempted to address that misalignment of incentives through a variety of mechanisms, including increasing financial assurance requirements, assigning liability to prior operators or interest holders, and preventing the transfer of wells to operators that cannot demonstrate they have the financial resources to plug them. More direct approaches include requiring operators to set aside future cleanup money in site- or operator-specific trust or escrow accounts and to plug a certain percentage of their inactive wells regularly. Many of these policy approaches have only been implemented in recent years, making it too early to fully assess their long-term effectiveness, and each comes with tradeoffs in terms of administrative burden, enforceability, and industry impact. EMNRD is currently beginning a rulemaking process based on a third-party petition that would make changes to the financial assurance requirements, among other things. While many of the changes align with the recommendations of this report, they are constrained by the current statutory framework and, as a result, have the potential to simply replicate its existing problems. In New Mexico, the goal should be to structure policies that motivate operators to plug wells before they become OCD's responsibility, leveraging the industry's capacity to do the work faster and likely at a lower cost.

Table 17. Policy Options for Reducing Orphan Well Liability

Policy	Description	Arguments For	Arguments Against	Implementing Jurisdictions
Increased financial assurance	Increase required financial assurance amounts to reflect actual plugging costs, including requiring single well financial assurance for inactive and low producing wells.	Increases the money available to the state for orphaned well plugging; matches an operator or well's risk profile to its required financial assurance.	Bonds or letters of credit can be difficult to obtain and cost operators money that goes towards neither production nor plugging; it can be difficult for the state to forfeit surety bonds.	Colorado Proposed NM rules
Trailing liability	The regulator can hold prior operators, lease holders, or working interest owners responsible for well plugging and remediation if the current operator is unable to pay.	Allows the state to hold operators that profited from the well responsible for cleanup; encourages self-policing among operators and may minimize the transfer of wells to risky operators.	Trailing liability can be difficult to enforce and can result in costly legal battles.	California Louisiana Department of the Interior
Licensing	The regulator can assess various aspects of a company (past compliance, financial standing, plugging liability, well portfolio, etc.) to determine if a company should operate in the state and/or if it can buy wells from other operators.	Prevents operators that do not have the capital to plug wells, have many inactive wells, or are facing large plugging liabilities from obtaining more wells that could become the responsibility of the state.	Depending on the level of detail requested from operators, the administrative burden could be significant.	Alberta <Canada> Texas
Site- or operator-specific trusts	Operators are required to pay into a trust or escrow account up to a site- or operator-specific estimated cleanup cost. The payments can be structured to build over time at defined rates or be tethered to production, so those profiting the most pay the most.	Ensures the state has enough money to plug and remediate wells should they be orphaned and puts all the money spent by the operators on FA towards cleanup. Disincentivizes orphaning because liability is effectively pre-paid.	Between estimating the necessary assurance and tracking many hundreds or thousands of accounts, the administrative burden could be significant. This option also ties up operator capital.	Louisiana Colorado

Source: LFC files

In 2022, Colorado adopted new rules requiring additional financial assurance with the goal of aligning an operator's risk profile with its required financial assurance. In 2019, the Colorado General Assembly passed Senate Bill 19-181, which restructured the Oil and Gas Conservation Commission into the Energy and Carbon Management Commission (ECMC) and directed it to adopt rules ensuring every operator is financially capable of meeting statutory obligations, including plugging, remediation, and reclamation (C.R.S. § 34-60-106(13)). The resulting rules, which went into effect in 2022, require all operators to submit a financial assurance plan, reviewed annually by ECMC. In its rulemaking, the commission determined lower production is a proxy for higher orphaning risk, and as a result, the required financial assurance plans are tethered to an operator's average annual production and its corporate structure (e.g., public or private). Operators with lower average production are assigned to plans that require greater financial assurance. Operators on those plans must also make defined annual contributions to a third-party trust fund until their full financial assurance obligation is met. Operators receive credit toward their financial assurance requirements for wells they plug and abandon. As of June 2024, more than one-third of operators had not submitted a financial assurance plan, and another 10 percent had submitted plans that were deemed insufficient. The rules have also been criticized for offering too many compliance pathways, increasing ECMC's administrative burden and potentially creating loopholes. However, it remains to be seen whether they

ultimately achieve the goal of reducing the number of orphaned wells in the state.

Similar to Colorado, proposed New Mexico rules would require operators to submit a plugging and abandonment plan prior to purchasing wells and for OCD to collect more financial assurance from operators with lower production. The rulemaking proposal, case number 24683 submitted by the Western Environmental Law Center, would make changes to OCD's current rules regarding inactive wells, financial assurance and well plugging. Among the suggestions are requiring operators to submit plugging plans when wells are transferred that demonstrate the purchaser has sufficient resources to plug the wells it is purchasing, requiring single well financial assurance for wells that produce less than 1,000 BOE annually and for less than 180 days, and requiring operators with well portfolios composed of more than 15 percent inactive or low-producing wells to provide single-well financial assurance for all of their wells. The proposal also recommends treating wells that produce less than 90 barrels and for less than 90 days in a year as presumptively of "no beneficial use," meaning they would need to be plugged. This report recommends defining "low-producing" wells and requiring additional financial assurances for them. It further recommends expanding the definition of "inactive" wells to include wells that produce fractions of a barrel of oil equivalent a day. This report also suggests additional mechanisms be made available to fulfill financial assurance requirements that would allow operators to set aside money over time for plugging and reclamation costs. Careful consideration should be afforded in the rulemaking process to ensuring the changes do not result in operators orphaning additional wells.

California uses trailing liability to hold previous operators responsible for properly plugging and abandoning wells if the current operator does not meet its obligations. Since 1996, California administrative code (Cal. PRC. Section 3237) has stated that the current operator of a deserted well is responsible for properly plugging wells and decommissioning production facilities. However, if the regulator determines the current operator does not have the financial resources to fully cover the cost of plugging and cleanup, the immediately preceding operator is responsible for the cost. The regulator can continue to look to previous operators until an operator is found that is determined to have the resources to plug and abandon the well. That includes mineral interest owners that may have leased the working interest in a well to another person. Known as "trailing liability," the rule is meant to disincentivize operators from transferring wells to companies they believe will not have the capital to properly plug and abandon the well, therefore keeping it from being orphaned to the state. The federal Department of the Interior has also had regulations that create trailing liability for offshore oil and gas platform decommissioning since the 1950s. However, it has never used those rules to pursue a prior operator in part because complex corporate structures can limit the ability of regulators to pursue compensation using trailing liability.

While OCD is limited in its ability to hold previous operators responsible for well plugging and reclamation, the State Land Office (SLO) can hold lessees responsible for the cleanup of well sites on state land if the operator cannot afford or refuses to do it themselves. On New Mexico state trust lands, the lessee and the operator of a well are often not the same because the entity that holds the lease from SLO may assign operational responsibilities to another company. In March 2020, SLO created an accountability and enforcement program focused on ensuring leaseholders comply with the terms of their lease agreements, including proper plugging and reclamation. SLO staff began tracking inactive wells and reaching out to lessees to plug and remediate those sites. In several cases, SLO has sued to compel lessees, and a recent New Mexico Court of Appeals decision concluded prior oil and gas lessees can be held responsible for cleanup necessitated by their activities on state trust lands. According to the agency, the program has resulted in the industry plugging 650 wells that may otherwise have been orphaned. At the current per-well average of $163 thousand, that translates to nearly $106 million in potential cost savings for plugging alone. SLO also claims increased enforcement has led to operators and lessees doing a better job of tracking and managing their inactive and marginal wells before the agency gets involved, but it is difficult to validate those claims. OCD records indicate a similar number of wells have been plugged annually in recent years as have been plugged historically, but it is possible those wells would not have been plugged otherwise.

The Alberta (Canada) Energy Regulator can deny the transfer of wells to operators that cannot afford to plug them. The Alberta Energy Regulator (AER) oversees all oil and gas production in Alberta, including licensing of oil and gas operators in the province. AER conducts an annual licensee assessment with the goal of understanding the ability of licensees to meet their regulatory obligations, including plugging and abandoning their wells. Factors considered in determining whether the applicant poses an unreasonable risk and should be denied a license include the compliance history of all actors within the applicant's company (including its directors, officers, and shareholders in the province and elsewhere), compliance history of actors previously associated with the applicant, financial health of the applicant and associated entities, outstanding debts to AER or others, cancelation or reductions in insurance coverage, and any unspecified factor AER considers appropriate in the circumstances. This process applies to the company's initial license to operate as well as whether it is allowed to purchase additional wells from other operators. Texas similarly requires operator assessments, though the information required is far less comprehensive than the financial and operational assessments used in Alberta. If OCD were able to review and deny or approve well transfers from one operator to another based on both companies' compliance history and available capital, the division could potentially prevent the transfer of wells to companies that do not have the financial resources to properly plug and abandon wells, therefore reducing the likelihood of orphaning.

Alberta Licensee Capability Assessment Considerations

- Financial health;
- Estimated total magnitude of liability (active and inactive), including plugging, remediation, and reclamation;
- Remaining lifespan of mineral resources and infrastructure and the extent to which existing operations fund current and future liabilities;
- Management and maintenance of regulated infrastructure and sites, including compliance with operational requirements;
- Rate of closure activities and spending and pace of inactive liability growth; and
- Compliance with administrative regulatory requirements, including the management of debts, fees, and levies.

Source: Alberta Energy Regulator

A site-specific trust account, like those offered in Louisiana and required for certain operators in Colorado, can be used as a supplement or alternative to the current financial assurance system. Bonds, particularly surety bonds, have long been the primary regulatory mechanism for ensuring proper plugging and abandonment of wells. However, changes to the surety bond market have made those more difficult for some operators to obtain. As a result, regulators in some states have created a mechanism for companies to set aside money directly for cleanup through site-specific trusts or escrow accounts, up to an estimated maximum. In Louisiana, operators have the option of fulfilling their financial assurance requirements though a site-specific trust when they transfer a well to another operator. Typically, an operator will do that to avoid being held liable for plugging and remediation costs if the new operator fails to pay (because Louisiana also has trailing liability). The amount required for Louisiana's site-specific trust accounts is determined through an estimate of actual plugging costs, which must be updated when the well is transferred. A 2024 legislative program evaluation recommended Louisiana encourage the use of site-specific trusts by requiring them when new wells are permitted. In Colorado, certain low-producing operators are required to contribute to a sinking fund or third-party trust at a specified rate annually. Those funds are not tied to individual wells but to the operator itself to minimize the administrative burden on regulatory staff. Other models for escrow or trust accounts include tethering contributions to the account to production, with different tiers for the stage of a well's life. Those can be structured to ensure the operator who profits from the most from the well also pay towards the liability, or to require accelerated contributions later in a well's life. One advantage of trusts over sureties is that all the money paid into the account ultimately goes toward plugging and reclamation, not to a bank or insurance company through premiums. If structured properly, the trusts also ensure the state has sufficient financial assurance to cover the costs of plugging and remediating the site should it be orphaned.

Recommendations

The Legislature should consider:

- Amending statute to require the Oil Conservation Division of the Energy, Minerals and Natural Resources Department to annually provide a report to the Legislature detailing all costs associated with state-contracted plugging and remediation, not only costs associated with use of the reclamation fund, including information about average cost-per-foot for plugging and cost-per-acre for remediation;
- Amending Section 70-2-14 NMSA 1978 to specify that wells producing below certain thresholds set in rule require additional financial assurance;
- Amending Section 70-2-14 NMSA 1978 to allow an operator to meet its financial assurance obligations by fully funding a third-

party trust or escrow up to OCD's site- or operator-specific estimated plugging and remediation costs; and

- Amending statute to grant the Oil Conservation Division the authority to review and disallow the transfer of wells should the division determine, through processes outlined in rule, that the purchaser is unlikely to be able to fulfill its asset retirement obligations.

The Energy, Minerals and Natural Resources Department should:

- Promulgate rules specifying that low-producing wells require individual well financial assurance, posted within two months of notice, and clarifying that the transfer is contingent on regulatory approval;
- Publish a list of orphaned wells monthly, including both wells the state has already plugged and those it is planning to plug, including the costs associated with plugging and reclamation, to ensure transparent tracking of state expenditures on orphaned wells;
- Develop internal estimates for the cost of plugging and reclaiming individual wells and associated infrastructure;
- Develop individual contracts for plugging projects, in addition to the statewide purchase price agreement, that specify the scope of work, the estimated cost, the procedures for obtaining a change order and the circumstances under which OCD will pull a contractor's performance bond;
- Reopen its statewide purchase agreement for plugging and remediation work to solicit additional bids from plugging contractors by September 2025;
- Ensure the presence of a "company man" for all state-contracted well plugging who is responsible for filing daily reports on the activities undertaken by the contractor, the materials used, and the estimated plugging cost;
- Develop a risk-based monitoring system to track leaks from wells awaiting plugging, as well as plugged and abandoned wells, and provide annual reports on the number of previously plugged wells that are leaking, what they are leaking, and how much; and
- Complete the prioritization scoring of all currently orphaned wells and complete assessments for new orphaned wells within 90 days of the state assuming plugging authority.

Appendix A. EMNRD Report Card Updates on Orphaned Well Plugging

Fiscal Year	LFC/OCD Comments
2007	"The program area managed 12 site remediation projects in FY07 costing approximately $3 million and exhausting reclamation funds available for this purpose. It should be noted that some of these projects, while expensive, were determined to be critical to reclamation efforts."
2012	"In FY12, the OCD spent only $3 million, or 30 percent, of the oil and gas reclamation fund to plug wells and to conduct site assessments, monitoring and maintenance activities. The agency reports no wells were plugged for the first quarter of FY13 because a vendor on price agreement went out of business and the price agreement expired."
2013	"Well plugging activity increased in FY13, with a cumulative, annual total of 57 wells plugged, decreasing the number of outstanding wells to be plugged by almost 50 percent. Additionally, the program generated $100 thousand in revenue for the oil and gas reclamation fund from the sale of salvage equipment at the plugging sites."
2014	"The program is currently working with a group of contractors to properly plug a significant number of wells resulting from the business failure of the former Xeric Oil and Gas Corp. There are 45 such wells located southwest of Hobbs, ten of which were plugged in the first quarter of FY14."
2015	"The program is currently working with a group of contractors to properly plug a significant number of wells resulting from the business failure of the former Xeric Oil and Gas Corp. The hearing process for two sets of wells was completed and the wells are now approved for plugging. The division has five plugging contractors under contract. All five are currently doing work for other clients and will begin plugging wells for the Oil Conservation Division as soon as possible."
2016	"The agency is on track to meet the annual target for plugging abandoned oil and gas wells. However, agency and LFC projections show a rapidly decreasing oil reclamation fund balance through FY17 due to a long list of wells authorized for plugging – which is expected to grow in the near future due to oil producer bankruptcies – and increased use of the fund to support agency operations. At the same time the fund is being tapped at a higher rate, revenues are projected to decline as the oil and gas industry weathers the downturn. As of May 2016, the cash balance of the oil reclamation fund is $9.3 million, but agency staff reports an unobligated balance of only $395 thousand and projects a reduction in fund revenues. The average cost of plugging a well is $30 thousand to $40 thousand."
2017	"OCD had been waiting on General Services Department approval of a new four year plugging contract, which stopped activity in the second quarter. However, 10 wells were plugged in the third quarter and improved weather conditions should allow the agency to meet the annual target of 30 wells plugged."
2018	Q1: "No wells were plugged in the first quarter, which the OCD attributes to wet weather in the southeast which limited access to well locations. OCDs performance on this measure will also likely be hindered by funding; the oil reclamation fund, which is used to pay for plugging activities, will likely be exhausted by the close of FY20." Q2: "OCD plugged 12 wells in the second quarter and is on pace to meet the target. Performance on this measure may improve as a result of the Legislature increasing general fund appropriations for EMNRD by $3 million to offset use of the reclamation fund. EMNRD anticipates plugging 60 wells in calendar year 2018. The State Land Office estimates there are 600 unplugged, abandoned wells on state trust lands."
2019	"Despite plugging 41 abandoned oil and gas wells in FY18, the agency requested a target of only 27 in FY19, which it met. OCD reports that 208 abandoned or orphaned wells are currently approved for plugging."
2021	Q1: "Due mainly to timing conflicts with OCD's well-plugging contractor, the target for wells plugged was not met in FY20." Q4: "OCD had a new procurement agreement for FY21 that allowed for additional approved well-plugging contractors, which substantially increased the number of wells plugged in FY21 relative to the past three fiscal years. The division was just one well short of meeting its annual target."

Comments Continued

2022	Q2: "Orphan well-plugging was slow in the first two quarters of FY22 and OCD is unlikely to meet its annual target. Program staff report the recent well sites have been in worse than usual condition with defective casing and casing collapses causing additional rig time and cementing to properly remediate the wells. The increased time and materials required, plus the effects of inflation, have significantly increased cost of well-plugging to roughly $70.5 thousand per well." Q3: "OCD has recently been focusing its well-plugging efforts on a large oil field containing old, poorly maintained orphan well sites that require additional time and resources to remediate. Furthermore, program staff report low availability of equipment and crews has also contributed to the slow pace of well-plugging. Wells such as these with defective casing and casing collapses are more expensive and take longer to complete, but pose the greatest risk to groundwater. OCD has spent just over $1 million on plugging costs for 16 wells so far in FY22." Q4: OCD has recently been focusing its well-plugging efforts on a large oil field containing old, poorly maintained orphan well sites that require additional time and resources to remediate. Since 2015, OCD has plugged 234 wells on state and private land. In FY22 OCD has spent $1.6 million in recurring funds, and $1.8 in other state funds on well plugging. OCD secured the services of four rigs and intends to plug more wells using monies from the reclamation fund and a sizeable grant from the federal government. Plugging cost per well have doubled from FY21 to FY22."
2023	"OCD received a $25 million initial federal grant to fund plugging and remediation at 200 well sites over 24 months under the federal Infrastructure Investment and Jobs Act's Orphan Well Program. ENMRD's 2022 annual report estimated more than 1,700 abandoned wells are located on state-owned or private land. The division expects to receive an additional $75 million over the next four years for expenditure through 2030. As required by the grant, the division successfully obligated 90 percent of the initial funding to 145 plugging projects. The Division anticipates plugging the remaining balance of those initial grant funds by September 2023. However, the "wells properly plugged" metric counts only completed plugging projects. The division currently has three contract plugging crews working concurrently and correctly predicted a significant increase in well-plugging activity between the second and third quarters once it completed steps to ramp up the program. OCD has set an internal target of plugging approximately 200 wells by October 2023, well above its target of 50 for the year; however, crew availability remains a challenge."
2024	"Ten wells were plugged during the fourth quarter of FY24, bringing the total for the fiscal year to 105. Five plugging rigs were contracted and are working simultaneously. Plugging activity increased due to funding from the federal Infrastructure Investment and Jobs Act and continued state support from the oil reclamation fund. With still over 2,000 orphaned wells identified in New Mexico, the agency's ability to complete these plugging projects at an increased pace will be critical to protecting public health and safety."
2025	"Nine abandoned and orphaned wells were plugged during the first quarter of FY25. The lower-than-average number was due to new requirements for pre-clearance of well site regarding compliance with the Endangered Species Act and the National Historic Preservation Act. Once new clearance requirements are finalized, well plugging will return to a more consistent rate. The division also, per the request of the Federal Indian Minerals office, has begun plugging on Navajo-allotted land. With still over 2,000 orphaned wells identified in New Mexico, the agency's ability to complete these plugging projects at an increased pace will be critical to protecting public health and safety."

Source: LFC

Appendix B. Other State Financial Assurance Amounts

While most states require oil and gas operators to provide upfront financial assurance for well plugging, the amounts and variables considered vary widely. In 2023, the Ground Water Protection Council published a summary report featuring different states' approaches to financial assurance for oil and gas well plugging and remediation. Among the states, Alaska has the highest blanket or all-well bond maximum at $30 million, while Pennsylvania has the lowest blanket bond at $25 thousand for all wells. New Mexico is one of four states where the maximum blanket bond is capped at $250,000 in statute. Eleven states consider the depth of the proposed well in the amount of financial assurance required, increasing the amount as the well depth increases. However, many of these states, including New Mexico, only consider well depth in the financial assurance amount required for a single well while the blanket bonds for more than one well do not consider depth. Only four states vary their blanket bond amounts depending on the depth of the well: for example, in Kansas there are blanket bond amounts for all wells less than 2,000 feet in depth and higher blanket amounts for wells more than 2,000 feet in depth. Additionally, some states consider factors like location of the well, mineral type, and status of the well.

Financial Assurance Amounts in Select States

State	Minimum	Maximum	Do amounts consider well depth?
Alaska	$400,000	$30,000,000	No
Colorado	$12,000	$6,000,000	No
New York	$2,500	$2,000,000	Yes*
Louisiana	$6,000	$500,000	Yes
New Mexico	**$25,000**	**$250,000**	**Yes**
Texas	$25,000	$250,000	Yes
Michigan	$20,000	$250,000	Yes*
West Virginia	$5,000	$250,000	No
Utah	$1,500	$120,000	Yes*
South Dakota	$50,000	$100,000	No
Mississippi	$20,000	$100,000	Yes
Nebraska	$10,000	$100,000	No
Alabama	$5,000	$100,000	Yes
Arkansas	$3,000	$100,000	No
Illinois	$1,500	$100,000	Yes
Montana	$1,500	$50,000	Yes
Kansas	$7,500	$45,000	Yes*
Indiana	$2,500	$45,000	No
Pennsylvania	$2,500	$25,000	No

Note: New York, Michigan, Utah, and Kansas regulate blanket bond amounts based on the depth of the wells while the other only consider depth in the amount for a single well.

Source: Ground Water Protection Council

Appendix C. History of the Oil and Gas Conservation Tax and the Oil and Gas Reclamation Fund

- Laws 1959, Chapter 53, Section 7: Oil conservation tax created at a rate of 0.14 percent on oil and gas products severed and sold. The revenue went to the oil conservation fund, which was used by the Oil Conservation Commission (OCC) to enforce the Oil and Gas Act (as is currently the function of OCD).

- Laws 1975, Chapter 289, Section 15: The oil conservation tax rate was increased to .18 percent.

- Laws 1977, Chapter 237, Section 5 and 6; Chapter 234, Section 4: The Legislature amended statute so most of the conservation tax revenue still went to the conservation fund, but 0.01 percent was deposited in the newly created oil and gas reclamation fund specifically for the OCC to plug and remediate abandoned well sites. The laws also tied the conservation tax rate to the balance in the reclamation fund; being 0.19 percent when the fund balance was under $1 million, and 0.18 percent when the balance was over $1 million.

- Laws 1989, Chapter 130, Sections 1 and 6: The Legislature changed the allocation of the conservation tax, increasing the share directed to the reclamation fund to 5.3 percent, with 87.7 percent going to the conservation fund, and 7 percent to the general fund.

- Laws 1991, Chapter 9, Section 16: The Legislature repealed the conservation fund, instead sending all conservation tax not sent to the reclamation fund to the general fund; the percent directed to the reclamation fund remained the same, at 5.3 percent.

- Laws 2010, Chapter 98, Sections 1 and 2: The Legislature untethered the conservation tax rate from the balance of the reclamation fund and instead tied it to the price of oil. When the price of West Texas Intermediate is less than $70 per barrel, the tax is 0.19 percent and the reclamation fund receives 10.5 percent of the tax revenue and the remainder goes to the general fund. When the price is over $70 per barrel, the tax is 0.24 percent and the reclamation fund receives 19.7 percent of the revenue.

Appendix D. Texas Plugging Costs

District	Calculated average per-foot cost													
	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
01	$3.95	$3.03	$5.98	$10.47	$8.52	$6.85	$6.65	$7.68	$8.21	$7.88	$11.14	$12.31	$11.53	$9.49	$11.15
02	$3.96	$4.84	$4.84[2]	$14.27	$10.74	$10.74[4]	$8.36	$8.36[5]	$8.30	$8.81	$15.70	$13.57	$7.97	$8.48	$11.77
03	$8.36	$6.07	$8.73	$12.13	$8.71	$10.59	$10.96	$5.22	$6.04	$7.51	$13.93	$15.58	$10.40	$30.19	$21.60
04	$4.31	$5.60	$7.72	$13.96	$15.77	$6.49	$6.38	$7.56	$9.42	$9.35	$8.32	$8.16	$8.66	$10.35	$16.37
05	$3.87	$4.35	$6.10	$7.85	$14.45	$10.96	$7.45	$5.28	$5.02	$31.73	$6.40	$8.29	$6.62	$10.20	$9.92
06	$8.99	$7.64	$6.42	$4.90	$5.94	$5.94[4]	$8.30	$11.00	$6.84	$7.69	$7.93	$6.49	$8.81	$15.75	$15.05
6E	$3.74	$5.63	$5.63[2]	$8.45	$7.16	$6.25	$6.11	$5.96	$6.40	$7.63	$6.79	$7.54	$8.34	$12.46	$11.90
7B	$3.90	$5.70	$5.39	$6.48	$6.76	$7.77	$5.93	$6.23	$6.23	$7.19	$11.27	$7.42	$10.09	$9.57	$10.62
7C	$7.34	$12.93	$10.56	$6.29	$4.52	$10.26	$7.53	$7.85	$7.21	$8.09	$9.63	$9.30	$6.43	$11.14	$10.95
08	$8.56	$6.52	$12.31	$12.68	$17.37	$6.80	$11.57	$14.15	$13.28	$10.29	$17.88	$17.23	$27.38	$30.75	$46.48
8A	$4.28	$4.28[1]	$4.28[2]	$4.28[3]	$9.02	$9.02[4]	$6.54	$6.54[5]	$6.54[6]	$10.62	$12.16	$17.54	$12.74	$17.09	$14.27
09	$2.60	$2.73	$3.38	$3.96	$4.21	$4.92	$2.88	$2.97	$3.04	$4.27	$4.37	$4.46	$4.61	$6.39	$5.96
10	$6.25	$5.85	$5.63	$14.50	$7.48	$17.17	$9.05	$6.85	$5.44	$8.13	$9.69	$10.94	$9.81	$16.45	$16.39

Notes: Cost is calculated based on actual costs incurred by the Railroad Commission for plugging wells in the previous fiscal year.
(1) No State Funded plugging operations were completed in District 8A during FY 2011. The per-foot cost from FY 2010 was continued.
(2) No State Funded plugging operations were completed in Districts 02, 6E or 8A during FY 2012. The per-foot cost from FY 2011 was continued.
(3) No State Funded plugging operations were completed in Districts 8A during FY 2013. The per-foot cost from FY 2012 was continued.
(4) No State Funded plugging operations were completed in Districts 02, 06, and 8A during FY 2015. The per-foot cost from FY 2014 was continued.
(5) No State Funded plugging operations were completed in Districts 02 and 8A during FY 2017. The per-foot cost from FY 2016 was continued.
(6) No State Funded plugging operations were completed in Districts 8A during FY 2018. The per-foot cost from FY 2017 was continued.

Appendix E. OCD Well Plugging Prioritization System

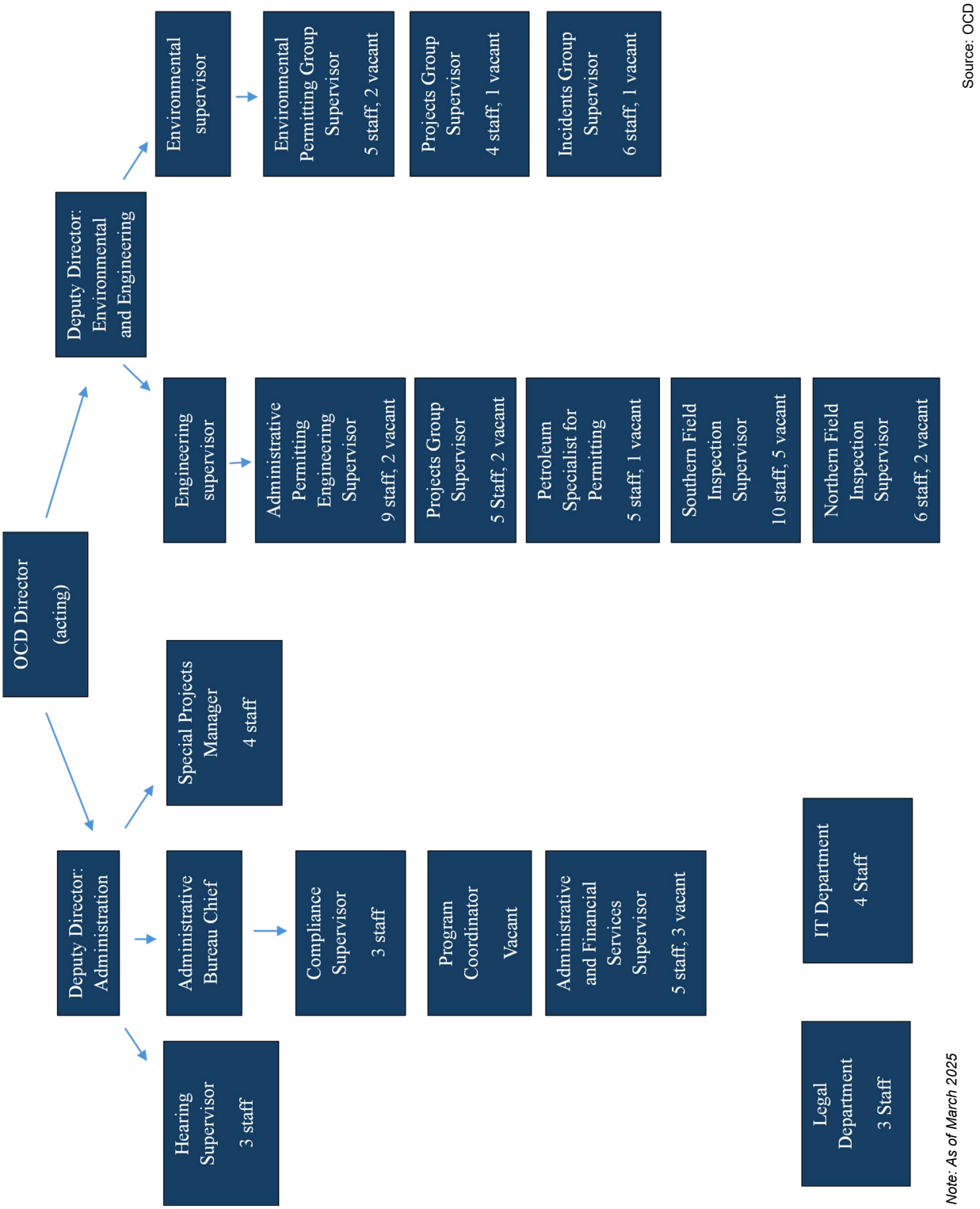
Each well is scored on 21 different criteria, with different weights assigned to each criterion. Wells that are actively leaking are automatically deemed highest priority, but other criteria that may boost a well's overall score include if it is within 300 feet of an occupied structure, if it is within a municipal boundary, if the well is a saltwater disposal well, if it has known defective casing, and if it has no well head control. After wells that are actively leaking, wells with a score over 100 are considered the second-highest priority, scores of 50-100 are third, and wells with a score lower than 50 are the last priority to plug.

OCD Plugging Prioritization Ranking Criteria

Factor	Maximum Weight	Weighting Criteria
Active leaks	Highest priority	
Within 300 ft of an occupied structure	10	Yes/No
Within a municipal boundary	10	Yes/No
Disposal well?	10	Yes/No
Mechanical integrity testing history/ known defective casing	10	Yes/ No; unrepaired failure
No Wellhead control	10	Well with gas or casing above 12" =10, well without gas =7
No surface casing or water protection casing	9	Yes/No
Well has abnormally high pressure	8	Yes/No
Located within an agricultural area	8	Yes/No
Age of well >25 years	7	Yes/No
Bradenhead pressure >10	7	Yes/No
Date of las production or injection >10	7	Yes/No
Within one mile of other orphan wells needing plugging	6	Yes/No
Within 200 ft of a water supply well	5	Yes/No
Proximity to karst geology	5	High karst =5, medium karst =3, low karst =0
Hydrogen sulfide	5	Yes/No
Naturally occurring radioactive material	5	Yes/No
Citizen complaints	5	Yes/No
Areas within ½ mile of injection/disposal	4	Yes/No
Private surface	3	Yes/No
Other	10	TBD, level dependent on issue discovered.

Source: OCD

Appendix F. OCD Organizational Structure



Source: OCD

Note: As of March 2025

EXHIBIT 5

HINKLE SHANOR LLP
ATTORNEYS AT LAW
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ROSWELL, NEW MEXICO 88202
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WRITER:
Ann Cox Tripp, Partner
atripp@hinklelawfirm.com

April 16, 2026

SLO.IPRA@slo.state.nm.us
Records Custodian
NM State Land Office
310 Old Santa Fe Trail
P.O. Box 1148
Santa Fe, NM 87504

RE: ***Inspection of Public Records Request***

Dear Records Custodian,

Pursuant to the New Mexico Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 *et seq* ("IPRA"), I am requesting copies of the following records, listed below. In the event the Records Custodian should determine that the below requests either (a) "fail to identify the records sought with reasonable particularity," Section 14-2-8(C), or (b) constitute "excessively burdensome or broad" requests, I am also requesting that the Records Custodian contact our office so that we may better limit or structure the request to enable timely response under IPRA.

1. Public records related to State Land Office Land Maintenance Fund expenditures in Fiscal Year 2024 and Fiscal Year 2025, July 1, 2023 – June 30, 2025, to include accountings, receipts, or invoices for contractual services during the above time period.

2. Public records related to the State Land Office Reclamation and Remediation Fund expenditures in Fiscal Year 2024 and Fiscal Year 2025, July 1, 2023 – June 30, 2025, to include accountings, receipts, or invoices for contractual services during the above time period.

3. Public records identifying or establishing the number of state wells plugged by entities which were not the registered operator of the well, commonly referred to as "forced plugging" or to "force plug" wells. *See* Exhibit A. OCD Exhibit 03-0003 in Case No. 24683, and Exhibit B, Transcript of Alison Marks Testimony, 221:25–222:6 & 223:20-24 (Oct. 27, 2025).

4. Any notes, recordings, transcripts, summaries, drafts or working documents, or presentations, and records of attendance related to or arising out of the

EXHIBIT 5

"Stakeholder Meetings" conducted on the following dates and locations related to the State Land Office Proposed Bonding Rule:

a. November 6, 2025, Santa Fe, NM
b. November 12, 2025, Santa Fe, NM
c. November 14, 2025, Hobbs, NM
d. November 17, 2025, Farmington, NM

5. Public records of bond claims or correspondence evidencing claims made or submitted by the State Land Office to forfeit surface damage bonds under Rule 19.2.100.23 NMAC from FY20-FY25 and the resulting receipt and use of related funds.

6. Copies of renewable energy leases and related bond and financial assurance agreements or instruments for all wind, solar, and geothermal leases on State Trust Lands issued by the Commissioner of Public Lands from January 1, 2022 to present.

This request seeks all materials, regardless of physical form or characteristics, which are used, created, received, maintained or held by your office, irrespective of whether such records "are required by law to be created or maintained." NMSA 1978, § 14-2-6. Pursuant to §14-2-8(C) the person making this request is Ann Cox Tripp of Hinkle Shanor LLP, P.O. Box 10, Roswell, New Mexico 88202-0010.

In accordance with §14-2-9 NMSA, we will pay the reasonable fees for photocopying or duplicating of any of the records, documents, or recordings. Any information stored digitally may be produced in electronic format, and we are agreeable to accept responsive document production on a rolling basis as records become available.

Thank you for your attention to this matter and please do not hesitate to contact our office with any questions.

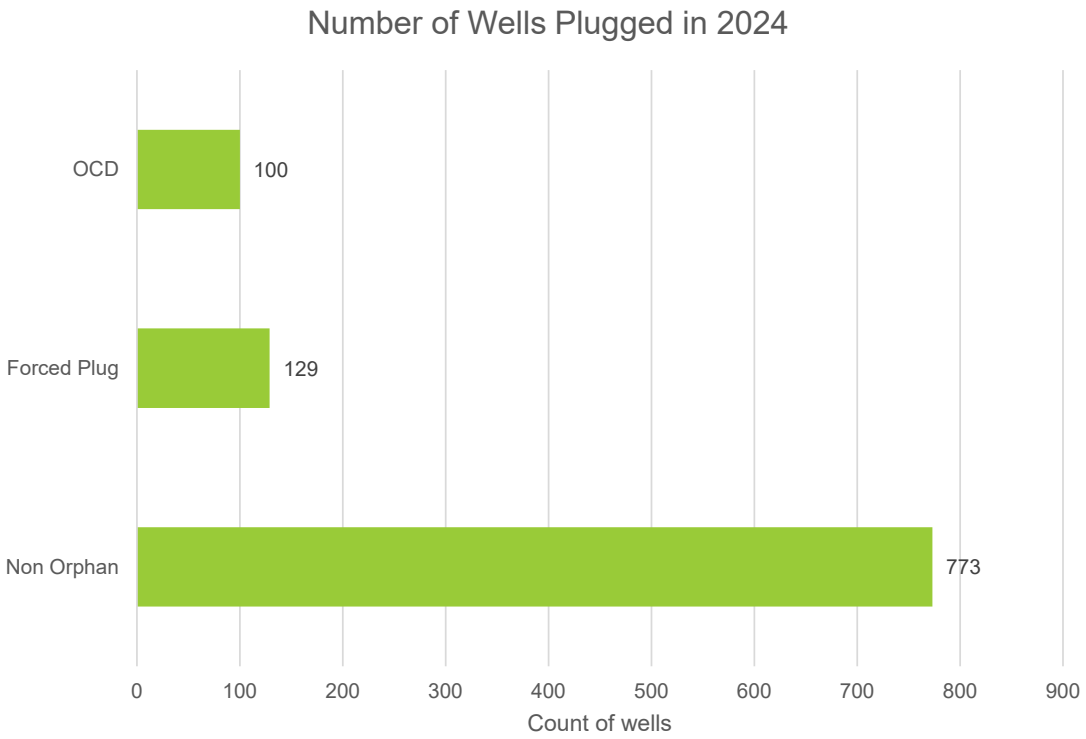
Very truly yours,

HINKLE SHANOR LLP

/s/ Ann Cox Tripp

Ann Cox Tripp

Calendar year 2024 Plugging Counts



- Total wells plugged from January 1, 2024, to January 1, 2025, was 1002 wells.
- Orphan wells made up approximately 23% of the 2024 plugging count.
- Non-orphan wells are wells in which an Operator plugged its own well or a known subsidiary of itself.
- Forced plugged wells are wells in which an Operator plugged a known Orphan well which they are not the Operator of record.
- OCD are wells which OCD plugged a known Orphan well with various sources of funding.

name, Marks. M-A-R-K-S.

HEARING OFFICER ORTH: Do swear or affirm to tell the truth?

THE WITNESS: I do.

HEARING OFFICER ORTH: Thank you.

Go ahead, Mr. Moore.

MR. MOORE: Thank you, Madam Hearing Examiner.

ALLISON MARKS,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MOORE:

Q. Ms. Marks, I know you just said your name, but could you state your name and your position at the State Land Office?

A. Sure. Allison Marks. I'm the director of the Oil, Gas and Minerals Division at the State Land Office.

Q. And did you prepare written direct testimony that was attached to the commissioner of public lands' prehearing statement in this matter?

A. I did.

Q. And are there any corrections or clarifications that you would like to make to that direct testimony?

BY MR. TISDEL:

Q. Good afternoon, Ms. Marks. My name is Kyle Tisdel. I'm an attorney with the Western Environmental Law Center and represent the applicants in this matter. Thank you for your testimony today.

In your direct testimony, you state that the commissioner strongly supports the proposed rule amendments; is that correct?

A. That's correct.

Q. And that's upon a full review of the rule that has been proposed and that is the subject of this rulemaking?

A. I've -- I did not review the entire rule. I only reviewed the portions related to well transfers.

Q. But the commissioner strongly supports the entirety of the proposed rule, or just --

A. I believe that's correct.

Q. Okay. Wonderful. Thank you.

The State Land Office has had tremendous success in its accountability and enforcement program for plugging wells. Is that true?

A. That's correct.

Q. Would you, please, yeah, just describe that program a little bit for us.

A. Sure. So under the accountability and

enforcement program, the land office has -- I believe to date, we've had 746 wells plugged and abandoned, and that is by asking the lessees of operators to make sure on the -- on the leases, the leases that we have issued, to make sure those operators have -- make sure the operators on those leases -- sorry. I apologize.

For example, if we issue a lease to somebody, we will make sure that the lessee of record goes after whomever they have parsed out certain debt severances to or someone they -- they have maybe an override, but they have allowed another person to be an operator record on that lease.

Then we will pursue that lessee of record to P&A that well, but that is no longer active in producing. Say an operator has left the state, it has become insolvent, filed for bankruptcy, it's just -- or in another case, for example, they've created a huge environmental mess, we will pursue the lessee of record to clean up those messes.

We've filed, I believe, 38 -- 38 cases that have been filed, we've resolved 18 of those. A lot of these can be resolved without filing a lawsuit, and there's a lot of good operators that we work with. But a lot of the operator -- or sorry, I said operator -- good operators, we work with good

operators, but they're also lessees, a lot of those lessees have stepped up and actually plugged and abandoned the not so great operators' wells on those leases.

Q. Thank you. 746 wells is a lot. Over how many --

A. In addition to those, I'm sorry, we also do lease assignment reviews within my Division. So in addition to those 746 under the accountability and enforcement program, we also get a number of kind of more very poor performing wells. We get those plugged separate from the accountability and enforcement program.

So we'll get spills cleaned up and wells plugged under the unit review process or just the lease assignment review process. So that's in addition to wells that have been plugged or sites cleaned up vis-a-vis the accountability and enforcement program.

Q. Over how many years would you say that the 746 wells that have been plugged, over how many years has that program been in operation to get those wells plugged?

A. Either four or five years.

Q. And the relationship between the State Land

EXHIBIT 6

NM State Land Office - Oil, Gas, and Minerals Division

Levels of bonding and Instructions for filing a Surface Improvement Damage Bond

1) **Single lease damage bond** in the amount of $10,000.00 will provide coverage for only one oil and gas lease. Both an officer of the surety provider and an officer/representative of the principal must complete this form. All signatures must be notarized.

2) **Multi-lease (blanket) damage bond** in the amount of $20,000.00 will provide coverage for two or more oil and gas leases. Both an officer of the surety provider and an officer/representative of the principal must complete this form. All signatures must be notarized.

3) **Mega-bond** in the amount of $25,000.00 will provide coverage for state leases for oil and gas, minerals, coal or geothermal resources and right-of-way easements. Both an officer of the surety provider and an officer/representative of the principal must complete this form. All signatures must be notarized.

4) **Assignment of Cash Collateral Form** may suffice in lieu of a surety damage bond. It should be for the sum of $10,000.00 or $20,000.00, 25,000.00 depending on the number of leases it will cover. The financial institution must be a federally insured bank or savings institution within the state of New Mexico. Both an officer of the financial institution and an officer/representative of the principal must complete this form. All signatures must be notarized.

NOTE: The respective damage bond form must also be completed in conjunction with the Assignment of Cash Collateral Form. This damage bond form may be signed and notarized by the Principal only

5) **Request for Waiver of Bond**. The waiver of bond may be filed by a lessee where there is no surface disturbance or occupation of the leased land and it also serves as an acknowledgement that the lessee must file a sufficient bond with our office before any operations commence or the applicable lease(s) may be cancelled. Signatures must be notarized.

6) **Surface Owner/ Lessee Waiver of Bond**. With this form, a surface owner relinquishes his/her right to require a surface damage bond from a mineral lessee or an operator who is commencing development or operations on the land in question. Signatures must be notarized.

Revised July 2016

EXHIBIT 6

Please contact the Oil, Gas and Minerals Division for assistance at (505) 827-5744.

Once completed, please return the properly executed forms to the address below for filing.

Standard mail:
NM State Land Office
Oil, Gas and Minerals Division
PO Box 1148
Santa Fe, NM 87504-1148

Priority Mail:
NM State Land Office
Oil, Gas and Minerals Division
310 Old Santa Fe Trail
Santa Fe, NM 87501-2708

Revised July 2016

EXHIBIT 6

Statutes/Statutory Chapters in New Mexico Statutes Annotated 1978/

CHAPTER 19 PUBLIC LANDS/
ARTICLE 10 LEASE OF OIL AND GAS LANDS/
19-10-26.
[Lands sold with reservation of minerals; lease; bond to protect purchaser; waiver.] (1979)

State lands sold heretofore, or which may be sold hereafter on any deferred payment plan under contract containing a reservation to the state of the minerals therein contained, may be leased by the state for oil, gas or other mineral development or exploitation, as provided by law in the same manner as other state lands.

Provided, that before any lessee of minerals on state lands so sold shall commence development or operations thereon such lessee or the operator (being any third party conducting exploratory or development operations authorized by the lessee within the authority granted to the lessee under the provisions of Section 19-10-13 NMSA 1978) shall execute and file with the commissioner of public lands a good and sufficient bond or undertaking in an amount to be fixed by the commissioner, but not less than two thousand dollars ($2,000), in favor of the state of New Mexico for the use and benefit of the purchaser holding purchase contract or deed to such lands on which such development is about to be commenced, his grantees or successors in interest to secure the payment for such damage to the livestock range, water, crops or tangible improvements on such lands as may be suffered by such purchaser or his successors in interest by reason of such development, use and occupation of such lands by such lessee.

And provided further, that if any such purchaser shall file with the commissioner of public lands a waiver duly executed and acknowledged by him of his right to require such bond, such development, occupation and use of the lands by a mineral lessee may be permitted without the bond herein required.

History: Laws 1925, ch. 137, § 5; 1929, ch. 45, § 1; C.S. 1929, § 132-423; 1941 Comp., § 8-1119; 1953 Comp., § 7-11-20; Laws 1979, ch. 60,

19.2.100.23 SURETY TO PROTECT SURFACE PURCHASER AND LESSEE - WAIVERS:

A. Before any lessee shall commence development or operations, including any and all prospecting activities upon the lands, such lessee or operator shall execute and file with the commissioner a good and sufficient bond or other surety, in an amount to be fixed by the commissioner but not less than ten thousand dollars ($10,000) in favor of the state of New Mexico for the benefit of the appropriate trust beneficiary and the state's contract purchasers, patentees and surface lessees, to secure payment to the extent allowed by law for such damage to their interests and tangible improvements upon such lands as may be suffered by reason of development, use and occupation of the lands by the oil and gas lessee.

B. A bond or other surety in the minimum amount of ten thousand dollars ($10,000) for each lease shall be deemed sufficient unless and until the commissioner determines, or one or more surface lessees or purchasers show the commissioner, that such an amount is not adequate in a given case. Provided, however, that if a lessee holds more than one oil and gas lease, a blanket bond or other surety in the amount of twenty thousand dollars ($20,000) will be acceptable unless and until the commissioner determines, or one or more surface lessees or purchasers show the commissioner, that such an amount is not adequate in a given case. Provided further, that if any purchaser, patentees or surface lessees shall file with the commissioner a waiver duly executed and acknowledged by him of his right to require such bond or other surety pursuant to Section 19-10-26 NMSA 1978 the development, occupation and use of the lands by the oil and gas lessee may in the discretion of the commissioner be permitted without said surety.

C. With the approval of the commissioner, in lieu of the single and blanket bonds for oil and gas lessees, a twenty-five thousand dollar ($25,000) bond or other surety may be used at the option of lessee for the use and benefit of the commissioner, to secure surface improvement damage and the performance of the lessee under one or more state leases or permits for minerals, oil and gas, coal or geothermal resources or as holder under one or more state rights of way or easements which the lessee has executed with the commissioner. The lessee will be obligated to perform and keep all terms, covenants, conditions and requirements of all state leases for minerals, oil and gas, coal or geothermal resources and of all state rights of way and easements executed with the commissioner, including the payment of royalties when due and compliance with all established mining plans and reclamation requirements.

[19.2.100.23 NMAC – Rn, SLO Rule 1, Section 1.016, 12/13/2002]

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EXHIBIT 6

NEW MEXICO STATE LAND OFFICE – Oil, Gas, & Minerals Division
IMPROVEMENT DAMAGE BOND FOR OIL & GAS LEASES
ONE LEASE BOND -- ONLINE Version

*BOND NO.*_____
(For use of Surety Company)

*BOND NO.*_____
(For use of Land Office)

KNOW ALL MEN BY THESE PRESENTS LEASE NO._____

That_____, *(an individual) (a partnership) (a corporation organized in the State of* _____*, with its principal office in the City of* _____ *State of* _____*, and authorized to do business in the State of New Mexico),* as **PRINCIPAL**, and _____, a corporation organized and existing under the laws of the State of _____, and authorized to do business in the State of New Mexico as **SURETY**, are held firmly bound unto the State of New Mexico, for the use and benefit of the New Mexico State Land Office and its lessees holding grazing or patent to state lands, with minerals reserved, their grantees, and successors in interest, pursuant to Section 19-10-26 NMSA 1978, as amended, in the sum of **Ten Thousand ($10,000)** lawful money of the United States, for the payment of which well and truly to be made, said **PRINCIPAL and SURETY** hereby bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

The conditions of this obligation are such that:

WHEREAS, the above principal has heretofore or may hereafter enter into an oil and gas lease with the State of New Mexico; and

WHEREAS, said lease was entered into by the said principal, subject to the requirements of the provisions of Section 19-10-26 NMSA 1978, as amended; and

WHEREAS, all or part of the lands embraced in said oil and gas lease has been leased for grazing or agricultural purposes or has been sold, with minerals reserved to the State of New Mexico, to various purchasers who hold limited patents from the State of New Mexico or State purchase contracts; and

WHEREAS, the above principal, individually, or in association with one or more other parties, has commenced or may commence development or operations upon the land embraced in the aforesaid oil and gas lease.

NOW THEREFORE, if the above bounden principal and surety or either of them or their successors or assigns, or any of them, upon demand shall make good and sufficient recompense, satisfaction or payment unto the New Mexico State Land Office and its holders of State grazing or agricultural leases, State purchase contracts, or State patents, with minerals reserved to the State, and their heirs, executors, administrators, successors and assigns, for all damages to livestock, range, water, crops, or tangible improvements on such lands as may be suffered by the New Mexico State Land Office and its lessees and purchasers or their successors in interest, by reason of such development, use or occupancy of such lands by such principal, or for such damages including attorneys' fees as a court of competent jurisdiction may determine and fix in any action brought on this bond.

THEN THEREFORE, this obligation shall be null and void; otherwise and in default of complete compliance with any and all of said obligations, the same shall remain in full force and effect.

SIGNED AND SEALED this _____ day of _____, 20_____.

_____ _____
PRINCIPAL *SURETY*

_____ _____
Address *Address*

*BY*_____ *By* _____
Signature *Attorney-in-Fact Signature*

*Title*_____ *(Note: Corporate surety affix corporate seal here.)*
(Note: Principal, if corporation, affix corporate seal here.)

[Continued on next page.]

EXHIBIT 6

ACKNOWLEDGMENT FORM FOR NATURAL PERSONS:

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 20_____, before me personally appeared_____
to me known to be the person(s) described in and who executed the same as (his, her, their) free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year in this certificate first above written.

_____ _____ _____
My Commission Expires *Notary Public name* *Notary signature*
(Notary seal)

ACKNOWLEDGMENT FORM FOR CORPORATION:

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____day of _____, 20_____, before me personally appeared _____,
to me personally known, who, being by me duly sworn, did say that s/he is _____ of
_____ and that this instrument was signed and sealed on behalf of said corporation
by authority of its board of directors, and acknowledged said instrument to be the free act and deed of said corporation.
IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year in this certificate first above written.

_____ _____ _____
My Commission Expires *Notary Public name* *Notary signature*
(Notary seal)

ACKNOWLEDGMENT FORM FOR CORPORATE SURETY:

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____day of _____, 20_____, before me personally appeared _____
to me personally known, who, being by me duly sworn, did say that s/he is _____ of
_____ and that this instrument was signed and sealed on behalf of said corporation by
authority of its board of directors, and acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year in this certificate first above written.

_____ _____ _____
My Commission Expires *Notary Public name* *Notary signature*
(Notary seal)

(Note: Corporate surety attach power of attorney.)

APPROVED this _____day of _____, 20_____.

_____
COMMISSIONER OF PUBLIC LANDS

NOTE: File with: *Commissioner of Public Lands; New Mexico State Land Office OGMD ;*
P.O. Box 1148; Santa Fe, New Mexico 87504-1148
BEFORE any development or operations are commenced. *Revised for web October 2004* -- **ONLINE Version**

EXHIBIT 6

ONLINE Version

NEW MEXICO STATE LAND OFFICE – Oil, Gas, & Minerals Division

IMPROVEMENT DAMAGE BOND FOR OIL & GAS LEASES

MULTI-LEASE BLANKET BOND

*BOND NO.*_____
(For use of Surety Company)

*BOND NO.*_____
(For Land Office Use)

KNOW ALL MEN BY THESE PRESENTS:

That_____, *(an individual) (a partnership) (a corporation organized in the State of* _____, *with its principal office in the City of*_____ *State of* _____, *and authorized to do business in the State of New Mexico),* as **PRINCIPAL,** and _____, a corporation organized and existing under the laws of the State of _____, and authorized to do business in the State of New Mexico as **SURETY** are held firmly bound unto the State of New Mexico, for the use and benefit of the New Mexico State Land Office and its lessees holding grazing or patent to state lands, with minerals reserved, their grantees and successors in interest, pursuant to Section 19-10-26 NMSA 1978, as amended, in the sum of **Twenty Thousand ($20,000)** lawful money of the United States, for the payment of which well and truly to be made, said PRINCIPAL and SURETY hereby bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

The conditions of this obligation are such that:

WHEREAS, the above principal has heretofore or may hereafter enter into one or more oil and gas leases with the State of New Mexico; and

WHEREAS, said leases were entered into by the said principal, subject to the requirements of the provisions of Section 19-10-26 NMSA 1978, as amended; and

WHEREAS, all or part of the lands embraced in said oil and gas leases have been leased for grazing or agricultural purposes or have been sold, with minerals reserved to the State of New Mexico or State purchase contracts; and

WHEREAS, the above principal, individually, or in association with one or more other parties, has commenced or may commence development or operations upon the land embraced in the aforesaid oil and gas lease.

NOW THEREFORE, if the above bounden principal and surety or either of them or their successors or assigns, or any of them, upon demand shall make good and sufficient recompense, satisfaction or payment unto the New Mexico State Land Office and its holders of State grazing or agricultural leases, State purchase contracts, or State patents, with minerals reserved to the State, and their heirs, executors, administrators, successors and assigns, for all damages to livestock, range, water, crops, or tangible improvements on such lands as may be suffered by the New Mexico State Land Office and its lessees and purchasers or their successors in interest, by reason of such development, use or occupancy of such lands by such principal, or for such damages including attorneys' fees as a court of competent jurisdiction may determine and fix in any action brought on this bond.

THEN THEREFORE, this obligation shall be null and void; otherwise and in default of complete compliance with any and all of said obligations, the same shall remain in full force and effect.

SIGNED AND SEALED this _____ day of _____, 20_____.

_____	_____
PRINCIPAL	*SURETY*
_____	_____
Address	*Address*
*By*_____	*By* _____
Signature	*Attorney-in-Fact Signature*
*Title*_____	
(Note: Principal, if corporation, affix corporate seal here.)	*(Note: Corporate surety affix corporate seal here.)*

[Notary acknowledgements on following page.]

EXHIBIT 6

ACKNOWLEDGMENT FORM FOR NATURAL PERSONS

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 20_____, before me personally appeared _____,
to me known to be the person(s) described in and who executed the same as (his, her, their) free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year in this certificate first above written.

_____	_____	_____	
My commission expires	*Notary Public Name*	*Signature, Notary*	*(Notary seal)*

ACKNOWLEDGMENT FORM FOR CORPORATION

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____day of _____, 20_____, before me personally appeared _____
to me personally known, who, being by me duly sworn, did say that s/ he is _____ of
_____ and that the foregoing instrument was signed and sealed on behalf of said corporation
by authority of its board of directors, and acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year in this certificate first above written.

_____	_____	_____	
My Commission Expires	*Notary Public Name*	*Signature – Notary*	*(Notary Seal)*

ACKNOWLEDGMENT FORM FOR CORPORATE SURETY

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____day of _____, 20_____, before me personally appeared _____,
to me personally known, who, being by me duly sworn, did say that s/ he is _____ of
_____ and that the foregoing instrument was signed and sealed on behalf of said corporation
by authority of its board of directors, and acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year in this certificate first above written.

_____	_____	_____	
My commission expires	*Notary Public name*	*Notary signature*	*(Notary Seal)*

(Note: Corporate surety attach power of attorney.)

APPROVED *this _____day of _____, 20____.*

_____
COMMISSIONER OF PUBLIC LANDS

NOTE: ***BEFORE*** *development or operations are commenced, file with* Commissioner of Public Lands
New Mexico State Land Office
Oil Gas & Minerals Division
P.O. Box 1148; Santa Fe, New Mexico 87504-1148

Revised for Web October 2004 – ONLINE Version

EXHIBIT 6

NEW MEXICO STATE LAND OFFICE – Oil, Gas, and Minerals Division
BOND FOR CONTRACT PERFORMANCE AND SURFACE OR IMPROVEMENT DAMAGE
Surface Improvement Damage Megabond

*BOND NO.*_____
(For use of Surety Company)

*BOND NO.*_____
(For use of State Land Office)

KNOW ALL PERSONS BY THESE PRESENTS

_____, as **Principal**, and _____, as **Surety**, a corporation organized, existing and doing business under and by virtue of the laws of the State of _____ and authorized to transact a surety business in the State of New Mexico, are held and firmly bound unto the New Mexico Commissioner of Public Lands in the sum of **Twenty-five Thousand Dollars ($25,000)** for the following uses:

1. For the use and benefit of the Commissioner, to secure the performance of said Principal as lessee under one or more state leases or permits for minerals, oil and gas, coal and geothermal resources which Principal has heretofore executed or may hereafter execute with the Commissioner; and

2. For the use and benefit of the Commissioner, state surface lessees, state land contract purchasers, state patentees, and their successors and assigns, to pay for damages to the surface of lands subject to a state lease or permit for minerals, oil and gas, coal and geothermal resources held by Principal, or for damages to surface improvements located thereon, suffered by reason of Principal's operations under a state lease or permit for minerals, oil and gas, coal and geothermal resources.

For the payment of said sum, well and truly to be made, Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

The conditions of the foregoing obligations are:

1. If the above bound Principal or its successors or assigns shall well and truly perform and keep all terms, covenants, conditions, and requirements of all state leases for minerals, oil and gas, coal and geothermal resources heretofore or hereafter executed by the Commissioner and Principal, including the payment of royalties when due and compliance with all established mining plans; and

2. If Principal or its successors or assigns shall in all respects make good and sufficient recompense, satisfaction or payment to the Commissioner of Public Lands for damages to the surface of lands subject to a state lease or permit for minerals, oil and gas, coal and geothermal resources held by Principal and for damages to livestock, water, crops, tangible improvements or surface improvements of any kind located thereon suffered by reason of Principal's operations under such state lease, permit, heretofore or hereafter executed by the Commissioner and Principal;

THEN, the obligation to pay the sum of Twenty-five Thousand Dollars ($25,000) shall be null and void.

If, however, Principal shall default or otherwise fail in performance under such state lease, permit, including the failure to pay royalties when due or to comply with established mining plans, or if Principal shall fail or refuse to make good and sufficient recompense, satisfaction or payment to the Commissioner for damages to the surface of the above designated lands or to improvements located thereon, then the obligation to pay said sum shall remain in full force and effect.

EXHIBIT 6

The liability of Surety upon this bond shall not expire upon the termination of any state lease or permit or any renewal or extension thereof for minerals, oil and gas, coal and geothermal or any renewal or extension thereof which Principal or its successors or assigns has heretofore executed or may hereafter execute with the Commissioner, but shall be and remain in full force and effect until released in writing by the Commissioner of Public Lands.

Principal and Surety further agree that in the event an action is brought on this bond and a court of competent jurisdiction determines Principal or Surety is in breach of the agreements contained in this bond, Principal or Surety or both of them shall pay to the Commissioner the costs associated with the recovery of the amounts due hereunder, including reasonable attorneys' fees.

This bond is executed pursuant to the laws of the State of New Mexico, including Sections 19-8-24, 19-9- 12, 19-10-26, 19-13-19, and 46-6-1 through -9, NMSA 1978.

The premium for which this bond is written is _____Dollars.

In witness whereof we hereunto set our hands this _____day of _____, 20_____.

_____	_____
PRINCIPAL	*SURETY*
_____	_____
Address	*Address*
*BY*_____	*BY* _____
Signature	*Attorney-in-Fact*
_____	
Title	
(Note: Principal, if corporation, affix Corporate seal here.)	*(Note: Corporate surety, affix Corporate seal here.)*

ACKNOWLEDGMENT FORM FOR NATURAL PERSONS

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____day of _____, 20_____,

before me personally appeared _____, to me known to be the person(s) described in and who executed the same as (his, her, their) free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year in this certificate first above written.

_____	_____	_____
My commission expires	*Notary Public name*	*Signature, notary*

(Notary Seal)

EXHIBIT 6

ACKNOWLEDGMENT FORM FOR CORPORATION

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____day of _____, 20_____,
before me personally appeared _____, to me personally known, who, being by me duly sworn, did say that he is _____of _____and that this instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year in this certificate first above written.

My commission expires _____ *Notary Public name* _____ *Signature notary* _____

(Notary Seal)

ACKNOWLEDGMENT FORM FOR CORPORATE SURETY

STATE OF _____
) ss.
COUNTY OF _____)

On this _____day of _____, 20_____,
before me personally appeared _____, to me personally known, who, being by me duly sworn, did say that he is _____of _____and that this instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year in this certificate first above written.

My commission expires _____ *Notary Public name* _____ *Signature, notary* _____

(Notary Seal)

Note: Corporate surety, attach power of attorney.

APPROVED this _____day of _____, 20_____.

_____
COMMISSIONER OF PUBLIC LANDS

NOTE: File <u>before</u> development or operations are commenced, with:

Commissioner of Public Lands
New Mexico State Land Office, OGMD
P.O. Box 1148
Santa Fe, New Mexico 87504-1148

or

Commissioner of Public Lands
New Mexico State Land Office, OGMD
310 Old Santa Fe Trail
Santa Fe, NM 87501-2708

EXHIBIT 6

New Mexico Commissioner of Public Lands
310 Old Santa Fe Trail
P.O. Box 1148
Santa Fe, NM 87504-1148

ASSIGNMENT OF CASH COLLATERAL

(MUST BE A FEDERALLY-INSURED BANK OR FEDERALLY OR STATE CHARTERED SAVINGS AND LOAN ASSOCIATION)

Pursuant to the applicable rules for State Trust Lands under Title 19 Chapter 2 **Dated _____**

_____
"Grantee"

of _____
(Address)

has deposited with the _____
(Name of State or National Bank or Savings Association)

of _____
(Address) "Financial Institution" and "Trustee"

the sum of _____ dollars ($_____) in Certificate of Deposit or Savings Account No. _____ ("Fund"). Grantee hereby assigns and conveys all right, title and interest in the Fund to the New Mexico State Land Office (or successor agency). Grantee and Financial Institution agree that as to the Fund:

a. **The New Mexico State Land Office acquires by this assignment the entire beneficial interest in the Fund, with the right to order the Trustee in writing to distribute the Fund to the person(s) determined by the Oil, Gas and Minerals Division to be entitled thereto, including the New Mexico State Land Office itself, in amounts determined by the Division, without further consent by Grantee. Financial Institution hereby acknowledges that the New Mexico State Land Office is Financial Institution's customer with respect to the Fund.**

b. **Grantee retains no legal or beneficial interest in the Fund and has only the right to interest, if any, thereon, and to return of the Fund upon written order of the Oil, Gas and Minerals Division.**

c. **The Financial Institution agrees that the Fund may not be assigned, transferred, pledged or distributed except upon written order of the New Mexico State Land Office or a court of competent jurisdiction made in a proceeding in which the New Mexico State Land Office is a party. The Financial Institution waives all statutory or common law liens or rights of set-off against the fund, by reason of indebtedness or obligation of Grantee to Financial Institution now existing or hereafter incurred.**

d. **Grantee agrees that the Financial Institution may deduct from interest due Grantee any attorney fees incurred by the Financial Institution if any claim or demand via writ, summons or other process arising from Grantee's business is made upon the Financial Institution.**

This instrument shall be governed by the laws of the State of New Mexico.

_____	_____
Name of Grantee	**Name of Financial Institution**
BY: _____	**BY: _____**
Signature of Grantee, Personally or Authorized Officer	**Signature of Authorized Officer of Financial Institution**
_____	_____
Title	**Officer's Title**

EXHIBIT 6

PERSONAL ACKNOWLEDGEMNT

STATE OF _____)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me on this _____ day of _____, 20 _____

By _____

My Commission Expires: _____ _____
(Notary Public)

ACKNOWLEDGMENT BY ATTORNEY

STATE OF _____)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me on this _____ day of _____, 20 _____

By _____ as attorney-in-fact on behalf of _____

My Commission Expires: _____ _____
(Notary Public)

ACKNOWLEDGMENT BY CORPORATION, PARTNERSHIP OR LIMITED LIABILITY

STATE OF _____)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me on this _____ day of _____, 20 _____

By _____, _____ of _____
Name Title Name of Partnership, Corporation, LLC
,a _____
(Partnership, Corporation, LLC)

My Commission Expires: _____ _____
(Notary Public)

FINANCIAL INSTITUTION ACKNOWLEDGMENT

STATE OF _____)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me on this _____ day of _____, 20 _____

By _____, _____ of _____
Name Title Name of Financial Institution

My Commission Expires: _____ _____
(Notary Public)

EXHIBIT 6

New Mexico Commissioner of Public Lands
310 Old Santa Fe Trail
P.O. Box 1148
Santa Fe, NM 87504-1148

CASH BOND COLLATERAL ASSIGNMENT

(FOR DEPOSIT OF FUNDS WITH THE STATE LAND OFFICE)

Pursuant to the terms of New Mexico State Land Office 19.2 NMAC **Dated _____**

_____
"Grantee"

of _____
(address)

has deposited with the New Mexico State Land Office ("Trustee") the sum of _____ dollars ($_____) ("Fund"). Grantee hereby assigns and conveys all right, title and interest in the Fund to the New Mexico State Land Office (or successor agency). Grantee and Trustee agree that as to the Fund:

a. **The New Mexico State Land Office acquires by this assignment the entire beneficial interest in the Fund, with the right to order the Trustee in writing to distribute the Fund to the person(s) determined by the Oil, Gas and Minerals Division to be entitled thereto, including the New Mexico State Land Office itself, in amounts determined by the Division, without further consent by Grantee.**

b. **Grantee retains no legal or beneficial interest in the Fund and has only the right to return of the Fund upon written order of the Oil, Gas and Minerals Division, upon satisfaction of all obligations to the New Mexico State Land Office.**

c. **Grantee agrees that the Trustee may deduct from the Fund any attorney fees incurred by the Trustee if any claim or demand via writ, summons or other process arising from or related to Trustee's holding of the Fund or any action or claim related to the Fund.**

This instrument shall be governed by the laws of the State of New Mexico.

_____
Name of Grantee

BY: _____
Signature of Grantee,
Personally or Authorized Officer

_____

_____
New Mexico State Land Office

BY: _____

EXHIBIT 6

PERSONAL ACKNOWLEDGEMNT

STATE OF _____)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me on this _____ day of _____, 20 _____

By _____

My Commission Expires: _____ _____
(Notary Public)

ACKNOWLEDGMENT BY ATTORNEY

STATE OF _____)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me on this _____ day of _____, 20 _____

By _____ as attorney-in-fact on behalf of _____
Please attach a copy of the Power Of Attorney

My Commission Expires: _____ _____
(Notary Public)

ACKNOWLEDGMENT BY CORPORATION, PARTNERSHIP OR LIMITED LIABILITY

STATE OF _____)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me on this _____ day of _____, 20 _____

By _____, _____ of _____
Name Title Name of Partnership, Corporation, LLC
,a _____
(Partnership, Corporation, LLC)

My Commission Expires: _____ _____
(Notary Public)

EXHIBIT 6

NEW MEXICO STATE LAND OFFICE - Oil, Gas & Minerals Division
IMPROVEMENT DAMAGE BOND FOR OIL & GAS LEASES

IRREVOCABLE STANDBY LETTER OF CREDIT
#_____

Date: _____
Expiration: _____
Effective Date
Expiration Date

Beneficiary:
Commissioner of Public Lands
New Mexico State Land Office
Oil Gas and Minerals Division
310 Old Santa Fe Trail
Santa Fe, NM 87504

On behalf of _____ ("Applicant"), we _____,
_____ (hereinafter "Bank") hereby issue this Irrevocable
Principal Name
Bank Name
Bank Address
Standby Letter of Credit ("LOC") for the benefit of the New Mexico Commissioner of Public Lands ("Commissioner") for the amount of US _____ dollars ($_____). By this LOC we agree that, immediately upon receipt of written demand, whether in original form or by facsimile copy pursuant to the requirements set out in the "Documentary Requirements" BELOW, from the Commissioner for all or a portion of the LOC, we will pay the sum or sums demanded to the Commissioner. This LOC is made and issued pursuant to the Uniform Commercial Code, and is accepted in lieu of the bond requirements set out in New Mexico State Land Office Rule 100.23 C.
Amount in Words
Numerical Amount

Term: The LOC becomes effective on _____ and shall remain in effect for exactly one year after that date and shall automatically be extended by this provision.
Effective Date

Renewal: At least one hundred twenty (120) days prior to the expiration of any one-year term of this LOC, the Commissioner must receive written notice by registered mail or by overnight courier service from the Bank that it intends not to extend this LOC; and in the absence of such notice, this LOC shall automatically be extended.

Upon receipt of notice of non-renewal from the Bank, the Commissioner may, before expiration of the term of this LOC, draw upon the Bank up to the amount of this LOC, provided that such draft is accompanied by a statement of the Commissioner on its letterhead that the Applicant has, at that time, failed to provide a satisfactory replacement bond.

Documentary Requirements: This LOC may be drawn upon by the Commissioner in whole or in part at any time during its term to secure payment for surface improvement damages and performance under the lease as described in New Mexico State Land Office Rule 100.23C. Any such drawings by the Commissioner shall be effected by a demand letter from the Commissioner on her letterhead stating that the Applicant has defaulted and that the amount demanded is in partial

or full satisfaction of that default.

Drawing may be effected personally, by overnight courier service or by facsimile. If drawing is effected by facsimile, presentation of such drawing documents may be made by fax transmission to _____ or such other fax number identified by Bank in a written notice to you. Presentation via fax requires: (A) telephone notification to Bank, _____ prior to or simultaneously with the sending of such fax transmission and (B) our receipt of original drawing document(s) to: _____, _____, Attention: Letter of Credit Department by overnight courier. Receipt by Bank of original documents(s) is a condition to payment hereunder.

Bank Phone Number

Bank Name

Bank Address

Adjustments: No partial drawing by the Commissioner against this LOC shall extinguish the Bank's obligation to pay any remaining balance upon demand properly made. The outstanding obligation of this LOC shall be reduced by any partial drawing against this LOC, provided that the Bank shall promptly notify the Commissioner in writing of the post-drawing balance following any such drawing(s).

Surrender: If upon demand by the Commissioner, the Bank tenders the full amount represented by this LOC as properly adjusted, the Commissioner shall, upon the request of the Bank, surrender this original LOC and all amendments to the Bank. Similarly, the Commissioner shall surrender this original LOC and all amendments upon request at the expiration of this LOC. Except as expressly stated herein, this undertaking is not subject to any agreement, condition, or qualification. The obligation of the Bank under this LOC is the individual obligation of the Bank and is in no way contingent upon reimbursement with respect thereto.

Additional Terms: Any notice required to be sent to the Commission must be sent to:

Commissioner of Public Lands
State Land Office
Oil Gas & Minerals Division
310 Old Santa Fe Trail
Santa Fe, NM 87501-2708

Except as otherwise stated herein, this Letter of Credit shall be governed by and subject to the laws of the State of New Mexico. Bank and Commissioner agree that any action filed hereunder shall be filed in the First Judicial District Court, Santa Fe, New Mexico, and all parties agree to venue in said court.

This LOC is subject to the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 ("ISP98"), in effect on the date this Letter of Credit is issued, and as to matters not addressed by ISP98 is subject to and governed by New Mexico State Law and applicable U.S. Federal Law. Any dispute under this LOC shall be filed in, and venue shall be, Santa Fe, New Mexico.

_____ Attest:

By:_____ By:_____
_____ (Authorized Bank Signature)
_____
Name of Person Signing
Title

Approved as to form:

By: _____
Commissioner of Public Lands

New Mexico State Land Office Bond

Waiver Request and Certification Form

(NMSA 1978 19-10-4.1-4.3, NMAC 19.2.100.23)

No development, occupation, or use of the acreage described below shall occur without posting a bond pursuant to NMSA 1978 19-10-4.1-4.3 and NMAC 19.2.100.23

NMSLO Oil and Gas Lease Number _____

Legal Description of Lease Acreage: _____

Date of State Land Office Lease Sale: _____

Purpose of Lease Acquisition: _____

Will lease be assigned prior to being developed, occupied, or used? Y ☐ **N** ☐

Representative of _____

Representative Name _____

Address _____

_____

Telephone Number _____

Fax Number _____

Email Address _____

CERTIFICATION: I hereby certify under penalty of perjury that no development, occupation, or use of the lands described above will occur without posting a sufficient bond pursuant to NMAC 19.2.100.23.

I further certify under penalty of perjury that if my intent to develop, occupy, or use the lands changes, that I will notify the State Land Office and post a bond pursuant to NMAC 19.2.100.23

Print Name	Signature	Title	Date
_____	_____	_____	_____

EXHIBIT 6

NEW MEXICO STATE LAND OFFICE – OIL, GAS, AND MINERALS DIVISION
Surface Owner/Lessee WAIVER of Bond Requirement – *Online Version*

_____ hereby **grants waiver** of bond
SurfaceOwner / Lessee – Print or type name

to _____ proposing to occupy and
Mineral Lessee or Operator – Print or type name

use the tract of land, herein designated, for development of oil and gas operations.

Lease #_____ Assignment # _____

Subdivisions _____,

Sect_____, Twp_____, Rng _____, NMPM _____ County, NM.

_____ _____ Date

Signature(s) - Representative(s) of Surface Owner or Lessee

_____

Print or type NAME(s) and TITLE(s) of person(s) signing above.

Acknowledgment in an Individual Capacity

State of _____
ss
County of _____

This instrument was acknowledged before me this _____day of _____, 20____

By _____, _____.
Name(s) of Person(s)

_____
Signature of Notarial Officer

(Seal) My commission expires _____

Acknowledgment in a Representative Capacity

State of _____
ss
County of _____

This instrument was acknowledged before me this _____day of _____, 20____

By_____
Name of Person representing company

As _____ of _____
Type of authority; e.g., officer, trustee, etc. Name of party on behalf of whom instrument was executed

_____
Signature of Notarial Officer

(Seal) My commission expires _____

Revised for Web November 2004

EXHIBIT 7

Commissioner Garcia Richard Proposes Stronger Financial Protections for State Lands

Apr 8, 2026

SANTA FE, N.M. – New Mexico Land Commissioner Stephanie Garcia Richard announced today the opening of the public comment process and a public hearing on a proposed new rule to strengthen bonding requirements for oil and gas development on state lands.

Currently, oil and gas lessees are required to have a $10,000 bond on file to cover expenses for plugging abandoned wells and remediating other damage to state lands – a figure that has long been woefully inadequate considering plugging a single abandoned well with no other remediation activities can cost over $100,000 by conservative estimates.

The proposed rule raises the minimum bond to $150,000 for oil and gas leases on state lands and makes other changes, including increased coverage for state land deemed to be at heightened risk for environmental damage.

“For too long, New Mexicans have been exposed to unnecessary financial liability because existing bonding levels for oil and gas operations are far too low. That stops now,” **said Commissioner Garcia Richard**. “The changes we are proposing make our bonding rule much stronger and finally bring it into the twenty-first century. Having an adequate bond in place is simply the cost of doing the business on state lands so we can ensure that the public doesn’t have to pick up the tab if a company goes belly up or isn’t willing to clean up properly. Since entering office, I have made a point to hold lessees accountable to ensure that New Mexicans are not left holding the bag for environmental cleanup. Strengthening the oil and gas bonding rule is a critical part of those efforts.”

WHAT: Public Hearing on Proposed Oil and Gas Bonding Rule

WHEN: May 27-28 at 9:00 a.m. (and continuing thereafter as necessary)

WHERE: State Land Office, Morgan Hall; 310 Old Santa Fe Trail, Santa Fe, NM 87501

Zoom Option – May 27:

https://us02web.zoom.us/j/89646464772?pwd=KGHEwPGlmcOhp4xNYILFFnSCz2bHRX.1

Zoom Option – May 28:

https://us02web.zoom.us/j/88194292301?pwd=9lGqarl5rPM17IdbbZ8Z6auEbqko85.1

Public Comments

Written public comments may be emailed to info@nmslo.gov by 11:59 p.m. MT on May 26, 2026.

In October 2025, the New Mexico State Land Office (NMSLO) released a pre-publication discussion draft to informally receive public input regarding its oil and gas bonding rule. The NMSLO held stakeholder group meetings in Santa Fe on November 6 and 12, 2025, in Hobbs on November 14, 2025, and in Farmington on November 17, 2025. In developing the proposed rule, the NMSLO considered the comments received on the pre-publication discussion draft during the stakeholder group meetings.

As part of her efforts to ensure state lands are properly cleaned up after use, Commissioner Garcia Richard launched the Accountability & Enforcement program within the State Land Office in 2020. Since then, the program has compelled companies to plug over 840 abandoned oil and gas wells on state lands, saving New Mexicans at least $84 million in cleanup costs. The program has also filed over 40 lawsuits for non-compliance by lessees.

More information including the proposed rule is available here.

—

Commissioner of Public Lands Stephanie Garcia Richard has overseen the New Mexico State Land Office since 2019. In that time the agency has earned about $14 billion for New Mexico public schools, hospitals, and universities. Over 13 million acres of state trust land are leased for a variety of uses, including ranching and farming, renewable energy, business development, mineral development, and outdoor recreation. The State Land Office has a dual mandate to use state trust land to financially support vital public institutions, while simultaneously working to protect the land for future generations.

EXHIBIT 8

Holland & Hart

Adam G. Rankin
Partner
Phone 505.954.7294
agrankin@hollandhart.com

April 20, 2026

VIA ELECTRONIC MAIL
NM State Land Office
Attn: Records Custodian
310 Old Santa Fe Trail
P.O. Box 1148
Santa Fe, NM 87504
SLO.IPRA@nmslo.gov

Re: Request Pursuant to Inspection of Public Records Act, NMSA 1978, § 14-2-1, *et seq*.

Dear Records Custodian:

This is a formal request under the New Mexico Inspection of Public Records Act (IPRA), NMSA 1978, § 14-2-1, *et seq*. to inspect certain public records in the possession of the New Mexico State Land Office. As used in this IPRA request, the term "Public Records" has the meaning stated in NMSA 1978, Section 14-2-6. In the event the Records Custodian should determine that the below requests either (a) "fail to identify the records sought with reasonable particularity," Section 14-2-8(C), or (b) constitute "excessively burdensome or broad" requests, I ask that the Records Custodian contact me so that I may modify my request to enable a timely response under IPRA.

I respectfully request to inspect the following public records:

1. Public records reflecting factual basis the State Land Office has identified that support the proposed modifications to Rule 19.2.100.23 was published in the New Mexico Register on April 7, 2026.

2. Public records reflecting the principal reasons the State Land Office has identified for the modifications proposed to Rule 19.2.100.23 was published in the New Mexico Register on April 7, 2026.

This request seeks all materials, regardless of physical form or characteristics, which are used, created, received, maintained or held by your office, irrespective of whether such records "are required by law to be created or maintained." NMSA 1978, § 14-2-6.

If any of the records are being held in electronic format, I wish to receive electronic copies in .pdf format at agrankin@hollandhart.com or, if that is not possible, on a thumb drive or a share

file or similar medium. I agree to pay reasonable copy fees on request, and I prefer to be notified in advance if the total cost will exceed $250.

If the New Mexico State Land Office requires payment in advance for reasonable scanning fees, please contact me so I may arrange payment. If the aggregate file size of the responsive records is too large to transmit by email or can't be placed on a thumb drive or a share file, please let me know and we can provide a link to a share file for the upload of the documents. I can also have a zip or flash drive provided if other means are not feasible.

If you believe any record or document included in this request is excluded from review under the New Mexico Inspection of Public Records Act, please provide the rationale and legal citation for the exclusion. Please provide redacted versions of any such documents, along with all other documents covered by this request.

If you believe any record or document included in this request is not in the possession of the New Mexico State Land Office, please identify the category of records or documents and the state agency or individual responsible for maintaining those records as custodian.

The New Mexico Inspection of Public Records Act requires a response time of three business days, which would be April 23, 2026. If the requested records will take longer than three business days to collect and provide copies, please contact me at (505) 954-7294 or through the email listed above with information about when I might expect copies or the ability to review the requested records. In the event the requested records will take longer than three business days to collect and provide copies, I ask that the records be provided on a rolling basis to avoid delay.

Please contact me if you have any questions regarding this request or if I can provide any assistance in responding to this request. Thank you for your public service in this matter.

Very truly yours,

/s/ Adam G. Rankin
Adam G. Rankin
Of Holland & Hart LLP

EXHIBIT 8

Holland & Hart

Adam G. Rankin
Partner
Phone 505.954.7294
agrankin@hollandhart.com

April 27, 2026

VIA ELECTRONIC MAIL
NM State Land Office
Attn: Records Custodian
310 Old Santa Fe Trail
P.O. Box 1148
Santa Fe, NM 87504
SLO.IPRA@nmslo.gov

Re: Request Pursuant to Inspection of Public Records Act, NMSA 1978, § 14-2-1, *et seq*.

Dear Records Custodian:

This is a formal request under the New Mexico Inspection of Public Records Act (IPRA), NMSA 1978, § 14-2-1, *et seq*. to inspect certain public records in the possession of the New Mexico State Land Office. As used in this IPRA request, the term "Public Records" has the meaning stated in NMSA 1978, Section 14-2-6. In the event the Records Custodian should determine that the below requests either (a) "fail to identify the records sought with reasonable particularity," Section 14-2-8(C), or (b) constitute "excessively burdensome or broad" requests, I ask that the Records Custodian contact me so that we may consider modification of the request(s) to obtain timely response under IPRA.

I respectfully request to inspect the following public records:

1. Public Records, including but not limited to memoranda, analyses, summaries, reports, including drafts and working documents, emails, text messages, and other communications, from January 1, 2019 to the present stating, analyzing, discussing or considering the Commissioner's authority to require financial assurance from any lessee of minerals on state lands beyond what is stated in NMSA 1978, § 19-10-26.

2. Public Records, including but not limited to memoranda, analyses, summaries, reports, including drafts and working documents, emails, text messages, and other communications, from January 1, 2019 to the present stating, analyzing, discussing or considering the State Land Office's authority to require the reporting and notices required in proposed Rule 19.2.100.23.D(4) NMAC published in the New Mexico Register on April 7, 2026.

3. Public Records, including but not limited to memoranda, analyses, summaries, reports, including drafts and working documents, emails, text messages, and other

communications, from January 1, 2019 to the present stating, analyzing, discussing or considering the State Land Office's authority to cancel leases for reporting and notice violations required in proposed Rule 19.2.100.23.D(4) NMAC published in the New Mexico Register on April 7, 2026.

4. From January 1, 2019 to present, Public Records identifying and/or reflecting:

a. each instance in which the State Land Office has requested, demanded or required (through litigation or otherwise) a record title lessee to plug inactive or uneconomic wells pursuant to a state oil and gas lease; and

b. each instance in which the State Land Office has requested, demanded or required (through litigation or otherwise) a record title lessee to conduct surface reclamation or remediation pursuant to a state oil and gas lease; and

c. each instance in which the State Land Office has requested, demanded or required (through litigation or otherwise) a record title lessee to conduct surface reclamation or remediation pursuant to State Land Office regulations 19.2.100.66 and/or 19.2.100.67 NMAC.

5. Public Records, including but not limited to memoranda, analyses, summaries, power points, and reports, including drafts and working documents, emails, text messages, and other communications, stating, analyzing, discussing or considering what constitutes a "marginal" or "uneconomic" well.

6. Public Records, including but not limited to memoranda, analyses, summaries, power points, and reports, including drafts and working documents, emails, text messages, and other communications, stating, analyzing, discussing or considering any amendment to alter, increase, or broaden the State Land Office's bonding authority under NMSA 1978, Section 19-20-26 or the statutory lease forms contained in Sections 19-10-4.1, -4.2, or -4.3 from January 1, 2019 to the present.

7. Public Records stating, analyzing, discussing or considering the existence of the State Land Office's access to information and databases maintained by the New Mexico Oil Conservation Division ("OCD"), including but not limited to any consideration of the enlargement of access, from January 1, 2019 to the present.

8. Public Records, including but not limited to emails, text messages, and other communications, from January 1, 2019 to present regarding the State Land Office's proposal to amend Rule 19.2.100.23 NMAC from or to any representative or employee of the State Land Office and any member or employee of the following groups:

a. Western Environmental Law Center;
b. WildEarth Guardians;
c. Center for Biological Diversity;
d. New Energy Economy;
e. San Juan Citizens Alliance;
f. Citizens Caring for the Future;
g. Diné C.A.R.E.;

h. Earthworks;
i. Naeva;
j. New Mexico Interfaith Power and Light;
k. Sierra Club; and
l. Conservation Voters New Mexico.

9. For oil or gas wells on state leases that were plugged by OCD-designated well operators from January 1, 2019 through the present, Public Records reflecting any of the following information:

a. Well name and API number
b. Lease number
c. Record title lessee
d. Entity that performed the plugging
e. Date plugging was completed

10. For oil or gas wells on state leases that were plugged from January 1, 2019 through the present, Public Records stating or reflecting:

a. whether any form of financial assurance or bond was used, in whole or part, to pay for the well plugging by any federal or state agency, including the United States Bureau of Land Management, State Land Office, or OCD, and if so, documentation identifying the specific bond(s) pulled (bond number, amount, type, and party posting the bond); and

b. how the bond funds were used, such as plugging invoices, disbursement records, or internal accounting summaries.

11. For oil or agas wells on state leases that were plugged from January 1, 2019 through the present by lessees who were not OCD-designated operator of the wells, Public Records reflecting the following information

a. Well name and API number
b. Lease number
c. Record title lessee
d. Entity that performed the plugging
e. Date plugging was completed

12. Public Records, including but not limited to memoranda, analyses, summaries, and reports, including drafts and working documents, identifying, stating, analyzing, discussing or considering oil or gas wells on state leases that are inactive pursuant to 19.15.5.9.B NMAC, from January 1, 2019 to present.

13. Public Records identifying, stating, analyzing, discussing or considering state leases not "in good standing," as that term is used in 19.2.100 NMAC.

14. Public Records, including but not limited to memoranda, analyses, summaries, and reports, including drafts and working documents, identifying, stating, analyzing, discussing or

considering wells on state leases the State Land Office has identified to be plugged and abandoned from January 1, 2019 to the present.

This request seeks all materials, regardless of physical form or characteristics, which are used, created, received, maintained or held by your office, irrespective of whether such records "are required by law to be created or maintained." NMSA 1978, § 14-2-6.

If any of the records are being held in electronic format, I wish to receive electronic copies in .pdf format at agrankin@hollandhart.com or, if that is not possible, on a thumb drive or a share file or similar medium. I agree to pay reasonable copy fees on request, and I prefer to be notified in advance if the total cost will exceed $250.

If the New Mexico State Land Office requires payment in advance for reasonable scanning fees, please contact me so I may arrange payment. If the aggregate file size of the responsive records is too large to transmit by email or can't be placed on a thumb drive or a share file, please let me know and we can provide a link to a share file for the upload of the documents. I can also have a zip or flash drive provided if other means are not feasible.

If you believe any record or document included in this request is excluded from review under the New Mexico Inspection of Public Records Act, please provide the rationale and legal citation for the exclusion. Please provide redacted versions of any such documents, along with all other documents covered by this request.

If you believe any record or document included in this request is not in the possession of the New Mexico State Land Office, please identify the category of records or documents and the state agency or individual responsible for maintaining those records as custodian.

The New Mexico Inspection of Public Records Act requires a response time of three business days, which would be April 30, 2026. If the requested records will take longer than three business days to collect and provide copies, please contact me at (505) 954-7294 or through the email listed above with information about when I might expect copies or the ability to review the requested records. In the event the requested records will take longer than three business days to collect and provide copies, I ask that the records be provided on a rolling basis to avoid delay.

Please contact me if you have any questions regarding this request or if I can provide any assistance in responding to this request. Thank you for your public service in this matter.

Very truly yours,

/s/ Adam G. Rankin
Adam G. Rankin
Of Holland & Hart LLP

cc: Ari Biernoff, State Land Office General Counsel
abiernoff@slo.state.nm.us

37715300_v1

NEW MEXICO OIL & GAS ASSOCIATION

INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO

The Honorable Stephanie Garcia Richard
Commissioner of Public Lands
c/o Mr. Ari Biernoff, General Counsel
New Mexico State Land Office
310 Old Santa Fe Trail
Santa Fe, New Mexico 87501
abiernoff@nmslo.gov

Subj: ***May 27-28, 2026 Public Hearing on Rulemaking***

Dear Mr. Biernoff:

We are counsel the New Mexico Oil and Gas Association (Holland & Hart LLP) and the Independent Petroleum Association of New Mexico (Hinkle Shanor LLP). We write to respectfully request additional information regarding the format and procedures governing the public rulemaking hearing scheduled for May 27-28, 2026, concerning the proposed amendments to State Land Office Rule 19.2.100.23 NMAC published April 7, 2026 in the New Mexico Register Vol. XXXVII, Issue No. 7, attached hereto as Exhibit A.

Our organizations intend to attend and participate in the hearing, and in order to do so effectively and meaningfully, would appreciate clarification or further detail on the following matters:

1. **Hearing Structure.** As provided in the Notice, two days have been identified for the Public Hearing. The Notice does not identify whether a Hearing Officer will be designated by the Commissioner to conduct the public hearing. The Notice also does not establish a format or schedule for the Hearing. Pursuant to State Land Office Rule 19.2.16.11 NMAC, all interested persons have the opportunity to review all documents or other pertinent information prepared in advance of the hearing. We request clarification on the structure and schedule of the hearing and in what format interested persons will be able to review documents and pertinent information in advance of the hearing that the Commissioner intends to rely on in the hearing or in support of the proposed rulemaking.

2. **Hearing Participation.** Pursuant to State Land Office Rule 19.2.16.11 NMAC, at the Hearing "all interested persons, or groups of persons" shall be allowed "reasonable opportunity to present written materials, present oral comments on the proposed rule, present questions, and to examine witnesses." Under this provision, we request clarification as to the framework in which interested persons or groups of persons will be allowed to present materials or comments and to question or examine witnesses.

Specifically, if there will be time limits imposed upon participating persons or groups, or limitations as to examination of witnesses, we ask that information be made publicly available in advance and that the Commissioner provide a list of witnesses it may make available for examination and the portions of the proposed rule each witness will be prepared to address.

3. Record and Transcript. Given that the Commissioner will consider the "contents of the rulemaking record", Rule 19.2.6.12 NMAC, and that the State Land Office Rule on Rulemaking Procedures does not expressly require recording, we request confirmation that the Public Hearing will be recorded and/or transcribed pursuant to the State Rules Act NMSA 1978, § 14-4-5.4, and Rule 1.24.25.13(H) NMAC, and made readily available to the public. We also request confirmation that all public comments submitted in advance of the deadline, 11:59 p.m. MT on May 26, 2026, will be formally admitted into the record. Further, please clarify the method in which the State Land Office will publish received public comments or make the same available for inspection. In that vein, to the extent that more extensive comments may exceed email provider limits associated with info@nmslo.gov, please identify what method participants should use for such submissions.

4. Agency Presentation. If State Land Office staff will appear at the hearing and present testimony or make witnesses available for examination, we request copies of any written testimony of State Land Office staff or witnesses the Commissioner intends to call in support of the proposed rule and a list of witnesses the Commissioner may make available for examination. In the event the Commissioner should determine that oral presentation or the oral examination of witnesses is disallowed, we request advance notice of the same decision and the opportunity to submit written questions in advance to be made part of the formal record.

5. Formal Request to Maintain Rulemaking Record Open following Hearing. Pursuant to State Land Office Rule 19.2.16.11, we hereby request the Commissioner keep the rulemaking record open for a reasonable period of time, no less than one week (5 business days), after the close of the Hearing to receive further written materials.

6. Commissioner Decision Promulgation. We understand that the final rule will be promulgated by publication in the New Mexico Register. We also request clarification, however, on the format in which the Commissioner's Order adopting the rule pursuant to Rule 19.2.16.12, will be announced and made publicly available.

We appreciate the work the State Land Office has undertaken in preparing for this significant rulemaking proceeding. Our purpose in raising these questions is to ensure interested persons and groups are informed and in the best position to participate constructively within the procedures the Commissioner has established, and that the procedures collectively comport with

fair and equitable participation under law. We are happy to meet with you to discuss details and mechanisms to promote these goals.

Thank you sincerely for your time and attention to this request.

Very Truly Yours,

HINKLE SHANOR LLP

/s/ Andrew J. Cloutier

HOLLAND & HART LLP

/s/ Adam Rankin

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EXHIBIT 10

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

IN THE MATTER OF PROPOSED AMENDMENTS TO 19.15.2, 19.15.5 19.15.8, 19.15.9, AND 19.15.25 NMAC **Case No. 24683**

TESTIMONY OF DOUGLAS R. EMERICK

ON BEHALF OF

NEW MEXICO OIL AND GAS ASSOCIATION

August 8, 2025

TESTIMONY OF DOUGLAS R. EMERICK

I. INTRODUCTION AND BACKGROUND

My name is Douglas R. Emerick. My business address is 12600 Hill Country Boulevard, Suite R-130 #236, Austin, TX 78738.

I am employed as Director of Operations for Insurance Expert Network. I am also a private consultant and owner of Emerick Consulting, based in Levittown, Pennsylvania.

I have a degree in business administration and marketing from Gannon University. My resume is included as **Appendix A** of this testimony.

In addition to my Director duties, I am an insurance and surety expert. I have the following insurance expert specialties: fidelity, surety, director and officers (D&O) insurance products, and errors and omissions (E&O) insurance.

I have extensive experience in fidelity and surety product lines and operating groups. I have developed and implemented new underwriting tools for public and private companies. I have worked as an underwriter for all sizes of fidelity and surety accounts in several states, and I am familiar with fidelity and surety underwriting more generally, as they both have common elements and common issues associated with writing and securing fidelity and surety accounts across industries and states. I am familiar with the surety markets nationwide and understand the special concerns of energy companies. Specifically, I underwrote oil and gas plugging bonds in several states.

I have been qualified as an expert witness in numerous courts, addressing matters including surety lines of credit, recission of bonds, denial of claims, surety underwriting, supersedeas bonds, and similar issues. My resume provides a summary of those cases and the issues involved.

II. PURPOSE OF TESTIMONY

The purpose of my testimony is to explain the mechanisms for securing a surety or other forms of bonding, the likely significant costs of securing such a surety bond, and the challenges that companies, particularly small and medium-sized companies, will have in securing a surety bond at a reasonable cost. I have reviewed and am familiar with the proposed changes before the New Mexico Oil Conservation Commission ("Commission" or "OCC"), regulations and, in particular, the proposed amendments to **Sections 19.15.2.7, 19.15.5.9, 19.15.8.9, 19.15.9.9, and 19.15.25 of the New Mexico Administrative Code (NMAC).**

III. TESTIMONY

A. Background on Private Financial Assurance Markets, Underwriting Timelines, and Practical Limitations

The proposed amendments being offered by the Western Environmental Law Center ("WELC"), could have significant unintended and perhaps undesirable consequences.[1] WELC's proposal would require single-well financial assurance of $150,000 for many wells (described in detail below). That would represent a sudden and dramatic increase in surety requirements; such an increase may not be available to many operators, particularly small- and medium-sized companies. Moreover, surety requirements in these amounts may be prohibitively expensive even for companies for whom a surety is available.

The simple fact is that the surety market today is very demanding and difficult to navigate. Surety companies are now requiring large collateral requirements, and those collateral requirements will exceed the ability of many companies to secure a surety bond, if one is available

[1] NMOGA reserves the right to comment on any proposals filed in this rulemaking proceeding by the New Mexico Oil Conservation Division, or OCD, or any other party or intervenor.

to them at all.

It is critical to understand that a surety bond is not like an insurance policy; it is, in effect, a promise to pay. If a bond is "called," the surety company will seek reimbursement from the principal. For a host of reasons, surety companies have become more restrictive in their underwriting guidelines to minimize the risk that a bond will be called. That is certainly true when it comes to determining the amount of collateral that the surety will demand up front. It is important to note that the surety business is written to a 0% loss ratio, unlike other property and casualty insurance lines of business.

There is no hard and fast rule, but a surety provider will look to the principal's financial statements and will insist that the principal have sufficient working capital to account for a substantial part of the total surety amount – the required amount can easily equal 25% or more of the surety amount that is being sought if the provider is going to offer a surety contract with limited or no collateral. Many companies cannot meet these working capital level requirements. Therefore, the lower an operator's working capital, the higher the collateral required to secure a surety bond. It is entirely conceivable that surety companies will require collateral of 50-100% of the bond amount.

In addition to requiring such substantial amounts of capital to issue new bonds, it is also entirely conceivable that surety providers will require operators to demonstrate working capital levels to maintain existing bonds as a result of the new compliance costs and risk of default that wells with existing surety coverage will be exposed to under WELC's proposed regulations. As explained elsewhere, surety companies are in the business of minimizing risk, and determining the collateral amount is integral to minimizing risk.

How would this work in practice? Simple arithmetic tells the story. An operator with ten wells requiring single-well financial assurance will require a surety bond of $1,500,000. An operator with 50 wells requiring single well financial assurance will need a surety bond (or some other instrument) valued at $7,500,000. I concede the actual calculation may be more complex depending on the mix of the number and depth of wells, but this is a simple and instructive way of looking at it. In my opinion, blanket bonding options are the superior approach in the context of providing bonding for oil and gas wells because they are easier to write and constrain less of the operator's working capital and, thus, will be easier for operators and the surety industry alike to implement.

Of course, there are alternative options to surety bonds. For example, an operator could provide a letter of credit or even a cash bond if the rules permit such bonds. But these options mean 100% of the associated costs to the operator would be tied up in the letter of credit or other similar instruments. A letter of credit would need to be irrevocable, given the non-cancelable feature of the plugging bond.

These instruments would function like surety bonds in at least two ways in terms of how an operator could provide a letter of credit. First, an operator could draw on its line of credit at their bank to post an irrevocable letter of credit. Or second, the operator could post cash in a certificate of deposit to back the letter of credit issued by the operator's bank. The problem with these options is that, with the required bonding level for multiple wells subject to single well financial assurances, they are beyond the means of many small- and medium-sized operators. Further, the more working capital that is tied up to meet bonding requirements, the less working capital operators will have available for other expenses that go towards ensuring proper and clean

operations. Of course, it is a truism that as costs (caused by the bonding requirements or other reasons) increase, the less profit there is to attract investors and owner support for oil and gas operations in New Mexico. And, again, these effects are more impactful on small and medium-sized operators. For these sizes of operators, working capital and investment capital are generally minimal. Surety providers are far less likely to approve larger bonds when an operator's investment capital and working capital are barely adequate upon initial analysis.

At a minimum, these new proposed surety instrument requirements, especially single well financial assurances, will tie up operators' working capital, decreasing the capital available for investment in things like drilling and other activities (including plugging and abandoning wells). Compound this with the likely premature plugging and abandonment of "economic wells and well units," which would further impact the cash flow, capital, and working capital of the operators, the proposed surety and bonding requirements will negatively impact small and medium sized operators' ability to obtain bonding on new and existing wells.

I have also reviewed the written testimony of NMOGA witness Dan Arthur, who explains that the risks and concerns I summarize above are compounded by the serious risk of premature plugging and abandonment of "economic wells and well units" posed by the proposed regulations. Mr. Arthur also explains in detail the impacts the proposed increased levels of required financial assurances will have to an operator's cash flow, capital, and working capital, which will negatively impact the operator's respective ability to obtain bonding on new and existing wells.

Hence, my concern that the financial assurance amounts being sought by WELC could create a situation where otherwise stable and productive companies cannot afford a surety bond (or any other form of bond) in the amounts being proposed in this rulemaking.

B. Proposed Financial Assurance Requirements

1. Active Wells

WELC proposes amending 19.15.8.9(C) NMAC to either (1) impose a single-well financial assurance requirement of $150,000 for each "active well,"[2] or (2) allow an operator to post a blanket bond of $250,000 to cover the financial assurance requirement for all active wells, but even where the blanket option is utilized, the operator remains subject to additional single-well financial assurance requirements for marginal wells as I explain below. These standard per-well requirements will result in excessive and unnecessary bonding for many individual wells not bonded through blanket bonding.

My principal concern with this proposed amendment is that it cannot be viewed in a vacuum. The majority of operators will likely have a mix of wells, with some being covered by a $250,000 blanket bond and others requiring a single-well financial assurance of $150,000. The sums would be additive, and WELC's proposed amendments must be viewed in that context.

Obtaining numerous single well financial assurance instruments in addition to high-volume blanket bonds, as will be required to comply with WELC's rule as proposed, will be difficult, if not impossible, under the current surety market.

The current New Mexico plugging bond is a noncancelable form, and its term is unique in that it is typically issued for the life of the subject wells it secures, from permitting to plugging, and cannot be canceled until the wells are properly plugged and the state, as obligee, releases the

[2] WELC's proposed amendment to 19.15.8.9(C) NMAC would define "active wells" as wells subject to financial assurance requirements pursuant to 19.15.8.9(A) NMAC, but not subject to either (i) inactive well financial assurance requirements (which WELC also proposes to amend and broaden the financial assurance requirements to encompass more types of temporarily abandoned wells) that I discuss below in Part III.B.3. of my testimony, or (ii) the new marginal well financial assurance requirements WELC proposes that I discuss next in Part III.B.2.

obligation. The surety industry disfavors noncancelable bond forms because the surety provider is unable to get off the noncancelable bond unless another company replaces it.

The underwriting of financial security bonds depends primarily on the financial stability of the bonded operator and the length of time the operator has been in business. A surety annually reviews the financial statements of operators because the financial situation of the operator can change over time. With an annual or multi-year term bond, the surety has the option to non-renew at more frequent intervals, providing time for the operator to replace it. If the amount of bond increases significantly, many sureties, if they could, would seek to get their existing bond replaced by another surety, collateralize the bond, or ask the operator to replace it in another way.

These proposed amendments remove the risk-based individual well financial assurance requirements and tiered blanket bonding currently in place for active wells. Under the existing regulations, active wells can be secured by individual well assurance starting at $25,000 plus $2 per foot drilled or proposed; alternatively, operators can obtain blanket bonding coverage of $50,000 for one to 10 active wells, $75,000 for 11 to 50 active wells, $125,000 for 51 to 100 active wells; and $250,000 for more than 100 active wells. 19.15.8.9(C) NMAC.

I recommend retaining the risk-based individual well financial assurance requirements and tiered blanket bonding alternatives. WELC would instead adopt a counterintuitive one-size-fits-all approach that ignores well characteristics, and as I read it, would require a blanket bond of $250,000 for just two active wells – a level of bonding which is currently only required where an operator has over 100 active wells.

2. Marginally Producing Wells

WELC also proposes adding to the financial assurance requirements for marginal wells, but at

least to a non-lawyer, in a very confusing manner. Under WELC's proposed subparagraph 19.15.8.9(D)(2) NMAC, WELC would require that *beginning January 1, 2028*, **every** marginal well must have single-well financial assurance of $150,000. Additionally, WELC would *immediately* require $150,000 in single-well financial assurance for all marginal wells that are being transferred or are part of a transaction like an asset assignment or purchase agreement under its proposed 19.15.8.9(D)(1) NMAC.

In addition, under WELC's proposed 19.15.8.9(D)(3) NMAC, any operator whose well inventory is composed of 15% or more of marginal or inactive wells, or a combination thereof, must provide single well financial assurance of $150,000 for all of an operator's wells, not just their marginal wells, until the percentage decreases to below 15%.

My thoughts regarding these proposed provisions are in keeping with my more general comments above in Parts III.A-B.1. Regardless of an operator's financial health, many operators will find that the additive effects of the applicant's proposal to impose these increased financial assurance requirements will result in financial assurance obligations that many operators simply cannot satisfy. The reality of the current state of the surety market, which requires operators to demonstrate significant levels of available working capital, is that the market will be inaccessible to many operators.

In addition, based on my review of Mr. McGowen and Mr. Arthur's testimonies, WELC's proposal to add a new definition for a "marginal well" could result in the application of these increased financial assurance requirements to a large number of viable producing wells. I discuss my analysis of the proposed definition of "marginal well" below in Part III.C.

Other jurisdictions do not differentiate between marginal and other wells for financial

assurance determinations. Texas, for instance, calculates financial assurance requirements for all wells by the number of wells only and without reference to well production levels. In Texas, blanket bond amounts range from $25,000 for one to 10 wells to $250,000 for 100 or more wells. Mr. McGowen and Mr. Arthur discuss multiple other states with similar financial assurance programs with no direct or indirect reference to production thresholds, which the proposed definition of marginal wells would create here.

3. Inactive Wells and Temporarily Abandoned Wells

WELC would move the financial assurance requirements for inactive and temporarily abandoned wells from 19.15.8.9(D) NMAC to subparagraph 19.15.8.9(E). Therein, WELC proposes that wells that are inactive, or in approved or expired temporarily abandoned status, or for which the operator is seeking approved temporarily abandoned status, will also require either single well financial assurance of $150,000 or a blanket bond that amounts to an average of $150,000 per well.

Yet again, WELC's proposed amendments would remove the risk-based individual well financial assurance requirements and tiered blanket bonding currently in place for inactive wells and wells that have been in temporarily abandoned status for more than two years or for which the operator is seeking approved temporary abandonment. Under the existing regulations, such inactive and temporarily abandoned wells can be secured by individual well financial assurance starting at $25,000 plus $2 per foot drilled or proposed; alternatively, operators can obtain blanket bonding coverage of $150,000 for one to five inactive wells, $300,000 for six to 10 inactive wells, $500,000 for 11 to 25 inactive wells; and $1,000,000 for more than 25 inactive wells. 19.15.8.9(D) NMAC. Under WELC's proposed inactive well financial assurance requirements, coverage for 25

inactive wells would take $3.5M in financial assurance, where only $500,000 of coverage is currently required.

In my experience, the required single well financial assurance of $150,000 is far greater than the typical costs required to plug and abandon the typical onshore oil and gas well in New Mexico. Mr. Arthur noted his similar experience with plugging costs, noting that such costs vary dramatically, from less than $20,000 to significantly more (depending on well type, location, and depth).

Relatedly, the $150,000 single well financial assurance requirement is not feasible and does not align with surety market availability and thresholds for bonding across asset classes because the surety market cannot support the significantly larger financial guarantee due to the non-cancelable nature of the bond and variability of the financial qualifications of the operators over the years. Again, the additive effect of the proposed single well financial assurance bonding level will be difficult or impossible for some operators to achieve for the reasons I explained above in Parts III.A-B.1.

I also note that a blanket bond that averages $150,000 per well will be very difficult to track, as inventories change frequently. This will likely pose an enforcement issue for OCD, too. Mr. Arthur confirmed the same in his testimony. Blanket financial assurance has become a standard industry practice because blanket bonds are less difficult to underwrite and represent a smaller portion of an operator’s working capital and capital. As mentioned above, blanket bonds are currently utilized in many jurisdictions, including Texas.

If the proposed single well financial assurance amount remains in place using a $150,000 amount, most small and even medium-sized operators will no longer be able to qualify for the

bonds in the standard surety market. The non-cancelable nature of the bond is a major underwriting hurdle. Consequently, fewer surety companies will be willing to assume that risk.

Additionally, I note that under WELC's inactive and temporarily abandoned well financial assurance requirements proposal, the blanket financial assurance represents a running average amount. While I am not an expert in how operators and regulators would address this requirement of fluctuating average values, it seems reasonable to me that it would create a moving target for inactive/temporarily abandoned well blanket bonding requirements, and that might raise issues associated with managing fluctuating average values. The ever-changing average values will create uncertainty in the underwriting process and will amplify the concerns I have regarding the private surety market's ability to meet the demand that will be required under WELC's proposed single well financial assurance requirements.

For example, a logical conclusion would be that it may be difficult for an operator – or a regulator, for that matter – to track bond sufficiency across dynamic portfolios with frequent acquisitions and dispositions, which is common in the oil and gas industry. Mr. Arthur's written testimony addresses this issue in some detail, and I found his testimony to be persuasive. Furthermore, his testimony also informed me that for leases covering multiple wells, less productive wells are kept producing to maintain a lease or unit and prevent lease or unit expiration. Therefore, for the surety industry, it makes sense for multiple well operators to have a blanket bond covering all the wells, which better mirrors operations and would be easier to underwrite by the surety.

Finally, if these changes are implemented mid-term of a surety billing cycle for existing bonds, the surety industry will struggle to update amounts and will not be consistent in their approach.

Most cases will require re-underwriting of the principal, including a review of all outstanding bonded obligations and an assessment of the surety's willingness to maintain its support. In many instances, the surety will require replacement of the existing bond with one issued by another surety. Differences in underwriting criteria, variability in responses, and inconsistent timelines—compounded by the multiple parties involved (principals, agents, brokers, and sureties)—make an orderly update of the existing bond highly unlikely.

4. Individual Well Financial Assurance for Incomplete Blanket Bond Coverage

WELC proposes adding subparagraph 19.15.8.9(F) NMAC, which would require operators whose existing blanket financial assurance does not cover all wells to provide individual bonds for the uncovered wells, subject to regulatory requirements, i.e., WELC's proposed financial assurance requirements, and statutory limitations. WELC would also remove the alternative option for operators to file a replacement blanket bond.

This proposal presents significant practical challenges. The current surety market is not equipped to issue hundreds of individual well bonds on a broad scale. Underwriters are likely to decline bond requests if the operator lacks clarity about required bond amounts or fails to meet stricter underwriting criteria. As bonding limits increase, fewer surety providers will be willing to issue non-cancelable bonds. In many cases, issuing such bonds will require internal escalation and approval within the surety company, introducing additional delays and uncertainty. These market realities could result in serious disruption to operators' ability to comply with financial assurance requirements.

5. New Requirement for OCD Approval of Financial Assurance Prior to Both Drilling New Wells and Acquiring Existing Wells

WELC further proposes amending 19.15.8.9(A) NMAC by adding an express requirement that the OCD approve the required financial assurance before any proposed drilling or acquisition. My biggest concern with this provision is that the sweeping language seems to require the bonding of legacy wells preacquisition at a level that the private surety market is not able to provide, as explained above in Parts III.A.-B.1.

6. Annual Adjustment for Inflation

Finally, WELC would require that all authorized financial assurance amounts be adjusted annually to reflect inflation using the Consumer Price Index under its proposed subparagraph 19.15.8.9(G) NMAC. I believe the inflation linkage is ambiguous and unnecessary. If retained, it should be tied to a New Mexico-specific index.

The additive effects of these provisions may impede transfers and may exceed the ability of at least some operators to secure a surety or other bond. As I explain above in Parts III.A-B.1., the current surety market is limited by its own capacity constraints and the practical unavailability of high-volume or single well financial assurance at the levels proposed by WELC, particularly for marginal wells.

C. Adding a New Definition of "Marginal Well"

WELC proposes to add a definition of "marginal well" under 19.15.2.7(M)(2) NMAC that would define an oil or gas well as a marginal well when or if it produced less than 180 days and less than 1,000 barrels of oil equivalent within a consecutive twelve (12) month period.

WELC's proposed inclusion of the "marginal well" definition present serious potential cost implications for operators and even the state. Application of a definition that does not align with the operational reality of marginal well production could also result in misclassification which will

in turn impact investment and production decisions. I found Mr. McGowen's testimony particularly persuasive in highlighting the operational realities associated with marginal well classification—especially how overly broad or misaligned definitions can disrupt infrastructure planning, complicate lease retention strategies, and lead to disincentives for continued investment in low-producing but still viable wells.

Moreover, the definition of "marginal well" may be used in financial assurance calculations, although WELC's proposals are unclear on that point. As explained above in Part III.B.2, WELC proposes numerous $150,000 single well financial assurance requirements for marginal wells, which appear to ultimately result in a $150,000 assurance for every marginal well in the future. Using a definition that misclassifies wells as marginal could lead to a significant overestimation of decommissioning liability. This, in turn, would place additional strain on a surety market that is already limited in capacity and unprepared to handle the surge in private bonding demands likely to arise under WELC's proposed regulations.

D. Adding a New Definition of "Beneficial" and Presumptions of No Beneficial Use

1. Defining Beneficial Purposes or Beneficial Use

WELC proposes adding a new definition of "beneficial purpose" or "beneficial use" under 19.15.2.7(B)(6) NMAC as "mean[ing] an oil or gas well that is being used in a productive or beneficial manner such as production, injection, or monitoring, and does not include use of a well for speculative purposes." Use of vague language like "speculative purposes" in defining beneficial purposes should be struck. When vague terms like this are used, it can translate into uncertainty for underwriters, making bonds even more difficult to issue and obtain.

2. Presumptions of No Beneficial Use

WELC proposes to adopt volumetric production or injection thresholds[3] that, if not met, would trigger a rebuttable presumption of no beneficial use under a new provision at 19.15.25.9 NMAC. This presumption, if not refuted, will lead to a determination that could trigger the obligation to temporarily abandon or properly plug and abandon a well pursuant to 19.15.25.8 NMAC. This, in turn, would affect the well classification and corresponding level of bonding that is required, as I explain in Part III.B.1.-3. above. I share the concerns raised by Mr. Arthur and Mr. McGowen that using a narrow definition of "beneficial use" as a basis for financial or bonding requirements is impractical and creates unacceptable underwriting risk, adding further uncertainty and volatility to the already-constrained surety market.

Under WELC's proposed 19.15.25.9(D) NMAC, to rebut the presumption, operators would have a 30-day response window to provide multiple types of documents, including documentation proving "production in paying quantities." In my experience, however, "production in paying quantities" is fundamentally a lease-level economic standard, not a well-specific metric. Applying this standard to individual wells is misleading, as well-level production can vary widely due to market dynamics, seasonal fluctuations, and infrastructure constraints. This misapplication injects further uncertainty into the underwriting process, particularly for marginal wells.

IV. RECOMMENDATIONS

The Commission should strike or significantly redline WELC's proposed marginal well financial assurance requirements due to the legal, operational, and economic risks that such

[3] Production wells would be presumed to have no beneficial use if, in a consecutive twelve-month period, there was less than ninety days of production and less than ninety total BOE. Saltwater disposal and injection wells would be presumed to have no beneficial use if, in a consecutive twelve-month period, there was less than ninety days of injection and less than one hundred barrels (bbls) total injected.

amendments will create.

Further, I recommend that the Commission preserve or refine the blanket bond concepts already in place for active and inactive wells, and select temporarily abandoned wells, which, in my opinion, could be scaled by operator size or well count. The Commission also should provide for a $250,000 blanket bond that covers all wells, with no overlap with single-well financial assurance requirements. I advocate for blanket bonding because, as explained above, blanket bonds are easier to write and represent less of the Operator's working capital.

That being said, I found Mr. Arthur and McGowen's testimony advocating for a risk-based bonding system for single well financial assurance that varies by well characteristics also persuasive. If single well financial assurance requirements are to remain, I believe it would also be wise to introduce a risk-based approach informed by statistical data on orphan wells and operator default rates. It should also include a tiered bonding system adjusted for operator history, production status, and compliance record. This would avoid the undesirable effects of increases in bonding disputes and divestment of marginal assets that Mr. Arthur explained have resulted in states like Colorado, where high default per-well bonding assumptions – like the $150,000 per well proposed by WELC – automatically apply.

I also believe the inflation linkage proposed under 19.15.8.9(G) NMAC is ambiguous and unnecessary. If retained, it should be tied to a New Mexico-specific index.

Finally, I recommend that the bond instrument be modified to convert it into a periodically renewable form, with each renewable period not exceeding two years. This will significantly increase the ability for operators to qualify for the bond and make it meet more surety company underwriting guidelines. Furthermore, for those sureties that require non-cancelable bonds to be

346 referred to a higher authority, converting the bond to a periodically renewable form will streamline
347 the underwriting and approval process.

348 That concludes my testimony on behalf of the New Mexico Oil and Gas Association.

SIGNATURE PAGE

I hereby affirm that the statements, analyses, and opinions contained in this report are true and accurate to the best of my knowledge and belief. This report has been prepared in a manner consistent with generally accepted standards.

Prepared by:

Signature: Douglas R. Emerick **Date:** August 6, 2025

Name: Douglas R. Emerick

Title: Director of Operations

Company: Insurance Expo + Network

Dated this 8th day of August 2025.

Respectfully submitted,

By:_____

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Testimony of Douglas R. Emerick
NMOGA Exhibit F

EXHIBIT A

Curriculum Vitae

Douglas Emerick

EXHIBIT 10

Douglas R. Emerick

Professional Experience



Insurance Expert Network 2007- Present
IRCOS, LLC – General Manager 2007-2021

Director of Operations

These firms provide insurance and reinsurance arbitration, mediation, company startup and runoff, due diligence, feasibility studies, product research and development, policy review and underwriting audit, expert witness, litigation support and insurance expert referral services.

EMERICK CONSULTING, Morrisville, PA 2005-Present
Owner
Continued development of econometric data delivery products and established residential computer assistance business.

- Provides risk management services for IRCOS, LLC and Insurance Expert Network, LLC
- Organized and coordinated separate marketing effort for econometric products, including the hiring of sales persons
- Spearheaded any joint venture development efforts that included market analysis
- Provided high level technical support for products
- Expanded product line of client to include business interruption estimator and researched workers compensation exposure analysis tool
- Established local residential computer and network assistance services

MARSHALL & SWIFT/BOECKH, Princeton, NJ 1994-2005
Manager - **Econometric Services & Eastern Region Sales Manager**
Developed new product line and extended company's penetration of existing product lines into commercial insurance and tax assessing industries. Managed a joint venture endeavor with data provider

- Developed new and maintained 94% of existing sales for Eastern division
- Directed programming and development of industry first and only commercial contents exposure estimating program (CCI)
- Increased commercial outsourcing revenue by 347% with profitability over 45% by creating methodologies that integrated commercial building and contents estimating technologies
- Managed outsourcing project for company's largest ($12 million revenue) single account
- Spoke at various public and trade conferences on business, profit and market impact issues

CONTINENTAL INSURANCE, Cranbury, NJ 1979-1994
Senior Vice President - Corporate Underwriting
Developed new review and oversight of fidelity and surety product lines and operating groups. Developed and implemented new underwriting tools. Coordinated with corporate planning. Authority on large or complex credit extensions over branch-level limits. Designed plan for and implemented new auditing standards and profitability improvement of surety underwriting practices.

Vice President - Field Operations
Managed field operations (17 offices, 85 staff) for profitability, growth and efficiency objectives of $60 million unit that returned 18% profit on revenue. Held Treaty level authority in all lines including D&O, E&O, Financial Institution, Commercial Fidelity and ancillary coverages. Responsible for Canada Offices, production and profitability.

- Led management team -analyzed and restructured field operations to enhance production and profitability resulting in expense savings of 22% and revenue growth of 9.8% in the first year
- Conceived, designed introduced first on-going professional training program for industry and product areas
- Established comprehensive producer management system to focus production efforts, identify potential key producers and provide incentive awards resulting in a revenue growth of 58% over 3 years
- Streamlined submission requirements further reducing continuing expenses by 4.6%

EXHIBIT 10

Vice President - Central Region, New York, NY & Cranbury, NJ
Directed underwriting and production efforts of the Central Region field and Home Office units (12 direct reports) Maintained underwriting standards, through soft market, across multiple lines of business including Financial Institution and Commercial Fidelity, D&O and E&O

- Achieved premium growth of 21% over two years
- Increased net profit from 6% to 18%
- Responsible for section development of new financial institution D&O policy

Senior Manager, Braintree, MA
Established this new office and managed all phases of field office operation

- Developed office into the largest D&O underwriting branch and second largest branch overall Increased revenue 871 % in three years
- Streamlined and improved producer plant. Reduced expenses 3.1%
- Worked with agents and consulted with insureds on coverage and terms necessary.
- Scored far above competition for service (100% "Same or Better'"), professionalism (87% -100%) and knowledge (100%) in anonymous Producer Survey
- Participated in the development of financial Institution D&O policy
- Earned highest incentive award in unit in 1992 for profitability (36.4%) and growth (245%)

Sr. Underwriter, Dallas, TX
Responsible for production and underwriting of all sizes of fidelity and surety accounts in North Texas Territory

- Designed and implemented Continental's first "call report" automated analysis tool for evaluating financial institution risks. This was adopted for company-wide use reducing underwriting time by 44%
- Designed, implemented and maintained database for producer and policy information that enabled company to successfully combine two field office operations into Dallas with no additional staffing
- Worked with agents and consulted with insureds on coverage and terms necessary.
- Managed contractor risks of all sizes and miscellaneous surety accounts generating up to $350,000 in annual premium
- Trained in underwriting and developed D&O and E&O business for existing book of non-surety business.
- Received national Employee Award for accomplishments in underwriting, production and office operation improvements

Underwriter, York, PA
Responsible for underwriting all sizes of commercial and financial institution fidelity, contract and noncontract surety accounts in the Central Pennsylvania, Maryland and DC areas. Claims payment handling as required.

Education

Certified Mediator – MTI –Mediator Training Institute International

IIA – **INS** Certification - General Principles of Insurance, Principles of Fire, Marine and Allied Lines and Principles of Casualty Insurance and Bonding

BS - Business Administration, Gannon University, Erie, P A, Deans List,

EXHIBIT 10

Expert Witness Experience (Parties in Bold type were retaining side)

- PKF-Mark III v. **SEPTA** (Philadelphia CCP October Term 2004, No. 003323) – Reported on causal linkage of contract termination and Surety Line of Credit reduction. Case settled to defendant's benefit. David Braverman, Esq., Braverman Kaskey *February 2007*
- Hudson Savings Bank v. **Progressive Insurance** (United States District Court –Massachusetts-Civil Action No. 06 CA 11967 RGS) Reported on and provided deposition on rescission of Financial Institution Bond due to material misrepresentation. Case Settled to defendant's benefit.
  Deborah Griffin, Esq., Holland & Knight
  October 2007
- **Confidential Consultation** – Provided litigation support on a case involving a denial of claim for a large loss under a Commercial Crime Policy to an attorney representing the agent. Case settled to agent's benefit. Michael Margolis, Esq. and Stephen Tisman, Esq, Margolis & Tisman *April 2008*
- **Rice** v. Interlake (Philadelphia CCP, April Term, 2003; No. 2328)-Provided report on the financial security of a supersedeas bond filed by a surety company.
  Patrick J. Keenan, Esq, Duffy + Partners
  February 2009
- **Gunderson** et. al. v. F A Richard & Associates et.al. (Louisiana Fourteenth Judicial District, 2004-002417, DIV. "D"). Accepted as a surety underwriting expert and testified as to the "sufficiency" of an appeal bond filed by a licensed surety company on behalf of one of the defendants. Ruling of court correlated with the substance of the testimony. Arthur Murray, Esq., Stephen Murray, Esq., Murray Law Firm, (504) 525-8100 and Thomas Filo, Esq., Cox, Cox, Filo, Camel & Wilson
  November 2009
- **Confidential Consultation** – Assist attorney/homeowner claimant to obtain proper restitution for loss suffered as a result of a fire while addition was being added to the home. *October 2010*
- Progressive Casualty v Jackie K. Delaney et al – **FDIC** involved and was retaining party. Expert witness on policy interpretation issues related to claim made by FDIC on bank's D&O policy relative to several directors and officers prior to takeover by FDIC.
  Geoffrey Long, Esq. and Andrew Reidy, Esq, Dickstein Shapiro
  November 2011
- Progressive Casualty v **FDIC** as receiver for Michigan Heritage Bank et. al. – Underwriting expert witness on policy interpretation issues related to bank's D&O policy.
  Edward J. Hood, Esq., Clark Hill PLC February 2012
- Merchants Benefit Administration, Inc. v **Hartford Fire Insurance Company** et. al. - Underwriting expert witness on commercial fidelity policy. Opined on the materiality of internal control questions and loss information on renewal application to Defendant's writing, pricing and acceptance of plaintiff's renewal policy.Spencer Proffitt, Esq. Lewis Brisbois Bisgaard & Smith LLP April 2012
- Progressive Casualty v **FDIC** as Receiver of Omni National Bank – Expert witness on policy interpretation issues related to Omni's D&O policy.Carey L Menasco, Esq., Liskow & Lewis July 2012
- Progressive Casualty v **FDIC** as receiver for Silver State Bank et al. – Expert Witness on policy interpretation issues related to claim made on the Bank's D&O policy.Anthony W. Kirkwood, Esq., Mullin Hoard & Brown, L.L.P. August 2012
- Hanover Insurance v. **Smith Brothers Insurance** – Contract Surety Underwriting
  Kenneth R. Rothschild, Esq., Golden, Rothschild, Spagnola, Lundell, Boylan & Garubo, P.C.
  November 2012

EXHIBIT 10

- **Krivit** v MetLife Auto & Home – Residential replacement cost method and practice analysis
  Steven J. Pace, Esq., Shuttleworth & Ingersoll, P.L.C. March 2013
- First Bank of Delaware v **Fidelity & Deposit Company (Zurich)** –Directors & Office Liability policy and claim analysis involving Entity and Electronic Risk coverages
  Kelly M. Lippincott, Esq., Carr Maloney P.C. April 2013
- Ironshore v **Banyon Capital** - Commercial Fidelity Underwriting
  Jason S. Mazer, Esq, Ver Ploeg & Lumpkin, PA, August 2013
- **Lincoln General** v Arrowhead of California - Contract Surety underwriting
  Edward Ruberry, Esq., Ruberry, Stalmack & Garvey, LLC, September 2103
- **Moneygram** v Lloyd's – Commercial Crime Underwriting
  Christopher Yetka, Esq., Barnes & Thornburg, LLP September 2014
- **Hub** v. BNC – Financial Institution Bond Underwriting May 2014
  Mayes Morrison, Esq Lewis, Roca Rothberger LLP
- Enloe v **Trinity Capital Corporation et. al. v** Atlantic Specialty Insurance et.al. – D&O Underwriting
  Robert Warburton, Esq., Stelzner Winter Warburton Flores Sanchez Dawes, P.A**.** May 2016
- Patrick Dunfee **v. Newark Shopping Center** – Contract Bond Underwriting
  Brett T. Norton, Esq., Marks, O'Neill, O'Brien, Doherty & Kelly, P.C. June-2016
- **CoreLogic, Inc**. v. Zurich – Commercial Surety bond Industry standards
  David E. Weiss, Esq, Reed Smith September 2016
- **Auto Finders** v. Prime Service Agency, LLC et.al.- Commercial Crime Underwriting
  Michael Kovalsky, Esq., Zenstein & Ballard, PC March 2017
- **Tallan v.** Federal Insurance **– Employee Dishonesty Coverage Underwriting June 2018**
  Jay Rabin, Esq. Olshan Frome & Wolosky, LLP
- **NBB V. Everest National – Financial Institution Bond Underwriting November 2018**
  Brian Wheeler, Esq. Cowan Perry PC
- Dominion Mechanical Contractors, Inc. v. **FVCBank, Contract Surety Underwriting**
  Matthew Sorensen, Esq. Cameron/McEvoy PLLC March 2020
- **Karolina Khlebnikova, ano** v. Herman Boiko et. al. March 2021
  – Residential replacement cost method and practice analysis
  Maria A. Giragossian Giragossian Law, Inc

- **Publications**

- **Working as an Expert Witness,** CLEW News**,** Spring 2019

EXHIBIT 10

Testimony of Douglas R. Emerick
NMOGA Exhibit F

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served to counsel of record by electronic mail this 8th day of August 2025, as follows:

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EXHIBIT 10

Testimony of Douglas R. Emerick
NMOGA Exhibit F

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EXHIBIT 10

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

IN THE MATTER OF PROPOSED AMENDMENTS TO 19.15.2, 19.15.5 19.15.8, 19.15.9, AND 19.15.25 NMAC **Case No. 24683**

REBUTTAL TESTIMONY OF DOUGLAS EMERICK

ON BEHALF OF

NEW MEXICO OIL AND GAS ASSOCIATION

September 19, 2025

REBUTTAL TESTIMONY OF DOUGLAS EMERICK

I. INTRODUCTION

My name is Douglas Emerick, and I am the surety expert witness for the New Mexico Oil and Gas Association ("NMOGA") in this Oil Conservation Commission ("OCC" or "Commission") rulemaking proceeding, Case No. 24683, specializing in financial assurance issuance and maintenance and the private surety and insurance industries. My education, background, qualifications, and prior expert experience are set forth in my direct testimony submitted to the Commission on August 8, 2025, offering my opinion as to the proposed rules on behalf of NMOGA, with my curriculum vitae attached as Appendix A thereto.

II. PURPOSE OF REBUTTAL TESTIMONY

I have reviewed the prehearing statements and direct testimony submitted by the Applicants—led by the Western Environmental Law Center ("WELC" or collectively the "Applicants")—as well as the Oil Conservation Division ("OCD" or "Division"), the New Mexico State Land Office ("SLO"), the Independent Petroleum Association of New Mexico ("IPANM"), and OXY USA Inc. ("Oxy"). Based on their filings, OCD and SLO generally support the Applicants' amendments, offering only limited technical changes, if any. I also reviewed publicly available records of federal court filings using the Public Access to Court Electronic Records ("PACER") platform.

All direct testimony filings concerned the proposed amendments to **Sections 19.15.2.7 and 19.15.8 of the New Mexico Administrative Code ("NMAC"),** which are the subject of this rulemaking proceeding. I address the direct testimony by regulation in that order.

III. REBUTTAL TESTIMONY

I begin by addressing what Applicants and their experts describe as the "orphan well problem." Their testimony and proposed amendments focus narrowly on this issue but overlook essential considerations that should inform any regulatory change adopted by the Commission. In particular, they ignore two critical realities: first, the feasibility—or lack thereof—of implementing their proposed financial assurance requirements within the private surety and insurance markets; and second, the unintended, industrywide consequences of such changes. Based on my own experience in the surety sector and observations of how similar rulemakings have unfolded in other jurisdictions, I anticipate that these proposals would strain private bonding capacity, escalate collateral demands, and ultimately destabilize operators across the board. In short, what Applicants characterize as a solution to the orphan well problem risks creating broader systemic problems that undermine the very goals of responsible regulation.

Next, I will address how the definitional additions and changes proposed under 19.15.2.7 NMAC interact with and ultimately shape the broader financial assurance overhaul in 19.15.8 NMAC. Although the Applicants' proposed language does not expressly state that these definitions will set thresholds for financial assurance determinations, in practice, they would do precisely that if adopted. Terms such as "marginal well," "inactive well," and "beneficial use" will directly influence which wells are swept into the higher bonding categories. Accordingly, it is important that the Commission make clear—either within the final rule text or through implementing guidance—how these definitions are intended to operate and how they may affect both existing regulations and the other amendments being proposed. Without that clarity, the definitional changes risk becoming open-ended triggers that expand financial assurance obligations well beyond what the statute authorizes.

Finally, I will analyze the direct testimony submitted in support of the proposed financial assurance amendments under 19.15.8.9 NMAC, with particular focus on the practical feasibility of these changes within the surety and insurance markets. The testimony of the Applicants' experts presents a theoretical model of bonding adequacy, but it does not sufficiently appreciate how in practice, these requirements would be financed, collateralized, or administered. Drawing on my experience in the surety industry, I will explain why the proposed structure is neither realistic nor sustainable, and I will conclude with recommendations for more workable alternatives. These alternatives are designed to ensure adequate financial security for the State of New Mexico while also keeping bonding requirements achievable for operators of all sizes, thereby avoiding the unintended consequence of destabilizing the market and discouraging responsible operations.

A. Applicants, OCD, and Their Experts Ignore Essential Factors

Applicants' proposed amendments fail to consider several foundational realities of the surety and insurance markets that determine whether financial assurance requirements can actually function as intended. In my experience, these omissions are not minor; they go to the heart of whether the proposed framework is workable. Applicants' proposed amendments do not consider the current surety market and the unintended consequences that will flow from the proposed financial assurance changes, the surety industry's reluctance to write non-cancellable bonds, or that the disparate financial burden the proposed rules place on small and medium-sized operators will force many out of business. Ignoring these essential factors will result in ill-fitting regulations, which will cause harm and industry disruption, and both foreseeable and unforeseeable regulatory problems, which, in my opinion, will outweigh the potential benefits. Especially where the current regulations already contain a more tailored risk-based individual well and tiered blanket bonding

financial assurance scheme.[1]

By overlooking these essential factors, Applicants and their experts have built a model that looks neat on paper but will prove unworkable in practice. The result will not be stronger protections, but rather ill-fitting regulations that cause both foreseeable and unforeseeable disruptions to New Mexico's oil and gas industry. The harms—including business failures, stranded assets, and reduced state revenue—will outweigh any theoretical benefits.

[1] Direct Testimony of Daniel Arthur, P.E., NMOGA Lead Technical Expert, *In the Matter of Proposed Amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC*, No. 24683, OCC, Aug. 8, 2025 (hereinafter, "**NMOGA's Arthur Direct Testimony**"), at 26:527-533 ("WELC's proposal abandons the existing risk-based financial assurance requirements for individual bonding for such active wells, which currently starts at $25,000 plus $2 per foot of well depth, calculated based on the true vertical depth for vertical and horizontal wells or measured depth for deviated and directional wells. WELC also abandons the tiered blanket financial assurance alternatives for active wells, depending on the number of active wells secured: $50,000 for one (1) to 10 wells; $75,000 for 11 to 50 wells; $125,000 for 51 to 100 wells; and $250,000 for more than 100 wells."), 27:551-61 ("Currently, only wells that have been in temporarily abandoned status for more than two years or for which the operator is seeking approved temporary abandonment are subject to the heightened inactive well financial assurance provision under the existing version of 19.15.8.9(D) (Inactive Wells). WELC would broaden the types of wells subject to heightened inactive well financial assurance requirements and abandon the existing risk-based approach, which currently allows for individual well bonding starting at $25,000 plus $2 per foot of well depth, calculated based on the true vertical depth for vertical and horizontal wells or measured depth for deviated and directional wells. WELC would also abandon the current tiered blanket bonding alternatives available for such wells, depending on the number of active wells secured: $150,000 for one (1) to five (5) wells; $300,000 for six (6) to 10 wells; $500,000 for 11 to 25 wells; and $1,000,000 for more than 25 wells."); Direct Testimony of Harold McGowen, P.E., NMOGA Technical Expert, *In the Matter of Proposed Amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC*, No. 24683, OCC, Aug. 8, 2025 (hereinafter, "**NMOGA's McGowen Direct Testimony**"), at 70:1499-1511 ("The amendments would remove the existing risk-based approach for securing individual active wells, with assurance requirements starting at a floor of $25,000 and increasing incrementally based on well depth: 'a one well financial assurance in the amount of $25,000 plus $2 per foot of the projected depth of a proposed well or the depth of an existing well; the depth of a well is the true vertical depth for vertical and horizontal wells and the measured depth for deviated and directional wells[.]' 19.15.8.9(C)(1) NMAC. Alternatively, operators can obtain a blanket bond of $250,000 to cover all active wells under the current version of 19.15.8.9(C)(2) NMAC. WELC also proposes to remove the existing tiered approach for blanket bonds for active wells which currently only requires a blanket bond totaling: (a) $50,000 for one (1) to ten (10) active wells; (b)$75,000 for eleven (11) to twenty-five (25) 1510 active wells; (c) $125,000 for 51 to 100 wells; and (d) $250,000 for more than 100 wells. 19.15.8.9(C)(2) NMAC."), 71:1526-1535 ("Again, removing the existing risk-based approach for securing individual inactive and expired or pending TA wells, also with assurance requirements starting at a floor of $25,000 and increasing incrementally based on well depth: 'a one well financial assurance in the amount of $25,000 plus $2 per foot of the projected depth of a proposed well or the depth of an existing well; the depth of a well is the true vertical depth for vertical and horizontal wells and the measured depth for deviated and directional wells[.]' 19.15.8.9(D)(1) NMAC. In contrast to its proposal for active wells, WELC's proposed blanket financial assurance requirements for inactive and temporarily abandoned wells under new 19.15.8.9(E)(2) NMAC would eliminate a flat-rate blanket bond option. Instead, WELC would require that any blanket bond provide, on average, $150,000 in coverage per well included under the bond.").

1. Proposed Financial Assurance Changes are Not Feasible Considering the Current Surety Market and State of New Mexico's Non-Cancelable Bonds Requirement

As explained in my direct testimony, as well as the direct testimony of NMOGA's operational and plugging and abandonment experts, Daniel Arthur and Harold McGowen, respectively: the changes to individual and blanket financial assurances for active, inactive, and temporarily abandoned wells,[2] coupled with the additive requirements for a new category of heightened financial assurance for marginal wells[3] which can also create heightened financial assurance requirements for inactive, temporarily abandoned, and even active wells depending on the operator's portfolio,[4] each individually, and especially combined, will create a level of demand the private surety market cannot and will not meet.[5]

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[2] **NMOGA's Arthur Direct Testimony** at 26:533-37 ("WELC's [active well assurance] proposal is unworkable, will exponentially increase the bonding required for active wells – which pose the least risk of all well types considered under WELC's proposed financial assurance requirements and are the most prevalent type of well in New Mexico . . . and will likely drive business and tax revenue out of state."), 27:561-28:564 ("Yet again, these [inactive and temporarily abandoned well assurance] changes by WELC are unworkable, will exponentially increase the bonding required [for] temporarily abandoned wells – which Mr. McGowen explains can in some cases be even safer than actively producing wells – and for even more types of temporarily abandoned wells, as well as inactive wells, which will in turn likely drive business and tax revenue out of state.").

[3] **NMOGA's Arthur Direct Testimony** at 28:566-570 ("Additionally, WELC's proposed new marginal well assurance provision 19.15.8.9(D)(1)-(2) NMAC would compound the required financial assurance by requiring operators to provide single-well financing of $150,000 for each marginal well (subject to the proposed amended definition described above) beginning in January 2028, and as of the effective date of the proposed rule, for every marginal well that is the subject of a transaction."), 28:575-79 ("These per well financial assurance requirements for marginal wells will exponentially increase the bonding amounts required under the rule because stripper wells (a subset of marginal) wells represent 54% of oil wells and 81% of gas wells in New Mexico, and in 2023 alone, these wells produced approximately 18% of the state's total oil output and 10% of its total gas production, according to the U.S. Energy Information Administration's 2024 Well Distribution Report.").

[4] **NMOGA's Arthur Direct Testimony** at 28:571-574 ("Under its proposed 19.15.8.9(D)(3) NMAC, WELC would also require individual well financial assurance of $150,000 for each well – not just marginal wells – registered to any operator with fifteen percent or more ($\geq$15%) of an operator's total well inventory made up of inactive or marginal wells, or a combination thereof, until the percentage falls below fifteen percent (<15%).").

[5] **NMOGA's McGowen Direct Testimony** at 74:1583-85 ("the new rules themselves (with high base amounts) are likely to harden the surety market, many surety providers may reassess their exposure and require more collateral or higher premiums."); Direct Testimony of Douglas Emerick, NMOGA Technical Expert, *In the Matter of Proposed Amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC*, No. 24683, OCC, Aug. 8, 2025 (hereinafter "**NMOGA's Emerick Direct Testimony**"), at 6:123-25 ("Obtaining numerous single [active] well financial assurance instruments in addition to high-volume blanket bonds, as will be required to comply with WELC's rule as proposed, will be difficult, if not impossible, under the current surety market. "), 8:161-67 ("My thoughts regarding these

The surety and insurance industries would likely be unable to respond to the situation where an existing cash or surety bond amount, irrevocable letter of credit, or policy coverage must be increased nearly fourfold, mid-term, or to timely issue new financial assurance to cover additional amounts required under the proposed rules. The New Mexico Legislative Finance Committee's ("LFC") June 2025 Policy Spotlight on Orphaned Wells ("LFC Report"), which Applicants heavily rely on to justify why their proposed amendments are necessary, acknowledges that obtaining surety bonds is growing increasingly difficult.[6]

The LFC, in its LFC Report, just like the Applicants, ignores the fact that the State of New Mexico requires non-cancelable bonds. This is critical to understand because a non-cancelable bond is a surety bond that, once issued, cannot be terminated or withdrawn by the surety before the obligation it guarantees has been fully discharged. *See* 19.15.8.13 NMAC (predicating release of financial assurance instruments on file with OCD on all wells drilled or acquired under that financial assurance have been plugged and abandoned, restored and remediated, and released pursuant to New Mexico's plugging and abandonment regulations in 19.15.25.9-.11 NMAC, or have replacement coverage by another assurance instrument OCD has approved).

Because New Mexico requires surety and cash bonds to be issued on non-cancelable forms,

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[marginal well] proposed provisions are in keeping with my more general comments above . . . Regardless of an operator's financial health, many operators will find that the additive effects of the applicant's proposal to impose these increased financial assurance requirements will result in financial assurance obligations that many operators simply cannot satisfy. The reality of the current state of the surety market, which requires operators to demonstrate significant levels of available working capital, is that the market will be inaccessible to many operators."), 10:202-07 ("Relatedly, the $150,000 single [inactive] well financial assurance requirement is not feasible and does 203 not align with surety market availability and thresholds for bonding across asset classes because 204 the surety market cannot support the significantly larger financial guarantee due to the non-cancelable nature of the bond and variability of the financial qualifications of the operators over 206 the years. Again, the additive effect of the proposed single well financial assurance bonding level 207 will be difficult or impossible for some operators to achieve for the reasons I explained above").

[6] LFC Report at 140 ("Bonds, particularly surety bonds, have long been the primary regulatory mechanism for ensuring proper plugging and abandonment of wells. However, changes to the surety bond market have made those more difficult for some operators to obtain.").

the practical effect of the Applicants' proposed amendments will be even more severe. In the surety market, the ability to cancel or non-renew is a critical risk-management tool. When that option is removed, sureties demand significantly more collateral and higher annual premiums, and many sureties decline to participate altogether. For operators, this means tying up large amounts of capital to maintain existing financial assurance, in addition to securing new financial assurance at inflated costs. The result is not only reduced access to the surety market but also disproportionate impacts small and mid-sized operators who lack the balance sheets to support such collateral demands.

These realities highlight the impracticality of the proposed financial assurance changes in New Mexico, where the non-cancelable bond requirement amplifies costs and shrinks the very market on which the rules depend. The Division's five (5) financial assurance forms, including non-cancelable surety and cash bond forms, are attached hereto *in globo* as Appendix A.

Because of the current state of the surety market and the requirement that surety and cash bonds be issued on non-cancelable forms, unintended consequences not envisioned under the language proposed by Applicants will also result; most notably, the anticipated increase in collateral required to maintain existing financial assurance, in addition to increased frequency and levels of collateral and annual premiums required to acquire new assurance instruments.

i. Premiums and Collateral Will Increase Beyond Levels Anticipated by Applicants, Especially Considering the Industry's Reluctance to Write Non-Cancelable Bonds as Required By OCD

In practice, for the industry to secure the increased or newly required forms of financial assurance, sureties and insurers will inevitably require higher premiums and substantially greater collateral. These demands will exceed by a wide margin the cost assumptions offered by Applicants' experts in their direct testimony, which fail to account for the realities of the current

surety and insurance markets. The LFC explains:

> Operators can use one of several financial instruments to fulfill the state's financial assurance requirements. Surety bonds, typically issued by specialized surety companies, are the most commonly used type of financial assurance. They are paid for with annual premiums and secured by varying amounts of collateral; typical premium rates are 1 to 5 percent of the total bond amount annually.[7]

WELC legal and technical expert Peter Morgan claims the annual premiums for surety bonds are typically between 1%-2.5% of the bond as well as pledged collateral, based on a 2000 study. He further claims that higher amounts are indicative of a higher risk operator and that operators that have profited from oil and gas production should bear the costs of cleanup.[8]

First and foremost, I do not believe that the LFC or Mr. Morgan adequately considered the non-cancelable nature of the bonds required by the State of New Mexico, or the private surety industry's reluctance to write such bonds. Importantly, the surety industry has recently suffered a significant loss year and consequently raised rates and strengthened underwriting through the initial decade of the 2000's.

Second, Mr. Morgan relies on 25-year-old data, which is no longer indicative of modern-day costs, inflation, and other economic factors present in 2025. Reliance on old data ignores the current state of the surety market that Applicants seek to disrupt. Each surety files its own rates in each state either itself or by utilizing the services of the Surety & Fidelity Association of America. A broad brush of average premium rates does not adequately address the premiums operators face under the proposed rules. Based on my understanding, the current provider of these bonds indicates the range of premiums range from 1% to 10%. The small and medium operators would likely have

[7] LFC Report at 10.

[8] Direct Testimony of Peter Morgan, JD, WELC Technical and Legal Expert, In the Matter of Proposed Amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC, No. 24683, OCC, Aug. 8, 2025 (hereinafter, "**WELC's Morgan Direct Testimony**"), at 36:10-37:1.

to pay between 2.5% -5% from the highest qualified to the lowest qualified.

Third, I anticipate that not only would smaller operators pay higher premiums and be forced to provide collateral, but I also expect some sureties would require additional collateral from **all** operators, no matter the size or financial stability of the operator. Some current underwriters of the New Mexico bond market have told me that they will be instituting collateral requirements on all of the New Mexico oil & gas well plugging bonds.

Real-world experience by compliant operators in other jurisdictions proves that increases, premiums, and collateral are not limited to high-risk operators and could be used as a pretext to force cancellation of otherwise non-cancelable bonds, as I explain in greater detail immediately below.

ii. Where Non-Cancelable Bonds are Used and Financial Assurance Requirements Increase, Sureties and Insurers Can Make Demands that Principals of Existing Assurance Post Additional Collateral to Maintain Their Existing Security to Force Cancelation and Create a Means to Exit the Market

Considering the noncancelable nature of the bonds required by the State of New Mexico, sureties could strategically increase collateral amounts for existing instruments, knowing such demands cannot be met, thereby creating a means of escape for these sureties to exit the New Mexico oil and gas assurance industry when they otherwise could not. The same was experienced in the federal offshore oil and gas industry, less than one month after the Biden Administration overhauled the federal offshore oil and gas financial assurance regime to require heightened levels of supplemental financial assurance to cover asset decommissioning. The cases that follow illustrate the consequences of the problems with the proposed amendment. *See, e.g., W&T Offshore, Inc., W&T Energy VI, LLC v. Endurance Assurance Corp., et al.*, No. 4:24-cv-3047 (S.D. Tex. filed Aug. 14, 2024).

W&T Offshore, Inc. and W&T Energy VI, LLC (collectively, the "W&T Entities") had obtained $55,902,578 in financial assurance to secure their federal offshore operations and decommissioning obligations from Lexon Insurance Company ("Lexon"), Endurance Assurance Corporation ("Endurance"), and various other Sompo International Companies ("Sompo Company" or "Sompo Companies"). On August 14, 2024, the W&T Entities sued Endurance and Lexon after receiving a demand on July 9, 2024, demanding $7,500,000 in additional collateral within 30 days in order to maintain its existing bonds, considering the Department of the Interior's new financial assurance requirements, which went into effect in June 2024. The W&T Entities' Complaint for Declaratory Relief naming Lexon and Endurance, with all exhibits including applicable financial assurance instruments and $7.5 million private surety demand, is attached hereto *in globo* as Appendix B.

The W&T Entities' lawsuit illustrates difficult circumstances operators face when regulatory entities change the rules affecting the surety bonds operators are forced to provide to these regulators. When the regulatory environment changed, the Surety required collateral. The Principal considered this request for collateral as burdensome and unreasonable. Because the surety is writing the bonds with a commitment to achieve a zero loss ratio, that is, the surety's business model is to avoid ever paying claims out of its own funds—collateral is required so that, in a claim situation, the surety can rely on the Principal's collateral to pay. When regulators tighten requirements, such as through new financial assurance rules, sureties perceive an increased risk of bond claims. To maintain their zero-loss position, sureties respond by demanding collateral, often up to the full bond amount. This practice ties up operator capital and reduces liquidity, especially for small and mid-sized operators that may lack balance-sheet capacity to meet collateral calls. Even larger operators see reduced bonding capacity and increased financial drag. Because the

surety believed that, under the changed regulatory environment, a claim situation was more likely to arise, collateral was required. These are the types of situations confronting operators that are likely to arise under the financial assurance rules change proposal. This is one of the many types of disputes and bond changes that the proposed financial assurance rule changes portend.

As explained in the W&T Entities' Complaint, W&T's financial position did not change; only the regulatory environment did.[9] W&T asserted that its sureties did not want to remain in the now high-risk federal offshore oil and gas assurance industry, and as a way to escape the non-cancelable bonds required by the DOI, demanded an unreasonable amount of additional collateral in the form of cash or a Letter of Credit, knowing W&T could not and would not comply.

Notably, the various Sompo Companies filed their own lawsuits against one or both of the W&T Entities, which were ultimately consolidated under the W&T Entities' lawsuit. For example, on November 8, 2024, Sompo Company Pennsylvania Insurance Company ("Pennsylvania") filed its own complaint against W&T Offshore, Inc. ("W&T Offshore") demanding it immediately deposit collateral in the amount $11,343,949.00, the total amount secured by four bonds where Pennsylvania was the surety, W&T Offshore the principal, as well as a judgment for damages of $357,355.10 plus interest, which Pennsylvania claims it incurred when W&T Offshore allegedly failed to pay the premium due and owing for the bonds. *Pennsylvania Insurance Company v. W&T Offshore, Inc.*, No. (filed Nov. 8, 2024). Pennsylvania's complaint is attached hereto as Appendix C.

[9] The relevant regulatory changes went into effect June 29, 2024, a week or so before the Endurance and Lexon made their demands of W&T Entities, when BOEM had not yet issued notices requesting requests for financial information (60 days after effective date) and no supplemental financial assurance demands to be issued until 18-20 months thereafter. Accordingly, the sureties made these increases to existing collateral automatically due to regulatory changes before effect on specific principal could be known. BOEM, *Risk Management and Financial Assurance Rule Implementation Timeline* (June 28, 2024), https://www.boem.gov/newsroom/notes-stakeholders/boem-risk-management-and-financial-assurance-rule-implementation (accessed Sept. 1, 2025).

On November 20, 2024, Lexon and Endurance filed their First Amended Answer to the W&T Entities' Complaint, attached hereto as Appendix D. Lexon and Endurance countersued the W&T Entities for specific performance for breach of the indemnity agreement, a declaratory judgment that the W&T Entities had breached Lexon's contractual right to collateral, seeking attorneys' fees and other enforcement-related costs, and *quia timet* for $55,902,578 in additional collateral. With the indemnity agreement signed and in force, the surety had a right to demand collateral. It is the principal's right to comply with that demand or move to another surety. This is the type of activity that will inevitably follow if the proposed financial assurance rules are adopted—protracted litigation, collateral demands, and loss of operator capital that undermine, rather than advance, the conservation goals of the OCD and the policy aims asserted by WELC.

On November 22, 2024, the U.S. District Court for the Southern District of Texas granted consolidation of all related Case Nos. 4:24-cv-04113, 04395, and 04400 under the W&T Entities' lawsuit No. 3047. The consolidation order is attached hereto as Appendix E.

All these filings I have reviewed in developing my findings and are attached to my rebuttal testimony and are made available to the public via the Public Access to Court Electronic Records (PACER) platform. Based on these public records, I conclude that the noncancelable federal offshore requirements for financial assurance and bonding are so similar to New Mexico that the effects experienced by W&T are indicative of what smaller to mid-size and independent operators, if not all operators, will experience in the event that the Applicants' proposed financial assurance changes are approved as written.

iii. Creates Environment Ripe for Price-Fixing, Collusion, and Antitrust Violations

On December 10, 2024, the W&T Entities amended their lawsuit to add allegations of price-fixing, collusion, and antitrust violations. They also named other Sompo Companies as new

defendants, including Pennsylvania Insurance Company, U.S. Specialty Insurance Company, United States Fire Insurance Company, and Philadelphia Indemnity Insurance Company as additional defendants. *Texas Oil Company Asks Federal Court to Stop Insurance Companies' $250 Million Demand for Additional Collateral*, Business Wire (Dec. 11, 2024), https://www.businesswire.com/news/home/20241211846138/en/Texas-Oil-Company-Asks-Federal-Court-to-Stop-Insurance-Companies-%24250-Million-Demand-for-Additional-Collateral.

The aforementioned article states, "several states, including Texas, are challenging the BOEM rule [changing federal offshore financial assurance requirements,] and in one case they specifically cite W&T as an example of how the rule could be misused to irreparably harm energy producers." In addition, the article fails to recognize that a Surety bond is fundamentally different from an insurance policy. Insurance is a contract of adhesion, while a surety bond is a three-party contract where all parties have a responsibility. Indemnity agreements are tools used by sureties to illustrate that the principal is primarily responsible for conducting their operations in compliance with the underlying law or regulations. When a surety demands collateral, it is to ensure that funds are available when claims are presented on the bond. If sureties are prevented from asking for collateral, they are likely to stop underwriting the riskiest bonds—particularly where the principal does not qualify without collateral, or where the regulatory environment increases the likelihood of claims. Preventing sureties from operating in this manner—as they have done since corporate suretyship began—would deprive operators of access to bonds from Treasury-listed companies.

On June 17, 2025, W&T announced a settlement with two of its largest Sompo Company surety providers (which together with W&T's other major surety provider who did not attempt to increase premiums or call for collateral, represent almost 70% of the W&T Entities' surety bond

portfolio; the agreement required the surety providers withdraw their current collateral demands and agree not to make additional collateral demands or increase premiums through December 31, 2026. The W&T Offshore press release announcing the settlement agreement is attached hereto as Appendix F.

The consolidated case remains pending between the W&T Entities and Sompo Companies, which did not settle. But on June 26, 2025, the U.S. District Court for the Southern District of Texas denied the Sompo Companies' Motion for Preliminary Injunction. Judge Palamero **rejected** the Sompo Companies' claim that they were entitled to an injunction requiring the W&T Entities:

> (1) deposit cash collateral in the amount of $93,665,179.00 with the U.S. Fire, such amount representing the amount that U.S. Fire deems sufficient to protect itself from loss in connection with certain bonds; (2) deposit cash collateral in the amount of $11,343,949.00 with the Pennsylvania Insurance, such amount representing the amount that Pennsylvania Insurance deems sufficient to protect itself from loss in connection with certain bonds; (3) specifically perform their books and records obligations under the Indemnity Agreement by providing the Sureties with access to the books, records, and accounts of Plaintiffs, on an ongoing and continuing basis until all claims and liabilities in connection with the Bonds have been extinguished; and (4) not transfer, encumber or otherwise dissipate any of their assets until such time as they have posted the full amount of the collateral.

The U.S. District Court for the Southern District of Texas's Report and Recommendations rejecting these requests by the Sureties is attached hereto as Appendix G.

iv. Costs of and Time Required to Defend from Resulting Collateral and Premium Increases Add to Likelihood Operators Will Exit New Mexico Oil and Gas Industry

Answers have now been filed but discovery remains ongoing, with the parties agreeing to complete alternative dispute resolution and file dispositive motions by July 3, 2026, and other pretrial motions by July 31, 2026. The W&T Entities' Unopposed Motion for Entry of Docket Control Order ("DCO") and Order Governing Production of Electronically Stored Information, filed September 10, 2025, with those proposed orders as exhibits, is attached hereto as Appendix

H. The DCO reflects the case, filed at the end of 2024, will not proceed to trial until at least late summer or fall of 2026.

The consolidated lawsuits exemplify just how much time and money it takes for a principal like the W&T Entities to protect itself from collateral and premium increases, resources which not every operator will have. I anticipate small to mid-size operators and other independents smaller or more risk-averse than the W&T Entities will opt to exit New Mexico's oil and gas industry in the event they are faced with the increases similar to those faced by W&T.

2. Financial Burden of the Proposed Rules Will Affect the Entire Oil and Gas Industry But Targets Small and Medium-Sized Operators to the Point that They Will Be Forced Out of Business

Applicants propose increasing the individual well financial assurance amount to $150,000 for: any active well not covered by a blanket bond under proposed 19.15.8.9(C)(1) NMAC; every inactive and temporarily abandoned well whether secured by blanket bond or separately under proposed 19.15.8.9(E)(1)-(2) NMAC; and any separately secured well not covered by a blanket bond under proposed 19.15.8.9(F) NMAC; every well if an operator has 15% or more marginal and/or inactive wells under 19.15.8.9(D)(3) NMAC; every marginal well that is the subject of a transfer under 19.15.8.9(D)(1) NMAC; and ultimately every marginal well starting in 2028 under proposed 19.15.8.9(D)(2) NMAC. The proposed amendments would also effectively remove the blanket bond alternative for inactive and temporarily abandoned wells by requiring any blanket assurance total to an average of $150,000 per well secured under proposed 19.15.8.9(E)(2) NMAC.

In my opinion, only the largest of the operators will be able to meet this across-the-board mandate of $150,000 in assurance for virtually every requirement to be secured under 19.15.8.9(A) NMAC. The changes will have serious and disparate effects on small to mid-size operators, with resulting cost increases to be felt across the entire private surety market, as described above, below

in Part III.C.1.iv., in Part III.A of my direct testimony,[10] and in NMOGA operational expert Dan Arthur's rebuttal testimony.[11]

IPANM technical expert Robert Arscott illustratively explains that if an operator has eight wells are highly productive, one is older with less production, and one is inactive, under the Applicants' proposed requirements, if just one of the nine active wells became "marginal," the bonding requirement would immediately increase to $1,500,000, which would increase further with future bond amount increases.[12]

The OCD Testimony and supporting PowerPoint exhibit confirm that the single well financial Assurance bond amount of $150,000 is a one-size-fits-all approach. This proposed heightened individual well financial assurance requirement would affect operators' capital and ability to invest in new production, particularly for smaller members. In addition, when higher bond amounts are needed by operators, sureties will demand collateral, likely regardless of the operator's size. But collateral demands will further strain small and medium-sized operators' cash flow, working capital, and balance sheet, depending on the type of collateral chosen by the operator. When that strain is severe, the surety will likely ask that the collateral be replaced. Accordingly, the New Mexico Bond form, being non-cancelable bonds of that size, will most likely

[10] NMOGA's Emerick Direct Testimony at 2-5.

[11] Rebuttal Testimony of Daniel Arthur, P.E., NMOGA Lead Technical Expert, *In the Matter of Proposed Amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC*, No. 24683, OCC, Sept. 19, 2025 (hereinafter, "**NMOGA's Arthur Rebuttal Testimony**"), at 65-66 ("Different scales of impact, same fundamental problem. Smaller independents face existential threats, while larger operators must cut or delay investment. The common outcome is the same: fewer wells drilled, less production, reduced state revenues from severance and ad valorem taxes, and a chilling effect on long-term investment in New Mexico's oil and gas sector. Accordingly, the proposals will economically harm the entire industry, not just smaller companies and independents.").

[12] Direct Testimony of Robert Arscott, PhD., IPANM Technical Expert, *In the Matter of Proposed Amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC*, No. 24683, OCC, Aug. 8, 2025 (hereinafter "IPANM's Arscott Direct Testimony"), at 7-8.

lead to underwriting reactions from sureties, including collateral demands and collateral replacement requests across the board, but most especially for small to medium-sized operators.[13] I discuss these negative oil and gas industry wide effects in greater detail in Part III.C.1.iii. below.

B. How the Proposed Additions and Changes to the Definitions under 19.15.2.7 NMAC Affect Financial Assurance Requirements

It seems that Applicants propose to introduce new or amended definitions in 19.15.2.7 NMAC as a way to expand the coverage of the new financial assurance requirements they propose in 19.15.8.9 NMAC. Still, without ever expressly acknowledging that the definitions apply for purposes of financial assurance determinations, Applicants' experts' analysis of the definitions and the financial assurance requirements confirms as much. But as noted in NMOGA lead technical expert Dan Arthur's direct and rebuttal testimony, who specializes in regulatory compliance and onshore oil and gas operations, it is also unclear what scope and limits of applicability the newly defined terms, including "marginal" and "beneficial," would have regarding and beyond the proposed marginal well financial assurance requirements and presumptions of no beneficial use provision, respectively.[14]

Not expressly acknowledging that defined terms in 19.15.2.7 NMAC, as proposed or amended by Applicants (temporarily abandoned, expired temporarily abandoned, marginal well, and beneficial purposes/use), and now OCD (inactive well), dictate financial assurance determinations, and the limits of their application on other regulatory requirements, creates confusion regarding regulatory application. I fear that this could result in the full impact of these

[13] *EMNRD OCD Overview of the Specific Rule Changes,* Exhibit 15 to Direct Testimony of OCD Deputy Director Brandon Powell, OCD Expert, In *the Matter of Proposed Amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC*, No. 24683, OCC, Aug. 8, 2025 (amending slides 17 and 35 subsequently) (hereinafter "Exhibit 15 to OCD's Powell Direct Testimony"), at slide 3.

[14] NMOGA's Arthur Direct Testimony at 5-7, 35-40; NMOGA's Arthur Rebuttal Testimony at n.1.

definitional changes on financial assurance requirements not being adequately considered during this rulemaking proceeding, as well as subjective and/or disparate enforcement in the event the proposed changes are promulgated and implemented, and with the risk of the Division's varying offices and departments not consistently applying the same standards and thresholds.

1. The Proposed New Definition of Beneficial Purposes/Use Will Capture Productive and Viable Wells, Leading to Improper Assurance Amounts, and Resulting in Replacement or Collateral Demands

Based on my industry experience, the proposed definition of "beneficial purposes/use" would capture productive and viable wells, some of which would likely be misclassified as non-beneficial. This would lead to improper bond amounts. I have reviewed the direct testimony filed by NMOGA lead technical expert Dan Arthur, who concurs with me on this point: "By misclassifying productive or strategically important wells as 'marginal' or 'non-beneficial,' the rule creates new triggers that force wells into higher."

Sureties would take action by either asking to be replaced on the bond or demanding collateral. Both actions place pressure on the operators and could impact drilling operations. assurance categories or into plugging requirements, regardless of their actual utility.[15]

2. Overly Detailed Definitions Complicate Bonding and Insurance for All Parties

The OCD's commentary overlooks the impact its proposals would have on the surety industry's response. As definitions become more complex, operators will face greater difficulty in meeting bonding requirements. Operators are the ones who must work directly with surety providers—whether through agents, brokers, or direct writers—and they currently understand how to navigate the existing framework. That predictability will disappear under the proposed rules. The surety industry, whose model is built on avoiding losses, will take every precaution to

[15] NMOGA's Arthur Rebuttal Testimony at 67.

minimize exposure. This will include demanding collateral, requiring replacement bonds, or even withdrawing from the New Mexico surety bond market altogether. Some sureties may respond on a case-by-case basis with individual principals or parent companies, while others may adopt a blanket, company-wide underwriting approach for every plugging bond in New Mexico. If the latter occurs, the result will be a far more restrictive and burdensome system for operators.

C. Proposed Changes to Financial Assurance Requirements under 19.15.8. NMAC

Applicants propose numerous changes to New Mexico's oil and gas financial assurance framework.[16] Here, I will analyze the flaws in Applicants' and now OCD's position that current financial assurance requirements are inadequate as described in their direct testimony submissions, and the facts and factors their proposed witnesses and experts ignored. I will then end this section with my responsive recommendations.

1. Flaws in Applicants' and Now OCD's Position That Current Financial Assurance Requirements are Inadequate and Factors Ignored in Supportive Direct Testimony

I noted the following flaws and factors that were ignored in the Applicants' and OCD's direct testimony submissions concerning the adequacy of current financial assurance requirements.

i. Removes Risk-Based Individual Financial Assurance Determinations for Individual Well Coverage Requirements

Applicants propose to amend 19.15.8.9(C) NMAC to: remove the risk-based individual well bonding and instead require $150,000 worth of financial assurance for each active well that is secured individually; and to remove the tiered blanket bonding based on the number of wells secured, and instead require $250,000 of financial assurance if alternative blanket bonding is used, regardless of the number of active wells secured.[17]

[16] WELC Prehearing Statement Exhibit 1-C.

[17] WELC Prehearing Statement Exhibit 1-C.

Applicants further propose to modify inactive well financial assurance requirements under 19.15.8.9(E) NMAC by: expressly extending the requirements to pending, approved, or expired temporarily abandoned wells; removing the risk-based individual well bonding and instead requiring $150,000 worth of financial assurance for each inactive or temporarily abandoned well that is secured individually; and removing the tiered blanket bonding based on the number of wells secured, and instead require $250,000 of financial assurance if alternative blanket bonding is used, regardless of the number of inactive or temporarily abandoned wells secured.[18] I found the direct testimony of NMOGA operational expert Dan Arthur and plugging and abandonment expert Harold McGowen confirming that the statutorily set forth factors of depth and other well characteristics are most indicative of the cost to decommission a certain well. Applicants' removal of that existing risk-based structure, to impose an across-the-board $150,000 financial assurance requirement for essentially all wells, as I explain in Part III.B.2. above, is not only counter intuitive but also shortsighted considering the effects I anticipate, and which have already been experienced by small to mid-sized and independent operators in other jurisdictions, which I explain above in Part III.A.1.ii.-iii., above.

ii. Blanket Bonds Function as Intended

These proposals would also effectively eliminate blanket bonds by requiring that each well covered carry $150,000 of assurance, functionally the same as requiring per-well bonding. I concur with NMOGA technical expert Dan Arthur; in our experience, blanket bonds have served their intended purpose to provide adequate coverage while offering operators and OCD flexibility to manage changing well inventories.[19] The old adage if it's not broke, don't fix it rings true here,

[18] WELC Prehearing Statement Exhibit 1-C.

[19] NMOGA's Arthur Rebuttal Testimony at 56-57.

especially considering the increased costs to operators and the agency that would flow from essentially limiting the use of blanket bonds by New Mexico oil and gas operators.

iii. Applicants and the Agency Should Not Be Allowed to Rely on LFC Decommissioning Averages Because Industry Can Plug, Abandon, and Remediate Wells Faster and Cheaper Than OCD

I also found persuasive Mr. Arthur's analysis of Applicants' and OCD's reliance on the LFC Report's averages to justify their proposed increases, but those averages reflect OCD's procurement process, not industry reality.[20] Just like Mr. Arthur has experienced, I am aware that most wells can be plugged and abandoned for $40,000–$60,000, or less—less than half the $150,000 figure Applicants would require for every inactive, temporarily abandoned, marginal, or even active well.[21] The LFC itself acknowledges that: (i) OCD does not negotiate or develop internal price estimates but relies solely on vendor submissions, which inflates averages and undermines the credibility of using those figures to set financial assurance levels; and (ii) "OCD does not negotiate or develop its own internal price estimates for plugging and remediation work but instead relies on the approved vendors to submit estimates."[22] These facts undermine the Applicants', and now the OCD's reliance on LFC Report averages to justify higher bonding.

iv. The Private Surety and Insurance Industries are Not Ready or Equipped to Respond to the Proposed Changes, Which Will Harm the Entire Oil and Gas Industry, Not Just Small Operators

As I explain in Part III.A. above and in Part A of my direct testimony,[23] the current surety market is not equipped to absorb the influx of private financial assurance demands that would

[20] NMOGA's Arthur Rebuttal Testimony at 58.

[21] NMOGA's Arthur Rebuttal Testimony at 58.

[22] LFC Report at 28.

[23] NMOGA's Emerick Direct Testimony at 2-5.

follow adoption of the proposed rules. Because operators' financial profiles do not typically change dramatically, sureties are highly sensitive to sudden increases in bond amounts or regulatory shifts. When faced with such changes, sureties protect themselves by demanding significant collateral—not only for new assurances but also for existing bonds. These heightened collateral requirements and compliance costs will, in turn, drive premature well plugging, reduce competition, and diminish economic activity and revenue to the State of New Mexico.

Mr. Arthur explains how larger operators also face significant financial and operational burdens that have the potential to affect drilling schedules, capital allocation, and long-term investment.[24]

> Different scales of impact, same fundamental problem. Smaller independents face existential threats, while larger operators must cut or delay investment. The common outcome is the same: fewer wells drilled, less production, reduced state revenues from severance and ad valorem taxes, and a chilling effect on long-term investment in New Mexico's oil and gas sector. Accordingly, the proposals will economically harm the entire industry, not just smaller companies and independents.[25]

Accordingly, the proposals will economically harm the entire industry, not just smaller companies and independents.

2. Responsive Financial Assurance Recommendations and Alternatives

Considering my analysis above and in response to the direct testimony filed by Applicants and OCD, and the proposals contained therein, I recommend the following balanced alternatives that honor the spirit of Applicants' rulemaking proceeding while adequately considering and addressing industry's interests and concerns regarding implementation.

i. Phased or Risk-Based Assurance Increases

[24] NMOGA's Arthur Rebuttal Testimony at 65.

[25] NMOGA's Arthur Rebuttal Testimony at 65.

I concur with Mr. Arthur's suggestion to implement phased or risk-based bonding increases rather than immediate one-size-fits-all requirements that apply the: (a) same $150,000 level of individual well financial assurance to inactive wells under proposed 19.15.8.9(E) NMAC, "marginal well" under proposed 19.15.8.9(D) NMAC, and active wells under proposed 19.15.8.9(C) NMAC; and (b) the same $250,000 blanket financial assurance amount to any number of both inactive or active wells. This will normalize the bonding situations and not force the surety industry to change collateral and replacement options. This will encourage keeping the surety industry supportive of the New Mexico bond.

ii. Other Alternative Forms of Financial Assurance Not Considered by Applicants

Additionally, within the list of approved categories of financial assurance, other alternative forms of financial assurance could be authorized. Under the overhauled federal offshore oil and gas regime overseen by the U.S. Department of the Interior Bureau of Land Management's offshore counterpart and leasing agency, the Bureau of Ocean Energy Management ("BOEM"), acceptable forms of financial assurance guaranteeing plugging and abandonment of wells on federal offshore leases include decommissioning trust accounts and third-party guarantees.[26] These forms of assurance had been used by industry, and BOEM codified their use under their regulations in 2024.

Decommissioning accounts overseen by trustees, where operators are allowed to make incremental deposits over time to build up towards larger required financial assurance amounts over time. Trust accounts can be more secure than the surety bonds and insurance policies currently

[26] *See* 30 CFR §§ 556.904-905; 89 Fed. Reg. 31595, 31544, 31555-56 (Apr. 24, 2024), https://www.federalregister.gov/documents/2024/05/31/2024-11914/risk-management-and-financial-assurance-for-ocs-lease-and-grant-obligations-correction.

allowed because the account holds actual funds in the event of an operator's default. In contrast, for traditional financial assurance, there is always the risk that the surety may not be able to satisfy the obligation when its secondary liability is triggered in the event of operator default. The LFC Report acknowledges that the use of trust accounts is a viable alternative used by other states, as well, including Louisiana, and for certain operators in Colorado.[27]

Under the Code of Federal Regulations Title 30, Chapter V, Subchapter B, Part 556, Section 900, Subsection (g), alternative financial assurance, the operator must monitor the value to ensure that the security "protects the interests of the United States to the same extent as a Surety Bond."[28] It is clear that surety bonds are the preferred type of financial assurance, as they should be in New Mexico, and their workability by the private surety market should be prioritized as such.

iii. Only Requiring Additional Financial Assurance Where the Amount Currently on File Does Not Cover the Estimated Cost for the Industry to Decommission the Well

Under 30 C.F.R. Section 556.901(c), it states, "can satisfy your decommissioning and other lease obligations for less than the [base] amount of financial assurance required…the Regional Director may accept financial assurance in an amount less than the prescribed amount but not less than the amount of the cost for decommissioning." If a federal offshore lease, right-of-way, or right-of-use and easement's decommissioning costs are not fully covered by the base bonding/assurance on file, then BOEM is authorized to demand supplemental financial assurance from an operator to cover the difference in current coverage and decommissioning obligations for a given asset, unless the operator has: (1) an investor-grade credit rating as issued by a Nationally

[27] LFC Report at 36.

[28] 30 C.F.R. § 556.900(g).

Recognized Standards and Ratings Organization ("NRSRO"), like Moody's[29] or S&P 500 and Fitch;[30] (2) a proxy credit rating determined by BOEM reflecting creditworthiness equivalent to an investment-grade credit rating; (3) their co-lessee or co-grantee has an investment-grade NRSRO or proxy credit rating; or (4) specific to federal offshore leases, if the proven value of the reserves is at least three times as much as the estimated decommissioning cost. 30 C.F.R. 556.901(d)(1)-(4).

I see no parallel provisions in the New Mexico rule changes. I agree with NMOGA plugging and abandonment expert Harold McGowen that a recommended alternative to a standard requirement could be to instead base any additional assurance amounts demanded by OCD on the actual cost to decommission by a regulated party. I recommend a provision similar to BOEM's 30 C.F.R. 30 C.F.R. Section 556.901(c), allowing the agency to deviate from standard requirements where the assurance on file already covers the full cost of decommissioning. I further recommend adopting exemptions from supplementary decommissioning financial assurance requirements where reserves being produced or the interest holder's or holders' credit worthiness sufficiently secures decommissioning obligations, like BOEM does under 30 C.F.R. § 556.901(d)(1)-(4).

IV. CONCLUSION

The Applicants' proposals promise certainty but would, in practice, destabilize New Mexico's financial-assurance system. The record shows that (1) the private surety market is not positioned to absorb across-the-board increases and new categories of heightened assurance; (2) New Mexico's non-cancelable bond requirement magnifies underwriting risk and triggers collateral demands; and (3) sureties operate to a zero-loss ratio, meaning any regulatory change

[29] Baa3 or higher on a scale from Aaa (highest quality, extremely strong capacity) to C (junk bonds, default, etc.).

[30] BBB- or higher on a scale from AAA (highest quality, extremely strong capacity) to D (junk bonds, default, etc.).

that increases the likelihood of bond calls will be met with replacement demands, collateralization, or market withdrawal. The experience in federal offshore—illustrated by the W&T litigation—confirms that when rules tighten rapidly, sureties respond by demanding additional collateral even on existing instruments, precipitating disputes, tying up operator capital, and shrinking bonding capacity.

The definitional changes proposed for 19.15.2.7 NMAC would function as de facto triggers for higher bonding under 19.15.8 NMAC. Terms such as "marginal," "inactive," and "beneficial use" would broaden the population of wells swept into elevated categories without clear limiting principles, inviting inconsistent enforcement and unintended consequences. At the same time, reliance on LFC decommissioning averages ignores how industry actually plugs and abandons wells and overlooks OCD's own procurement effects that inflate those averages. The result is a one-size-fits-all $150,000 figure that bears little relation to risk, penalizes efficient operators, and renders blanket bonds effectively unusable.

New Mexico already has a functional, risk-based framework—individualized well bonding keyed to well characteristics and tiered blanket bonds—that aligns security with risk and preserves liquidity to fund responsible operations and timely plugging. Replacing that structure with uniform, elevated assurance will reduce competition, accelerate premature plugging, constrain investment, and depress state revenues—harms that fall first and hardest on small and mid-sized operators but ultimately impair the entire industry.

V. RECOMMENDATIONS

Based on my review of the prehearing statements and the direct testimony from the parties, I recommend the following:

1. **Retaining risk-based bonding and tiered blanket bonds**. These tools match security

to risk and provide predictable, workable access to surety capacity.

2. **Phase in any increases and keep them risk-based**. Avoid mid-term shocks that trigger collateral calls on existing instruments, particularly under New Mexico's non-cancelable bond regime.
3. **Adopt a BOEM-style safety valve (30 C.F.R. § 556.901(c)).** Allow the Division to deviate from prescribed amounts where the operator demonstrates that the amount on file at least equals the estimated decommissioning cost.
4. **Adopt exemptions from supplementary decommissioning financial assurance requirements where reserves being produced or interest holder's or holders' credit worthiness sufficiently secures decommissioning obligations, like BOEM does (30 C.F.R. § 556.901(d)(1)-(4)).** Allow consideration of the value of the reserves the well is producing and/or the creditworthiness of the operator or its other co-interest holders in the well, if applicable.
5. **Authorize additional, proven assurance forms**. Permit decommissioning trust accounts and third-party guarantees (with appropriate safeguards) to diversify capacity while protecting the State.
6. **Clarify the scope and effect of new definitions**. If any definitional amendments are adopted, specify their limited application to avoid open-ended financial-assurance triggers and ensure consistent statewide administration.

That concludes my rebuttal testimony on behalf of the New Mexico Oil and Gas Association.

SIGNATURE PAGE

I hereby affirm that the statements, analyses, and opinions contained in this report are true and accurate to the best of my knowledge and belief. This report has been prepared in a manner consistent with generally accepted professional and engineering standards.

Prepared by:

Signature: Douglas R. Emerick **Date:** September 19 2025

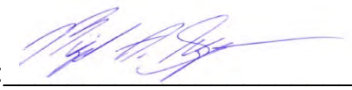
Name: Douglas Emerick

Title: Director of Operations

Company: Insurance Expert Network

Dated this 19th day of September, 2025.

Respectfully submitted,



By:_____
Miguel A. Suazo
James P. Parrot
James Martin
Jacob L. Everhart
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jeverhart@bwenergylaw.com
Attorneys for New Mexico Oil and Gas Association

EXHIBIT 10

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served to counsel of record via EMNRD's CentreStack Platform this 19th day of September 2025, as follows:

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Attorneys for Applicants Western Environmental Law Center, Citizens Caring for the Future, Conservation Voters New Mexico Education Fund, Diné C.A.R.E., Earthworks, Naeva, New Mexico Interfaith Power and Light, San Juan Citizens Alliance, WildEarth Guardians, and Sierra Club.

Santa Fe, New Mexico 87505
Felicia.l.orth@gmail.com
Oil Conservation Commission Hearing Officer

Jesse Tremaine
Chris Moander
Assistant General Counsels
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Santa Fe, New Mexico 87505
occ.hearings@emnrd.nm.gov
Oil Conservation Commission Clerk

Rachael Ketchledge

APPENDIX A

Form O&G SB
Adopted 6-17-1977
Revised 12/14/2022

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

SURETY BOND

- ☐ SINGLE WELL PLUGGING [19.15.8.9(C)(1); 19.15.8.9(D)(1) NMAC]
- ☐ BLANKET PLUGGING [19.15.8.9(C)(2) NMAC; 19.15.8.9(D)(2) NMAC]
- ☐ RECYCLING FACILITY OR CONTAINMENT [19.15.34.15 NMAC]
- ☐ SURFACE WASTE MANAGEMENT FACILITY [19.15.36.11 NMAC]
- ☐ WQCC DISCHARGE PERMIT (EXCLUDING UIC WELLS) [20.6.2.3107.A(11) NMAC]
- ☐ WQCC DISCHARGE PERMIT FOR UIC CLASS I, III, and V INJECTION WELLS [20.6.2.5006 NMAC; 20.6.2.5210.B(17) NMAC; 20.6.2.5320 NMAC; 20.6.2.5342(A)(1) NMAC; 20.6.2.5361(A)(3) NMAC; 20.6.2.5362(A)(3) NMAC; 20.6.2.5363 NMAC]
- ☐ ABATEMENT PLAN [19.15.30.11(C) NMAC; 20.6.2.4104(C) NMAC]

BOND NUMBER _____

BOND AMOUNT _____

FINANCIAL INSTITUTION _____

OPERATOR/PRINCIPAL _____

OGRID NUMBER _____

WELL/FACILITY _____

TYPE OF WELL [ ]Active [ ]Inactive [ ]Approved Temporary Abandonment

WELL DEPTH _____

LOCATION Section [ ] Township [ ] Range [ ]

County [ ]

API/ PERMIT NUMBER _____

EXHIBIT 10

Form O&G SB
Adopted 6-17-1977
Revised 11/20/2020

KNOW ALL MEN BY THESE PRESENTS:

That _____, (an individual – **if dba must read – Example: John Doe dba ABC Services**) (a general partnership) (a corporation) (limited liability company) (limited partnership) organized in the State of _____, and authorized to do business in the State of New Mexico), as PRINCIPAL, and_____ _____, a corporation organized and existing under the laws of the State of _____and authorized to do business in the State of New Mexico, as SURETY, are firmly bound unto the State of New Mexico, for the use and benefit of the Oil Conservation Division of the Energy, Minerals and Natural Resources Department (or successor agency) (the DIVISION), pursuant to NMSA 1978, Section 70-2-14, as amended, in the sum of $ _____ _____, for the payment of which the PRINCIPAL and SURETY hereby bind themselves, their successors, and assigns, jointly and severally, firmly by these presents.

The conditions of this obligation are one of the following:

1. WHEREAS, the PRINCIPAL has commenced or may commence the drilling of one well to a depth not to exceed _____feet, to prospect for and/or produce oil or gas, carbon dioxide gas, helium gas, or brine minerals, or as an injection or other service well related to such exploration or production, or owns or operates, or may acquire, own, or operate such well, the identification and location of said well being:

   _____ API No. 30- ___, _____,
   (Name of Well)

   located _____feet from the (North/South) line and _____ feet from the (East/West) line of Section _____, Township _____ (North) (South), Range _____ _____ (East) (West), NMPM, _____ County, New Mexico.

2. WHEREAS, the PRINCIPAL has heretofore or may hereafter enter into the collection, disposal, evaporation, remediation, reclamation, treatment or storage of produced water, drilling fluids, drill cuttings, completion fluids, contaminated soils, Basic Sediment & Water, tank bottoms, waste oil or other oil field related waste in Section _____, Township _____, Range ____,NMPM, County _____, New Mexico.

3. The OPERATOR/PRINCIPAL(APPLICANT/PERMITTEE) has or may enter into the collection, treatment, storage, recycling, and re-use of produced water in Section_____, Township _____, Range _____,NMPM, County _____, New Mexico ("Facility"). ISSUER has been advised that OPERATOR/PRINCIPAL has requested this Bond as security for OPERATOR/PRINCIPAL's compliance with all laws and rules applicable to such activities, including, but not limited to, proper closing and remediation of the Facility.

NOW, THEREFORE, if the PRINCIPAL and SURETY or either of them, or their successors or assigns or any of them, shall cause said well be properly plugged and abandoned when dry or when no longer productive or useful for other beneficial purpose, in accordance with the rules and orders of the DIVISION, Oil Conservation Commission, or a court of competent jurisdiction, including but not limited to 19.15.8.9 and 19.15.25.10 NMAC, as such rules now exist or may hereafter be amended;

THEN AND IN THAT EVENT, this obligation shall be null and void; otherwise and in default of complete compliance with any and all of said obligations, the same shall remain in full force and effect.

_____	_____
PRINCIPAL	SURETY
_____	_____
Address	Address
By _____	_____
Signature	Attorney-in-Fact
_____	**Corporate surety, affix Corporate seal below:**
Title	

IF PRINCIPAL is a corporation, affix Corporate Seal below:

Form O&G SB
Adopted 6-17-1977
Revised 11/20/2020

ACKNOWLEDGMENT FOR INDIVIDUAL

(If dba, must read – Example: John Doe dba Well Services)

State of _____)
SS.
County of_____)

This instrument was acknowledged before me on this_____day of_____,

20___, by _____.
(**Name of Individual**)

_____
Notary Public

SEAL

My Commission Expires:

_____

ACKNOWLEDGMENT FOR PARTNERSHIP, CORPORATION, OR LIMITED LIABILITY COMPANY

State of _____)
SS.
County of_____)

This instrument was acknowledged before me on this_____day of_____,

20___, by_____ of
(Capacity, e.g., partner, president, manager, member, company)

_____.
(Name of Partnership, corporation, or limited liability company)

_____
Notary Public

SEAL

My Commission Expires:

_____

EXHIBIT 10

Form O&G SB
Adopted 6-17-1977
Revised 11/20/2020

ACKNOWLEDGMENT FOR CORPORATE SURETY

State of _____)
SS.
County of_____)

This instrument was acknowledged before me on this_____day of_____,

20 _____, by_____ of
(Name of Attorney-in-Fact)

_____.
(Name of Corporate Surety)

_____
Notary Public

SEAL

My Commission Expires:

_____

CORPORATE SURETY ATTACH
POWER OF ATTORNEY

APPROVED BY:
OIL CONSERVATION DIVISION OF NEW MEXICO

By_____

Date_____

Instructions for Providing a Bond Rider
(9/8/2021)

To provide a rider to a bond (or letter of credit) that is already in place, contact the financial institution who issued the original assurance. Have them provide an original letter to the OCD by regular or overnight mail (not by email) on the institution's letterhead which minimally contains the following:

The name of the bonded company

The original bond number, type, and amount

The amount being added or reduced

The date the rider is effective

The rider must be notarized and contain the signature of one or more authorized officer of the financial institution.

If the name of your company is changing, all existing financial assurance must be re-issued in the new name of the company rather than by issuance of a rider. You also must have a previously approved form C-146 for an operator name change that was filed using OCD's electronic permitting system.

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

CASH BOND

☐ SINGLE WELL PLUGGING [19.15.8.9(C)(1); 19.15.8.9(D)(1) NMAC]

☐ BLANKET PLUGGING [19.15.8.9(C)(2) NMAC; 19.15.8.9(D)(2) NMAC]

☐ RECYCLING FACILITY OR CONTAINMENT [19.15.34.15 NMAC]

☐ SURFACE WASTE MANAGEMENT FACILITY [19.15.36.11 NMAC]

☐ WQCC DISCHARGE PERMIT (EXCLUDING UIC WELLS) [20.6.2.3107.A(11) NMAC]

☐ WQCC DISCHARGE PERMIT FOR UIC CLASS I, III, and V INJECTION WELLS [20.6.2.5006 NMAC; 20.6.2.5210.B(17) NMAC; 20.6.2.5320 NMAC; 20.6.2.5342(A)(1) NMAC; 20.6.2.5361(A)(3) NMAC; 20.6.2.5362(A)(3) NMAC; 20.6.2.5363 NMAC]

☐ ABATEMENT PLAN [19.15.30.11(C) NMAC; 20.6.2.4104(C) NMAC]

BOND NUMBER _____

BOND AMOUNT _____

FINANCIAL INSTITUTION _____

OPERATOR/PRINCIPAL _____

OGRID NUMBER _____

WELL/FACILITY _____

TYPE OF WELL [ ]Active [ ]Inactive [ ]Approved Temporary Abandonment

WELL DEPTH _____

LOCATION Section [ ] Township [ ] Range [ ]

County [ ]

API/ PERMIT NUMBER _____

EXHIBIT 10

Form O&G CB
Revised 11/20/2020

1. _____ ("Operator/Principal"),[1] whose mailing address is _____, _____, _____ and who is authorized to do business in the State of New Mexico, submits this Cash Bond in the sum of _____ Dollars ($_____.00), to the Oil Conservation Division ("OCD") of the New Mexico Energy, Minerals and Natural Resources Department (or successor agency).

2. Operator/Principal represents and warrants that it has deposited the specified amount in a Cash Bond on behalf of OCD with _____ ("Financial Institution") in Account Number _____ ("Account").

3. Operator/Principal and Financial Institution have executed the attached collateral assignment of the Account to OCD which provides that only OCD may authorize withdrawals from the Account prior to its release in accordance with paragraph 5.

4. This Cash Bond secures Operator/Principal's obligations under the applicable statutes and rules in effect on the date of execution and as may thereafter be adopted, including the plugging and abandonment of wells and the operation and closure of wells and facilities, including abatement, remediation, reclamation, restoration, monitoring, and post-closure care, as applicable.

5. This Cash Bond shall remain in effect until released by OCD upon a determination that Operator/Principal has complied with the obligations stated herein.

6. This Cash Bond shall be forfeited in accordance with the applicable procedures if OCD determines that Operator/Principal failed to comply with an obligation hereunder.

7. OCD reserves the right to demand reimbursement from Operator/Principal or its successors, heirs, or personal representatives if this Cash Bond is less than the actual cost incurred by OCD to plug and abandon a well or close a facility, including remediation, reclamation, and restoration, as applicable in accordance with the Oil and Gas Act, NMSA 1978, § 70-2-1 et seq.

[1] If the Operator/Principal is an individual doing business as an entity, state the individual's name and the entity, e.g., John Doe dba ABC Services.

8. The signatory represents and warrants that he/she has the authority execute this Cash Bond and to obligate Operator/Principal.

OPERATOR/PRINCIPAL

_____ Date: _____
Name

_____
Position

_____
Entity

ACKNOWLEDGMENT

State of _____)
SS
County of _____)

This instrument was acknowledged before me by _____ on behalf of

_____, this _____ (Date).

_____
Notary Public

My Commission Expires:

_____

APPROVED BY:

_____ Date: _____
Bond Administrator
New Mexico Oil Conservation Division

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

ASSIGNMENT OF CASH COLLATERAL

BOND NUMBER _____

BOND AMOUNT _____

FINANCIAL INSTITUTION _____

OPERATOR/PRINCIPAL _____

OGRID NUMBER _____

WELL/FACILITY _____

TYPE OF WELL [ ]Active [ ]Inactive [ ]Approved Temporary Abandonment

WELL DEPTH _____

LOCATION Section [ ] Township [ ] Range [ ]

County [ ]

API/ PERMIT NUMBER _____

1. _____ ("Operator/Principal"), whose mailing address is _____, _____, _____ _____and who is authorized to do business in the State of New Mexico, has deposited _____ Dollars ($_____) in Account No. _____ ("Account") with _____ _____ (Financial Institution), a federally insured financial institution located in the state of New Mexico at _____, _____, _____ _____ to secure Cash Bond No. _____.

2. Financial Institution shall hold the Account in trust for the Oil Conservation Division ("Division") of the Energy, Minerals and Natural Resources Department (or successor agency).

3. Operator/Principal assigns all right, title, and interest in the Account to the Division.

4. The Division may use the Account to satisfy any purpose or obligation under the applicable law for which Operator/Principal posted the Cash Bond.

5. The Division in its sole discretion may order Financial Institution to distribute the Account in any amount to any person, including the Division, without the consent of Operator/ Principal.

6. Operator/Principal retains no right, title, or interest in the Account, except the right to interest, if any, and the return of the Account or such balance as exists following the Division's release of the Cash Bond or portion thereof.

7. Financial Institution shall not assign, transfer, pledge, or distribute the Account except upon the receipt of written notification from the Division or a court order entered in a proceeding to which the Division is a party.

8. Financial Institution waives all statutory and common law claims, liens, and rights, including set-off and recoupment, against the Account.

9. This Assignment of Cash Collateral shall be governed by the laws of the State of New Mexico.

10. The signatories represents and warrants that they have the authority execute this Assignment of Cash Collateral and to bind Operator/Principal and Financial Institution, as applicable. If the officer executing this Assignment of Cash Collateral on behalf of Financial Institution is not the President, Vice President, or Branch Manager, the Board of Directors of

Financial Institution has certified and attached hereto a resolution approving such officer to execute this instrument on its behalf.

OPERATOR/PRINCIPAL

_____ Date: _____
Name

_____
Position

_____
Entity

ACKNOWLEDGMENT OF OPERATOR/PRINCIPAL

State of _____)
SS.
County of _____)

This instrument was acknowledged before me by _____

on behalf of _____, this _____

_____ (Date).

_____
Notary Public

My Commission Expires:

_____

FINANCIAL INSTITUTION

_____ Date: _____
Name

_____
Position

_____
Entity

ACKNOWLEDGMENT OF FINANCIAL INSTITUTION

State of _____)
SS.
County of _____)

This instrument was acknowledged before me by _____

on behalf of _____, this _____

_____ (Date).

_____
Notary Public

My Commission Expires:

_____

APPROVED BY:

_____ Date: _____
Bond Administrator
New Mexico Oil Conservation Division

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

LETTER OF CREDIT

☐ SINGLE WELL PLUGGING [19.15.8.9(C)(1); 19.15.8.9(D)(1) NMAC]

☐ BLANKET PLUGGING [19.15.8.9(C)(2) NMAC; 19.15.8.9(D)(2) NMAC]

☐ RECYCLING FACILITY OR CONTAINMENT [19.15.34.15 NMAC]

☐ SURFACE WASTE MANAGEMENT FACILITY [19.15.36.11 NMAC]

☐ WQCC DISCHARGE PERMIT (EXCLUDING UIC WELLS) [20.6.2.3107.A(11) NMAC]

☐ WQCC DISCHARGE PERMIT FOR UIC CLASS I, III, and V INJECTION WELLS [20.6.2.5006 NMAC; 20.6.2.5210.B(17) NMAC; 20.6.2.5320 NMAC; 20.6.2.5342(A)(1) NMAC; 20.6.2.5361(A)(3) NMAC; 20.6.2.5362(A)(3) NMAC; 20.6.2.5363 NMAC]

☐ ABATEMENT PLAN [19.15.30.11(C) NMAC; 20.6.2.4104(C) NMAC]

BOND NUMBER _____

BOND AMOUNT _____

FINANCIAL INSTITUTION _____

OPERATOR/PRINCIPAL _____

OGRID NUMBER _____

WELL/FACILITY _____

TYPE OF WELL [ ]Active [ ]Inactive [ ]Approved Temporary Abandonment

WELL DEPTH _____

LOCATION Section [ ] Township [ ] Range [ ]

County [ ]

API/ PERMIT NUMBER _____

---

1. _____("Financial Institution"), _____

a national or state chartered banking association, establishes this irrevocable Letter of Credit on behalf of _____("Operator/ Principal") for _____ the use and benefit of the Oil Conservation Division ("OCD") of the Energy, Minerals and Natural Resources Department (or successor agency), in the sum of _____Dollars ($_____), with an effective date of _____.

2. Operator/Principal has requested Financial Institution to issue this irrevocable Letter of Credit to OCD to secure Operator/Principal's obligations under the applicable statutes and rules in effect on the date of execution and as may thereafter be adopted, including the plugging and abandonment of wells and the operation and closure of wells and facilities, including abatement, remediation, reclamation, restoration, monitoring, and post-closure care, as applicable.

3. This Letter of Credit is irrevocable for the specified term and shall not expire earlier than such term unless released in writing by OCD.

4. Based on the effective date of this irrevocable Letter of Credit, the initial 5-year term will automatically renew on_____unless notice of non-renewal is provided to the OCD pursuant to Paragraph 7 of this Letter of Credit.

5. Financial Institution shall make available such amount from the Letter of Credit as requested by OCD no later than 5:00 p.m. on the second business day following Financial Institution's receipt of OCD's sight draft and certificate in compliance with this Letter of Credit.

6. OCD may present a sight draft and certificate for the full amount of the Letter of Credit or any lesser amount in its sole discretion, provided that the aggregate amount of the sight drafts and certificates do not exceed the full amount of the Letter of Credit.

7. Except for a Letter of Credit provided pursuant to 20.6.2.5210(B)(17) NMAC, this Letter of Credit shall be automatically renewed for a term of five years commencing on the

expiration of the specified term unless Financial Institution provides written notification of non-renewal to OCD no later than: (a) for single well or blanket plugging or abatement plan, thirty (30) days; (b) for recycling facilities or containments, ninety (90) days; or (c) for surface waste management facilities, one hundred twenty (120) days, prior to the expiration date of the specified term.

8. This Letter of Credit shall be forfeited to OCD if Operator/Principal fails to furnish financial assurance and obtain OCD approval no later than: (a) for single well or blanket plugging or abatement plan, thirty (30) days; (b) for recycling facilities or containments, ninety (90) days; or (c) for surface waste management facilities, one hundred twenty (120) days, prior to the expiration date of the specified term.

9. This Letter of Credit shall be forfeited in accordance with the applicable procedures if OCD determines that Operator/Principal failed to comply with an obligation hereunder.

10. OCD reserves the right to demand reimbursement from Operator/Principal or its successors, heirs, or personal representatives if this Letter of Credit is less than the actual cost incurred by OCD to plug and abandon a well or close a facility, including remediation, reclamation, and restoration, as applicable, in accordance with the Oil and Gas Act, NMSA 1978, § 70-2-1 et seq.

11. Financial Institution shall give prompt notice to OCD and Operator/Principal of any notice received or action filed alleging the insolvency or bankruptcy of Financial Institution or alleging any violation of a regulatory requirement that could result in the suspension or revocation of Financial Institution’s charter or license to do business.

12. This Letter of Credit shall be governed by the laws of the State of New Mexico, and to the extent not inconsistent with such laws, the most recent version of the Uniform Customs & Practices for Documentary Credits issued by the International Chamber of Commerce.

13. All notices and communications regarding this Letter of Credit shall be sent by certified mail – return receipt requested to:

OCD
Bond Administrator
1220 S. St. Francis Drive
Santa Fe, NM 87505

OPERATOR/PRINCIPAL
(Insert Contact Person and address)

FINANCIAL INSTITUTION
(Insert Contact Person and address)

14. The signatories represent and warrant that they have the authority execute this Letter of Credit.

OPERATOR/PRINCIPAL

_____ Date: _____
Name

_____
Position

_____
Entity

ACKNOWLEDGMENT

State of_____)
SS
County of_____)

This instrument was acknowledged before me by_____on behalf of _____, this_____(Date)
Name

_____
Notary Public

My Commission Expires:

_____

FINANCIAL INSTITUTION

_____ Date: _____
Name

_____
Position

_____
Financial Institution

ACKNOWLEDGMENT

State of_____)
SS
County of_____)

This instrument was acknowledged before me by_____on behalf of

_____, this _____
Name (Date)

_____
Notary Public

My Commission Expires:

_____

APPROVED BY:

_____ Date: _____
Bond Administrator
Oil Conservation Division

EXHIBIT A

SIGHT DRAFT

TO: _____

PAY TO THE ORDER OF: OIL CONSERVATION DIVISION, ENERGY, MINERALS & NATURAL RESOURCES DEPARTMENT

THE AMOUNT OF:_____DOLLARS ($_____)

AT THE FOLLOWING ADDRESS: Oil Conservation Division
New Mexico Energy, Minerals, and
Natural Resources Department
1220 South St. Francis
Santa Fe, New Mexico 87505

By:_____ Date: _____

EXHIBIT B

CERTIFICATE

_____, a duly authorized representative of the Oil Conservation Division of the New Mexico Energy, Minerals and Natural Resources Department ("OCD"), certifies that (1) the sight draft for _____ Dollars ($_____) under Letter of Credit No. _____ ("Letter of Credit") issued by _____ on _____, is duly authorized by the Oil and Gas Act, NMSA 1978, Section 70-2-1 et seq., and OCD's rules; (2) the sum of the sight draft and any other amounts previously drawn under the Letter of Credit do not exceed its face amount; and (3) OCD has directed the forfeiture of the Letter of Credit.

By: _____ Date: _____

APPENDIX B

EXHIBIT 10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

W&T OFFSHORE, INC., AND W&T ENERGY VI, LLC, Plaintiffs, v. ENDURANCE ASSURANCE CORPORATION and LEXON INSURANCE COMPANY, Defendants.	§	**CIVIL ACTION NO.**

COMPLAINT FOR DECLARATORY RELIEF

NOW INTO COURT, through undersigned counsel, come W&T Offshore, Inc. ("W&T Offshore") and W&T Energy VI, LLC ("W&T Energy," and collectively with W&T Offshore, "W&T"), who seek declaratory relief against Endurance Assurance Corporation ("Endurance") and Lexon Insurance Company ("Lexon," and collectively with Endurance and Lexon, the "Sompo Sureties"), As described in greater detail below, years ago W&T obtained government-required surety bonds from the Sompo Sureties to secure decommissioning obligations that W&T may have with respect to certain oil and gas assets that W&T owns and/or operates in federal waters. The Sompo Sureties have recently made unreasonable demands that W&T post collateral to secure the bond obligations.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this civil action pursuant to 28 U.S.C. § 1331 and 43 U.SC. § 1349, as this dispute arises out of and would not exist but for operations conducted on the Outer Continental Shelf.

2. The surety bonds and related indemnity agreement that are at issue in this civil action were issued in connection with operations conducted on the Outer Continental Shelf.

3. The dispute existing between W&T, on the one hand, and the Sompo Sureties, on the other, would not exist but for the operations conducted on the Outer Continental Shelf.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2). The agreement between the parties provides that: (i) the place of performance is Harris County, Texas and (ii) the exclusive venue and jurisdiction for any disputes arising under that agreement lies with the federal and state courts sitting in Harris County, Texas.

5. This civil action seeks declaratory relief pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure for the purpose of determining questions of actual controversy between W&T, on the one hand, and the Sompo Sureties, on the other hand.

THE PARTIES

6. W&T Offshore is a corporation organized under the laws of the State of Texas with its principal place of business located in Houston, Texas.

7. W&T Energy is a limited liability company organized under the laws of the State of Delaware, with its principal place of business located in Houston, Texas.

8. Endurance is a corporation organized under the laws of the State of Delaware, with its principal place of business located in Mt. Juliet, Tennessee.

9. Lexon is a corporation organized under the laws of the State of Texas, with its principal place of business located in Mt. Juliet, Tennessee.

BACKGROUND

The Offshore Regulatory Environment

10. In 1953, the United States Congress enacted the Outer Continental Shelf Lands Act ("OCSLA" or the "OCS Lands Act"). 43 U.S.C. § 1331 *et seq.*

11. In the OCS Lands Act, Congress affirmed that the United States has exclusive control over the Outer Continental Shelf. OCSLA defines the Outer Continental Shelf to be "all submerged lands" beyond the lands reserved to the States, in the Submerged Lands Act, 43 U.S.C. § 1301 *et seq.*, up to the edge of the jurisdiction of the United States. *Id.* § 1331 (a).

12. The OCS Lands Act sets forth a comprehensive scheme for the leasing and development of resources on the Outer Continental Shelf. 43 U.S.C. §§ 133454.

13. OCSLA specifically authorizes the Secretary of the United States Department of the Interior (the "Secretary") to issue regulations to administer the Outer Continental Shelf for mineral development. 43 U.S.C. § 1334.

14. Compliance with the regulations issued by the Secretary is a condition of "[t]he issuance and continuance of any OCSLA lease." 43 U.S.C. § 1334 (b).

15. The Secretary established the Bureau of Ocean Energy Management ("BOEM") to carry out conventional and renewable energy-related functions on the Outer Continental Shelf. Dep't of the Interior Secretarial Ord. 3299 (May 19, 2010).

16. Order 3299 also established the Bureau of Safety and Environmental Enforcement ("BSEE"). Dep't of the Interior Secretarial Ord. 3299 (May 19, 2010)

17. BSEE and BOEM work together to, *inter alia*, protect the United States from incurring financial losses associated with the decommissioning facilities and other structures placed on the Outer Continental Shelf in conjunction with the development of the mineral and/or energy resources.

18. BOEM is responsible for managing the development of offshore energy and mineral resources in an environmentally and economically responsible manner.

19. BSEE provides estimates to BOEM regarding the financial assurance needed to cover decommissioning costs.

20. BOEM's predecessor, the Minerals Management Service (the "MMS"), established the financial requirements applicable to Outer Continental Shelf leases and pipeline rights of way in 1997. 62 Fed. Reg. 27948 (May 22, 1997).

21. The MMS regulations also provided a mechanism for the government to require supplemental financial assurance based on the financial health of the lessees.

22. The MMS issued regulations providing a mechanism for the government to require Outer Continental Shelf oil and gas lessees to post bonds. 62 Fed. Reg. 27948 (May 22, 1997).

23. BOEM continues to require Outer Continental Shelf lessees to post bonds as a condition of lease issuance and/or continuance. *See* 89 Fed. Reg. 31544 (Apr. 24, 2024).

24. In recent years, BOEM has issued regulations calling for stricter management of financial assurance, thus requiring ever increasing amounts of surety bonds to be posted in connection with operations on the Outer Continental Shelf.

25. The posting of surety bonds is, thus, essential to operations on the Outer Continental Shelf.

The Relationship Between the Sompo Sureties and W&T

26. W&T Offshore is an independent oil and natural gas producer, exploring, developing, and acquiring oil and natural gas in the Gulf of Mexico, subject to the jurisdiction of the United States Department of Interior.

27. W&T Energy is a subsidiary of W&T Offshore that explores, develops, acquires, and operates oil and natural gas properties in the Gulf of Mexico, subject to the jurisdiction of the United States Department of Interior.

28. Endurance is a foreign insurer which, *inter alia*, issues surety bonds required by BOEM with respect to operations conducted on the Outer Continental Shelf.

29. Lexon is a Texas domestic insurer, which, *inter alia*, issues surety bonds required by BOEM with respect to operations conducted on the Outer Continental Shelf.

30. In accordance with the regulations issued by BOEM, W&T was required to post bonds in favor of the United States.

31. W&T obtained the required surety bonds from, *inter alia*, both Endurance and Lexon.

32. The relationship, rights, and obligations of W&T, on the one hand, and the Sompo Sureties, on the other, is set forth in that certain Payment and Indemnity Agreement No. 1380 effective as of September 14, 2020 (the "Indemnity Agreement").

33. The Indemnity Agreement was executed by W&T Offshore, as Principal, and U.S. Specialty Insurance Company, as Surety, "in connection with any bond or bonds executed or to be executed on behalf of any principal and to induce the Surety to execute or procure of the execution of such bond(s) and any extensions, modifications, or renewals thereof, additions thereto, or substitutions therefor."

34. A true and correct copy of the Indemnity Agreement is attached hereto as Exhibit "A."

35. The term "Principal" as used in the Indemnity Agreement "shall mean [W&T Offshore], as well as all wholly owned subsidiaries, whether now existing or which hereafter may be created or acquired.

36. The Indemnity Agreement provides, in paragraph 17, that the bonds are:

> performable in, and all monies due the Surety hereunder are payable in, Harris County, Texas. This Agreement shall be construed and enforced in accordance with the laws of the state of Texas, without regard to its conflict of law rules. EACH PRINCIPAL HEREBY IRREVOCABLY
>
> CONSENTS TO THE EXCLUSIVE VENUE AND JURISDICTION OF THE FEDERAL AND STATE COURTS SITTING IN HARRIS COUNTY, TEXAS, AND DOES FURTHER WAIVE ANY AND ALL RIGHTS TO OBJECT TO SUCH VENUE OR JURISDICTION.

37. Paragraph 5 of the Indemnity Agreement entitled "Additional Sureties" provides that should the Surety "procure any other company or companies including but not limited to . . . Endurance Assurance Corporation . . . Lexon Insurance Company . . . to execute or join with it in the executing, or to reinsure any Bond, this Agreement shall inure to the benefit of such other company or companies, its or their successors and assigns, so as to give it or them a direct right of action against the Principals to enforce the provisions hereof."

38. Endurance joined in and issued bonds covered by the Indemnity Agreement.

39. Accordingly, the Indemnity Agreement governs the relationship between W&T and Endurance.

40. Lexon joined in and issued bonds covered by the Indemnity Agreement.

41. Accordingly, the Indemnity Agreement governs the relationship between W&T and Lexon.

42. Other surety companies (the "Other Sureties") joined in and issued bonds covered by the Indemnity Agreement, which governs the relationships between W&T and the Other Sureties.

W&T Obtains BOEM-Required Bonds from the Sompo Sureties and Others

43. Pursuant to and in accordance with the Indemnity Agreement, Endurance issued the following bonds in connection with W&T's obligations to BOEM:

Bond No.	Form	Amount
ZEACX226000039	BOEM -2028A	$3,830,148.00
ZEACX226000040	BOEM -2028A	$13,126,457.00
ZEACX226000038	BOEM -2028A	$1,482,000.00
EACX226000025	BOEM -2028A	$3,000,000.00
EACX226000047	BOEM -2028A	$2,285,584.00
EACX226000044	BOEM -2028A	$3,000,000.00
EACX226000022	BOEM -2028A	$1,461,000.00

44. True and correct copies of the bonds identified in paragraph 43 are attached hereto as Exhibit "B" *in globo.*

45. Endurance also issued the following bonds to nongovernmental parties. These bonds were also issued in conjunction with W&T's operations on the Outer Continental Shelf:

Bond No.	Form	Amount
EACX226000043	N/A	$7,000,000.00

46. A true and correct copy of the bond identified in paragraph 45 is attached hereto as Exhibit "C."

47. Endurance also issued a bond in favor of the Texas Railroad Commission:

Bond No.	Form	Amount
EACX226000045	P-5PB	$125,000.00

48. A true and correct copy of the bond identified in paragraph 47 is attached hereto as Exhibit "D."

49. Pursuant to and in accordance with the Indemnity Agreement, Lexon issued the following bonds in connection with W&T's obligations to BOEM:

Bond No.	Form	Amount
1156846	BOEM -2028A	$5,000,000.00
1136949	ONRR -4435	$1,166,860.00
1136950	ONRR -4435	$117,279.00
1159776	BOEM -2028A	$3,000,000.00
1097677	BOEM -2028A	$9,000,000.00

50. True and correct copies of the bonds identified in paragraph 49 are attached hereto as Exhibit "E" *in globo*.

51. Lexon also issued the following bonds to nongovernmental parties. These bonds were also issued in conjunction with W&T's operations on the Outer Continental Shelf:

Bond No.	Form	Amount
1152011	N/A	$376,688.00
1152010	N/A	$1,931,562.00

52. A true and correct copy of the bond identified in paragraph 51 is attached hereto as Exhibit "F."

The Sompo Sureties Conflicting Collateral Demands

53. At all times, W&T has complied with the Indemnity Agreement and paid all premiums associated with all bonds issued by the Sompo Sureties.

54. W&T is, and has, at all times since the execution of the Indemnity Agreement, been solvent and capable of meeting its financial obligations.

55. The Indemnity Agreement provides, in paragraph 3 entitled "Security," as follows:

> The Surety may at any time and from time to time hereafter, in its sole and absolute discretion, require the Principals to provide collateral, in form and amounts acceptable to the Surety (such amounts not to exceed the aggregate penalty sum of all then-issued Bonds) to secure the Principals' obligations to the Surety hereunder and/or to establish reserves to cover any actual or potential liability, claim, suit, or judgment under any Bond. Within thirty (30) days

> after the Surety has made written demand on Principals, each Principal shall execute such documents and take such further action as may be necessary in order to provide such collateral. Each Principal hereby grants to the Surety a security interest in all money and other property now or hereafter delivered by such Principal to the Surety, and all income (if any) thereon. If a Principal provides the Surety with a letter of credit or similar instrument, such Principal agrees that the Surety has the right to call on the same from time to time, in whole or in part and for any reason or no reason, and to hold the proceeds thereof as collateral for the obligations of the Principals hereunder. Any collateral provided at any time by any Principal shall be available, in the discretion of the Surety, as collateral security on any or all Bonds heretofore or hereafter executed for or at the request of such Principal or any other Principal.

56. Notwithstanding W&T's payment of all premiums and its continued maintenance of its financial status and solvency, on July 9, 2024, Endurance and Lexon, through their parent Sompo International, issued a written demand, pursuant to the Indemnity Agreement, on W&T that it provide collateral in the form of cash or a letter of credit.

57. A true and correct copy of Sompo International's July 9, 2024, demand is attached hereto as Exhibit "G."

58. At the same time that Endurance and Lexon have demanded collateral in the form of cash or a letter of credit, W&T has been in discussions with the Other Sureties regarding their possible demands for collateral.

59. W&T has offered to provide collateral to both the Sompo Sureties and the Other Sureties in forms other than cash or letter of credit.

60. Discussions with the Other Sureties regarding their acceptance of such alternative collateral have been productive and remain ongoing.

61. The discussions with the Other Sureties have revealed that any agreement regarding alternative collateral will depend on W&T not providing cash or a letter of credit to any other surety, including the Sompo Sureties.

62. W&T's financial status has remained substantially the same since the execution of the Indemnity Agreement and the issuance of the bonds thereunder.

63. The only material change regarding the bonds involves not W&T, but the regulatory environment established by the United States Department of Interior.

64. In light of the changes to the regulatory environment, the Sompo Sureties have, on information and belief, made the decision that they wish to exit the market for surety bonds related to the Outer Continental Shelf.

65. The bonds issued in favor of the BOEM are not cancelable.

66. The Sompo Sureties' demand for collateral is not based on the financial condition of W&T Energy or W&T Offshore, but is entirely based on a change in the regulatory environment and the Sompo Sureties' changed business model.

67. The Sompo Sureties' demand for collateral is at odds with the ongoing discussions with the Other Sureties, thus, placing W&T in an impossible position, as complying with one demand will require W&T to breach its obligations to the other.

CAUSES OF ACTION

COUNT ONE – DECLARATORY RELIEF

68. W&T incorporates as if set forth fully herein the allegations contained in paragraphs 1 through 67 of this Complaint.

69. A justiciable controversy exists between W&T and the Sompo Sureties.

70. The parties are governed by and bound to comply with the Indemnity Agreement.

71. While the Indemnity Agreement imposes certain obligations on W&T, it also imposes obligations on the Sompo Sureties, including the obligation of good faith, fair dealing, and to not abuse rights granted under the agreement.

72. The disparate actions of the Sompo Sureties, on the one hand, and the Other Sureties, on the other hand, place W&T in an impossible position, as compliance with one's demand ensures a breach of obligations to the other.

73. The Sompo Sureties' demands for collateral are unreasonable in that they are not based on any need of the Sompo Sureties other than a change in their business model.

74. The Sompo Sureties' demands for collateral in the form of cash or a letter of credit are an unreasonable interpretation of the Indemnity Agreement as evidenced by the ongoing discussions with the Other Sureties.

75. W&T is entitled to a judgment declaring the rights of the parties including, without limitation, the following

a. That the Sompo Sureties may not enforce the Indemnity Agreement such that their actions constitute an abuse of right;

b. That the Sompo Sureties may not make an unreasonable demand for collateral;

c. That the Sompo Sureties must accept reasonable collateral as offered by W&T;

d. That the form of collateral offered by W&T is adequate and fulfills W&T's obligations under the Indemnity Agreement;

e. That the Sompo Sureties may not make demands for collateral that are inconsistent such that W&T cannot comply with both demands; and

f. That the Sompo Sureties' changed business model and desire to exit the market are not legitimate grounds to demand further collateral beyond that offered by W&T.

PRAYER

WHEREFORE, W&T Offshore, Inc. and W&T Energy VI, LLC pray that, after due proceedings are had, this Court enter judgment in their favor and against Endurance Assurance Corporation and Lexon Insurance Company:

Declaring that:

a. Endurance Assurance Corporation and Lexon Insurance Company are bound by the terms of the Indemnity Agreement

b. Endurance Assurance Corporation and Lexon Insurance Company may not enforce the Indemnity Agreement such that their actions constitute an abuse of right;

c. Endurance Assurance Corporation and Lexon Insurance Company may not make an unreasonable demand for collateral;

d. Endurance Assurance Corporation and Lexon Insurance Company must accept reasonable collateral as offered by W&T Offshore, Inc. and W&T Energy VI, LLC;

e. The form of collateral offered by W&T Offshore, Inc. and W&T Energy VI, LLC is adequate and fulfills their obligations under the Indemnity Agreement.

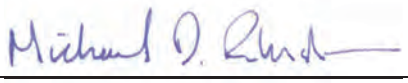
f. Endurance Assurance Corporation and Lexon Insurance Company may not make demands for collateral that are inconsistent with those of other the Other Sureties such that W&T Offshore, Inc. and W&T Energy VI, LLC cannot comply with both demands; and

g. Endurance Assurance Corporation and Lexon Insurance Company's changed business model and desire to exit the market are not legitimate grounds to demand further collateral beyond that offered by W&T Offshore, Inc. and W&T Energy VI, LLC;

1. Awarding W&T Offshore, Inc. and W&T Energy VI, LLC all costs of this proceeding; and
2. For all other legal and equitable relief to which W&T Offshore, Inc. and W&T Energy VI, LLC may be entitled.

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Respectfully submitted,



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(09/12/20 Modified) W&T/No. 1380

PAYMENT AND INDEMNITY AGREEMENT No. 1380

THIS PAYMENT AND INDEMNITY AGREEMENT (as amended and supplemented, this "Agreement") is executed by each of the undersigned on behalf of each Principal (as defined below) for the benefit of U.S. Specialty Insurance Company (the "Surety") in connection with any bond or bonds executed or to be executed on behalf of any Principal and to induce the Surety to execute or procure the execution of such bond(s) and any extensions, modifications, or renewals thereof, additions thereto, or substitutions therefor (the "Bonds"). The term "Principal" as defined and used herein shall mean any of the undersigned entities, as well as all wholly owned subsidiaries, whether now existing or which may hereafter be created or acquired.

IN CONSIDERATION of the execution or procurement of the Bonds, and for other good and valuable consideration, the receipt and sufficiency of which the Principals hereby acknowledge, the Principals hereby agree, for themselves, their personal representatives, successors, and assigns, jointly and severally, as follows:

1. Bond Premiums The Principals shall pay to the Surety premiums and charges at the rates and at the times specified by the Surety with respect to each Bond (as the Surety may specify at any time before or after the issuance of any Bond), continuing until the Surety shall be discharged or released from any and all liability and responsibility under the Bonds, and all matters arising therefrom, and until the Surety receives evidence, satisfactory to the Surety, of such discharge or release. If any Principal fails to pay within thirty (30) days after written demand any premium or portion thereof, or fails to pay within thirty (30) days after written demand of any other sum becoming due the Surety hereunder then, unless the Principals shall, immediately upon demand therefor: (a) deliver to the Surety evidence, satisfactory to the Surety, of the discharge and release of the Surety from any and all liability and responsibility under the Bonds and all matters arising therefrom; and (b) pay to the Surety all sums owed the Surety as of the effective date of such absolute release of the Surety from said obligations, the Surety may require there be paid, and the Principals jointly and severally agree they shall forthwith pay to the Surety, an amount equal to the full penalty amount of the Bonds, to be held as collateral until: (i) all sums due and to become due to the Surety have been paid, and (ii) the Surety shall be wholly discharged and released from all liability under the Bonds.

2. Indemnification of Surety The Principals shall jointly and severally indemnify and keep indemnified the Surety and hold and save it harmless from and against any and all liability, damage, loss, cost, and expense of whatsoever kind or nature, including reasonable counsel and attorneys' fees which the Surety may at any time sustain or incur or in enforcing this Agreement against any Principal or in procuring or in attempting to procure the Surety's release from liability or a settlement under any Bonds. For the avoidance of doubt, the Principals, jointly and severally, acknowledge and agree that the above obligation to indemnify the Surety shall apply to any and all reasonable attorneys' fees, costs or other expenses incurred by the Surety in connection with a bankruptcy proceeding (whether voluntary or involuntary), an assignment for the benefit of creditors, a receivership (whether state, federal or otherwise) or any other similar insolvency proceeding (whether state, federal, or otherwise) of the Principals, or any one of them If the Surety deems it necessary to make an independent investigation of a claim, demand or suit, the Principals jointly and severally acknowledge and agree that all reasonable expenses attendant to such investigation, whether incurred internally or with third parties, is included as an indemnified expense.

3. Security The Surety may at any time and from time to time hereafter, in its sole and absolute discretion, require the Principals to provide collateral, in form and amounts acceptable to the Surety (such amounts not to exceed the aggregate penalty sum of all then-issued Bonds) to secure the Principals' obligations to the Surety hereunder and/or to establish reserves to cover any actual or potential liability, claim, suit, or judgment under any Bond. Within thirty (30) days after the Surety has made written demand on Principals, each Principal shall execute such documents and take such further action as may be necessary in order to provide such collateral. Each Principal hereby grants to the Surety a security interest in all money and other property now or hereafter delivered by such Principal to the Surety, and all income (if any) thereon. If a Principal provides the Surety with a letter of credit or similar instrument, such Principal agrees that the Surety has the right to call on the same from time to time, in whole or in part and for any reason or no reason, and to hold the proceeds thereof as collateral for the obligations of the Principals hereunder. Any collateral provided at any time by any Principal shall be available, in the discretion of the Surety, as collateral security on any or all Bonds heretofore or hereafter executed for or at the request of such Principal or any other Principal.

4. Inspection Until the Surety shall have been furnished with evidence of its full, final and complete discharge without loss from any and all Bonds, the Surety and its agents shall have reasonable access, at any and all reasonable times, to the financial books and records (including but not limited to reserve reports, engineering data and like information) of each Principal relevant to the obligations under this Agreement. Each individual Principal consents to the Surety's requests for, and use of, consumer credit reports and investigative consumer credit reports with respect to such Principal. Any bank, creditor, credit bureau or credit reporting agency, obligee of a Bond or other individual or entity possessing records or having information concerning the financial affairs and operations of any Principal is hereby authorized to furnish to the Surety and its agents any such records or information requested by the Surety. Each Principal will execute any additional document reasonably requested by the Surety to cause the release of such records and information.

EXHIBIT A

IndemCo

5. Additional Sureties If IndemCo. or the Surety shall procure any other company or companies, including but not limited to American Contractors Indemnity Company, Ironshore Indemnity Inc., Ironshore Specialty Insurance Company, Lexon Insurance Company, Bond Safeguard Insurance Company, Endurance Assurance Corporation, Endurance American Insurance Company, Great Midwest Insurance Company, North American Specialty Insurance Company, Westport Insurance Corporation, United States Fire Insurance Company, Seneca Insurance Company, Inc., and/or QBE Insurance Corporation, to execute or join with it in executing, or to reinsure any Bond, this Agreement shall inure to the benefit of such other company or companies, its or their successors and assigns, so as to give it or them a direct right of action against the Principals to enforce the provisions hereof.

6. Evidence of Liability An itemized statement of payments made by the Surety for any of the purposes specified herein, or the voucher or vouchers for such payments, shall be prima facie evidence of the liability of the Principals to reimburse the Surety for such payments.

7. Additional Rights of Surety The Surety, in its sole discretion and without notice to any Principal, is hereby authorized but not required, (a) from time to time to make or consent to any change in the Bonds (with the exception of increasing the penal amount or the obligation secured thereby) or to issue any substitutes or any renewal thereof, and this Agreement shall apply to such substituted, changed or renewed Bonds; (b) take such action as it may deem appropriate to prevent or minimize loss under the Bonds, including, but not limited to, taking steps to procure discharge from liability under the Bonds; and (c) to adjust, settle, or compromise any claim or suit arising under the Bonds and, with respect to any such claim or suit, to take any action it may deem appropriate. Any adjustment, settlement, or compromise made or action taken by the Surety shall be conclusive against and binding upon the Principals.

8. Bond Forms The Principals acknowledge and agree it is their sole responsibility to provide the proper forms for the Bonds to be executed by the Surety, and neither the Surety nor its agents shall have any liability whatsoever to any Principal if the Principals fail to furnish the Surety with the proper forms. It shall be the sole responsibility of the Principals to review the bond form to be executed by the Surety for any errors or omissions before delivery of any Bond to its obligee, and the Surety and its agents shall have no liability to the Principals on account of any such errors and omissions. Before requesting the Surety issue any Bond, the Principals shall obtain confirmation the proposed obligee on the Bond will accept the Surety as surety on the proposed Bond, and neither the Surety nor its agents shall have any liability whatsoever if any obligee refuses, for whatever reason, to accept the Surety as surety on any Bond. Each Principal agrees the Principals shall be solely responsible for arranging, independent of the Surety, for the timely delivery of any Bond to its obligee. The Surety and its agents shall have no liability to the Surety if the Bond is not timely delivered to any obligee for any reason whatsoever.

9. Additional Obligations of Principals Each Principal agrees to pay all amounts owed and/or described herein regardless of (a) the failure of any Principal to sign any application for a Bond; (b) any claim that other indemnity, security, or collateral was to have been obtained; (c) the release, return, or exchange by the Surety with or without the consent of any other Principal, of any indemnity, security, or collateral that may have been obtained, or (d) the fact that any other Principal is not bound for any reason. The Surety is expressly subrogated to all rights, if any (but if a Principal has waived its rights of subrogation against any party, such waiver shall control this Agreement), of the Principals (or any or all of them) to collect, receive, recover, and/or be reimbursed from (i) any co-owners or owners of undivided interest in any properties, wells, and leasehold interests relative to which the Bonds shall apply (collectively, the "Related Property"); (ii) any party contractually bound to pay or reimburse any Principal on account of ownership or operation of any Related Property; or (iii) any other party otherwise obligated to, or for, any Principal in any way, in connection with, or arising out of damage to any Related Property. The Surety, as subrogee, upon default of payment of any sums becoming payable hereunder by any Principal, may enforce all of the rights of the Principals in and to any such above-described claims and interests; and may pursue its remedies hereunder in its own name or in the name of the relevant Principal(s); but nothing herein shall require that the Surety pursue any such remedy or claim against any third party. Each Principal agrees, upon demand of the Surety therefor, to execute and deliver any and all appropriate further documentation evidencing and authorizing the Surety to pursue, recover, collect, and hold for its account any such claims or rights.

10. Suits to Enforce Separate suits may be brought hereunder as causes of action accrue, and suit may be brought against any and all of the Principals; and any suit or suits upon one or more causes of action, or against one or more of the Principals, shall not prejudice or bar subsequent suits against any other Principals on the same or any other causes of action, whether theretofore or thereafter accruing.

11. Liability Limitation Each Principal agrees the Surety's liability, if any, to any one or more of the Principals on account of any acts or omissions by the Surety (whether such acts or omissions arise in tort, breach of contract, or at law) arising out of or related to any Bonds or any other conduct by the Surety, **WHETHER THE SAME ARISES FROM THE NEGLIGENCE OF THE SURETY OR OTHERWISE,** shall be and is hereby expressly limited to an amount equal to the premium actually paid to the Surety for such Bond.

12. Waiver of Notice Each Principal hereby expressly waives notice from the Surety of any claim or demand made against the Surety or any Principal under the Bonds or of any information the Surety may receive concerning any Principal, any Bond, or any contract.

13. No Obligation to Issue Bonds The Surety shall have the right to decline to issue any or all Bonds applied for

hereunder and shall have the right to withdraw from or cancel any application for a Bond at any time, all without incurring any liability to any Principal. The use of the plural term "Bonds" herein shall not be interpreted to require that the Surety issue multiple bonds or any bond whatsoever.

14. Conflict and Modification If any portion of this Agreement is in conflict with any law controlling the construction hereof, such portion of this instrument shall be considered to be deleted and the remainder shall continue in full force and effect.

15. Waivers To the maximum extent not prohibited by applicable law, each Principal hereby waives all rights to claim any of its property is exempt from levy, execution, sale, or other legal process in any action hereunder.

16. Continuing Obligation This Agreement is a continuing obligation of each Principal, and no Principal shall have the right to terminate its obligations for any Bonds issued during the term hereof. A Principal may terminate this Agreement as to future Bonds by notice to the Surety, but such termination as to a Principal shall in no way affect the obligation of any other Principal who has not given such notice. In order to terminate liability as to future Bonds, a Principal must notify the Surety of such termination and state in such notice the effective date (not less than 30 days after receipt thereof by the Surety) of termination of such Principal's liability for future Bonds. After the effective date of such termination, the Principal giving notice of termination shall nonetheless be liable hereunder for Bonds executed or authorized before such date and renewal, substitutions, and extensions thereof.

17. Place of Performance and Enforcement All obligations hereunder of each Principal is performable in, and all monies due the Surety hereunder are payable in, Harris County, Texas. This Agreement shall be construed and enforced in accordance with the laws of the state of Texas, without regard to its conflict of law rules. **EACH PRINCIPAL HEREBY IRREVOCABLY CONSENTS TO THE EXCLUSIVE VENUE AND JURISDICTION OF THE FEDERAL AND STATE COURTS SITTING IN HARRIS COUNTY, TEXAS, AND DOES FURTHER WAIVE ANY AND ALL RIGHTS TO OBJECT TO SUCH VENUE OR JURISDICTION.**

18. Rights Not Exclusive Nothing herein-contained shall be construed to waive or abridge any right or remedy which the Surety might have if this Agreement was not executed.

19. Other Bonds and Agreements This Agreement shall also extend to and cover and indemnify the Surety against loss under any presently outstanding Bonds, and the obligation of the Principals hereunder, with respect to such pre-existing Bonds, shall replace the obligation of any or all of the Principals under any presently existing agreement relating to or securing such pre-existing Bonds.

20. Joint and Several Liability Each Principal shall be deemed to have made all of the representations, warranties, covenants, and agreements set forth herein, and each Principal shall be jointly and severally liable for each and every obligation and duty of the Principals set forth herein. A default of any Principal in the performance of any of its obligations to the Surety under this or any other agreement shall constitute a default hereunder by all Principals. Each Principal understands and agrees that the circumstances, financial or otherwise, of any one or more of the other Principals may change substantially over the term of this Agreement, and the Principals therefore agree to keep themselves fully informed as to the business activities and financial affairs of each Principal and of the risks being engaged in, so that each is always aware of the risks of hazards in continuing to act as a Principal. Each Principal expressly waives any requirement for notice from the Surety of any fact or information coming to the notice or knowledge of the Surety affecting its rights or the rights or liabilities of the Principals. If any claim or demand is made by the Surety against the Principals, or any one or more of them, by reason of the execution of a Bond, the Surety is expressly authorized to settle or compromise with any one or more of the Principals individually, and without reference to the others, and such settlement or composition shall not affect the liability of any of the others and each Principal expressly waives the right to be discharged by reason of the release of one or more of the joint debtors, and hereby consents to any settlement or composition that may hereafter be made. The liability of the Principals hereunder shall not be affected by the failure of the Principals, or any one or more of them, to sign any Bond or this Agreement, nor by any claim that other indemnity or security was to have been obtained, nor by the release of any indemnity, nor the return or exchange of any collateral that may have been obtained and if any party signing this Agreement is not bound for any reason, this Agreement shall still be binding upon each and every other party.

21. Required Notices The Principals agree to notify the Surety (a) in the event of any change, alteration, restructuring, cancellation, transfer (including, without limitation, the conveyance of a security interest), or other modification to (i) the working interest ownership of the property for which a Bond is issued, or (ii) any lease for or relating to the property for which a Bond is issued, or (b) upon becoming aware of any demand, notice, or proceeding preliminary to determining or fixing any liability, with which the Surety may be subsequently charged under any Bond.

22. Manner of Notices All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered against receipt therefor or mailed by registered or certified mail, return receipt requested, postage prepaid, addressed (a) in the case of a Principal, to such Principal's address set forth below and (b) in the case of the Surety, to (i) the Surety at 13403 Northwest Freeway, Houston, Texas 77040-6094, Attention: President, and (ii) IndemCo L.P. at 777 Post Oak Boulevard, Houston, Texas 77056. Such names and addresses may be changed by written notice given as provided in this Agreement. Actual notice, however given, shall always be effective.

23. Interest Any and all sums not paid when due shall bear interest at the lesser of (a) ten percent (10%) per annum, or (b) the maximum non-usurious rate of interest allowed by applicable law.

24. Entire Agreement and Amendments This Agreement contains the entire understanding of the parties hereto with respect to the subject matter contained herein and may be amended or terminated only by a document executed by all parties, or their respective successors or assigns. There are no restrictions, promises, warranties, covenants, or undertakings other than those expressly set forth herein.

25. Headings The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

26. Attorney's Fees In the event any action is instituted to enforce any of the provisions of this Agreement or to recover damages for the breach of any provision hereof, the prevailing party therein shall be entitled to recover any costs or expenses incurred, including without limitation, costs of court and reasonable attorneys' fees.

27. Number and Gender Whenever required by the context, any reference herein to the singular shall include the plural, any reference to the plural shall include the singular, and the gender of any pronoun shall mean and include the appropriate gender, whether masculine, feminine, or neuter.

28. Counterparts This Agreement may be executed in multiple counterparts, and by the Principals on separate counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Delivery by telecopy or email of a signed counterpart of this Agreement shall be effective as physical delivery.

29. Continuing Agreement Each Principal understands and agrees (a) this Agreement is a continuing agreement to indemnify over an indefinite period; (b) Bonds may vary widely in amounts and nature, and (c) each Principal will be bound by all Bonds, and any increases in the penal limits of all Bonds. Each Principal shall continue to remain bound under the terms of this Agreement even though the Surety may have from time to time heretofore or hereafter, with or without notice to or knowledge of any Principal, accepted or released other agreements of indemnity or collateral from some or all of the Principals or others in connection with the procurement of Bonds, it being expressly understood and agreed by each Principal that any and all other rights which the Surety may have or acquire against such Principal or others under any such other or additional agreements of indemnity or collateral shall be in addition to, and not in lieu of, the rights afforded the Surety under this Agreement.

30. No Conflict Each Principal represents and warrants that neither this Agreement nor any condition relating to the issuance of any Bond shall be a breach or default in any other obligation of such Principal, specifically including, without limitation, any loan agreement.

31. ENTIRE AGREEMENT **EACH PRINCIPAL REPRESENTS TO THE SURETY THAT SUCH PRINCIPAL HAS CAREFULLY READ THIS ENTIRE AGREEMENT, AND THERE ARE NO OTHER AGREEMENTS OR UNDERSTANDINGS WHICH IN ANY WAY LESSEN OR MODIFY THE OBLIGATIONS SET FORTH HEREIN. THE EFFECTIVE DATE OF THIS AGREEMENT SHALL BE THE DATE SET FORTH BELOW, REGARDLESS OF THE DATE OR DATES ON WHICH ANY PRINCIPAL MAY EXECUTE THIS AGREEMENT AND REGARDLESS OF WHETHER BONDS WERE ISSUED BY THE SURETY BEFORE OR AFTER THE EXECUTION OR EFFECTIVE DATE OF THIS AGREEMENT. THE SURETY'S ACCEPTANCE OF THIS AGREEMENT SHALL BE PRESUMED AND IS DEEMED EFFECTIVE BY ITS RECEIPT OF THIS AGREEMENT, ITS RELIANCE HEREON, OR BY ITS EXECUTION OF ANY BOND FOR THE PRINCIPALS OR ANY OF THEM, WITH OR WITHOUT THE SURETY'S SIGNATURE BEING AFFIXED THERETO.**

32. Individual Certification. Each individual signing below on behalf of any Principal certifies that (a) such individual is familiar with the organizational documents and other records of such Principal; (b) the name of such Principal as reflected below is its correct name; (c) such Principal exists and is in good standing in the jurisdiction of its organization; (d) the execution, delivery and performance of this Agreement by such Principal (1) are within its organizational power; (2) have been duly authorized by all necessary actions, and (3) do not contravene its organizational documents or any agreement binding upon it or any of its property; (e) the form of signature block for such Principal is an appropriate signature block for it; (f) such individual holds the position reflected below and is duly authorized to execute this Agreement on behalf of such Principal, and (g) this Agreement has been duly executed and delivered on behalf of such Principal.

EXECUTED effective as of September 14, 2020.

EXECUTION ON FOLLOWING PAGE(S)

EXHIBIT 10

(11/25/09 W&T)

W&T Energy VI, LLC; W&T Offshore, Inc. /No. 0847

For entity as Principal:

TYPE OF ENTITY: Corporation

TAXPAYER IDENTIFICATION NO.: 72-1121985

W&T Offshore, Inc.
(Name of Entity)

BY: _____ TW Acq
(Signature)

PRINTED NAME: Janet Yang

TITLE: Chief Financial Officer + EVP

ADDRESS: 9 Greenway Plaza, Suite 300

Houston, Texas 77046

This instrument was acknowledged before me on Sept 14, 2020

by Janet Yang, CFO and EVP
(Name of officer) (Title of officer)

of W&T Offshore, Inc.
(Name of Principal)

on behalf of such entity.

NOTARIAL STAMP OR SEAL _____

Notary Signature

Printed Name ROSEMARY BARRIOS

Notary in and for the State of TX

My commission expires 10/13/2022

ROSEMARY BARRIOS
Notary ID #129993408
My Commission Expires
October 13, 2022

For entity as Principal:

TYPE OF ENTITY: Limited Liability Company

TAXPAYER IDENTIFICATION NO.: 20-4416495

W&T Energy VI, LLC
(Name of Entity)

BY: _____ TW Acq
(Signature)

PRINTED NAME: Janet Yang

TITLE: Representative

ADDRESS: 9 Greenway Plaza, Suite 300

Houston, Texas 77046

This instrument was acknowledged before me on Sept. 14, 2020

by Janet Yang, Representative
(Name of officer) (Title of officer)

of W&T Energy VI, LLC
(Name of Principal)

on behalf of such entity.

NOTARIAL STAMP OR SEAL _____

Notary Signature

Printed Name ROSEMARY BARRIOS

Notary in and for the State of TX

My commission expires 10/13/2022

ROSEMARY BARRIOS
Notary ID #129993408
My Commission Expires
October 13, 2022

IndemCo

U.S. DEPARTMENT OF THE INTERIOR
Bureau of Ocean Energy Management

Bond No. ZEACX226000039 OCS Lease/RUE/ROW No. OCS-G 10942

Bond Type Supplemental Amount $ 3,830,148.00

OUTER CONTINENTAL SHELF (OCS) MINERAL LESSEE'S OR OPERATOR'S SUPPLEMENTAL BOND

The **Surety** is the entity Guaranteeing Performance.

Name of Surety: Endurance Assurance Corporation

Mailing Address: 12890 Lebanon Road

Mt. Juliet, TN 37122-2870

If a Corporation, Incorporated in the State of: Delaware ; County or Parish of: New Castle

☒ Check here if Surety is certified by U.S. Treasury as an acceptable surety on Federal Bonds and listed in the current U.S. Treasury Circular No. 570.

The **Principal** is the Lessee or Designated Operator for Whom the Bond is Issued.

Name of Principal: W & T Energy VI, LLC

Mailing Address: 5718 Westheimer Road, Suite 700, Houston, Texas 77057-5745

Schedule A, the lease/RUE/ROW covered by this bond, is composed of: (add legal description)

☐ Check here if additional information is on attached sheet.

The following lease/RUE/ROW: All of Block 823, Viosca Knoll, as shown on OCS Official Protraction Diagram, NH16-7.

In addition to the Obligations of the Principal during the period of liability of this bond, the Surety also accepts the following Obligations: (Check one)

☐ No Obligations other than the Obligations of the Principal during the period of liability of this bond.

☒ All Obligations of all previous Sureties or guarantors even if the Obligations are not Obligations of the Principal during the period of liability of this bond.

☐ All Obligations of all previous Sureties or guarantors even if the Obligations are not Obligations of the Principal during the period of liability of this bond with the following exceptions or limitations (use an attached rider).

Definitions For the purposes of this document:	A **Principal** includes an entity holding an interest in the oil & gas lease in one or more of the following ways: (1) as an approved record title owner of all or a portion of the lease, (2) as an approved operating rights owner of all or a portion of the lease, or (3) as a designated operator or designated agent in all or a portion of the lease. A **Lessee** includes an approved record title owner of all or a portion of the lease or an approved operating rights owner of all or a portion of the lease. An **Obligation** includes any obligation arising from any regulations of the Department of the Interior or any Instrument issued, maintained, or approved under the OCS Lands Act (43 U.S.C. 1331 et seq.). An **Instrument** includes individually or collectively any lease, operating agreement, designation of operator or agent, storage agreement, compensatory royalty agreement, transfer of operating rights, permit, license, or easement, whereunder the Principal has the right, privilege, or license to conduct operations on the OCS. A **Person** includes an individual, a public or private entity, a State, a political subdivision of a State, any association of individuals, corporations, States, or subdivisions of States, or a government agency.

By signing below, the Principal verifies that the information above is correct and agrees to the following:

The Principal as agent on behalf of all lessees, operating rights owners, and operators will fulfill all Obligations for the entire leasehold and to the same extent as though the Principal were the sole lessee for the lease/RUE/ROW in Schedule A.

By signing below, the Surety verifies that the information above is correct and agrees to the following:

1. The Surety does hereby absolutely and unconditionally bind itself to the United States of America acting through and by the Bureau of Ocean Energy Management (BOEM), or such other official designated by the Secretary of the Interior for this purpose, for the payment of all of the cost of the plugging and abandonment Obligations.
2. The Surety will be responsible for all Obligations of the Principal in existence at the time this document becomes effective and all Obligations that accrue after that date and until all Obligations are met or until the Regional Director terminates the period of liability of this bond.
3. If the Regional Director terminates the period of liability of this bond, the Surety will remain responsible for Obligations that accrued during the period of liability until the Regional Director issues a written cancellation of the bond in favor of the Surety.
4. If this bond is cancelled, the Regional Director may reinstate this bond as if no cancellation had occurred if any payment of any Obligation of the Principal(s) is rescinded or must be restored pursuant to any insolvency, bankruptcy, reorganization, or receivership, or should the representation of the Principal that it has paid its financial Obligations or performed the other

EXHIBIT B

Obligations of the lease in accordance with BOEM specifications be materially false and BOEM relied upon such representation in canceling the instrument.

5. The Surety waives any right of notice of this bond taking effect and agrees that this bond will take effect upon delivery to BOEM.
6. The Surety's Obligations will remain in full force and effect, even if:
   (a) Any person assigns all or part of any interest in an Instrument covered by this document.
   (b) Any person modifies an Instrument or Obligation under an Instrument in any manner including modifications that result from a commitment to a unit, cooperative, communitization, or storage agreement; suspension of operations or production; suspension or changes in rental, minimum royalty, or royalties; modification of regulations or interpretations of regulations; creation or modification of compensatory royalty agreements or payments; or creation of any mortgage, pledge, or other grant of security interest in the Instruments.
   (c) Any person, event, or condition terminates any Instrument covered by this bond, whether the termination is by operation of law or otherwise.
   (d) BOEM takes or fails to take any action in enforcing, as against any party to the Instrument, the payment of rentals or royalties or the performance of any other covenant, condition or agreement of the lease, or giving notice of or making demand with respect to such nonperformance.
   (e) The Surety suffers any loss by reason of any law limiting, qualifying, or discharging the Principal's Obligation.
7. The Surety agrees to be bound under this bond as to the interests in any Instrument retained by the Principal when BOEM approves the transfer of any or all of the Instruments or interests in the Instruments.
8. In the event of any default under a lease, the Surety must provide payment of all of the cost of the Obligations of the Principal upon demand by BOEM.
9. If BOEM decides to commence suit to enforce its rights, it may commence and prosecute any claim, suit, action, or other proceeding against the Principal and Surety, or either of them, whether or not BOEM joins the lessees or any other party.
10. In the event there is more than one Surety for the Principal's performance of the Obligations, as to any Instrument, the Surety's Obligation and liability under this bond is on a "solidary" or "joint and several" basis along with other guarantors or sureties.
11. The Surety agrees to give prompt notice to BOEM and the Principal of any action filed alleging the insolvency or bankruptcy of the Surety or the Principal, or alleging any violation that would result in suspension or revocation of the Surety's charter or license to do business.
12. The Surety's Obligation and liabilities under this Bond are binding upon the Surety's successors and assigns. Nothing in this document permits assignment of the Surety's Obligation without the written consent of BOEM.
13. The Surety hereby waives any defenses to liability on this bond based on an unauthorized Principal signature.

Endurance Assurance Corporation	W & T Energy VI, LLC
Name of Surety	Name of Principal
Meredith K Anderson	
Signature of Person Executing for Surety	Signature of Person Executing for Principal
Meredith K. Anderson, Attorney-in-Fact	Janet Yang, Representative
Name and Title (typed or printed)	Name and Title (typed or printed)
12890 Lebanon Road	5718 Westheimer Road, Suite 700
Business Address	Business Address
Mt. Juliet, TN 37122-2870	Houston, Texas 77057-5745
Business Address	Business Address

Signed on this 10th day of January, 20 22, in the State of Texas, in the presence of:

Wendy Pierson	
Signature of Witness	Signature of Witness
Wendy Pierson	Todd Grabois
Name (typed or printed)	Name (typed or printed)
777 Post Oak Blvd., Ste. 330	5718 Westheimer Rd. Ste 700
Address	Address
Houston, Texas 77056	Houston, TX 77057
Address	Address

Note: The person executing for the Surety must attach a corporate resolution and power of attorney stating his or her authority to undertake this Obligation, pursuant to the acts of the corporate board of directors and the laws of the State of incorporation. The corporation executing this bond as Surety and the Principal, if a corporation, must affix their corporate seals.

BOEM-2028A (January 2020)
Previous Editions are Obsolete.

U.S. Department of the Interior
Bureau of Ocean Energy Management

OMB Control No.: 1010-0006
Expiration Date: 1/31/2023

Cover Page

OUTER CONTINENTAL SHELF (OCS) MINERAL LESSEE'S OR OPERATOR'S SUPPLEMENTAL BOND

Form BOEM-2028A

This form dated January 2020 supersedes all previous versions of form BOEM-2028A

All Bond Forms must be submitted with a transmittal letter to the appropriate BOEM office:

Bureau of Ocean Energy Management
Gulf of Mexico OCS Office
1201 Elmwood Park Blvd. New Orleans LA 70123-2394
Leasing and Financial Responsibility - Mail Stop GM266A

Bureau of Ocean Energy Management
Alaska OCS Office
3801 Centerpoint Drive, Suite 500
Anchorage AK 99503-5820 Alaska Leasing Section

Bureau of Ocean Energy Management
Pacific OCS Office
760 Paseo Camarillo, Suite 102
Camarillo CA 93010
Lease Management

Paperwork Reduction Act of 1995 (PRA) Statement: The PRA (44 U.S.C. 3501 *et seq.*) requires us to inform you that BOEM collects this information to hold the surety liable for the obligations and liability of the Principal (lessee or operator). Responses are mandatory. No proprietary information is collected. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. Public reporting burden for this form is estimated to average 15 minutes per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Comments regarding the burden estimate or any other aspect of this form should be directed to the Information Collection Clearance Officer, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, VA 20166.

SOMPO INTERNATIONAL
INSURANCE

POWER OF ATTORNEY

11071

KNOW ALL BY THESE PRESENTS, that **Endurance Assurance Corporation**, a Delaware corporation, **Endurance American Insurance Company**, a Delaware corporation, **Lexon Insurance Company**, a Texas corporation, and/or **Bond Safeguard Insurance Company**, a South Dakota corporation, each, a "Company" and collectively, "**Sompo International**," do hereby constitute and appoint: **Edwin H. Frank, III, Michele K. Tyson, W. Russell Brown, Jr., Meredith K. Anderson, Stephen Michael Smith**

as true and lawful Attorney(s)-In-Fact to make, execute, seal, and deliver for, and on its behalf as surety or co-surety; bonds and undertakings given for any and all purposes, also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking so made, executed and delivered shall obligate the Company for any portion of the penal sum thereof in excess of the sum of **ONE HUNDRED MILLION Dollars ($100,000,000.00).**

Such bonds and undertakings for said purposes, when duly executed by said attorney(s)-in-fact, shall be binding upon the Company as fully and to the same extent as if signed by the President of the Company under its corporate seal attested by its Corporate Secretary.

This appointment is made under and by authority of certain resolutions adopted by the sole shareholder of each Company by unanimous written consent effective the 15th day of June, 2019, a copy of which appears below under the heading entitled "Certificate".

This Power of Attorney is signed and sealed by facsimile under and by authority of the following resolution adopted by the sole shareholder of each Company by unanimous written consent effective the 15th day of June, 2019 and said resolution has not since been revoked, amended or repealed:

RESOLVED, that the signature of an individual named above and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signature or seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, each Company has caused this instrument to be signed by the following officers, and its corporate seal to be affixed this 15th day of June, 2019.

Endurance Assurance Corporation
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

Endurance American Insurance Company
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

Lexon Insurance Company
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

Bond Safeguard Insurance Company
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

ACKNOWLEDGEMENT

On this 15th day of June, 2019, before me, personally came the above signatories known to me, who being duly sworn, did depose and say that he/they is/are officer of each of the Companies; and that he executed said instrument on behalf of each Company by authority of his office under the by-laws of each Company.

By: Amy Taylor
Amy Taylor, Notary Public – My Commission Expires 5/9/23

CERTIFICATE

I, the undersigned Officer of each Company, DO HEREBY CERTIFY that:

1. That the original power of attorney of which the foregoing is a copy was duly executed on behalf of each Company and has not since been revoked, amended or modified; that the undersigned has compared the foregoing copy thereof with the original power of attorney, and that the same is a true and correct copy of the original power of attorney and of the whole thereof;
2. The following are resolutions which were adopted by the sole shareholder of each Company by unanimous written consent effective June 15, 2019 and said resolutions have not since been revoked, amended or modified:

   "RESOLVED, that each of the individuals named below is authorized to make, execute, seal and deliver for and on behalf of the Company any and all bonds, undertakings or obligations in surety or co-surety with others: RICHARD M. APPEL, BRIAN J. BEGGS, CHRISTOPHER DONELAN, SHARON L. SIMS, CHRISTOPHER L. SPARRO, MARIANNE L. WILBERT

   ; and be it further

   RESOLVED, that each of the individuals named above is authorized to appoint attorneys-in-fact for the purpose of making, executing, sealing and delivering bonds, undertakings or obligations in surety or co-surety for and on behalf of the Company."
3. The undersigned further certifies that the above resolutions are true and correct copies of the resolutions as so recorded and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal this 10th day of January, 2022.

By: Daniel S. Lorie, Secretary

NOTICE: U. S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL (OFAC)

No coverage is provided by this Notice nor can it be construed to replace any provisions of any surety bond or other surety coverage provided. This Notice provides information concerning possible impact on your surety coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous foreign agents, front organizations, terrorists, terrorist organizations, and narcotics traffickers as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's website – https://www.treasury.gov/resource-center/sanctions/SDN-List.

In accordance with OFAC regulations, if it is determined that you or any other person or entity claiming the benefits of any coverage has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, any coverage will be considered a blocked or frozen contract and all provisions of any coverage provided are immediately subject to OFAC. When a surety bond or other form of surety coverage is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments may also apply.

Any reproductions are void.

Surety Claims Submission: LexonClaimAdministration@sompo-intl.com
Telephone: 615-553-9500 Mailing Address: Sompo International; 12890 Lebanon Road; Mount Juliet, TN 37122-2870

U.S. DEPARTMENT OF THE INTERIOR
Bureau of Ocean Energy Management

Bond No. ZEACX226000040 OCS Lease/RUE/ROW No. OCS-G 13060

Bond Type Supplemental Amount $ 13,126,457.00

OUTER CONTINENTAL SHELF (OCS) MINERAL LESSEE'S OR OPERATOR'S SUPPLEMENTAL BOND

The **Surety** is the entity Guaranteeing Performance.

Name of Surety: Endurance Assurance Corporation

Mailing Address: 12890 Lebanon Road

Mt. Juliet, TN 37122-2870

If a Corporation, Incorporated in the State of: Delaware ; County or Parish of: New Castle

☒ Check here if Surety is certified by U.S. Treasury as an acceptable surety on Federal Bonds and listed in the current U.S. Treasury Circular No. 570.

The **Principal** is the Lessee or Designated Operator for Whom the Bond is Issued.

Name of Principal: W & T Energy VI, LLC

Mailing Address: 5718 Westheimer Road, Suite 700, Houston, Texas 77057-5745

Schedule A, the lease/RUE/ROW covered by this bond, is composed of: (add legal description)

☐ Check here if additional information is on attached sheet.

The following lease/RUE/ROW: All of Block 784, Viosca Knoll, as shown on OCS Official Protraction Diagram, NH16-07.

In addition to the Obligations of the Principal during the period of liability of this bond, the Surety also accepts the following Obligations: (Check one)

☐ No Obligations other than the Obligations of the Principal during the period of liability of this bond.

☒ All Obligations of all previous Sureties or guarantors even if the Obligations are not Obligations of the Principal during the period of liability of this bond.

☐ All Obligations of all previous Sureties or guarantors even if the Obligations are not Obligations of the Principal during the period of liability of this bond with the following exceptions or limitations (use an attached rider).

Definitions For the purposes of this document:	A **Principal** includes an entity holding an interest in the oil & gas lease in one or more of the following ways: (1) as an approved record title owner of all or a portion of the lease, (2) as an approved operating rights owner of all or a portion of the lease, or (3) as a designated operator or designated agent in all or a portion of the lease. A **Lessee** includes an approved record title owner of all or a portion of the lease or an approved operating rights owner of all or a portion of the lease. An **Obligation** includes any obligation arising from any regulations of the Department of the Interior or any Instrument issued, maintained, or approved under the OCS Lands Act (43 U.S.C. 1331 et seq.). An **Instrument** includes individually or collectively any lease, operating agreement, designation of operator or agent, storage agreement, compensatory royalty agreement, transfer of operating rights, permit, license, or easement, whereunder the Principal has the right, privilege, or license to conduct operations on the OCS. A **Person** includes an individual, a public or private entity, a State, a political subdivision of a State, any association of individuals, corporations, States, or subdivisions of States, or a government agency.

By signing below, the Principal verifies that the information above is correct and agrees to the following:
The Principal as agent on behalf of all lessees, operating rights owners, and operators will fulfill all Obligations for the entire leasehold and to the same extent as though the Principal were the sole lessee for the lease/RUE/ROW in Schedule A.

By signing below, the Surety verifies that the information above is correct and agrees to the following:

1. The Surety does hereby absolutely and unconditionally bind itself to the United States of America acting through and by the Bureau of Ocean Energy Management (BOEM), or such other official designated by the Secretary of the Interior for this purpose, for the payment of all of the cost of the plugging and abandonment Obligations.
2. The Surety will be responsible for all Obligations of the Principal in existence at the time this document becomes effective and all Obligations that accrue after that date and until all Obligations are met or until the Regional Director terminates the period of liability of this bond.
3. If the Regional Director terminates the period of liability of this bond, the Surety will remain responsible for Obligations that accrued during the period of liability until the Regional Director issues a written cancellation of the bond in favor of the Surety.
4. If this bond is cancelled, the Regional Director may reinstate this bond as if no cancellation had occurred if any payment of any Obligation of the Principal(s) is rescinded or must be restored pursuant to any insolvency, bankruptcy, reorganization, or receivership, or should the representation of the Principal that it has paid its financial Obligations or performed the other

Obligations of the lease in accordance with BOEM specifications be materially false and BOEM relied upon such representation in canceling the instrument.

5. The Surety waives any right of notice of this bond taking effect and agrees that this bond will take effect upon delivery to BOEM.
6. The Surety's Obligations will remain in full force and effect, even if:
   (a) Any person assigns all or part of any interest in an Instrument covered by this document.
   (b) Any person modifies an Instrument or Obligation under an Instrument in any manner including modifications that result from a commitment to a unit, cooperative, communitization, or storage agreement; suspension of operations or production; suspension or changes in rental, minimum royalty, or royalties; modification of regulations or interpretations of regulations; creation or modification of compensatory royalty agreements or payments; or creation of any mortgage, pledge, or other grant of security interest in the Instruments.
   (c) Any person, event, or condition terminates any Instrument covered by this bond, whether the termination is by operation of law or otherwise.
   (d) BOEM takes or fails to take any action in enforcing, as against any party to the Instrument, the payment of rentals or royalties or the performance of any other covenant, condition or agreement of the lease, or giving notice of or making demand with respect to such nonperformance.
   (e) The Surety suffers any loss by reason of any law limiting, qualifying, or discharging the Principal's Obligation.
7. The Surety agrees to be bound under this bond as to the interests in any Instrument retained by the Principal when BOEM approves the transfer of any or all of the Instruments or interests in the Instruments.
8. In the event of any default under a lease, the Surety must provide payment of all of the cost of the Obligations of the Principal upon demand by BOEM.
9. If BOEM decides to commence suit to enforce its rights, it may commence and prosecute any claim, suit, action, or other proceeding against the Principal and Surety, or either of them, whether or not BOEM joins the lessees or any other party.
10. In the event there is more than one Surety for the Principal's performance of the Obligations, as to any Instrument, the Surety's Obligation and liability under this bond is on a "solidary" or "joint and several" basis along with other guarantors or sureties.
11. The Surety agrees to give prompt notice to BOEM and the Principal of any action filed alleging the insolvency or bankruptcy of the Surety or the Principal, or alleging any violation that would result in suspension or revocation of the Surety's charter or license to do business.
12. The Surety's Obligation and liabilities under this Bond are binding upon the Surety's successors and assigns. Nothing in this document permits assignment of the Surety's Obligation without the written consent of BOEM.
13. The Surety hereby waives any defenses to liability on this bond based on an unauthorized Principal signature.

Endurance Assurance Corporation	W & T Energy VI, LLC
Name of Surety	Name of Principal
Meredith K. Anderson	
Signature of Person Executing for Surety	Signature of Person Executing for Principal
Meredith K. Anderson, Attorney-in-Fact	Janet Youngs, Representative
Name and Title (typed or printed)	Name and Title (typed or printed)
12890 Lebanon Road	5718 Westheimer Road, Suite 700
Business Address	Business Address
Mt. Juliet, TN 37122-2870	Houston, Texas 77057-5745
Business Address	Business Address

Signed on this 10th day of January, 20 22, in the State of Texas, in the presence of:

Wendy Pierson	
Signature of Witness	Signature of Witness
Wendy Pierson	Todd Gabois
Name (typed or printed)	Name (typed or printed)
777 Post Oak Blvd., Ste. 330	5718 Westheimer Rd., Ste 700
Address	Address
Houston, Texas 77056	Houston, Tx 77057
Address	Address

Note: The person executing for the Surety must attach a corporate resolution and power of attorney stating his or her authority to undertake this Obligation, pursuant to the acts of the corporate board of directors and the laws of the State of incorporation. The corporation executing this bond as Surety and the Principal, if a corporation, must affix their corporate seals.

BOEM-2028A (January 2020)
Previous Editions are Obsolete.

U.S. Department of the Interior
Bureau of Ocean Energy Management

OMB Control No.: 1010-0006
Expiration Date: 1/31/2023

Cover Page

OUTER CONTINENTAL SHELF (OCS) MINERAL LESSEE'S OR OPERATOR'S SUPPLEMENTAL BOND

Form BOEM-2028A

This form dated January 2020 supersedes all previous versions of form BOEM-2028A

All Bond Forms must be submitted with a transmittal letter to the appropriate BOEM office:

Bureau of Ocean Energy Management
Gulf of Mexico OCS Office
1201 Elmwood Park Blvd. New Orleans LA 70123-2394
Leasing and Financial Responsibility - Mail Stop GM266A

Bureau of Ocean Energy Management
Alaska OCS Office
3801 Centerpoint Drive, Suite 500
Anchorage AK 99503-5820 Alaska Leasing Section

Bureau of Ocean Energy Management
Pacific OCS Office
760 Paseo Camarillo, Suite 102
Camarillo CA 93010
Lease Management

Paperwork Reduction Act of 1995 (PRA) Statement: The PRA (44 U.S.C. 3501 *et seq.*) requires us to inform you that BOEM collects this information to hold the surety liable for the obligations and liability of the Principal (lessee or operator). Responses are mandatory. No proprietary information is collected. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. Public reporting burden for this form is estimated to average 15 minutes per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Comments regarding the burden estimate or any other aspect of this form should be directed to the Information Collection Clearance Officer, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, VA 20166.

SOMPO INTERNATIONAL
INSURANCE

POWER OF ATTORNEY

11071

KNOW ALL BY THESE PRESENTS, that **Endurance Assurance Corporation**, a Delaware corporation, **Endurance American Insurance Company**, a Delaware corporation, **Lexon Insurance Company**, a Texas corporation, and/or **Bond Safeguard Insurance Company**, a South Dakota corporation, each, a "Company" and collectively, "**Sompo International**," do hereby constitute and appoint: **Edwin H. Frank, III, Michele K. Tyson, W. Russell Brown, Jr., Meredith K. Anderson, Stephen Michael Smith**

as true and lawful Attorney(s)-In-Fact to make, execute, seal, and deliver for, and on its behalf as surety or co-surety; bonds and undertakings given for any and all purposes, also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking so made, executed and delivered shall obligate the Company for any portion of the penal sum thereof in excess of the sum of **ONE HUNDRED MILLION Dollars ($100,000,000.00).**

Such bonds and undertakings for said purposes, when duly executed by said attorney(s)-in-fact, shall be binding upon the Company as fully and to the same extent as if signed by the President of the Company under its corporate seal attested by its Corporate Secretary.

This appointment is made under and by authority of certain resolutions adopted by the sole shareholder of each Company by unanimous written consent effective the 15th day of June, 2019, a copy of which appears below under the heading entitled "Certificate".

This Power of Attorney is signed and sealed by facsimile under and by authority of the following resolution adopted by the sole shareholder of each Company by unanimous written consent effective the 15th day of June, 2019 and said resolution has not since been revoked, amended or repealed:

RESOLVED, that the signature of an individual named above and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signature or seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, each Company has caused this instrument to be signed by the following officers, and its corporate seal to be affixed this 15th day of June, 2019.

Endurance Assurance Corporation	Endurance American Insurance Company	Lexon Insurance Company	Bond Safeguard Insurance Company
By: Richard Appel; SVP & Senior Counsel	By: Richard Appel; SVP & Senior Counsel	By: Richard Appel; SVP & Senior Counsel	By: Richard Appel; SVP & Senior Counsel

Endurance Assurance Corporation CORPORATE SEAL 2002 DELAWARE

Endurance American Insurance Company CORPORATE SEAL 1996 DELAWARE

LEXON INSURANCE COMPANY CORPORATE SEAL STATE OF TEXAS MARCH 10, 1994

BOND SAFEGUARD INSURANCE COMPANY A SOUTH DAKOTA INSURANCE COMPANY

ACKNOWLEDGEMENT

On this 15th day of June, 2019, before me, personally came the above signatories known to me, who being duly sworn, did depose and say that he/they is/are officer of each of the Companies; and that he executed said instrument on behalf of each Company by authority of his office under the by-laws of each Company.

By: Amy Taylor
Amy Taylor, Notary Public - My Commission Expires 5/9/23

AMY TAYLOR STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

CERTIFICATE

I, the undersigned Officer of each Company, DO HEREBY CERTIFY that:

1. That the original power of attorney of which the foregoing is a copy was duly executed on behalf of each Company and has not since been revoked, amended or modified; that the undersigned has compared the foregoing copy thereof with the original power of attorney, and that the same is a true and correct copy of the original power of attorney and of the whole thereof;
2. The following are resolutions which were adopted by the sole shareholder of each Company by unanimous written consent effective June 15, 2019 and said resolutions have not since been revoked, amended or modified:

   "RESOLVED, that each of the individuals named below is authorized to make, execute, seal and deliver for and on behalf of the Company any and all bonds, undertakings or obligations in surety or co-surety with others: RICHARD M. APPEL, BRIAN J. BEGGS, CHRISTOPHER DONELAN, SHARON L. SIMS, CHRISTOPHER L. SPARRO, MARIANNE L. WILBERT

   ; and be it further

   RESOLVED, that each of the individuals named above is authorized to appoint attorneys-in-fact for the purpose of making, executing, sealing and delivering bonds, undertakings or obligations in surety or co-surety for and on behalf of the Company."
3. The undersigned further certifies that the above resolutions are true and correct copies of the resolutions as so recorded and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal this 10th day of January, 2022.

By:
Daniel S. Lurie, Secretary

NOTICE: U. S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL (OFAC)

No coverage is provided by this Notice nor can it be construed to replace any provisions of any surety bond or other surety coverage provided. This Notice provides information concerning possible impact on your surety coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous foreign agents, front organizations, terrorists, terrorist organizations, and narcotics traffickers as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's website – https://www.treasury.gov/resource-center/sanctions/SDN-List.

In accordance with OFAC regulations, if it is determined that you or any other person or entity claiming the benefits of any coverage has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, any coverage will be considered a blocked or frozen contract and all provisions of any coverage provided are immediately subject to OFAC. When a surety bond or other form of surety coverage is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments may also apply.

Any reproductions are void.

Surety Claims Submission: LexonClaimAdministration@sompo-intl.com
Telephone: 615-553-9500 Mailing Address: Sompo International; 12890 Lebanon Road; Mount Juliet, TN 37122-2870

U.S. DEPARTMENT OF THE INTERIOR
Bureau of Ocean Energy Management

Bond No. ZEACX226000038 OCS Lease/RUE/ROW No. OCS-G 4832

Bond Type Supplemental Amount $ 1,482,000.00

OUTER CONTINENTAL SHELF (OCS) MINERAL LESSEE'S OR OPERATOR'S SUPPLEMENTAL BOND

The **Surety** is the entity Guaranteeing Performance.

Name of Surety: Endurance Assurance Corporation

Mailing Address: 12890 Lebanon Road

Mt. Juliet, TN 37122-2870

If a Corporation, Incorporated in the State of: Delaware ; County or Parish of: New Castle

☒ Check here if Surety is certified by U.S. Treasury as an acceptable surety on Federal Bonds and listed in the current U.S. Treasury Circular No. 570.

The **Principal** is the Lessee or Designated Operator for Whom the Bond is Issued.

Name of Principal: W & T Energy VI, LLC

Mailing Address: 5718 Westheimer Road, Suite 700, Houston, Texas 77057-5745

Schedule A, the lease/RUE/ROW covered by this bond, is composed of: (add legal description)

☐ Check here if additional information is on attached sheet.

The following lease/RUE/ROW: All of Block 108, Main Pass Area, as shown on OCS Louisiana Leasing Map, LA10.

In addition to the Obligations of the Principal during the period of liability of this bond, the Surety also accepts the following Obligations: (Check one)

☐ No Obligations other than the Obligations of the Principal during the period of liability of this bond.

☒ All Obligations of all previous Sureties or guarantors even if the Obligations are not Obligations of the Principal during the period of liability of this bond.

☐ All Obligations of all previous Sureties or guarantors even if the Obligations are not Obligations of the Principal during the period of liability of this bond with the following exceptions or limitations (use an attached rider).

Definitions For the purposes of this document:	A **Principal** includes an entity holding an interest in the oil & gas lease in one or more of the following ways: (1) as an approved record title owner of all or a portion of the lease, (2) as an approved operating rights owner of all or a portion of the lease, or (3) as a designated operator or designated agent in all or a portion of the lease. A **Lessee** includes an approved record title owner of all or a portion of the lease or an approved operating rights owner of all or a portion of the lease. An **Obligation** includes any obligation arising from any regulations of the Department of the Interior or any Instrument issued, maintained, or approved under the OCS Lands Act (43 U.S.C. 1331 et seq.). An **Instrument** includes individually or collectively any lease, operating agreement, designation of operator or agent, storage agreement, compensatory royalty agreement, transfer of operating rights, permit, license, or easement, whereunder the Principal has the right, privilege, or license to conduct operations on the OCS. A **Person** includes an individual, a public or private entity, a State, a political subdivision of a State, any association of individuals, corporations, States, or subdivisions of States, or a government agency.

By signing below, the Principal verifies that the information above is correct and agrees to the following:
The Principal as agent on behalf of all lessees, operating rights owners, and operators will fulfill all Obligations for the entire leasehold and to the same extent as though the Principal were the sole lessee for the lease/RUE/ROW in Schedule A.

By signing below, the Surety verifies that the information above is correct and agrees to the following:

1. The Surety does hereby absolutely and unconditionally bind itself to the United States of America acting through and by the Bureau of Ocean Energy Management (BOEM), or such other official designated by the Secretary of the Interior for this purpose, for the payment of all of the cost of the plugging and abandonment Obligations.
2. The Surety will be responsible for all Obligations of the Principal in existence at the time this document becomes effective and all Obligations that accrue after that date and until all Obligations are met or until the Regional Director terminates the period of liability of this bond.
3. If the Regional Director terminates the period of liability of this bond, the Surety will remain responsible for Obligations that accrued during the period of liability until the Regional Director issues a written cancellation of the bond in favor of the Surety.
4. If this bond is cancelled, the Regional Director may reinstate this bond as if no cancellation had occurred if any payment of any Obligation of the Principal(s) is rescinded or must be restored pursuant to any insolvency, bankruptcy, reorganization, or receivership, or should the representation of the Principal that it has paid its financial Obligations or performed the other

Obligations of the lease in accordance with BOEM specifications be materially false and BOEM relied upon such representation in canceling the instrument.

5. The Surety waives any right of notice of this bond taking effect and agrees that this bond will take effect upon delivery to BOEM.
6. The Surety's Obligations will remain in full force and effect, even if:
   (a) Any person assigns all or part of any interest in an Instrument covered by this document.
   (b) Any person modifies an Instrument or Obligation under an Instrument in any manner including modifications that result from a commitment to a unit, cooperative, communitization, or storage agreement; suspension of operations or production; suspension or changes in rental, minimum royalty, or royalties; modification of regulations or interpretations of regulations; creation or modification of compensatory royalty agreements or payments; or creation of any mortgage, pledge, or other grant of security interest in the Instruments.
   (c) Any person, event, or condition terminates any Instrument covered by this bond, whether the termination is by operation of law or otherwise.
   (d) BOEM takes or fails to take any action in enforcing, as against any party to the Instrument, the payment of rentals or royalties or the performance of any other covenant, condition or agreement of the lease, or giving notice of or making demand with respect to such nonperformance.
   (e) The Surety suffers any loss by reason of any law limiting, qualifying, or discharging the Principal's Obligation.
7. The Surety agrees to be bound under this bond as to the interests in any Instrument retained by the Principal when BOEM approves the transfer of any or all of the Instruments or interests in the Instruments.
8. In the event of any default under a lease, the Surety must provide payment of all of the cost of the Obligations of the Principal upon demand by BOEM.
9. If BOEM decides to commence suit to enforce its rights, it may commence and prosecute any claim, suit, action, or other proceeding against the Principal and Surety, or either of them, whether or not BOEM joins the lessees or any other party.
10. In the event there is more than one Surety for the Principal's performance of the Obligations, as to any Instrument, the Surety's Obligation and liability under this bond is on a "solidary" or "joint and several" basis along with other guarantors or sureties.
11. The Surety agrees to give prompt notice to BOEM and the Principal of any action filed alleging the insolvency or bankruptcy of the Surety or the Principal, or alleging any violation that would result in suspension or revocation of the Surety's charter or license to do business.
12. The Surety's Obligation and liabilities under this Bond are binding upon the Surety's successors and assigns. Nothing in this document permits assignment of the Surety's Obligation without the written consent of BOEM.
13. The Surety hereby waives any defenses to liability on this bond based on an unauthorized Principal signature.

Endurance Assurance Corporation	W & T Energy VI, LLC
Name of Surety	Name of Principal
Meredith K Anderson	
Signature of Person Executing for Surety	Signature of Person Executing for Principal
Meredith K. Anderson, Attorney-in-Fact	Janet Yang, Representative
Name and Title (typed or printed)	Name and Title (typed or printed)
12890 Lebanon Road	5718 Westheimer Road, Suite 700
Business Address	Business Address
Mt. Juliet, TN 37122-2870	Houston, Texas 77057-5745
Business Address	Business Address

Signed on this 10th day of January, 20 22, in the State of Texas, in the presence of:

Wendy Pierson	
Signature of Witness	Signature of Witness
Wendy Pierson	Todd Grabois
Name (typed or printed)	Name (typed or printed)
777 Post Oak Blvd., Ste. 330	5718 Westheimer Rd. Ste 700
Address	Address
Houston, Texas 77056	Houston, TX 77057
Address	Address

Note: The person executing for the Surety must attach a corporate resolution and power of attorney stating his or her authority to undertake this Obligation, pursuant to the acts of the corporate board of directors and the laws of the State of incorporation. The corporation executing this bond as Surety and the Principal, if a corporation, must affix their corporate seals.

BOEM-2028A (January 2020)
Previous Editions are Obsolete.

U.S. Department of the Interior
Bureau of Ocean Energy Management

OMB Control No.: 1010-0006
Expiration Date: 1/31/2023

Cover Page

OUTER CONTINENTAL SHELF (OCS) MINERAL LESSEE'S OR OPERATOR'S SUPPLEMENTAL BOND

Form BOEM-2028A

This form dated January 2020 supersedes all previous versions of form BOEM-2028A

All Bond Forms must be submitted with a transmittal letter to the appropriate BOEM office:

Bureau of Ocean Energy Management
Gulf of Mexico OCS Office
1201 Elmwood Park Blvd. New Orleans LA 70123-2394
Leasing and Financial Responsibility - Mail Stop GM266A

Bureau of Ocean Energy Management
Alaska OCS Office
3801 Centerpoint Drive, Suite 500
Anchorage AK 99503-5820 Alaska Leasing Section

Bureau of Ocean Energy Management
Pacific OCS Office
760 Paseo Camarillo, Suite 102
Camarillo CA 93010
Lease Management

Paperwork Reduction Act of 1995 (PRA) Statement: The PRA (44 U.S.C. 3501 *et seq.*) requires us to inform you that BOEM collects this information to hold the surety liable for the obligations and liability of the Principal (lessee or operator). Responses are mandatory. No proprietary information is collected. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. Public reporting burden for this form is estimated to average 15 minutes per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Comments regarding the burden estimate or any other aspect of this form should be directed to the Information Collection Clearance Officer, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, VA 20166.

SOMPO INTERNATIONAL
INSURANCE

POWER OF ATTORNEY

11071

KNOW ALL BY THESE PRESENTS, that **Endurance Assurance Corporation**, a Delaware corporation, **Endurance American Insurance Company**, a Delaware corporation, **Lexon Insurance Company**, a Texas corporation, and/or **Bond Safeguard Insurance Company**, a South Dakota corporation, each, a "Company" and collectively, "**Sompo International**," do hereby constitute and appoint: **Edwin H. Frank, III, Michele K. Tyson, W. Russell Brown, Jr., Meredith K. Anderson, Stephen Michael Smith**

as true and lawful Attorney(s)-In-Fact to make, execute, seal, and deliver for, and on its behalf as surety or co-surety; bonds and undertakings given for any and all purposes, also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking so made, executed and delivered shall obligate the Company for any portion of the penal sum thereof in excess of the sum of **ONE HUNDRED MILLION Dollars ($100,000,000.00).**

Such bonds and undertakings for said purposes, when duly executed by said attorney(s)-in-fact, shall be binding upon the Company as fully and to the same extent as if signed by the President of the Company under its corporate seal attested by its Corporate Secretary.

This appointment is made under and by authority of certain resolutions adopted by the sole shareholder of each Company by unanimous written consent effective the 15th day of June, 2019, a copy of which appears below under the heading entitled "Certificate".

This Power of Attorney is signed and sealed by facsimile under and by authority of the following resolution adopted by the sole shareholder of each Company by unanimous written consent effective the 15th day of June, 2019 and said resolution has not since been revoked, amended or repealed:

RESOLVED, that the signature of an individual named above and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signature or seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, each Company has caused this instrument to be signed by the following officers, and its corporate seal to be affixed this 15th day of June, 2019.

Endurance Assurance Corporation
By: Richard Appel; SVP & Senior Counsel

Endurance American Insurance Company
By: Richard Appel; SVP & Senior Counsel

Lexon Insurance Company
By: Richard Appel; SVP & Senior Counsel

Bond Safeguard Insurance Company
By: Richard Appel; SVP & Senior Counsel

ACKNOWLEDGEMENT

On this 15th day of June, 2019, before me, personally came the above signatories known to me, who being duly sworn, did depose and say that he/they is/are officer of each of the Companies; and that he executed said instrument on behalf of each Company by authority of his office under the by-laws of each Company.

By: Amy Taylor, Notary Public – My Commission Expires 5/9/23

CERTIFICATE

I, the undersigned Officer of each Company, DO HEREBY CERTIFY that:

1. That the original power of attorney of which the foregoing is a copy was duly executed on behalf of each Company and has not since been revoked, amended or modified; that the undersigned has compared the foregoing copy thereof with the original power of attorney, and that the same is a true and correct copy of the original power of attorney and of the whole thereof;
2. The following are resolutions which were adopted by the sole shareholder of each Company by unanimous written consent effective June 15, 2019 and said resolutions have not since been revoked, amended or modified:

   "RESOLVED, that each of the individuals named below is authorized to make, execute, seal and deliver for and on behalf of the Company any and all bonds, undertakings or obligations in surety or co-surety with others: RICHARD M. APPEL, BRIAN J. BEGGS, CHRISTOPHER DONELAN, SHARON L. SIMS, CHRISTOPHER L. SPARRO, MARIANNE L. WILBERT

   ; and be it further

   RESOLVED, that each of the individuals named above is authorized to appoint attorneys-in-fact for the purpose of making, executing, sealing and delivering bonds, undertakings or obligations in surety or co-surety for and on behalf of the Company."
3. The undersigned further certifies that the above resolutions are true and correct copies of the resolutions as so recorded and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal this 10th day of January, 2022.

By: Daniel S. Lurie, Secretary

NOTICE: U. S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL (OFAC)

No coverage is provided by this Notice nor can it be construed to replace any provisions of any surety bond or other surety coverage provided. This Notice provides information concerning possible impact on your surety coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous foreign agents, front organizations, terrorists, terrorist organizations, and narcotics traffickers as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's website – https://www.treasury.gov/resource-center/sanctions/SDN-List.

In accordance with OFAC regulations, if it is determined that you or any other person or entity claiming the benefits of any coverage has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, any coverage will be considered a blocked or frozen contract and all provisions of any coverage provided are immediately subject to OFAC. When a surety bond or other form of surety coverage is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments may also apply.

Any reproductions are void.
Surety Claims Submission: LexonClaimAdministration@sompo-intl.com
Telephone: 615-553-9500 Mailing Address: Sompo International; 12890 Lebanon Road; Mount Juliet, TN 37122-2870

U.S. DEPARTMENT OF THE INTERIOR
Bureau of Ocean Energy Management

Bond No. EACX226000025 OCS Lease/RUE/ROW No. OCS-G 10942

Bond Type Supplemental Amount $ 3,000,000.00

OUTER CONTINENTAL SHELF (OCS) MINERAL LESSEE'S OR OPERATOR'S SUPPLEMENTAL BOND

The **Surety** is the entity Guaranteeing Performance.

Name of Surety: Endurance Assurance Corporation

Mailing Address: 12890 Lebanon Road
Mt. Juliet, Tennessee 37122-2870

If a Corporation, Incorporated in the State of: Delaware ; County or Parish of: New Castle

☒ Check here if Surety is certified by U.S. Treasury as an acceptable surety on Federal Bonds and listed in the current U.S. Treasury Circular No. 570.

The **Principal** is the Lessee or Designated Operator for Whom the Bond is Issued.

Name of Principal: W & T Energy VI, LLC

Mailing Address: Nine Greenway Plaza, Suite 300, Houston, Texas 77046

Schedule A, the lease/RUE/ROW covered by this bond, is composed of: (add legal description)

☒ Check here if additional information is on attached sheet.

The following lease/RUE/ROW: All of Block 823 Viosca Knoll, as shown on OCS Official Protraction Diagram NH16-7.

In addition to the Obligations of the Principal during the period of liability of this bond, the Surety also accepts the following Obligations: (Check one)

☐ No Obligations other than the Obligations of the Principal during the period of liability of this bond.

☒ All Obligations of all previous Sureties or guarantors even if the Obligations are not Obligations of the Principal during the period of liability of this bond.

☐ All Obligations of all previous Sureties or guarantors even if the Obligations are not Obligations of the Principal during the period of liability of this bond with the following exceptions or limitations (use an attached rider).

Definitions For the purposes of this document:	A **Principal** includes an entity holding an interest in the oil & gas lease in one or more of the following ways: (1) as an approved record title owner of all or a portion of the lease, (2) as an approved operating rights owner of all or a portion of the lease, or (3) as a designated operator or designated agent in all or a portion of the lease. A **Lessee** includes an approved record title owner of all or a portion of the lease or an approved operating rights owner of all or a portion of the lease. An **Obligation** includes any obligation arising from any regulations of the Department of the Interior or any Instrument issued, maintained, or approved under the OCS Lands Act (43 U.S.C. 1331 et seq.). An **Instrument** includes individually or collectively any lease, operating agreement, designation of operator or agent, storage agreement, compensatory royalty agreement, transfer of operating rights, permit, license, or easement, whereunder the Principal has the right, privilege, or license to conduct operations on the OCS. A **Person** includes an individual, a public or private entity, a State, a political subdivision of a State, any association of individuals, corporations, States, or subdivisions of States, or a government agency.

By signing below, the Principal verifies that the information above is correct and agrees to the following:
The Principal as agent on behalf of all lessees, operating rights owners, and operators will fulfill all Obligations for the entire leasehold and to the same extent as though the Principal were the sole lessee for the lease/RUE/ROW in Schedule A.

By signing below, the Surety verifies that the information above is correct and agrees to the following:

1. The Surety does hereby absolutely and unconditionally bind itself to the United States of America acting through and by the Bureau of Ocean Energy Management (BOEM), or such other official designated by the Secretary of the Interior for this purpose, for the payment of all of the cost of the plugging and abandonment Obligations.
2. The Surety will be responsible for all Obligations of the Principal in existence at the time this document becomes effective and all Obligations that accrue after that date and until all Obligations are met or until the Regional Director terminates the period of liability of this bond.
3. If the Regional Director terminates the period of liability of this bond, the Surety will remain responsible for Obligations that accrued during the period of liability until the Regional Director issues a written cancellation of the bond in favor of the Surety.
4. If this bond is cancelled, the Regional Director may reinstate this bond as if no cancellation had occurred if any payment of any Obligation of the Principal(s) is rescinded or must be restored pursuant to any insolvency, bankruptcy, reorganization, or receivership, or should the representation of the Principal that it has paid its financial Obligations or performed the other

Obligations of the lease in accordance with BOEM specifications be materially false and BOEM relied upon such representation in canceling the instrument.

5. The Surety waives any right of notice of this bond taking effect and agrees that this bond will take effect upon delivery to BOEM.
6. The Surety's Obligations will remain in full force and effect, even if:
   (a) Any person assigns all or part of any interest in an Instrument covered by this document.
   (b) Any person modifies an Instrument or Obligation under an Instrument in any manner including modifications that result from a commitment to a unit, cooperative, communitization, or storage agreement; suspension of operations or production; suspension or changes in rental, minimum royalty, or royalties; modification of regulations or interpretations of regulations; creation or modification of compensatory royalty agreements or payments; or creation of any mortgage, pledge, or other grant of security interest in the Instruments.
   (c) Any person, event, or condition terminates any Instrument covered by this bond, whether the termination is by operation of law or otherwise.
   (d) BOEM takes or fails to take any action in enforcing, as against any party to the Instrument, the payment of rentals or royalties or the performance of any other covenant, condition or agreement of the lease, or giving notice of or making demand with respect to such nonperformance.
   (e) The Surety suffers any loss by reason of any law limiting, qualifying, or discharging the Principal's Obligation.
7. The Surety agrees to be bound under this bond as to the interests in any Instrument retained by the Principal when BOEM approves the transfer of any or all of the Instruments or interests in the Instruments.
8. In the event of any default under a lease, the Surety must provide payment of all of the cost of the Obligations of the Principal upon demand by BOEM.
9. If BOEM decides to commence suit to enforce its rights, it may commence and prosecute any claim, suit, action, or other proceeding against the Principal and Surety, or either of them, whether or not BOEM joins the lessees or any other party.
10. In the event there is more than one Surety for the Principal's performance of the Obligations, as to any Instrument, the Surety's Obligation and liability under this bond is on a "solidary" or "joint and several" basis along with other guarantors or sureties.
11. The Surety agrees to give prompt notice to BOEM and the Principal of any action filed alleging the insolvency or bankruptcy of the Surety or the Principal, or alleging any violation that would result in suspension or revocation of the Surety's charter or license to do business.
12. The Surety's Obligation and liabilities under this Bond are binding upon the Surety's successors and assigns. Nothing in this document permits assignment of the Surety's Obligation without the written consent of BOEM.
13. The Surety hereby waives any defenses to liability on this bond based on an unauthorized Principal signature.

Endurance Assurance Corporation	W & T Energy VI, LLC
Name of Surety	Name of Principal
Michelle K. Tyson	
Signature of Person Executing for Surety	Signature of Person Executing for Principal
Michele K. Tyson, Attorney-in-Fact	Shahid Ghauri, Representative
Name and Title (typed or printed)	Name and Title (typed or printed)
12890 Lebanon Road	Nine Greenway Plaza, Suite 300
Business Address	Business Address
Mt. Juliet, Tennessee 37122-2870	Houston, Texas 77046
Business Address	Business Address

Signed on this 5th day of November, 20 20, in the State of Texas, in the presence of:

Signature of Witness	Signature of Witness
Senia Hernandez	Todd Grabois
Name (typed or printed)	Name (typed or printed)
777 Post Oak Boulevard, Suite 330	9 Greenway Plaza, Ste. 300
Address	Address
Houston, Texas 77056	Houston, Tx 77046
Address	Address

Note: The person executing for the Surety must attach a corporate resolution and power of attorney stating his or her authority to undertake this Obligation, pursuant to the acts of the corporate board of directors and the laws of the State of incorporation. The corporation executing this bond as Surety and the Principal, if a corporation, must affix their corporate seals.

BOEM-2028A (January 2020)
Previous Editions are Obsolete.

U.S. Department of the Interior
Bureau of Ocean Energy Management

OMB Control No.: 1010-0006
Expiration Date: 1/31/2023

Cover Page

OUTER CONTINENTAL SHELF (OCS) MINERAL LESSEE'S OR OPERATOR'S SUPPLEMENTAL BOND

Form BOEM-2028A

This form dated January 2020 supersedes all previous versions of form BOEM-2028A

All Bond Forms must be submitted with a transmittal letter to the appropriate BOEM office:

Bureau of Ocean Energy Management
Gulf of Mexico OCS Office
1201 Elmwood Park Blvd. New Orleans LA 70123-2394
Leasing and Financial Responsibility - Mail Stop GM266A

Bureau of Ocean Energy Management
Alaska OCS Office
3801 Centerpoint Drive, Suite 500
Anchorage AK 99503-5820 Alaska Leasing Section

Bureau of Ocean Energy Management
Pacific OCS Office
760 Paseo Camarillo, Suite 102
Camarillo CA 93010
Lease Management

Paperwork Reduction Act of 1995 (PRA) Statement: The PRA (44 U.S.C. 3501 *et seq.*) requires us to inform you that BOEM collects this information to hold the surety liable for the obligations and liability of the Principal (lessee or operator). Responses are mandatory. No proprietary information is collected. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. Public reporting burden for this form is estimated to average 15 minutes per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Comments regarding the burden estimate or any other aspect of this form should be directed to the Information Collection Clearance Officer, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, VA 20166.

SOMPO INTERNATIONAL
INSURANCE

POWER OF ATTORNEY

11071

KNOW ALL BY THESE PRESENTS, that **Endurance Assurance Corporation**, a Delaware corporation, **Endurance American Insurance Company**, a Delaware corporation, **Lexon Insurance Company**, a Texas corporation, and/or **Bond Safeguard Insurance Company**, a South Dakota corporation, each, a "Company" and collectively, "**Sompo International**," do hereby constitute and appoint: **Edwin H. Frank, III, Michele K. Tyson, W. Russell Brown, Jr., Meredith K. Anderson, Stephen Michael Smith**

as true and lawful Attorney(s)-In-Fact to make, execute, seal, and deliver for, and on its behalf as surety or co-surety, bonds and undertakings given for any and all purposes. also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking so made, executed and delivered shall obligate the Company for any portion of the penal sum thereof in excess of the sum of **ONE HUNDRED MILLION Dollars ($100,000,000.00).**

Such bonds and undertakings for said purposes, when duly executed by said attorney(s)-in-fact, shall be binding upon the Company as fully and to the same extent as if signed by the President of the Company under its corporate seal attested by its Corporate Secretary.

This appointment is made under and by authority of certain resolutions adopted by the sole shareholder of each Company by unanimous written consent effective the 15th day of June, 2019, a copy of which appears below under the heading entitled "Certificate".

This Power of Attorney is signed and sealed by facsimile under and by authority of the following resolution adopted by the sole shareholder of each Company by unanimous written consent effective the 15th day of June, 2019 and said resolution has not since been revoked, amended or repealed:

RESOLVED, that the signature of an individual named above and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signature or seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, each Company has caused this instrument to be signed by the following officers, and its corporate seal to be affixed this 15th day of June, 2019.

Endurance Assurance Corporation
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

Endurance American Insurance Company
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

Lexon Insurance Company
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

Bond Safeguard Insurance Company
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

ACKNOWLEDGEMENT

On this 15th day of June, 2019, before me, personally came the above signatories known to me, who being duly sworn, did depose and say that he/they is/are officer of each of the Companies; and that he executed said instrument on behalf of each Company by authority of his office under the by-laws of each Company.

By: Amy Taylor
Amy Taylor, Notary Public - My Commission Expires 5/9/23

CERTIFICATE

I, the undersigned Officer of each Company, DO HEREBY CERTIFY that:

1. That the original power of attorney of which the foregoing is a copy was duly executed on behalf of each Company and has not since been revoked, amended or modified, that the undersigned has compared the foregoing copy thereof with the original power of attorney, and that the same is a true and correct copy of the original power of attorney and of the whole thereof;
2. The following are resolutions which were adopted by the sole shareholder of each Company by unanimous written consent effective June 15, 2019 and said resolutions have not since been revoked, amended or modified:

   "RESOLVED, that each of the individuals named below is authorized to make, execute, seal and deliver for and on behalf of the Company any and all bonds undertakings or obligations in surety or co-surety with others: RICHARD M. APPEL, BRIAN J. BEGGS, CHRISTOPHER DONELAN, SHARON L. SIMS, CHRISTOPHER L. SPARRO, MARIANNE L. WILBERT

   ; and be it further

   RESOLVED, that each of the individuals named above is authorized to appoint attorneys-in-fact for the purpose of making, executing, sealing and delivering bonds, undertakings or obligations in surety or co-surety for and on behalf of the Company."
3. The undersigned further certifies that the above resolutions are true and correct copies of the resolutions as so recorded and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal this 5th day of November, 2020

By:
Daniel S. Lunie, Secretary

NOTICE: U. S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL (OFAC)

No coverage is provided by this Notice nor can it be construed to replace any provisions of any surety bond or other surety coverage provided. This Notice provides information concerning possible impact on your surety coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous foreign agents, front organizations, terrorists, terrorist organizations, and narcotics traffickers as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's website – https://www.treasury.gov/resource-center/sanctions/SDN-List.

In accordance with OFAC regulations, if it is determined that you or any other person or entity claiming the benefits of any coverage has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, any coverage will be considered a blocked or frozen contract and all provisions of any coverage provided are immediately subject to OFAC. When a surety bond or other form of surety coverage is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments may also apply.

Any reproductions are void.

Surety Claims Submission: LexonClaimAdministration@sompo-intl.com
Telephone: 615-553-9500 Mailing Address: Sompo International; 12890 Lebanon Road; Mount Juliet, TN 37122-2870

U.S. DEPARTMENT OF THE INTERIOR
Bureau of Ocean Energy Management

Bond No. EACX226000047 OCS Lease/RUE/ROW No. OCS-G 10942

Bond Type Supplemental Amount $ 2,285,584.00

OUTER CONTINENTAL SHELF (OCS) MINERAL LESSEE'S OR OPERATOR'S SUPPLEMENTAL BOND

The **Surety** is the entity Guaranteeing Performance.

Name of Surety: Endurance Assurance Corporation

Mailing Address: 12890 Lebanon Road

Mt. Juliet, TN 37122-2870

If a Corporation, Incorporated in the State of: Delaware ; County or Parish of: New Castle

☒ Check here if Surety is certified by U.S. Treasury as an acceptable surety on Federal Bonds and listed in the current U.S. Treasury Circular No. 570.

The **Principal** is the Lessee or Designated Operator for Whom the Bond is Issued.

Name of Principal: W & T Energy VI, LLC

Mailing Address: 5718 Westheimer Road, Suite 700, Houston, Texas 77057-5745

Schedule A, the lease/RUE/ROW covered by this bond, is composed of: (add legal description)

☐ Check here if additional information is on attached sheet.

The following lease/RUE/ROW: All of Block 823, Viosca Knoll, as shown on OCS Official Protraction Diagram, NH16-07.

In addition to the Obligations of the Principal during the period of liability of this bond, the Surety also accepts the following Obligations: (Check one)

☒ No Obligations other than the Obligations of the Principal during the period of liability of this bond.

☐ All Obligations of all previous Sureties or guarantors even if the Obligations are not Obligations of the Principal during the period of liability of this bond.

☐ All Obligations of all previous Sureties or guarantors even if the Obligations are not Obligations of the Principal during the period of liability of this bond with the following exceptions or limitations (use an attached rider).

Definitions For the purposes of this document:	A **Principal** includes an entity holding an interest in the oil & gas lease in one or more of the following ways: (1) as an approved record title owner of all or a portion of the lease, (2) as an approved operating rights owner of all or a portion of the lease, or (3) as a designated operator or designated agent in all or a portion of the lease. A **Lessee** includes an approved record title owner of all or a portion of the lease or an approved operating rights owner of all or a portion of the lease. An **Obligation** includes any obligation arising from any regulations of the Department of the Interior or any Instrument issued, maintained, or approved under the OCS Lands Act (43 U.S.C. 1331 et seq.). An **Instrument** includes individually or collectively any lease, operating agreement, designation of operator or agent, storage agreement, compensatory royalty agreement, transfer of operating rights, permit, license, or easement, whereunder the Principal has the right, privilege, or license to conduct operations on the OCS. A **Person** includes an individual, a public or private entity, a State, a political subdivision of a State, any association of individuals, corporations, States, or subdivisions of States, or a government agency.

By signing below, the Principal verifies that the information above is correct and agrees to the following:

The Principal as agent on behalf of all lessees, operating rights owners, and operators will fulfill all Obligations for the entire leasehold and to the same extent as though the Principal were the sole lessee for the lease/RUE/ROW in Schedule A.

By signing below, the Surety verifies that the information above is correct and agrees to the following:

1. The Surety does hereby absolutely and unconditionally bind itself to the United States of America acting through and by the Bureau of Ocean Energy Management (BOEM), or such other official designated by the Secretary of the Interior for this purpose, for the payment of all of the cost of the plugging and abandonment Obligations.
2. The Surety will be responsible for all Obligations of the Principal in existence at the time this document becomes effective and all Obligations that accrue after that date and until all Obligations are met or until the Regional Director terminates the period of liability of this bond.
3. If the Regional Director terminates the period of liability of this bond, the Surety will remain responsible for Obligations that accrued during the period of liability until the Regional Director issues a written cancellation of the bond in favor of the Surety.
4. If this bond is cancelled, the Regional Director may reinstate this bond as if no cancellation had occurred if any payment of any Obligation of the Principal(s) is rescinded or must be restored pursuant to any insolvency, bankruptcy, reorganization, or receivership, or should the representation of the Principal that it has paid its financial Obligations or performed the other

Obligations of the lease in accordance with BOEM specifications be materially false and BOEM relied upon such representation in canceling the instrument.

5. The Surety waives any right of notice of this bond taking effect and agrees that this bond will take effect upon delivery to BOEM.
6. The Surety's Obligations will remain in full force and effect, even if:
   (a) Any person assigns all or part of any interest in an Instrument covered by this document.
   (b) Any person modifies an Instrument or Obligation under an Instrument in any manner including modifications that result from a commitment to a unit, cooperative, communitization, or storage agreement; suspension of operations or production; suspension or changes in rental, minimum royalty, or royalties; modification of regulations or interpretations of regulations; creation or modification of compensatory royalty agreements or payments; or creation of any mortgage, pledge, or other grant of security interest in the Instruments.
   (c) Any person, event, or condition terminates any Instrument covered by this bond, whether the termination is by operation of law or otherwise.
   (d) BOEM takes or fails to take any action in enforcing, as against any party to the Instrument, the payment of rentals or royalties or the performance of any other covenant, condition or agreement of the lease, or giving notice of or making demand with respect to such nonperformance.
   (e) The Surety suffers any loss by reason of any law limiting, qualifying, or discharging the Principal's Obligation.
7. The Surety agrees to be bound under this bond as to the interests in any Instrument retained by the Principal when BOEM approves the transfer of any or all of the Instruments or interests in the Instruments.
8. In the event of any default under a lease, the Surety must provide payment of all of the cost of the Obligations of the Principal upon demand by BOEM.
9. If BOEM decides to commence suit to enforce its rights, it may commence and prosecute any claim, suit, action, or other proceeding against the Principal and Surety, or either of them, whether or not BOEM joins the lessees or any other party.
10. In the event there is more than one Surety for the Principal's performance of the Obligations, as to any Instrument, the Surety's Obligation and liability under this bond is on a "solidary" or "joint and several" basis along with other guarantors or sureties.
11. The Surety agrees to give prompt notice to BOEM and the Principal of any action filed alleging the insolvency or bankruptcy of the Surety or the Principal, or alleging any violation that would result in suspension or revocation of the Surety's charter or license to do business.
12. The Surety's Obligation and liabilities under this Bond are binding upon the Surety's successors and assigns. Nothing in this document permits assignment of the Surety's Obligation without the written consent of BOEM.
13. The Surety hereby waives any defenses to liability on this bond based on an unauthorized Principal signature.

Endurance Assurance Corporation	WET Energy VI, LLC
Name of Surety	Name of Principal
Meredith K Anderson	
Signature of Person Executing for Surety	Signature of Person Executing for Principal
Meredith K. Anderson, Attorney-in-Fact	William J. Willford, Representative
Name and Title (typed or printed)	Name and Title (typed or printed)
12890 Lebanon Road	5718 Westheimer Rd., Ste. 700
Business Address	Business Address
Mt. Juliet, TN 37122-2870	Houston, Tx 77057
Business Address	Business Address

Signed on this 7th day of June, 2023, in the State of Texas, in the presence of:

Wendy Pierson	
Signature of Witness	Signature of Witness
Wendy Pierson	Todd Brabois
Name (typed or printed)	Name (typed or printed)
777 Post Oak Boulevard, Suite 330	5718 Westheimer Rd, Ste. 700
Address	Address
Houston, Texas 77056	Houston Tx 77057
Address	Address

Note: The person executing for the Surety must attach a corporate resolution and power of attorney stating his or her authority to undertake this Obligation, pursuant to the acts of the corporate board of directors and the laws of the State of incorporation. The corporation executing this bond as Surety and the Principal, if a corporation, must affix their corporate seals.

BOEM-2028A (March 2023)
Previous Editions are Obsolete.

U.S. Department of the Interior
Bureau of Ocean Energy Management

OMB Control No.: 1010-0006
Expiration Date: 03/31/2026

Cover Page

OUTER CONTINENTAL SHELF (OCS) MINERAL LESSEE'S OR OPERATOR'S SUPPLEMENTAL BOND

Form BOEM-2028A

This form dated March 2023 supersedes all previous versions of form BOEM-2028A

All Bond Forms must be submitted with a transmittal letter to the appropriate BOEM office:

Bureau of Ocean Energy Management
Gulf of Mexico OCS Office
1201 Elmwood Park Blvd. New Orleans LA 70123-2394
Leasing and Financial Responsibility - Mail Stop GM266A

Bureau of Ocean Energy Management
Alaska OCS Office
3801 Centerpoint Drive, Suite 500
Anchorage AK 99503-5820 Alaska Leasing Section

Bureau of Ocean Energy Management
Pacific OCS Office
760 Paseo Camarillo, Suite 102
Camarillo CA 93010
Lease Management

Paperwork Reduction Act of 1995 (PRA) Statement: The PRA (44 U.S.C. 3501 *et seq.*) requires us to inform you that BOEM collects this information to hold the surety liable for the obligations and liability of the Principal (lessee or operator). Responses are mandatory. No proprietary information is collected. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. Public reporting burden for this form is estimated to average 15 minutes per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Comments regarding the burden estimate or any other aspect of this form should be directed to the Information Collection Clearance Officer, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, VA 20166.

SOMPO INTERNATIONAL
INSURANCE

POWER OF ATTORNEY

11071

KNOW ALL BY THESE PRESENTS, that **Endurance Assurance Corporation**, a Delaware corporation, **Endurance American Insurance Company**, a Delaware corporation, **Lexon Insurance Company**, a Texas corporation, and/or **Bond Safeguard Insurance Company**, a South Dakota corporation, each, a "Company" and collectively, "**Sompo International**," do hereby constitute and appoint: **Edwin H. Frank, III, Michele K. Tyson, W. Russell Brown, Jr., Meredith K. Anderson, Stephen Michael Smith**

as true and lawful Attorney(s)-In-Fact to make, execute, seal, and deliver for, and on its behalf as surety or co-surety; bonds and undertakings given for any and all purposes, also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking so made, executed and delivered shall obligate the Company for any portion of the penal sum thereof in excess of the sum of **ONE HUNDRED MILLION Dollars ($100,000,000.00).**

Such bonds and undertakings for said purposes, when duly executed by said attorney(s)-in-fact, shall be binding upon the Company as fully and to the same extent as if signed by the President of the Company under its corporate seal attested by its Corporate Secretary.

This appointment is made under and by authority of certain resolutions adopted by the sole shareholder of each Company by unanimous written consent effective the 15th day of June, 2019, a copy of which appears below under the heading entitled "Certificate".

This Power of Attorney is signed and sealed by facsimile under and by authority of the following resolution adopted by the sole shareholder of each Company by unanimous written consent effective the 15th day of June, 2019 and said resolution has not since been revoked, amended or repealed:

RESOLVED, that the signature of an individual named above and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signature or seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, each Company has caused this instrument to be signed by the following officers, and its corporate seal to be affixed this 15th day of June, 2019.

Endurance Assurance Corporation
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

Endurance American Insurance Company
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

Lexon Insurance Company
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

Bond Safeguard Insurance Company
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

ACKNOWLEDGEMENT

On this 15th day of June, 2019, before me, personally came the above signatories known to me, who being duly sworn, did depose and say that he/they is an officer of each of the Companies; and that he executed said instrument on behalf of each Company by authority of his office under the by-laws of each Company.

By: Amy Taylor
Amy Taylor, Notary Public - My Commission Expires 5/9/23

CERTIFICATE

I, the undersigned Officer of each Company, DO HEREBY CERTIFY that:

1. That the original power of attorney of which the foregoing is a copy was duly executed on behalf of each Company and has not since been revoked, amended or modified; that the undersigned has compared the foregoing copy thereof with the original power of attorney, and that the same is a true and correct copy of the original power of attorney and of the whole thereof;
2. The following are resolutions which were adopted by the sole shareholder of each Company by unanimous written consent effective June 15, 2019 and said resolutions have not since been revoked, amended or modified:

   "RESOLVED, that each of the individuals named below is authorized to make, execute, seal and deliver for and on behalf of the Company any and all bonds, undertakings or obligations in surety or co-surety with others: RICHARD M. APPEL, BRIAN J. BEGGS, CHRISTOPHER DONELAN, SHARON L. SIMS, CHRISTOPHER L. SPARRO, MARIANNE L. WILBERT

   ; and be it further

   RESOLVED, that each of the individuals named above is authorized to appoint attorneys-in-fact for the purpose of making, executing, sealing and delivering bonds, undertakings or obligations in surety or co-surety for and on behalf of the Company."
3. The undersigned further certifies that the above resolutions are true and correct copies of the resolutions as so recorded and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal this 7th day of June, 2023.

By:
Daniel S. Lurie, Secretary

NOTICE: U. S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL (OFAC)

No coverage is provided by this Notice nor can it be construed to replace any provisions of any surety bond or other surety coverage provided. This Notice provides information concerning possible impact on your surety coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous foreign agents, front organizations, terrorists, terrorist organizations, and narcotics traffickers as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's website – https://www.treasury.gov/resource-center/sanctions/SDN-List.

In accordance with OFAC regulations, if it is determined that you or any other person or entity claiming the benefits of any coverage has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, any coverage will be considered a blocked or frozen contract and all provisions of any coverage provided are immediately subject to OFAC. When a surety bond or other form of surety coverage is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments may also apply.

Any reproductions are void.
Surety Claims Submission: LexonClaimAdministration@sompo-intl.com
Telephone: 615-553-9500 Mailing Address: Sompo International; 12890 Lebanon Road; Mount Juliet, TN 37122-2870

U.S. DEPARTMENT OF THE INTERIOR
Bureau of Ocean Energy Management

Bond No. EACX226000044 OCS Lease/RUE/ROW No. OCS-G 10942

Bond Type Supplemental Amount $ 3,000,000.00

OUTER CONTINENTAL SHELF (OCS) MINERAL LESSEE'S OR OPERATOR'S SUPPLEMENTAL BOND

The **Surety** is the entity Guaranteeing Performance.

Name of Surety: Endurance Assurance Corporation

Mailing Address: 12890 Lebanon Road
Mt. Juliet, TN 37122-2870

If a Corporation, Incorporated in the State of: Delaware ; County or Parish of: New Castle

☒ Check here if Surety is certified by U.S. Treasury as an acceptable surety on Federal Bonds and listed in the current U.S. Treasury Circular No. 570.

The **Principal** is the Lessee or Designated Operator for Whom the Bond is Issued.

Name of Principal: W & T Energy VI, LLC

Mailing Address: 5718 Westheimer Road, Suite 700, Houston, Texas 77057-5745

Schedule A, the lease/RUE/ROW covered by this bond, is composed of: (add legal description)

☐ Check here if additional information is on attached sheet.

The following lease/RUE/ROW: All of Block 823, Viosca Knoll, as shown on OCS Official Protraction Diagram, NH16-07.

In addition to the Obligations of the Principal during the period of liability of this bond, the Surety also accepts the following Obligations: (Check one)

☒ No Obligations other than the Obligations of the Principal during the period of liability of this bond.

☐ All Obligations of all previous Sureties or guarantors even if the Obligations are not Obligations of the Principal during the period of liability of this bond.

☐ All Obligations of all previous Sureties or guarantors even if the Obligations are not Obligations of the Principal during the period of liability of this bond with the following exceptions or limitations (use an attached rider).

Definitions For the purposes of this document:	A **Principal** includes an entity holding an interest in the oil & gas lease in one or more of the following ways: (1) as an approved record title owner of all or a portion of the lease, (2) as an approved operating rights owner of all or a portion of the lease, or (3) as a designated operator or designated agent in all or a portion of the lease. A **Lessee** includes an approved record title owner of all or a portion of the lease or an approved operating rights owner of all or a portion of the lease. An **Obligation** includes any obligation arising from any regulations of the Department of the Interior or any Instrument issued, maintained, or approved under the OCS Lands Act (43 U.S.C. 1331 et seq.). An **Instrument** includes individually or collectively any lease, operating agreement, designation of operator or agent, storage agreement, compensatory royalty agreement, transfer of operating rights, permit, license, or easement, whereunder the Principal has the right, privilege, or license to conduct operations on the OCS. A **Person** includes an individual, a public or private entity, a State, a political subdivision of a State, any association of individuals, corporations, States, or subdivisions of States, or a government agency.

By signing below, the Principal verifies that the information above is correct and agrees to the following:

The Principal as agent on behalf of all lessees, operating rights owners, and operators will fulfill all Obligations for the entire leasehold and to the same extent as though the Principal were the sole lessee for the lease/RUE/ROW in Schedule A.

By signing below, the Surety verifies that the information above is correct and agrees to the following:

1. The Surety does hereby absolutely and unconditionally bind itself to the United States of America acting through and by the Bureau of Ocean Energy Management (BOEM), or such other official designated by the Secretary of the Interior for this purpose, for the payment of all of the cost of the plugging and abandonment Obligations.
2. The Surety will be responsible for all Obligations of the Principal in existence at the time this document becomes effective and all Obligations that accrue after that date and until all Obligations are met or until the Regional Director terminates the period of liability of this bond.
3. If the Regional Director terminates the period of liability of this bond, the Surety will remain responsible for Obligations that accrued during the period of liability until the Regional Director issues a written cancellation of the bond in favor of the Surety.
4. If this bond is cancelled, the Regional Director may reinstate this bond as if no cancellation had occurred if any payment of any Obligation of the Principal(s) is rescinded or must be restored pursuant to any insolvency, bankruptcy, reorganization, or receivership, or should the representation of the Principal that it has paid its financial Obligations or performed the other

Obligations of the lease in accordance with BOEM specifications be materially false and BOEM relied upon such representation in canceling the instrument.

5. The Surety waives any right of notice of this bond taking effect and agrees that this bond will take effect upon delivery to BOEM.
6. The Surety's Obligations will remain in full force and effect, even if:
   (a) Any person assigns all or part of any interest in an Instrument covered by this document.
   (b) Any person modifies an Instrument or Obligation under an Instrument in any manner including modifications that result from a commitment to a unit, cooperative, communitization, or storage agreement; suspension of operations or production; suspension or changes in rental, minimum royalty, or royalties; modification of regulations or interpretations of regulations; creation or modification of compensatory royalty agreements or payments; or creation of any mortgage, pledge, or other grant of security interest in the Instruments.
   (c) Any person, event, or condition terminates any Instrument covered by this bond, whether the termination is by operation of law or otherwise.
   (d) BOEM takes or fails to take any action in enforcing, as against any party to the Instrument, the payment of rentals or royalties or the performance of any other covenant, condition or agreement of the lease, or giving notice of or making demand with respect to such nonperformance.
   (e) The Surety suffers any loss by reason of any law limiting, qualifying, or discharging the Principal's Obligation.
7. The Surety agrees to be bound under this bond as to the interests in any Instrument retained by the Principal when BOEM approves the transfer of any or all of the Instruments or interests in the Instruments.
8. In the event of any default under a lease, the Surety must provide payment of all of the cost of the Obligations of the Principal upon demand by BOEM.
9. If BOEM decides to commence suit to enforce its rights, it may commence and prosecute any claim, suit, action, or other proceeding against the Principal and Surety, or either of them, whether or not BOEM joins the lessees or any other party.
10. In the event there is more than one Surety for the Principal's performance of the Obligations, as to any Instrument, the Surety's Obligation and liability under this bond is on a "solidary" or "joint and several" basis along with other guarantors or sureties.
11. The Surety agrees to give prompt notice to BOEM and the Principal of any action filed alleging the insolvency or bankruptcy of the Surety or the Principal, or alleging any violation that would result in suspension or revocation of the Surety's charter or license to do business.
12. The Surety's Obligation and liabilities under this Bond are binding upon the Surety's successors and assigns. Nothing in this document permits assignment of the Surety's Obligation without the written consent of BOEM.
13. The Surety hereby waives any defenses to liability on this bond based on an unauthorized Principal signature.

Endurance Assurance Corporation	W & T Energy VI, LLC
Name of Surety	Name of Principal
Michele K. Tyson	
Signature of Person Executing for Surety	Signature of Person Executing for Principal
Michele K. Tyson, Attorney-in-Fact	Tracy W. Krohn, Representative
Name and Title (typed or printed)	Name and Title (typed or printed)
12890 Lebanon Road	5718 Westheimer Road, Suite 700
Business Address	Business Address
Mt. Juliet, TN 37122-2870	Houston, Texas 77057-5745
Business Address	Business Address

Signed on this 1st day of October, 20 22, in the State of Texas, in the presence of:

Wendy Pierson	
Signature of Witness	Signature of Witness
Wendy Pierson	TODD Grabois
Name (typed or printed)	Name (typed or printed)
777 Post Oak Blvd., Ste. 330	5718 Westheimer Rd., Ste 700
Address	Address
Houston, Texas 77056	Houston, TX 77057
Address	Address

Note: The person executing for the Surety must attach a corporate resolution and power of attorney stating his or her authority to undertake this Obligation, pursuant to the acts of the corporate board of directors and the laws of the State of incorporation. The corporation executing this bond as Surety and the Principal, if a corporation, must affix their corporate seals.

BOEM-2028A (January 2020)
Previous Editions are Obsolete.

U.S. Department of the Interior
Bureau of Ocean Energy Management

OMB Control No.: 1010-0006
Expiration Date: 1/31/2023

Cover Page

OUTER CONTINENTAL SHELF (OCS) MINERAL LESSEE'S OR OPERATOR'S SUPPLEMENTAL BOND

Form BOEM-2028A

This form dated January 2020 supersedes all previous versions of form BOEM-2028A

All Bond Forms must be submitted with a transmittal letter to the appropriate BOEM office:

Bureau of Ocean Energy Management
Gulf of Mexico OCS Office
1201 Elmwood Park Blvd. New Orleans LA 70123-2394
Leasing and Financial Responsibility - Mail Stop GM266A

Bureau of Ocean Energy Management
Alaska OCS Office
3801 Centerpoint Drive, Suite 500
Anchorage AK 99503-5820 Alaska Leasing Section

Bureau of Ocean Energy Management
Pacific OCS Office
760 Paseo Camarillo, Suite 102
Camarillo CA 93010
Lease Management

Paperwork Reduction Act of 1995 (PRA) Statement: The PRA (44 U.S.C. 3501 *et seq.*) requires us to inform you that BOEM collects this information to hold the surety liable for the obligations and liability of the Principal (lessee or operator). Responses are mandatory. No proprietary information is collected. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. Public reporting burden for this form is estimated to average 15 minutes per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Comments regarding the burden estimate or any other aspect of this form should be directed to the Information Collection Clearance Officer, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, VA 20166.

SOMPO INTERNATIONAL
INSURANCE

POWER OF ATTORNEY

11071

KNOW ALL BY THESE PRESENTS, that **Endurance Assurance Corporation**, a Delaware corporation, **Endurance American Insurance Company**, a Delaware corporation, **Lexon Insurance Company**, a Texas corporation, and/or **Bond Safeguard Insurance Company**, a South Dakota corporation, each, a "Company" and collectively, "**Sompo International**," do hereby constitute and appoint: **Edwin H. Frank, III, Michele K. Tyson, Meredith K. Anderson, Stephen Michael Smith, Timothy J. Briggs** as true and lawful Attorney(s)-In-Fact to make, execute, seal, and deliver for, and on its behalf as surety or co-surety; bonds and undertakings given for any and all purposes, also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking so made, executed and delivered shall obligate the Company for any portion of the penal sum thereof in excess of the sum of **ONE HUNDRED MILLION Dollars ($100,000,000.00)**.

Such bonds and undertakings for said purposes, when duly executed by said attorney(s)-in-fact, shall be binding upon the Company as fully and to the same extent as if signed by the President of the Company under its corporate seal attested by its Corporate Secretary.

This appointment is made under and by authority of certain resolutions adopted by the sole shareholder of each Company by unanimous written consent effective the 15th day of June, 2019, a copy of which appears below under the heading entitled "Certificate".

This Power of Attorney is signed and sealed by facsimile under and by authority of the following resolution adopted by the sole shareholder of each Company by unanimous written consent effective the 15th day of June, 2019 and said resolution has not since been revoked, amended or repealed:

RESOLVED, that the signature of an individual named above and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signature or seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, each Company has caused this instrument to be signed by the following officers, and its corporate seal to be affixed this 15th day of June, 2019.

Endurance Assurance Corporation
By: Richard Appel
Richard Appel; SVP & Senior Counsel

Endurance American Insurance Company
By: Richard Appel
Richard Appel; SVP & Senior Counsel

Lexon Insurance Company
By: Richard Appel
Richard Appel; SVP & Senior Counsel

Bond Safeguard Insurance Company
By: Richard Appel
Richard Appel; SVP & Senior Counsel

ACKNOWLEDGEMENT

On this 15th day of June, 2019, before me, personally came the above signatories known to me, who being duly sworn, did depose and say that he/they is an officer of each of the Companies; and that he executed said instrument on behalf of each Company by authority of his office under the by-laws of each Company.

By: Amy Taylor
Amy Taylor, Notary Public – My Commission Expires 5/9/23

CERTIFICATE

I, the undersigned Officer of each Company, DO HEREBY CERTIFY that:

1. That the original power of attorney of which the foregoing is a copy was duly executed on behalf of each Company and has not since been revoked, amended or modified; that the undersigned has compared the foregoing copy thereof with the original power of attorney, and that the same is a true and correct copy of the original power of attorney and of the whole thereof;
2. The following are resolutions which were adopted by the sole shareholder of each Company by unanimous written consent effective June 15, 2019 and said resolutions have not since been revoked, amended or modified:

   "RESOLVED, that each of the individuals named below is authorized to make, execute, seal and deliver for and on behalf of the Company any and all bonds, undertakings or obligations in surety or co-surety with others: RICHARD M. APPEL, BRIAN J. BEGGS, CHRISTOPHER DONELAN, SHARON L. SIMS, CHRISTOPHER L. SPARRO, MARIANNE L. WILBERT

   ; and be it further

   RESOLVED, that each of the individuals named above is authorized to appoint attorneys-in-fact for the purpose of making, executing, sealing and delivering bonds, undertakings or obligations in surety or co-surety for and on behalf of the Company."
3. The undersigned further certifies that the above resolutions are true and correct copies of the resolutions as so recorded and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal this 1st day of October 2022.

By: Daniel S. Lurie, Secretary

NOTICE: U. S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL (OFAC)

No coverage is provided by this Notice nor can it be construed to replace any provisions of any surety bond or other surety coverage provided. This Notice provides information concerning possible impact on your surety coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous foreign agents, front organizations, terrorists, terrorist organizations, and narcotics traffickers as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's website – https://www.treasury.gov/resource-center/sanctions/SDN-List.

In accordance with OFAC regulations, if it is determined that you or any other person or entity claiming the benefits of any coverage has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, any coverage will be considered a blocked or frozen contract and all provisions of any coverage provided are immediately subject to OFAC. When a surety bond or other form of surety coverage is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments may also apply.

Any reproductions are void.
Surety Claims Submission: LexonClaimAdministration@sompo-intl.com
Telephone: 615-553-9500 Mailing Address: Sompo International; 12890 Lebanon Road; Mount Juliet, TN 37122-2870

U.S. DEPARTMENT OF THE INTERIOR
Bureau of Ocean Energy Management

Bond No. EACX226000022 OCS Lease/RUE/ROW No. OCS-G 27632

Bond Type Supplemental Amount $ 1,461,000.00

OUTER CONTINENTAL SHELF (OCS) MINERAL LESSEE'S OR OPERATOR'S SUPPLEMENTAL BOND

The **Surety** is the entity Guaranteeing Performance.

Name of Surety: Endurance Assurance Corporation

Mailing Address: 12890 Lebanon Road
Mt. Juliet, Tennessee 37122-2870

If a Corporation, Incorporated in the State of: Delaware ; County or Parish of: New Castle

☒ Check here if Surety is certified by U.S. Treasury as an acceptable surety on Federal Bonds and listed in the current U.S. Treasury Circular No. 570.

The **Principal** is the Lessee or Designated Operator for Whom the Bond is Issued.

Name of Principal: W & T Energy VI, LLC

Mailing Address: Nine Greenway Plaza, Suite 300, Houston, Texas 77046

Schedule A, the lease/RUE/ROW covered by this bond, is composed of: (add legal description)

☒ Check here if additional information is on attached sheet.

The following lease/RUE/ROW: All of Block 258, Garden Banks, as shown on OCS Official Protraction Diagram, NG15-02.

In addition to the Obligations of the Principal during the period of liability of this bond, the Surety also accepts the following Obligations: (Check one)

☐ No Obligations other than the Obligations of the Principal during the period of liability of this bond.

☒ All Obligations of all previous Sureties or guarantors even if the Obligations are not Obligations of the Principal during the period of liability of this bond.

☐ All Obligations of all previous Sureties or guarantors even if the Obligations are not Obligations of the Principal during the period of liability of this bond with the following exceptions or limitations (use an attached rider).

Definitions For the purposes of this document:	A **Principal** includes an entity holding an interest in the oil & gas lease in one or more of the following ways: (1) as an approved record title owner of all or a portion of the lease, (2) as an approved operating rights owner of all or a portion of the lease, or (3) as a designated operator or designated agent in all or a portion of the lease. A **Lessee** includes an approved record title owner of all or a portion of the lease or an approved operating rights owner of all or a portion of the lease. An **Obligation** includes any obligation arising from any regulations of the Department of the Interior or any Instrument issued, maintained, or approved under the OCS Lands Act (43 U.S.C. 1331 et seq.). An **Instrument** includes individually or collectively any lease, operating agreement, designation of operator or agent, storage agreement, compensatory royalty agreement, transfer of operating rights, permit, license, or easement, whereunder the Principal has the right, privilege, or license to conduct operations on the OCS. A **Person** includes an individual, a public or private entity, a State, a political subdivision of a State, any association of individuals, corporations, States, or subdivisions of States, or a government agency.

By signing below, the Principal verifies that the information above is correct and agrees to the following:
The Principal as agent on behalf of all lessees, operating rights owners, and operators will fulfill all Obligations for the entire leasehold and to the same extent as though the Principal were the sole lessee for the lease/RUE/ROW in Schedule A.

By signing below, the Surety verifies that the information above is correct and agrees to the following:

1. The Surety does hereby absolutely and unconditionally bind itself to the United States of America acting through and by the Bureau of Ocean Energy Management (BOEM), or such other official designated by the Secretary of the Interior for this purpose, for the payment of all of the cost of the plugging and abandonment Obligations.
2. The Surety will be responsible for all Obligations of the Principal in existence at the time this document becomes effective and all Obligations that accrue after that date and until all Obligations are met or until the Regional Director terminates the period of liability of this bond.
3. If the Regional Director terminates the period of liability of this bond, the Surety will remain responsible for Obligations that accrued during the period of liability until the Regional Director issues a written cancellation of the bond in favor of the Surety.
4. If this bond is cancelled, the Regional Director may reinstate this bond as if no cancellation had occurred if any payment of any Obligation of the Principal(s) is rescinded or must be restored pursuant to any insolvency, bankruptcy, reorganization, or receivership, or should the representation of the Principal that it has paid its financial Obligations or performed the other

Obligations of the lease in accordance with BOEM specifications be materially false and BOEM relied upon such representation in canceling the instrument.

5. The Surety waives any right of notice of this bond taking effect and agrees that this bond will take effect upon delivery to BOEM.
6. The Surety's Obligations will remain in full force and effect, even if:
   (a) Any person assigns all or part of any interest in an Instrument covered by this document.
   (b) Any person modifies an Instrument or Obligation under an Instrument in any manner including modifications that result from a commitment to a unit, cooperative, communitization, or storage agreement; suspension of operations or production; suspension or changes in rental, minimum royalty, or royalties; modification of regulations or interpretations of regulations; creation or modification of compensatory royalty agreements or payments; or creation of any mortgage, pledge, or other grant of security interest in the Instruments.
   (c) Any person, event, or condition terminates any Instrument covered by this bond, whether the termination is by operation of law or otherwise.
   (d) BOEM takes or fails to take any action in enforcing, as against any party to the Instrument, the payment of rentals or royalties or the performance of any other covenant, condition or agreement of the lease, or giving notice of or making demand with respect to such nonperformance.
   (e) The Surety suffers any loss by reason of any law limiting, qualifying, or discharging the Principal's Obligation.
7. The Surety agrees to be bound under this bond as to the interests in any Instrument retained by the Principal when BOEM approves the transfer of any or all of the Instruments or interests in the Instruments.
8. In the event of any default under a lease, the Surety must provide payment of all of the cost of the Obligations of the Principal upon demand by BOEM.
9. If BOEM decides to commence suit to enforce its rights, it may commence and prosecute any claim, suit, action, or other proceeding against the Principal and Surety, or either of them, whether or not BOEM joins the lessees or any other party.
10. In the event there is more than one Surety for the Principal's performance of the Obligations, as to any Instrument, the Surety's Obligation and liability under this bond is on a "solidary" or "joint and several" basis along with other guarantors or sureties.
11. The Surety agrees to give prompt notice to BOEM and the Principal of any action filed alleging the insolvency or bankruptcy of the Surety or the Principal, or alleging any violation that would result in suspension or revocation of the Surety's charter or license to do business.
12. The Surety's Obligation and liabilities under this Bond are binding upon the Surety's successors and assigns. Nothing in this document permits assignment of the Surety's Obligation without the written consent of BOEM.
13. The Surety hereby waives any defenses to liability on this bond based on an unauthorized Principal signature.

Endurance Assurance Corporation	W & T Energy VI, LLC
Name of Surety	Name of Principal
Michele K. Tyson	
Signature of Person Executing for Surety	Signature of Person Executing for Principal
Michele K. Tyson, Attorney-in-Fact	William Williford, Representative
Name and Title (typed or printed)	Name and Title (typed or printed)
12890 Lebanon Road	Nine Greenway Plaza, Suite 300
Business Address	Business Address
Mt. Juliet, Tennessee 37122-2870	Houston, Texas 77046
Business Address	Business Address

Signed on this 15th day of September, 20 20, in the State of Texas, in the presence of:

Wendy Pierson	Rosemary Barrios
Signature of Witness	Signature of Witness
Wendy Pierson	Rosemary Barrios
Name (typed or printed)	Name (typed or printed)
777 Post Oak Blvd., Ste. 330	9 Greenway Plaza, Suite 300
Address	Address
Houston, Texas 77056	Houston, TX. 77046
Address	Address

Note: The person executing for the Surety must attach a corporate resolution and power of attorney stating his or her authority to undertake this Obligation, pursuant to the acts of the corporate board of directors and the laws of the State of incorporation. The corporation executing this bond as Surety and the Principal, if a corporation, must affix their corporate seals.

BOEM-2028A (January 2020) **PAGE 3 OF 3**

Previous Editions are Obsolete.

U.S. Department of the Interior
Bureau of Ocean Energy Management

OMB Control No.: 1010-0006
Expiration Date: 1/31/2023

Cover Page

OUTER CONTINENTAL SHELF (OCS) MINERAL LESSEE'S OR OPERATOR'S SUPPLEMENTAL BOND

Form BOEM-2028A

This form dated January 2020 supersedes all previous versions of form BOEM-2028A

All Bond Forms must be submitted with a transmittal letter to the appropriate BOEM office:

Bureau of Ocean Energy Management
Gulf of Mexico OCS Office
1201 Elmwood Park Blvd. New Orleans LA 70123-2394
Leasing and Financial Responsibility - Mail Stop GM266A

Bureau of Ocean Energy Management
Alaska OCS Office
3801 Centerpoint Drive, Suite 500
Anchorage AK 99503-5820 Alaska Leasing Section

Bureau of Ocean Energy Management
Pacific OCS Office
760 Paseo Camarillo, Suite 102
Camarillo CA 93010
Lease Management

Paperwork Reduction Act of 1995 (PRA) Statement: The PRA (44 U.S.C. 3501 *et seq.*) requires us to inform you that BOEM collects this information to hold the surety liable for the obligations and liability of the Principal (lessee or operator). Responses are mandatory. No proprietary information is collected. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. Public reporting burden for this form is estimated to average 15 minutes per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Comments regarding the burden estimate or any other aspect of this form should be directed to the Information Collection Clearance Officer, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, VA 20166.

SOMPO INTERNATIONAL
INSURANCE

POWER OF ATTORNEY

11071

KNOW ALL BY THESE PRESENTS, that **Endurance Assurance Corporation**, a Delaware corporation, **Endurance American Insurance Company**, a Delaware corporation, **Lexon Insurance Company**, a Texas corporation, and/or **Bond Safeguard Insurance Company**, a South Dakota corporation, each, a "Company" and collectively, "**Sompo International**," do hereby constitute and appoint: **Edwin H. Frank, III, Michele K. Tyson, W. Russell Brown, Jr., Meredith K. Anderson, Stephen Michael Smith, Timothy J. Briggs** as true and lawful Attorney(s)-In-Fact to make, execute, seal, and deliver for, and on its behalf as surety or co-surety; bonds and undertakings given for any and all purposes, also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking so made, executed and delivered shall obligate the Company for any portion of the penal sum thereof in excess of the sum of **FIFTY MILLION Dollars ($50,000,000.00)**.

Such bonds and undertakings for said purposes, when duly executed by said attorney(s)-in-fact, shall be binding upon the Company as fully and to the same extent as if signed by the President of the Company under its corporate seal attested by its Corporate Secretary.

This appointment is made under and by authority of certain resolutions adopted by the sole shareholder of each Company by unanimous written consent effective the 15th day of June, 2019, a copy of which appears below under the heading entitled "Certificate".

This Power of Attorney is signed and sealed by facsimile under and by authority of the following resolution adopted by the sole shareholder of each Company by unanimous written consent effective the 15th day of June, 2019 and said resolution has not since been revoked, amended or repealed:

RESOLVED, that the signature of an individual named above and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signature or seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, each Company has caused this instrument to be signed by the following officers, and its corporate seal to be affixed this 15th day of June, 2019.

Endurance Assurance Corporation
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

Endurance American Insurance Company
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

Lexon Insurance Company
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

Bond Safeguard Insurance Company
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

ACKNOWLEDGEMENT

On this 15th day of June, 2019, before me, personally came the above signatories known to me, who being duly sworn, did depose and say that he/they is/are officer of each of the Companies; and that he executed said instrument on behalf of each Company by authority of his office under the by-laws of each Company.

By: Amy Taylor
Amy Taylor, Notary Public - My Commission Expires 5/9/23

CERTIFICATE

I, the undersigned Officer of each Company, DO HEREBY CERTIFY that:

1. That the original power of attorney of which the foregoing is a copy was duly executed on behalf of each Company and has not since been revoked, amended or modified; that the undersigned has compared the foregoing copy thereof with the original power of attorney, and that the same is a true and correct copy of the original power of attorney and of the whole thereof;
2. The following are resolutions which were adopted by the sole shareholder of each Company by unanimous written consent effective June 15, 2019 and said resolutions have not since been revoked, amended or modified:

   "RESOLVED, that each of the individuals named below is authorized to make, execute, seal and deliver for and on behalf of the Company any and all bonds, undertakings or obligations in surety or co-surety with others: RICHARD M APPEL, BRIAN J BEGGS, CHRISTOPHER DONELAN, SHARON L SIMS, CHRISTOPHER L SPARRO, MARIANNE L WILBERT

   ; and be it further

   RESOLVED, that each of the individuals named above is authorized to appoint attorneys-in-fact for the purpose of making, executing, sealing and delivering bonds, undertakings or obligations in surety or co-surety for and on behalf of the Company."
3. The undersigned further certifies that the above resolutions are true and correct copies of the resolutions as so recorded and of the whole thereof

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal this 15th day of September 2020.

By:
Daniel S Lurie, Secretary

NOTICE: U. S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL (OFAC)

No coverage is provided by this Notice nor can it be construed to replace any provisions of any surety bond or other surety coverage provided. This Notice provides information concerning possible impact on your surety coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous foreign agents, front organizations, terrorists, terrorist organizations, and narcotics traffickers as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's website – https://www.treasury.gov/resource-center/sanctions/SDN-List.

In accordance with OFAC regulations, if it is determined that you or any other person or entity claiming the benefits of any coverage has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, any coverage will be considered a blocked or frozen contract and all provisions of any coverage provided are immediately subject to OFAC. When a surety bond or other form of surety coverage is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments may also apply.

Any reproductions are void.
Surety Claims Submission: LexonClaimAdministration@sompo-intl.com
Telephone: 615-553-9500 Mailing Address: Sompo International; 12890 Lebanon Road; Mount Juliet, TN 37122-2870

Bond No. EACX226000043

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

THAT we, W & T Offshore, Inc., with its principal office at 5718 Westheimer Rd., Suite 700, Houston, TX 77057-5745, (hereinafter called the "Principal"), and Endurance Assurance Corporation, with an address of 12890 Lebanon Road, Mt. Juliet, TN 37122-2870 (hereinafter called the "Surety"), are held and firmly bound unto Exxon Mobil Corporation, Mobil Oil Exploration & Producing Southeast Inc., XH, LLC, Exxon Mobile Bay Limited Partnership, and ExxonMobil U.S. Properties Inc., all with an address of 22777 Springwoods Village Parkway, Spring, Texas 77389 (hereinafter collectively called the "Obligee"), in the Penalty Sum of Three Million Three Hundred Thousand and No/100 Dollars ($3,300,000.00) lawful money of the United States of America for the payment of which sum the Principal and the Surety bind themselves, their successors and assigns, jointly, severally, and in solido, firmly by these presents.

WHEREAS, Principal and Obligee have entered into that certain Purchase and Sale Agreement dated effective as of January 1, 2019 (hereinafter called the "Agreement"), which Agreement is by reference made a part hereof and which provides for the sale and assignment from Obligee to Principal of the interests of Obligee in certain oil and gas leases and properties, including the oil and gas leases described on Exhibit A to the Agreement (collectively, the "Leases" and each individually, the "Lease"), together with all rights and obligations in connection with the Leases, and also provides for the sale and assignment to Principal of all wells (both abandoned and unabandoned), facilities, equipment and pipelines existing on the Leases as of the date of the Agreement (collectively, the "Wells" and individually, the "Well") (the Leases, Wells and such facilities, equipment and pipelines, being collectively referred to as the "Properties" and each as "Property"); and

WHEREAS, Principal and Surety agree that notwithstanding the subsequent termination of any of the Leases, whether by operation of law or otherwise, this Bond shall remain in full force and effect until Principal has presented satisfactory evidence to Obligee, as set forth below, that all P&A Obligations (as such term is defined below) have been performed and discharged; and

WHEREAS, as used in this Bond, the term "P&A Obligations" means all obligations and liabilities of Principal to abandon, restore and remediate the Properties, whether arising before or after January 1, 2019 (the "Effective Time"), including obligations, as applicable to the Properties, to: (a) obtain plugging exceptions in the operator's name for each Well with a current plugging exception, or permanently plugging and abandoning a Well; (b) plug, abandon, and if necessary, re-abandon each Well; (c) remove all equipment and facilities, including flowlines, and pipelines; (d) close all pits; and I restore and remediate the surface, subsurface and sites associated with the Properties; and

WHEREAS, Principal has agreed to deliver to Obligee this Bond, executed by Principal and Surety, at the Closing as defined and contemplated by the Agreement; and

EXHIBIT C

Bond No. EACX226000043

WHEREAS, Surety represents that it is duly authorized by the proper public authorities to transact the business of indemnity and suretyship in the state where it executed this Bond, and represents that it is qualified to be surety and guarantor on bonds and undertakings, which certificate has not been revoked, that it is named in the current Circular 570, published by the Audit Staff Bureau of Accounts, U.S. Department of the Treasury ("Circular 570"); and

WHEREAS, Surety represents that it has duly executed a power of attorney, appointing the hereafter named representative as its duly authorized deputy, as the true and lawful attorney-in-fact of such Surety, upon whom may be served all lawful process in any action or proceeding against such Surety in any court or before any officer, arising, out of or founded upon this Bond or any liability hereunder, and does hereby agree and consent that such service, when so made, shall be valid service upon it, and that such appointment shall continue in force and effect and be irrevocable so long as any liability against it remains outstanding hereunder but if the named representative becomes no longer able to act as the Surety's true attorney-in-fact, the Surety will immediately execute a new power of attorney appointing a replacement representative authorized to act as its true attorney-in-fact, and will promptly so inform Principal and Obligee;

NOW THEREFORE, Principal and Surety agree as follows:

Surety hereby guarantees the full and faithful performance by Principal of, and compliance by Principal with, the P&A Obligations in accordance with all current and future requirements of applicable federal and state law or any agency, authority or body having, jurisdiction or authority over the Properties or any operations thereon, and in accordance with the Leases and the Agreement.

PROVIDED, HOWEVER, whenever the Principal shall present to Obligee satisfactory evidence that all of the P&A Obligations have been performed (such satisfactory evidence shall comprise executed forms or other written documentation as may be required by any governmental authority under applicable law to reflect completion of the P&A Obligations, including, without limitation, forms and documentation relating to plugging and abandonment activities, decommissioning activities, site clearance activities and pipeline abandonment or removal activities and completion of remedial activities), then, this Bond shall be null and void; otherwise, it shall remain in full force and effect in the amount as provided.

In the event Principal fails to carry out its obligations to bear the cost and expense to perform the P&A Obligations for a Property or certain identified Properties, Obligee shall present to Surety written notice that Principal is in default of such P&A Obligation, identifying such Property or Properties. If Principal continues to fail to carry out such P&A Obligations with respect to such Property or Properties for thirty (30) days after Surety receives written notice by certified mail, Surety shall, within fifteen (15) days after the end of such thirty (30) day period: 1) Pay to Obligee an amount equal to the actual costs for performing the P&A Obligations with respect to such Property or identified Properties in an amount up to, but not exceeding, the Penalty Sum of this Bond and the Penalty Sum of this Bond shall be reduced by the amount so paid; or 2) Commence the necessary operations to perform the P&A Obligations with respect to such Property or identified Properties, with the Penalty Sum of this Bond to be reduced by Surety's actual costs incurred for each performance of such P&A Obligations upon Surety presenting proof of actual costs to Obligee.

In the event Obligee commences or completes the P&A Obligations with respect to a Property or identified Properties upon Principal's default under the terms of the Agreement, Surety's obligations shall remain the same as set forth in this Bond regarding payment to Obligee as set forth above.

If Surety shall decide, upon default by Principal, to commence, or cause to be commenced, the performance of the aforementioned P&A Obligations, said performance shall continue until such time as the P&A Obligations have been met, with the Penalty Sum of this Bond to be reduced by Surety's actual costs incurred for each performance of such P&A Obligations upon Surety presenting proof of actual costs to Obligee. **Surety agrees to indemnify, defend, and hold harmless Obligee, its directors, and agents from all claims, demands, and causes of action for personal injury, death, property and/or environmental damage resulting in whole or in part from Surety's or Surety's contractors' negligence, whether joint (including with Obligee or Principal) active, passive, concurrent or sole, or willful misconduct with respect to the performance of the P&A Obligations, if and only if Surety elects, as stated herein, to commence the aforementioned P&A Obligations in lieu of payment to Obligee.**

The Surety agrees that, within fifteen (15) calendar days after learning that it has been de-listed from the Circular No. 570, and/or of any action filed alleging the insolvency or bankruptcy of the Surety, or alleging any violation that would result in suspension or revocation of the Surety's certificate of suretyship, charter, or license to do business, the Surety will give notice to the Principal and Obligee.

The Principal agrees that, within fifteen (15) calendar days after learning that the Surety has become bankrupt or, insolvent, or the Surety has had its charter or license to do business suspended or revoked, or is no longer named in the current Circular 570, the Principal will substitute a bond identical in all material respects to this Bond from another financial institution reasonably acceptable and in a form reasonably acceptable to the Obligee.

The Principal agrees that, within fifteen (15) calendar days of learning of any action filed alleging the insolvency or bankruptcy of the Principal, or alleging any violation that would result in suspension or revocation of the Principal's charter, or license to do business, it will notify the Obligee and the Surety.

Surety consents to be sued in any court in the State of Texas, hereby irrevocably submitting itself to the jurisdiction of said court. No amendment of or supplement to the terms or provisions of the Agreement or of the Exhibits attached thereto shall release Principal and Surety or either of them from their liability under this Bond. Notice to Surety of any such amendment or supplement is hereby waived, except to the extent that is herein provided.

No forbearance of Obligee, to Principal, shall release Principal and Surety from their liability under this Bond except where Obligee has agreed to reduce the Penalty Sum as provided above. No delay, neglect or failure of Obligee to proceed promptly to enforce the Agreement or to proceed promptly in case of default on the part of Principal or Surety shall in any degree relieve Principal and Surety of their obligations under this Bond except as herein stated. No assignment of the Agreement or of the Property by the Principal, its successors and assigns, and no assignment of the Agreement by operation of law or consent of Obligee or otherwise shall in any degree relieve

Principal and Surety of their obligations under this Bond except as provided herein. However, upon assignment of the Agreement or Property in whole or in part by the Principal, its successors or assigns, to a third party, Principal shall have the right but not the duty or obligation to cause Principal's assignee to post financial security to Obligee in a form acceptable to Obligee (in the amount of and covering the remaining P&A Obligations to the extent not satisfied as of the time of such assignment), to replace this Bond (hereinafter "Replacement Security"). Replacement Security must be in a form reasonably acceptable and issued by a financial institution reasonably acceptable to Obligee. Upon acceptance of Replacement Security the Penalty Sum of this Bond shall be permanently reduced by the amount of Replacement Security.

No assignment, in whole or in part, of the Agreement or of the Properties by Principal, its successors and assigns, and no delay, neglect or failure of the Obligee to proceed promptly to enforce the Agreement or to proceed promptly in the premises in case of any default on the part of Principal shall in any degree relieve Principal and Surety or either of their obligations under this Bond.

No right or action shall accrue on this Bond to or for the use of any person or corporation other than Principal, Obligee, and their respective successors.

NOW THEREFORE, Principal and Obligee agree that any dispute, claim, or controversy concerning the interpretation of this Bond or the Agreement or their compliance with the terms of this Bond shall be resolved in accordance with the terms, conditions, and procedures in Article 17 of the Agreement and each agrees not to prosecute or commence any suit or action against the other relating to any such matters. This Bond is subject to the provisions of Section 8.04(f) of the Agreement including, without limitation, the redetermination provisions that may serve to adjust the Penalty Sum provided for herein and the ability of Obligee to draw on the Bond, in whole or in part, as expressly provided for therein. Surety shall not be required to increase the Penalty Sum provided for in this Bond as a result of any redetermination made pursuant to said Section 8.04(f) of the Agreement without Surety's written consent. In the event such written consent from Surety is not obtained, Principal will be required to obtain an additional bond to cover the incremental Penalty Sum increase as a result of such redetermination from a financial institution, mutually acceptable to Obligee and Principal, providing for terms substantially similar to those set forth in this Bond except as regards the Penalty Sum amount.

In the event of a conflict or inconsistency between the terms and provisions of this Bond and those set forth in the Agreement, as between Principal, Surety and/or Obligee, the terms and provisions of the Agreement shall control.

In no event shall Surety be liable for an amount greater than the Penalty Sum of $3,300,000.00, and upon Surety's payment of said amount, whether from one or multiple claims and/or payments, this Bond shall be null and void.

Bond No. EACX226000043

IN WITNESS WHEREOF, the above bound parties have executed this instrument to be effective as of June 1, 2022, the name of each corporate party duly signed by its undersigned representative pursuant to authority of its governing body.

PRINCIPAL: W & T Offshore, Inc.

WITNESSES:

By:

Name: Janet Ayub

Title: EVP & CFO

Date: 5/17/22

SURETY: Endurance Assurance Corporation

WITNESSES:

By:

Name: Meredith K. Anderson

Title: Attorney-in-Fact

Date: June 1, 2022

OBLIGEE: Exxon Mobil Corporation

WITNESSES:

By:

Name:

Title:

Date:

OBLIGEE: Mobil Oil Exploration & Producing Southeast Inc.

WITNESSES:

By:

Name:

Title:

Date:

Bond No. EACX226000043

OBLIGEE: XH, LLC

WITNESSES:

_____

_____

By: _____

Name: _____

Title: _____

Date: _____

OBLIGEE: Exxon Mobile Bay Limited Partnership

WITNESSES:

_____

_____

By: _____

Name: _____

Title: _____

Date: _____

OBLIGEE: ExxonMobil U.S. Properties Inc.

WITNESSES:

_____

_____

By: _____

Name: _____

Title: _____

Date: _____

SOMPO INTERNATIONAL
INSURANCE

POWER OF ATTORNEY

11071

KNOW ALL BY THESE PRESENTS, that **Endurance Assurance Corporation**, a Delaware corporation, **Endurance American Insurance Company**, a Delaware corporation, **Lexon Insurance Company**, a Texas corporation, and/or **Bond Safeguard Insurance Company**, a South Dakota corporation, each, a "Company" and collectively, "**Sompo International**," do hereby constitute and appoint: **Edwin H. Frank, III, Michele K. Tyson, W. Russell Brown, Jr., Meredith K. Anderson, Stephen Michael Smith**

as true and lawful Attorney(s)-In-Fact to make, execute, seal, and deliver for, and on its behalf as surety or co-surety, bonds and undertakings given for any and all purposes, also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking so made, executed and delivered shall obligate the Company for any portion of the penal sum thereof in excess of the sum of **ONE HUNDRED MILLION Dollars ($100,000,000.00).**

Such bonds and undertakings for said purposes, when duly executed by said attorney(s)-in-fact, shall be binding upon the Company as fully and to the same extent as if signed by the President of the Company under its corporate seal attested by its Corporate Secretary.

This appointment is made under and by authority of certain resolutions adopted by the sole shareholder of each Company by unanimous written consent effective the 15th day of June, 2019, a copy of which appears below under the heading entitled "Certificate".

This Power of Attorney is signed and sealed by facsimile under and by authority of the following resolution adopted by the sole shareholder of each Company by unanimous written consent effective the 15th day of June, 2019 and said resolution has not since been revoked, amended or repealed:

RESOLVED, that the signature of an individual named above and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signature or seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, each Company has caused this instrument to be signed by the following officers, and its corporate seal to be affixed this 15th day of June, 2019.

Endurance Assurance Corporation
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

Endurance American Insurance Company
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

Lexon Insurance Company
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

Bond Safeguard Insurance Company
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

ACKNOWLEDGEMENT

On this 15th day of June, 2019, before me, personally came the above signatories known to me, who being duly sworn, did depose and say that he/they is an officer of each of the Companies; and that he executed said instrument on behalf of each Company by authority of his office under the by-laws of each Company.

By: Amy Taylor
Amy Taylor, Notary Public - My Commission Expires 5/9/23

CERTIFICATE

I, the undersigned Officer of each Company, DO HEREBY CERTIFY that:

1. That the original power of attorney of which the foregoing is a copy was duly executed on behalf of each Company and has not since been revoked, amended or modified; that the undersigned has compared the foregoing copy thereof with the original power of attorney, and that the same is a true and correct copy of the original power of attorney and of the whole thereof;
2. The following are resolutions which were adopted by the sole shareholder of each Company by unanimous written consent effective June 15, 2019 and said resolutions have not since been revoked, amended or modified:

   "RESOLVED, that each of the individuals named below is authorized to make, execute, seal and deliver for and on behalf of the Company any and all bonds, undertakings or obligations in surety or co-surety with others: RICHARD M. APPEL, BRIAN J. BEGGS, CHRISTOPHER DONELAN, SHARON L. SIMS, CHRISTOPHER L. SPARRO, MARIANNE L. WILBERT

   ; and be it further

   RESOLVED, that each of the individuals named above is authorized to appoint attorneys-in-fact for the purpose of making, executing, sealing and delivering bonds, undertakings or obligations in surety or co-surety for and on behalf of the Company."
3. The undersigned further certifies that the above resolutions are true and correct copies of the resolutions as so recorded and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal this 1st day of June, 2022.

By:
Daniel S. Lurie, Secretary

NOTICE: U. S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL (OFAC)

No coverage is provided by this Notice nor can it be construed to replace any provisions of any surety bond or other surety coverage provided. This Notice provides information concerning possible impact on your surety coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous foreign agents, front organizations, terrorists, terrorist organizations, and narcotics traffickers as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's website – https://www.treasury.gov/resource-center/sanctions/SDN-List.

In accordance with OFAC regulations, if it is determined that you or any other person or entity claiming the benefits of any coverage has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, any coverage will be considered a blocked or frozen contract and all provisions of any coverage provided are immediately subject to OFAC. When a surety bond or other form of surety coverage is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments may also apply.

Any reproductions are void.

Surety Claims Submission: LexonClaimAdministration@sompo-intl.com
Telephone: 615-553-9500 Mailing Address: Sompo International; 12890 Lebanon Road; Mount Juliet, TN 37122-2870

DUPLICATE ORIGINAL

Bond No. EACX226000043

Surety Rider No. 1

To be attached to and form a part of Performance Bond No. EACX226000043 ("Bond") on behalf of W & T Offshore, Inc., ("Principal"), in favor of Exxon Mobil Corporation, Mobil Oil Exploration & Producing Southeast Inc., XH, LLC, Exxon Mobile Bay Limited Partnership, and ExxonMobil U.S. Properties Inc. (collectively, the "Obligee") and executed by Endurance Assurance Corporation, an insurance corporation domiciled in the state of Delaware with its office at 12890 Lebanon Road, Mt. Juliet, TN 37122-2870 ("Surety").

Effective Date of Change: June 1, 2023

In consideration of the mutual agreement herein contained, the Principal and Surety hereby consent to the following changes:

The Bond's Penalty Sum has increased by Three Million Seven Hundred Thousand and No/100 Dollars ($3,700,000.00) from Three Million Three Hundred Thousand and No/100 Dollars ($3,300,000.00) to Seven Million and No/100 Dollars ($7,000,000.00).

Nothing herein contained shall vary, alter, or extend any provision, term, or condition of this Bond except as herein expressly stated.

SIGNED, SEALED AND DATED THIS: 3rd day of May, 2023.

W&T Offshore, Inc.
(Principal)

By: _____

Todd Graboi, Treasurer
Name/Title

Endurance Assurance Corporation
(Surety)

By: _____

Heather Noles, Attorney-In-Fact
Name/Title

SOMPO INTERNATIONAL
INSURANCE

POWER OF ATTORNEY

10034

KNOW ALL BY THESE PRESENTS, that **Endurance Assurance Corporation**, a Delaware corporation ("EAC"), **Endurance American Insurance Company**, a Delaware corporation ("EAIC"), **Lexon Insurance Company**, a Texas corporation ("LIC"), and/or **Bond Safeguard Insurance Company**, a South Dakota corporation ("BSIC"), each, a "Company" and collectively, "**Sompo International**," do hereby constitute and appoint: **Marc W. Boots, Vickie Lacy, Maria D. Zuniga, Joseph R. Aulbert, Ashley Koletar, Ryan Varela, Richard Covington, Heather Noles, Melanie Salinas** as true and lawful Attorney(s)-In-Fact to make, execute, seal, and deliver for, and on its behalf as surety or co-surety; bonds and undertakings given for any and all purposes, also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking so made, executed and delivered shall obligate the Company for any portion of the penal sum thereof in excess of the sum of **One Hundred Million Dollars ($100,000,000.00).**

Such bonds and undertakings for said purposes, when duly executed by said attorney(s)-in-fact, shall be binding upon the Company as fully and to the same extent as if signed by the President of the Company under its corporate seal attested by its Corporate Secretary.

This appointment is made under and by authority of certain resolutions adopted by the board of directors of each Company by unanimous written consent effective the 30th day of March, 2023 for BSIC and LIC and the 17th day of May, 2023 for EAC and EAIC, a copy of which appears below under the heading entitled "Certificate".

This Power of Attorney is signed and sealed by facsimile under and by authority of the following resolution adopted by the board of directors of each Company by unanimous written consent effective the 30th day of March, 2023 for BSIC and LIC and the 17th day of May, 2023 for EAC and EAIC and said resolution has not since been revoked, amended or repealed:

RESOLVED, that the signature of an individual named above and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signature or seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, each Company has caused this instrument to be signed by the following officers, and its corporate seal to be affixed this 25th day of May, 2023.

Endurance Assurance Corporation
By: Richard Appel; SVP & Senior Counsel

Endurance American Insurance Company
By: Richard Appel; SVP & Senior Counsel

Lexon Insurance Company
By: Richard Appel; SVP & Senior Counsel

Bond Safeguard Insurance Company
By: Richard Appel; SVP & Senior Counsel

ACKNOWLEDGEMENT

On this 25th day of May, 2023, before me, personally came the above signatories known to me, who being duly sworn, did depose and say that he/they is/are officer of each of the Companies; and that he executed said instrument on behalf of each Company by authority of his office under the by-laws of each Company.

By: Amy Taylor
Amy Taylor, Notary Public - My Commission Expires 3/9/27

CERTIFICATE

I, the undersigned Officer of each Company, DO HEREBY CERTIFY that:

1. That the original power of attorney of which the foregoing is a copy was duly executed on behalf of each Company and has not since been revoked, amended or modified; that the undersigned has compared the foregoing copy thereof with the original power of attorney, and that the same is a true and correct copy of the original power of attorney and of the whole thereof;
2. The following are resolutions which were adopted by the board of directors of each Company by unanimous written consent effective 30th day of March, 2023 for BSIC and LIC and the 17th day of May, 2023 for EAC and EAIC and said resolutions have not since been revoked, amended or modified:

   "RESOLVED, that each of the individuals named below is authorized to make, execute, seal and deliver for and on behalf of the Company any and all bonds, undertakings or obligations in surety or co-surety with others: RICHARD M. APPEL, MATTHEW E. CURRAN, MARGARET HYLAND, SHARON L. SIMS, CHRISTOPHER L. SPARRO,

   and be it further

   RESOLVED, that each of the individuals named above is authorized to appoint attorneys-in-fact for the purpose of making, executing, sealing and delivering bonds, undertakings or obligations in surety or co-surety for and on behalf of the Company."
3. The undersigned further certifies that the above resolutions are true and correct copies of the resolutions as so recorded and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal this 3rd day of May 2023.

By: Daniel S. Lane, Secretary

NOTICE: U. S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL (OFAC)

No coverage is provided by this Notice nor can it be construed to replace any provisions of any surety bond or other surety coverage provided. This Notice provides information concerning possible impact on your surety coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous foreign agents, front organizations, terrorists, terrorist organizations, and narcotics traffickers as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's website – https //www treasury gov/resource-center/sanctions/SDN-List.

In accordance with OFAC regulations, if it is determined that you or any other person or entity claiming the benefits of any coverage has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, any coverage will be considered a blocked or frozen contract and all provisions of any coverage provided are immediately subject to OFAC. When a surety bond or other form of surety coverage is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments may also apply.

Any reproductions are void.
Surety Claims Submission: LexonClaimAdministration@sompo-intl.com
Telephone: 615-563-9500 Mailing Address: Sompo International; 12890 Lebanon Road; Mount Juliet, TN 37122-2870

EXHIBIT 10

TO: RAILROAD COMMISSION OF TEXAS
Attention: Oil & Gas Division
Administrative Compliance Section
P-5 Financial Assurance Unit
P.O. Box 12967
Austin, TX 78711-2967

EXHIBIT D

Bond # EACX226000045

PERFORMANCE BOND

P-5PB
rev. 9/2021

WHEREAS, persons performing oil and gas operations within the jurisdiction of the Railroad Commission of Texas (Commission) are required to execute and file with the Commission a bond covering those operations pursuant to Texas Natural Resources Code §§ 91.103 and 91.104;

WHEREAS, persons required to file financial security pursuant to Texas Natural Resources Code §§ 91.103-91.104 may file an individual bond or blanket bond in an amount prescribed by Texas Natural Resources Code §§ 91.1041 or 91.1042 in satisfaction of the requirement to file financial security with the Commission;

WHEREAS, the Principal named below is the operator of certain Commission-regulated operations including but not limited to: (1) operations and permits listed on the Commission's Form P-5 (Organization Report) records; and/or (2) wells listed on the Commission's Oil and Gas Proration Schedule(s) and any additional wells that may be obtained prior to the expiration of this bond and carried on the Oil and Gas Proration Schedules;

WHEREAS, the Commission's Form P-5 (Organization Report) records and the Oil and Gas Proration Schedule(s) pertaining to the Principal are incorporated herein by reference as if fully set forth at length;

WHEREAS, the Principal desires to perform oil and gas operations and activities within the jurisdiction of the Commission, and which operations and activities must be carried on in full conformance with all state laws and Commission rules, including those laws and Commission rules, orders, and permits requiring operators to plug and abandon all wells and control, abate, and clean up pollution associated with an operator's oil and gas operations and activities; and

WHEREAS, Principal acknowledges and agrees that, due to amendments to the Texas Natural Resources Code, amendments to Commission Rules, and/or changes to the Principal's Commission-regulated operations, including without limitation the acquisition of additional wells, it may be required during the effective term of this bond to provide additional financial security beyond the face amount of this bond before its Form P-5 (Organization Report) will be accepted and approved.

NOW, THEREFORE:

We, **W&T Offshore, Inc.** (operator's name exactly as shown on Form P-5 (Organization Report)), **887952** (P-5 number) as Principal, and **Endurance Assurance Corporation** as Surety, duly authorized and qualified to do business in the State of Texas, are held and firmly bound unto the State of Texas in the sum of **One Hundred Twenty Five Thousand** Dollars ($ **125,000.00**) payable at Austin, Travis County, Texas, and for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The Principal and Surety are relieved of their obligation to pay the bond amount to the State if the Principal conducts its oil and gas operations and activities in accordance with state law and all permits, rules and orders of the Commission, and is in full compliance with the following requirements and conditions of this bond::

1. All inactive wells shall be maintained in compliance with Commission Statewide Rules 14 and 15 by: (a) plugging the wells or restoring the wells to beneficial use; and (b) preventing the pollution of any ground or surface water in the state or any uncontrolled escape of formation fluids from the strata in which they were originally located;
2. All active wells shall be maintained to prevent the pollution of any ground or surface water in the state or any uncontrolled escape of formation fluids from the strata in which they were originally located;
3. All oil and gas operations and activities shall be conducted in a manner that prevents pollution of any ground or surface water in the state; and
4. The Principal has maintained current operator status as reflected on the Commission's P-5 records.

In the event of Principal's failure to comply with the conditions and obligations of this bond, the Surety shall promptly remedy such non-compliance, in accordance with the laws of the state and permits, rules, and orders of the Commission, within 60 days of notice of non-compliance as follows:

1. If any well or other oil and gas operation or activity subject to this bond is likely to pollute or is polluting any ground or surface water or allowing uncontrolled escape of formation fluids from the strata in which they were originally located, the Surety shall expend funds up to the face amount of the bond to control, abate and clean up pollution and to prevent further escape of formation fluids.
2. If the Principal has failed to maintain current operator status as reflected on the Commission's P-5 Organization Report records, the Surety shall:
   (a) Expend funds up to the face amount of the bond to properly plug the well or close any other operation or activity (Surety understands and agrees that plugging or closing operations must be completed once commenced without the expenditure of State Funds, including State Oil-Field Cleanup funds); or
   (b) Pay liquidated damages. It is agreed by the parties that the actual damages which might be sustained by the Railroad Commission of Texas by reason of the failure to comply are uncertain and would be difficult of ascertainment, and it is further agreed that the amount of liquidated damages for onshore wells will be calculated by multiplying the total depth of the well by the average actual per-foot plugging costs for wells plugged by the Commission in the preceding state fiscal year for the Commission Oil and Gas Division district in which the well is located (if for any reason a district average is not available, then the state-wide average for the preceding fiscal year shall be used), up to the face amount of the bond, and that amount would be reasonable and just compensation for such failure to comply, and Surety hereby promises to pay and the Railroad Commission of Texas agrees to accept, at its office in Austin, Travis County, Texas such sum as liquidated damages, and not as a penalty, in the event of such failure to comply. It is further agreed by the parties that the amount of liquidated damages for bay and/or offshore wells will be the estimated cost of plugging each well, which will be the amount required in 16 Tex. Admin. Code § 3.78(g)(1)(A) or (B) plus the additional amount that was required *per well* by the Commission in 16 Tex. Admin. Code § 3.78(g)(2)-(5), up to the face amount of the bond, and that amount would be reasonable and just compensation for failure to comply, and Surety hereby promises to pay and the Railroad Commission of Texas agrees to accept, at its office in Austin, Travis County, Texas such sum as liquidated damages, and not as a penalty, in the event of such failure to comply.
3. Except as provided by Paragraph 2(b) above, if the Commission has expended State Funds to plug any well, to close any other operation or activity, to control, abate and clean up pollution or take any other action to prevent further escape of formation fluids, the Surety shall reimburse the

(over)

Commission for the amounts of State Funds so expended up to the face amount of the bond.

Sums demanded under this bond shall be paid to the Railroad Commission at Austin, Texas, within thirty days after receipt of written demand therefor, which demand shall be mailed by registered or certified U.S. mail to the address shown below.

Conditions and obligations under this bond are construed in accordance with laws of the State of Texas and all permits, rules, and orders of the Commission, including any amendments thereto that may be made during the term of this bond, and Surety waives notice of any such amendments. The State of Texas shall have the right to sue on and otherwise enforce the obligations of this bond without first resorting to or exhausting its remedies against the properties and assets of the Principal.

If the Principal is filing this bond for the first time, then the bond is effective on the Principal's P-5 effective date for the first year; thereafter, it will be effective 150 days after the Form P-5 effective and/or renewal date.

The term of this bond shall expire **August 1**, 20**24** (date must be 150 days after the Principal's annual Form P-5 expiration dates) and is renewable. Written notice of renewal shall be given by the Surety to the Commission on or before the Principal's last P-5 filing date prior to the expiration of this bond. Obligations to pay part or all of the bond amount are deemed released upon the expiration date of the bond unless the Commission has made a claim on the bond or an enforcement action against any operations or activities subject to the bond is pending. Principal and Surety may also be relieved of their obligations to pay part or all of the bond amount by written agreement between the Commission, Principal, and Surety.

If the bond amount is not paid in accordance with the terms of this bond and if judgment for any part of the bond amount is awarded through action of the Attorney General or other action filed by the Commission in bankruptcy, probate, or any other court proceeding, then the State shall be entitled to court costs and reasonable attorney's fees awarded by the court. Surety's liability for such costs and fees shall not be limited by the amount of this bond. It is agreed and understood that this bond is executed and performable in Austin, Travis County, Texas, and venue for any cause of action construing this bond is proper in Austin, Travis County, Texas.

A transfer, by any means, of any well covered under this bond does not relieve the Surety of any obligation under this bond until the operator acquiring the well has on file with the Commission an approved form of financial security covering the well and an approved Form P-4 (Certificate of Compliance and Transportation Authority). The transferred well remains covered by this bond and the Principal and Surety remain responsible for compliance with all laws and Commission rules covering the transferred well until the Commission determines that the well is covered by proper financial security and the acquiring operator has assumed full responsibility for the well in accordance with all state laws, including Tex. Nat. Resources Code §91.107and all applicable Commission rules.

IN TESTIMONY WHEREOF, said PRINCIPAL has hereunto subscribed his or her name or has caused this instrument to be signed by its duly authorized officers this 27th day of April 20 23.

EXHIBIT F

W&T Offshore, Inc.

PRINCIPAL

By _____

Janet Yang
Chief Financial Officer &
Executive Vice President

NAME & TITLE

IN TESTIMONY WHEREOF, said SURETY has caused this instrument to be signed by its duly authorized officers and its corporate seal to be affixed this **28th** day of **February** 20**23**.

Endurance Assurance Corporation

SURETY (ATTACH POWER OF ATTORNEY)

(seal)

By _____

Meredith K. Anderson
Attorney-in-Fact

NAME & TITLE

12890 Lebanon Road, Mt. Juliet, TN 37122

SURETY'S FULL MAILING ADDRESS

12890 Lebanon Road, Mt. Juliet, TN 37122

SURETY'S PHYSICAL ADDRESS

(914) 468-8000

SURETY'S TELEPHONE NUMBER

P-5PB(2) rev. 9/2021

EXHIBIT 10

SOMPO INTERNATIONAL
INSURANCE

POWER OF ATTORNEY

11071

KNOW ALL BY THESE PRESENTS, that **Endurance Assurance Corporation**, a Delaware corporation, **Endurance American Insurance Company**, a Delaware corporation, **Lexon Insurance Company**, a Texas corporation, and/or **Bond Safeguard Insurance Company**, a South Dakota corporation, each, a "Company" and collectively, "**Sompo International**," do hereby constitute and appoint: **Edwin H. Frank, III, Michele K. Tyson, Meredith K. Anderson, Stephen Michael Smith, Timothy J. Briggs** as true and lawful Attorney(s)-In-Fact to make, execute, seal, and deliver for, and on its behalf as surety or co-surety; bonds and undertakings given for any and all purposes, also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking so made, executed and delivered shall obligate the Company for any portion of the penal sum thereof in excess of the sum of **ONE HUNDRED MILLION Dollars ($100,000,000.00)**.

Such bonds and undertakings for said purposes, when duly executed by said attorney(s)-in-fact, shall be binding upon the Company as fully and to the same extent as if signed by the President of the Company under its corporate seal attested by its Corporate Secretary.

This appointment is made under and by authority of certain resolutions adopted by the sole shareholder of each Company by unanimous written consent effective the 15th day of June, 2019, a copy of which appears below under the heading entitled "Certificate".

This Power of Attorney is signed and sealed by facsimile under and by authority of the following resolution adopted by the sole shareholder of each Company by unanimous written consent effective the 15th day of June, 2019 and said resolution has not since been revoked, amended or repealed:

RESOLVED, that the signature of an individual named above and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signature or seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, each Company has caused this instrument to be signed by the following officers, and its corporate seal to be affixed this 15th day of June, 2019.

Endurance Assurance Corporation
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

Endurance American Insurance Company
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

Lexon Insurance Company
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

Bond Safeguard Insurance Company
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

ACKNOWLEDGEMENT

On this 15th day of June, 2019, before me, personally came the above signatories known to me, who being duly sworn, did depose and say that he/they is an officer of each of the Companies; and that he executed said instrument on behalf of each Company by authority of his office under the by-laws of each Company.

By: Amy Taylor
Amy Taylor, Notary Public – My Commission Expires 5/9/23

CERTIFICATE

I, the undersigned Officer of each Company, DO HEREBY CERTIFY that:

1. That the original power of attorney of which the foregoing is a copy was duly executed on behalf of each Company and has not since been revoked, amended or modified; that the undersigned has compared the foregoing copy thereof with the original power of attorney, and that the same is a true and correct copy of the original power of attorney and of the whole thereof;
2. The following are resolutions which were adopted by the sole shareholder of each Company by unanimous written consent effective June 15, 2019 and said resolutions have not since been revoked, amended or modified:

   "RESOLVED, that each of the individuals named below is authorized to make, execute, seal and deliver for and on behalf of the Company any and all bonds, undertakings or obligations in surety or co-surety with others: RICHARD M. APPEL, BRIAN J. BEGGS, CHRISTOPHER DONELAN, SHARON L. SIMS, CHRISTOPHER L. SPARRO, MARIANNE L. WILBERT

   ; and be it further

   RESOLVED, that each of the individuals named above is authorized to appoint attorneys-in-fact for the purpose of making, executing, sealing and delivering bonds, undertakings or obligations in surety or co-surety for and on behalf of the Company."
3. The undersigned further certifies that the above resolutions are true and correct copies of the resolutions as so recorded and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal this 28th day of February, 2023.

By: Daniel S. Lurie, Secretary

NOTICE: U. S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL (OFAC)

No coverage is provided by this Notice nor can it be construed to replace any provisions of any surety bond or other surety coverage provided. This Notice provides information concerning possible impact on your surety coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous foreign agents, front organizations, terrorists, terrorist organizations, and narcotics traffickers as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's website – https://www.treasury.gov/resource-center/sanctions/SDN-List.

In accordance with OFAC regulations, if it is determined that you or any other person or entity claiming the benefits of any coverage has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, any coverage will be considered a blocked or frozen contract and all provisions of any coverage provided are immediately subject to OFAC. When a surety bond or other form of surety coverage is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments may also apply.

Any reproductions are void.

Surety Claims Submission: LexonClaimAdministration@sompo-intl.com
Telephone: 615-553-9500 Mailing Address: Sompo International; 12890 Lebanon Road; Mount Juliet, TN 37122-2870

U.S. Department of the Interior
Bureau of Ocean Energy Management

OMB Control No.: 1010-0006
Expiration Date: 6/30/2019

Cover Page

OUTER CONTINENTAL SHELF (OCS) MINERAL LESSEE'S OR OPERATOR'S SUPPLEMENTAL BOND

Form BOEM-2028A

This form dated June 2016 supersedes all previous versions of form BOEM-2028A

Paperwork Reduction Act of 1995 (PRA) Statement: The PRA (44 U.S.C. 3501 *et seq.*) requires us to inform you that BOEM collects this information to hold the surety liable for the obligations and liability of the Principal (lessee or operator). Responses are mandatory. No proprietary information is collected. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. Public reporting burden for this form is estimated to average 15 minutes per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Comments regarding the burden estimate or any other aspect of this form should be directed to the Information Collection Clearance Officer, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, VA 20166.

EXHIBIT E

U.S. DEPARTMENT OF THE INTERIOR
Bureau of Ocean Energy Management

Bond No. 1156846 OCS Lease/RUE/ROW No. OCS- G 10942

Bond Type Supplemental Amount $5,000,000.00

OUTER CONTINENTAL SHELF (OCS) MINERAL LESSEE'S OR OPERATOR'S SUPPLEMENTAL BOND

RECEIVED
JUN 01 2018
LEASING & FINANCIAL RESPONSIBILITY SECTION

The **Surety** is the entity Guaranteeing Performance.

Name of Surety: Lexon Insurance Company

Mailing Address: 10002 Shelbyville Road, Suite 100
Louisville, Kentucky 40223

If a Corporation, Incorporated in the State of: Texas ; County or Parish of: Travis

☒ Check here if Surety is certified by U.S. Treasury as an acceptable surety on Federal Bonds and listed in the current U.S. Treasury Circular No. 570.

The **Principal** is the Lessee or Designated Operator for Whom the Bond is Issued.

Name of Principal: W & T Energy VI, LLC

Mailing Address: Nine Greenway Plaza, Suite 300
Houston, Texas 77046

Schedule A, the lease/RUE/ROW covered by this bond, is composed of: (add legal description)

The following lease/RUE/ROW: All of Block 823 Viosca Knoll, as shown on OCS Official Protraction Diagram NH16-7.

In addition to the Obligations of the Principal during the period of liability of this bond, the Surety also accepts the following Obligations: (Check one)

☒ No Obligations other than the Obligations of the Principal during the period of liability of this bond.

☐ All Obligations of all previous Sureties or guarantors even if the Obligations are not Obligations of the Principal during the period of liability of this bond.

☐ All Obligations of all previous Sureties or guarantors even if the Obligations are not Obligations of the Principal during the period of liability of this bond with the following exceptions or limitations (use an attached rider).

Definitions For the purposes of this document:	A **Principal** includes an entity holding an interest in the oil & gas lease in one or more of the following ways: (1) as an approved record title owner of all or a portion of the lease, (2) as an approved operating rights owner of all or a portion of the lease, or (3) as a designated operator or designated agent in all or a portion of the lease. A **Lessee** includes an approved record title owner of all or a portion of the lease or an approved operating rights owner of all or a portion of the lease. An **Obligation** includes any obligation arising from any regulations of the Department of the Interior or any Instrument issued, maintained, or approved under the OCS Lands Act (43 U.S.C. 1331 et seq.). An **Instrument** includes individually or collectively any lease, operating agreement, designation of operator or agent, storage agreement, compensatory royalty agreement, transfer of operating rights, permit, license, or easement, whereunder the Principal has the right, privilege, or license to conduct operations on the OCS. A **Person** includes an individual, a public or private entity, a State, a political subdivision of a State, any association of individuals, corporations, States, or subdivisions of States, or a government agency.

By signing below, the Principal verifies that the information above is correct and agrees to the following:
The Principal as agent on behalf of all lessees, operating rights owners, and operators will fulfill all Obligations for the entire leasehold and to the same extent as though the Principal were the sole lessee for the lease/RUE/ROW in Schedule A.

By signing below, the Surety verifies that the information above is correct and agrees to the following:

1. The Surety does hereby absolutely and unconditionally bind itself to the United States of America acting through and by the Bureau of Ocean Energy Management (BOEM), or such other official designated by the Secretary of the Interior for this purpose, for the payment of all of the cost of the plugging and abandonment Obligations.
2. The Surety will be responsible for all Obligations of the Principal in existence at the time this document becomes effective and all Obligations that accrue after that date and until all Obligations are met or until the Regional Director terminates the period of liability of this bond.
3. If the Regional Director terminates the period of liability of this bond, the Surety will remain responsible for Obligations that accrued during the period of liability until the Regional Director issues a written cancellation of the bond in favor of the Surety.
4. If this bond is cancelled, the Regional Director may reinstate this bond as if no cancellation had occurred if any payment of any Obligation of the Principal(s) is rescinded or must be restored pursuant to any insolvency, bankruptcy, reorganization, or receivership, or should the representation of the Principal that it has paid its financial Obligations or performed the other

Obligations of the lease in accordance with BOEM specifications be materially false and BOEM relied upon such representation in canceling the instrument.

5. The Surety waives any right of notice of this bond taking effect and agrees that this bond will take effect upon delivery to BOEM.
6. The Surety's Obligations will remain in full force and effect, even if:
   (a) Any person assigns all or part of any interest in an Instrument covered by this document.
   (b) Any person modifies an Instrument or Obligation under an Instrument in any manner including modifications that result from a commitment to a unit, cooperative, communitization, or storage agreement; suspension of operations or production; suspension or changes in rental, minimum royalty, or royalties; modification of regulations or interpretations of regulations; creation or modification of compensatory royalty agreements or payments; or creation of any mortgage, pledge, or other grant of security interest in the Instruments.
   (c) Any person, event, or condition terminates any Instrument covered by this bond, whether the termination is by operation of law or otherwise.
   (d) BOEM takes or fails to take any action in enforcing, as against any party to the Instrument, the payment of rentals or royalties or the performance of any other covenant, condition or agreement of the lease, or giving notice of or making demand with respect to such nonperformance.
   (e) The Surety suffers any loss by reason of any law limiting, qualifying, or discharging the Principal's Obligation.
7. The Surety agrees to be bound under this bond as to the interests in any Instrument retained by the Principal when BOEM approves the transfer of any or all of the Instruments or interests in the Instruments.
8. In the event of any default under a lease, the Surety must provide payment of all of the cost of the Obligations of the Principal upon demand by BOEM.
9. If BOEM decides to commence suit to enforce its rights, it may commence and prosecute any claim, suit, action, or other proceeding against the Principal and Surety, or either of them, whether or not BOEM joins the lessees or any other party.
10. In the event there is more than one Surety for the Principal's performance of the Obligations, as to any Instrument, the Surety's Obligation and liability under this bond is on a "solidary" or "joint and several" basis along with other guarantors or sureties.
11. The Surety agrees to give prompt notice to BOEM and the Principal of any action filed alleging the insolvency or bankruptcy of the Surety or the Principal, or alleging any violation that would result in suspension or revocation of the Surety's charter or license to do business.
12. The Surety's Obligation and liabilities under this Bond are binding upon the Surety's successors and assigns. Nothing in this document permits assignment of the Surety's Obligation without the written consent of BOEM.
13. The Surety hereby waives any defenses to liability on this bond based on an unauthorized Principal signature.

Lexon Insurance Company
Name of Surety

Meredith K. Anderson
Signature of Person Executing for Surety

Meredith K. Anderson, Attorney-in-Fact
Name and Title (typed or printed)

10002 Shelbyville Road, Suite 100
Business Address

Louisville, Kentucky 40223
Business Address

W & T Energy VI, LLC
Name of Principal

Thomas D Murphy
Signature of Person Executing for Principal

REPRESENTATIVE
Name and Title (typed or printed)

Nine Greenway Plaza, Suite 300
Business Address

Houston, Texas 77046
Business Address

Signed on this 4th day of May, 2018, in the State of Texas, in the presence of:

Wendy Pierson
Signature of Witness

Wendy Pierson
Name (typed or printed)

777 Post Oak Boulevard, Suite 330
Address

Houston, Texas 77056
Address

Signature of Witness

TODD Grabois
Name (typed or printed)

9 Greenway Plaza, Ste 300
Address

Houston, Tx 77046
Address

Note: The person executing for the Surety must attach a corporate resolution and power of attorney stating his or her authority to undertake this Obligation, pursuant to the acts of the corporate board of directors and the laws of the State of incorporation. The corporation executing this bond as Surety and the Principal, if a corporation, must affix their corporate seals.

BOEM-2028A (June 2016)
Previous Editions are Obsolete.

POWER OF ATTORNEY

LX- 330977

Lexon Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that **LEXON INSURANCE COMPANY**, a Texas Corporation, with its principal office in Louisville, Kentucky, does hereby constitute and appoint: Edwin H. Frank, III, Michele K. Tyson, W. Russell Brown, Jr., Meredith K. Anderson its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of **LEXON INSURANCE COMPANY** on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed $5,000,000.00, Five Million dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, **LEXON INSURANCE COMPANY** has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 5th day of August, 2015.

LEXON INSURANCE COMPANY

BY _____
David E. Campbell
President

ACKNOWLEDGEMENT

On this 5th day of August, 2015, before me, personally came David E. Campbell to me known, who be duly sworn, did depose and say that he is the President of **LEXON INSURANCE COMPANY**, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.

AMY TAYLOR
Notary Public- State of Tennessee
Davidson County
My Commission Expires 07-08-19

BY _____
Amy Taylor
Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of **LEXON INSURANCE COMPANY**, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the forgoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Seal at Mount Juliet, Tennessee this 4th Day of May, 20 18.

BY _____
Andrew Smith
Assistant Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."

U.S. Department of the Interior
Office of Natural Resources Revenue

OMB Control Number 1012-0006
OMB Approval Expires March 31, 2018

ADMINISTRATIVE APPEAL BOND
Form ONRR-4435

Bond No. **1136949**

Bond Amount $ **6,924,756.00**
Date Bond Executed **September 9, 2016**

KNOW ALL MEN BY THESE PRESENTS, That we, **W & T Offshore, Inc.** as Principal, and **Lexon Insurance Company**, a corporation duly organized and existing under the laws of the State of **Texas**, having its main office at **10002 Shelbyville Road, Suite 100, Louisville, KY 40223**, as Surety are held and firmly bound unto the United States Office of Natural Resources Revenue in the sum of $ **6,924,756.00**, for the payment of which sum well and truly to be made, we bind ourselves, and our heirs, executors, administrators, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, WHEREAS, the bond is intended to secure the payment of principal and interest due the United States Office of Natural Resources Revenue in the event that **W & T Offshore, Inc.** is unsuccessful in its administrative appeal to the Director, Office of Natural Resources Revenue, of (**Bill Number(s)**) **OTH100002683**, dated **September 9, 2016**, or any order (invoice) which may be substituted, if **W & T Offshore, Inc.** shall pay all principal and interest found to be due under the decision on that appeal within the time required therefor, this instrument shall be of no force or effect; otherwise, it will remain in full force and effect.

Principal

W & T Offshore, Inc.
(Legal Name)
Nine Greenway Plaza, Suite 300
(Address)
Houston, Texas 77046

By John D Peterson

Its Vice President

Surety

Lexon Insurance Company
(Legal Name)
10002 Shelbyville Road, Suite 100
(Address)
Louisville, Kentucky 40223

Michelle K. Tyson

Michele K. Tyson, Attorney-in-Fact

Corporate Seal (where required)

Paperwork Reduction Act of 1995 (PRA) Statement: The PRA (44 U.S.C. 3501 *et seq.*) requires us to inform you that we collect this information to allow lessees, designees, or payors to stay the effectiveness of an order or decision by posting a surety instrument. The ONRR uses the information to secure the financial interests of the public and Indian lessors during the entire administrative and judicial appeal process. Responses are required to obtain a benefit (43 U.S.C. 1334). Proprietary information is protected in accordance with standards established by the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1733), the Freedom of Information Act (5 U.S.C. 552(b)(4)), and Department regulations (43 CFR 2). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Public reporting burden for this form is estimated to average 2 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to the Rules and Regs Team, Office of Natural Resources Revenue, PO Box 25165, MS 61030A, Denver, CO 80225.

Form ONRR-4435 (revised 10/2011)

POWER OF ATTORNEY

LX- 286187

Lexon Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that **LEXON INSURANCE COMPANY**, a Texas Corporation, with its principal office in Louisville, Kentucky, does hereby constitute and appoint: Edwin H. Frank, III, Michele K. Tyson, W. Russell Brown, Jr. its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of **LEXON INSURANCE COMPANY** on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed $7,000,000.00, Seven Million dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, **LEXON INSURANCE COMPANY** has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 5th day of August, 2015.

LEXON INSURANCE COMPANY

BY _____
David E. Campbell
President

ACKNOWLEDGEMENT

On this 5th day of August, 2015, before me, personally came David E. Campbell to me known, who be duly sworn, did depose and say that he is the President of **LEXON INSURANCE COMPANY**, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.

AMY TAYLOR
Notary Public- State of Tennessee
Davidson County
My Commission Expires 07-08-19

BY _____
Amy Taylor
Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of **LEXON INSURANCE COMPANY**, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the forgoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Seal at Mount Juliet, Tennessee this 9th Day of September, 2016.

BY _____
Andrew Smith
Assistant Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."

W&T OFFSHORE

January 24, 2022

Re: Request for Acceptance of Bond Rider No. 5 for Bond No. 1136949 and Bond Rider No.1 for Bond No. N-4000259

TO ONRR:
Office of Natural Resource Revenue
Denver Federal Center, Building 85
Room A-614, Document Processing Team
Denver, CO 80225-0165

Please accept the attached "Bond Rider No. 5" associated with Bond No. 1136949, issued by Lexon Insurance Company, decreasing the amount by $7,042,127.00 to $1,166,860.00; and "Bond Rider No. 1" associated with Bond No. N-4000259, issued by Indemnity National Insurance Company, increasing the amount by $7,042,127.00 to $7,313,000.00. The new riders are dollar-for-dollar replacement for existing bonds, totaling the same amount of $8,479,860.00. Both bonds are posted in favor of the United States Office of Natural Resource Revenue by W & T Offshore, Inc., (as Principal) and Lexon Insurance Company (as Surety) and Indemnity National Insurance Company (as Surety).

Bond No.	Bill #	Docket #	Surety Amount Required
1136949	OTH100002683	10-0128	$1,166,860.00
N-4000259	OTH10002683	10-0128	$7,313,000.00
Total			$8,479,860.00

As this request is accepted and processed, please provide notification via email to the following parties:

Todd Grabois, W&T Offshore, Inc.: tgrabois@wtoffshore.com
Alice Dornan, Petro-Marine Underwriters, Inc.: AliceDornan@msn.com
Scott Sewell, Petro-Marine Underwriters, Inc. Sewell504@gmail.com
Michele Tyson, Attorney-In-Fact Lexon Surety Group, LLC : mtyson@indemco.com
Michele Tyson, Indemnity National Insurance Company, mtyson@indemco.com

Should you have any questions in this matter, please contact our office at (504) 593-9399 or by email at AliceDornan@msn.com.

Sincerely,

Janet Yang
Chief Financial Officer

Bond No. 1136949

Bond Rider No. 5

Attaching to and forming part of Administrative Appeal Bond No. 1136949 (hereinafter "Bond") with W & T Offshore, Inc., as Principal, Lexon Insurance Company, as Surety, conditioned to cover Bill Number OTH100002683, in favor of the U.S. Department of the Interior, Office of Natural Resources Revenue, as Obligee.

Executed Date of Bond: September 9, 2016
Effective Date of Change: January 10, 2022

In consideration of the mutual agreement contained herein, the Principal and the Surety hereby consent to the following changes:

The penalty amount has decreased by Seven Million Forty Two Thousand One Hundred Twenty Seven and No/100 Dollars ($7,042,127.00) from Eight Million Two Hundred Eight Thousand Nine Hundred Eighty Seven and No/100 Dollars ($8,208,987.00) to One Million One Hundred Sixty Six Thousand Eight Hundred Sixty and No/100 Dollars ($1,166,860.00).

The address for the Principal has changed from Nine Greenway Plaza, Suite 300, Houston, Texas 77046 to 5718 Westheimer Road, Suite 700, Houston, Texas 77057-5745.

All other conditions and terms to remain as originally written.

Signed, sealed and dated this 10th day of January, 2022.

W & T Offshore, Inc.
5718 Westheimer Road, Suite 700
Houston, Texas 77057-5745

By: _____

Name: Janet Yang

Title: Chief Financial Officer

Lexon Insurance Company
10002 Shelbyville Road, Suite 100
Louisville, Kentucky 40223

By: _____

Name: Meredith K. Anderson

Title: Attorney-in-Fact

SOMPO INTERNATIONAL
INSURANCE

POWER OF ATTORNEY

11071

KNOW ALL BY THESE PRESENTS, that **Endurance Assurance Corporation**, a Delaware corporation, **Endurance American Insurance Company**, a Delaware corporation, **Lexon Insurance Company**, a Texas corporation, and/or **Bond Safeguard Insurance Company**, a South Dakota corporation, each, a "Company" and collectively, "**Sompo International**," do hereby constitute and appoint: **Edwin H. Frank, III, Michele K. Tyson, W. Russell Brown, Jr., Meredith K. Anderson, Stephen Michael Smith**

as true and lawful Attorney(s)-In-Fact to make, execute, seal, and deliver for, and on its behalf as surety or co-surety, bonds and undertakings given for any and all purposes, also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking so made, executed and delivered shall obligate the Company for any portion of the penal sum thereof in excess of the sum of **ONE HUNDRED MILLION Dollars ($100,000,000.00)**.

Such bonds and undertakings for said purposes, when duly executed by said attorney(s)-in-fact, shall be binding upon the Company as fully and to the same extent as if signed by the President of the Company under its corporate seal attested by its Corporate Secretary.

This appointment is made under and by authority of certain resolutions adopted by the sole shareholder of each Company by unanimous written consent effective the 15th day of June, 2019, a copy of which appears below under the heading entitled "Certificate".

This Power of Attorney is signed and sealed by facsimile under and by authority of the following resolution adopted by the sole shareholder of each Company by unanimous written consent effective the 15th day of June, 2019 and said resolution has not since been revoked, amended or repealed:

RESOLVED, that the signature of an individual named above and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signature or seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, each Company has caused this instrument to be signed by the following officers, and its corporate seal to be affixed this 15th day of June, 2019.

Endurance Assurance Corporation	Endurance American Insurance Company	Lexon Insurance Company	Bond Safeguard Insurance Company
By: Richard M Appel	By: Richard M Appel	By: Richard M Appel	By: Richard M Appel
Richard Appel; SVP & Senior Counsel	Richard Appel; SVP & Senior Counsel	Richard Appel; SVP & Senior Counsel	Richard Appel; SVP & Senior Counsel

Endurance Assurance Corporation CORPORATE SEAL 2002 DELAWARE

Endurance American Insurance Company CORPORATE SEAL 1996 DELAWARE

LEXON INSURANCE COMPANY CORPORATE SEAL MARCH 10, 1994 STATE OF TEXAS

BOND SAFEGUARD INSURANCE COMPANY A SOUTH DAKOTA INSURANCE COMPANY

ACKNOWLEDGEMENT

On this 15th day of June, 2019, before me, personally came the above signatories known to me, who being duly sworn, did depose and say that he/they is/are officer of each of the Companies; and that he executed said instrument on behalf of each Company by authority of his office under the by-laws of each Company.

By: Amy Taylor
Amy Taylor, Notary Public - My Commission Expires 5/9/23

AMY TAYLOR STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

CERTIFICATE

I, the undersigned Officer of each Company, DO HEREBY CERTIFY that:

1. That the original power of attorney of which the foregoing is a copy was duly executed on behalf of each Company and has not since been revoked, amended or modified; that the undersigned has compared the foregoing copy thereof with the original power of attorney, and that the same is a true and correct copy of the original power of attorney and of the whole thereof;
2. The following are resolutions which were adopted by the sole shareholder of each Company by unanimous written consent effective June 15, 2019 and said resolutions have not since been revoked, amended or modified:

   "RESOLVED, that each of the individuals named below is authorized to make, execute, seal and deliver for and on behalf of the Company any and all bonds, undertakings or obligations in surety or co-surety with others: RICHARD M. APPEL, BRIAN J. BEGGS, CHRISTOPHER DONELAN, SHARON L. SIMS, CHRISTOPHER L. SPARRO, MARIANNE L. WILBERT

   ; and be it further

   RESOLVED, that each of the individuals named above is authorized to appoint attorneys-in-fact for the purpose of making, executing, sealing and delivering bonds, undertakings or obligations in surety or co-surety for and on behalf of the Company."
3. The undersigned further certifies that the above resolutions are true and correct copies of the resolutions as so recorded and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal this 10th day of January, 2022

By: Daniel S. Lone, Secretary

NOTICE: U. S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL (OFAC)

No coverage is provided by this Notice nor can it be construed to replace any provisions of any surety bond or other surety coverage provided. This Notice provides information concerning possible impact on your surety coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous foreign agents, front organizations, terrorists, terrorist organizations, and narcotics traffickers as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's website – https://www.treasury.gov/resource-center/sanctions/SDN-List.

In accordance with OFAC regulations, if it is determined that you or any other person or entity claiming the benefits of any coverage has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, any coverage will be considered a blocked or frozen contract and all provisions of any coverage provided are immediately subject to OFAC. When a surety bond or other form of surety coverage is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments may also apply.

Any reproductions are void.

Surety Claims Submission: LexonClaimAdministration@sompo-intl.com

Telephone: 615-553-9500 Mailing Address: Sompo International; 12890 Lebanon Road; Mount Juliet, TN 37122-2870

Indemnity National Insurance Company
238 Bedford Way
Franklin, TN 37064

Power of Attorney

KNOW ALL PERSONS BY THESE PRESENTS: that Indemnity National Insurance Company, a Mississippi corporation, (hereinafter the "Company"), does hereby constitute and appoint: Edwin H. Frank, III, Michele K. Tyson, W. Russell Brown, Jr., Meredith K. Anderson, Stephen Michael Smith, and Timothy J. Briggs********** of IndemCo********** to be its true and lawful Attorney-in-Fact, with full power and authority hereby conferred to sign, seal, and execute on its behalf surety bonds or undertakings and other documents of a similar nature issued in the course of its business up to a penal sum not to exceed Ten million dollars ($10,000,000.00)********** each, and to bind the Company thereby as fully and to the same extent as if the same were signed by the duly authorized officers of the Company.

This appointment is made under and executed pursuant to and by authority of the following Minutes of Special Actions Taken by Written Consent of the Board of Directors, which is now in full force and effect:

Authorization to Appoint Attorneys-in-Fact and the Use of Facsimile Signatures and Facsimile Seals for the Purpose of Issuing Bonds:

RESOLVED: That the president or any vice president may appoint attorneys-in-fact or agents with authority as defined or limited in the instrument evidencing the appointment in each case, for and on behalf of the Company to execute and deliver and affix the seal of the Company to bonds and related obligatory certificates and documents; and any one of said officers may remove any such attorney-in-fact or agent and revoke any power previously granted to such person, whether or not such officer appointed the attorney-in-fact or agent.

RESOLVED: That any bonds and related obligatory certificates and documents shall be valid and binding upon the Company,
(i) when signed by the president, or any vice president, and sealed with the Company seal; or
(ii) when duly executed and sealed with the Company seal by one or more attorneys-in-fact or agents pursuant to and within the limits of authority evidenced by the power of attorney issued by the Company to such person or persons a certified copy of which power of attorney must be attached thereto in order for such obligation to be binding upon the Company.

RESOLVED: That the signature of any authorized officer and the seal of the Company may be affixed to any power of attorney or certification thereof authorizing the execution and delivery of any bonds and related obligatory certificates and documents of the Company and such signature and seal then so used shall have the same force and effect as though manually affixed.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Company and the corporate seal of Indemnity National Insurance Company has been affixed thereto in Lexington, Kentucky this 20th day of August, 2021.

INDEMNITY NATIONAL INSURANCE COMPANY CORPORATE SEAL 1993 Mississippi

Indemnity National Insurance Company

By _____
Thomas F. Elkins, President

State of Kentucky
County of Fayette

On this 20th day of August, 2021, before me, a Notary Public, personally came Thomas F. Elkins, to me known, and acknowledged that he is President of Indemnity National Insurance Company; that he knows the seal of said corporation; and that he executed the above Power of Attorney and affixed the corporate seal of Indemnity National Insurance Company thereto with the authority and at the direction of said corporation.

DEBORAH A. MURPHY NOTARY PUBLIC STATE AT LARGE KY

By Deborah A. Murphy
Notary Public

My Commission Expires 09/26/2025

CERTIFICATE

I, James E. Hart, Secretary of Indemnity National Insurance Company, do hereby certify that the foregoing Power of Attorney is still in full force and effect, and further certify that the Minutes of Special Actions Taken by Written Consent of the Board of Directors are now in full force and effect.

IN TESTIMONY WHEREOF I have subscribed my name and affixed the seal of said Company. Dated this 10th day of January, 2022.

INDEMNITY NATIONAL INSURANCE COMPANY CORPORATE SEAL 1993 Mississippi

By _____
James E. Hart, Secretary

U.S. Department of the Interior
Office of Natural Resources Revenue

OMB Control Number 1012-0006
OMB Approval Expires March 31, 2018

ADMINISTRATIVE APPEAL BOND
Form ONRR-4435

Bond No. **1136950**

Bond Amount $ **$101,944.00**
Date Bond Executed **September 9, 2016**

KNOW ALL MEN BY THESE PRESENTS, That we, **W & T Offshore, Inc.** as Principal, and **Lexon Insurance Company**, a corporation duly organized and existing under the laws of the State of **Texas**, having its main office at **10002 Shelbyville Road, Suite 100, Louisville, KY 40223**, as Surety are held and firmly bound unto the United States Office of Natural Resources Revenue in the sum of $ **$101,944.00**, for the payment of which sum well and truly to be made, we bind ourselves, and our heirs, executors, administrators, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, WHEREAS, the bond is intended to secure the payment of principal and interest due the United States Office of Natural Resources Revenue in the event that **W & T Offshore, Inc.** is unsuccessful in its administrative appeal to the Director, Office of Natural Resources Revenue, of (**Bill Number(s)**) **OTH100002745**, dated **September 9, 2016**, or any order (invoice) which may be substituted, if **W & T Offshore, Inc.** shall pay all principal and interest found to be due under the decision on that appeal within the time required therefor, this instrument shall be of no force or effect; otherwise, it will remain in full force and effect.

Principal

W & T Offshore, Inc.
(Legal Name)
Nine Greenway Plaza, Suite 300
(Address)
Houston, Texas 77046

By _____

Its Vice President

Corporate Seal (where required)

Surety

Lexon Insurance Company
(Legal Name)
10002 Shelbyville Road, Suite 100
(Address)
Louisville, Kentucky 40223

Michele K. Tyson

Michele K. Tyson, Attorney-in-Fact

Paperwork Reduction Act of 1995 (PRA) Statement: The PRA (44 U.S.C. 3501 *et seq.*) requires us to inform you that we collect this information to allow lessees, designees, or payors to stay the effectiveness of an order or decision by posting a surety instrument. The ONRR uses the information to secure the financial interests of the public and Indian lessors during the entire administrative and judicial appeal process. Responses are required to obtain a benefit (43 U.S.C. 1334). Proprietary information is protected in accordance with standards established by the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1733), the Freedom of Information Act (5 U.S.C. 552(b)(4)), and Department regulations (43 CFR 2). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Public reporting burden for this form is estimated to average 2 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to the Rules and Regs Team, Office of Natural Resources Revenue, PO Box 25165, MS 61030A, Denver, CO 80225.

Form ONRR-4435 (revised 10/2011)

EXHIBIT 10

POWER OF ATTORNEY

LX- 267934

Lexon Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that **LEXON INSURANCE COMPANY**, a Texas Corporation, with its principal office in Louisville, Kentucky, does hereby constitute and appoint: Edwin H. Frank, III, Michele K. Tyson, W. Russell Brown, Jr. its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of **LEXON INSURANCE COMPANY** on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed $3,000,000.00, Three Million dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, **LEXON INSURANCE COMPANY** has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 5th day of August, 2015.

LEXON INSURANCE COMPANY

BY _____
David E. Campbell
President

ACKNOWLEDGEMENT

On this 5th day of August, 2015, before me, personally came David E. Campbell to me known, who be duly sworn, did depose and say that he is the President of **LEXON INSURANCE COMPANY**, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.

AMY TAYLOR
Notary Public- State of Tennessee
Davidson County
My Commission Expires 07-08-19

BY _____
Amy Taylor
Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of **LEXON INSURANCE COMPANY**, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the forgoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Seal at Mount Juliet, Tennessee this 9th Day of September, 20 16.

BY _____
Andrew Smith
Assistant Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."

Bond No. 1136950

Bond Rider No. 3

Attaching to and forming part of Administrative Appeal Bond No. 1136950 (hereinafter "Bond") in the amount of One Hundred Eleven Thousand Five Hundred Forty-Four and No/100 Dollars ($111,544.00) executed on September 9, 2016, with W & T Offshore, Inc., as Principal, Lexon Insurance Company, as Surety, conditioned to cover Bill Number OTH100002745, in favor of the U.S. Department of the Interior, Office of Natural Resources Revenue, as Obligee.

Effective Date of Change: August 13, 2019

In consideration of the mutual agreement contained herein, the Principal and the Surety hereby consent to the following changes:

The penalty amount has increased by Five Thousand Seven Hundred Thirty-Five and No/100 Dollars ($5,735.00) from One Hundred Eleven Thousand Five Hundred Forty-Four and No/100 Dollars ($111,544.00) to One Hundred Seventeen Thousand Two Hundred Seventy-Nine and No/100 Dollars ($117,279.00).

All other conditions and terms to remain as originally written.

Signed, sealed and dated this 13th day of August, 2019.

W & T Offshore, Inc.
Nine Greenway Plaza, Suite 300
Houston, Texas 77046

By: _____

Name: Shahid Ghani

Title: Secretary

Lexon Insurance Company
10002 Shelbyville Road, Suite 100
Louisville, Kentucky 40223

By: Michele K. Tyson

Name: Michele K. Tyson

Title: Attorney-in-Fact

POWER OF ATTORNEY

LX- 11071

Lexon Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that **LEXON INSURANCE COMPANY**, a Texas Corporation, with its statutory home office in Austin, Texas, does hereby constitute and appoint: Edwin H. Frank, III, Michele K. Tyson, W. Russell Brown, Jr., Meredith K. Anderson, Stephen Michael Smith its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of **LEXON INSURANCE COMPANY** on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed $10,000,000.00 Ten Million Dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, **LEXON INSURANCE COMPANY** has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 22nd day of June, 2018.

LEXON INSURANCE COMPANY

BY _____
Brian Beggs
President

ACKNOWLEDGEMENT

On this 22nd day of June, 2018, before me, personally came Brian Beggs to me known, who be duly sworn, did depose and say that he is the President of **LEXON INSURANCE COMPANY**, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.

AMY TAYLOR
Notary Public- State of Tennessee
Davidson County
My Commission Expires 07-08-19

BY _____
Amy Taylor
Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of **LEXON INSURANCE COMPANY**, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the forgoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Seal at Mount Juliet, Tennessee this 13th Day of August, 2019.

BY _____
Andrew Smith
Assistant Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."



PETRO-MARINE UNDERWRITERS, INC.

1515 Poydras Street, Suite 1120
New Orleans, Louisiana 70112
Phone (504) 593-9399 or Fax (504) 267-0659
petro_marine@msn.com
www.Petro-MarineBonding.com

August 21, 2019

Re: Request for Acceptance of Bond Rider No. 3 for Bond No. 1136950

TO ONRR:

Office of Natural Resource Revenue
Denver Federal Center, Building 85
Room A-614, Document Processing Team
Denver, CO 80225-0165

Please accept the attached "Bond Rider No. 3" associated with Bond No. 1136950 (the "Bond"), posted in favor of the United States Office of Natural Resource Revenue by W & T Offshore, Inc., (as Principal) and Lexon Insurance Company (as Surety).

Bond No.	Bill #	Docket #	Surety Amount Required
1136950	OTH100002745	11-0001	$117,279.00

As this request is accepted and processed, please provide notification via email to the following parties:
Todd Grabois, W&T Offshore, Inc.: tgrabois@wtoffshore.com
Michele Tyson, Attorney-In-Fact Lexon Surety Group, LLC: mytyson@indemco.com
Alice Dornan, Petro-Marine Underwriters, Inc.: AliceDornan@msn.com
Scott Sewell, Petro-Marine Underwriters, Inc.: Sewell504@gmail.com

Should you have any questions in this matter, please contact our office at (504) 593-9399 or by email at AliceDornan@msn.com.

Sincerely,

S. Scott Sewell

S. Scott Sewell
Petro-Marine Underwriters, Inc.

ENC:

alicedornan@msn.com

From: TrackingUpdates@fedex.com
Sent: Thursday, August 22, 2019 10:26 AM
To: alicedornan@msn.com
Subject: FedEx Shipment 776040892673 Delivered

Your package has been delivered

Tracking # 776040892673

Ship date:
Wed, 8/21/2019

Scott Sewell
Petro-Marine Underwriters, Inc.
New Orleans, LA 70124
US

Delivered

Delivery date:
Thu, 8/22/2019 9:22 am

Kim Werner
Office of Natural Resource Revenue
Denver Federal Center, Building 85
Room A-614 Document Processing Team
DENVER, CO 80225
US

Shipment Facts

Our records indicate that the following package has been delivered.

Tracking number:	776040892673
Status:	Delivered: 08/22/2019 09:22 AM Signed for By: J.GIRON
Signed for by:	J.GIRON
Delivery location:	Denver, CO
Delivered to:	Receptionist/Front Desk
Service type:	FedEx Priority Overnight®
Packaging type:	FedEx® Envelope
Number of pieces:	1
Weight:	0.50 lb.
Special handling/Services:	Deliver Weekday
Standard transit:	8/22/2019 by 10:30 am

Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 10:26 AM CDT on 08/22/2019.

U.S. Department of the Interior
Bureau of Ocean Energy Management

OMB Control No.: 1010-0006
Expiration Date: 1/31/2023

Cover Page

OUTER CONTINENTAL SHELF (OCS) MINERAL LESSEE'S OR OPERATOR'S SUPPLEMENTAL BOND

Form BOEM-2028A

This form dated January 2020 supersedes all previous versions of form BOEM-2028A

All Bond Forms must be submitted with a transmittal letter to the appropriate BOEM office:

Bureau of Ocean Energy Management
Gulf of Mexico OCS Office
1201 Elmwood Park Blvd. New Orleans LA 70123-2394
Leasing and Financial Responsibility - Mail Stop GM266A

Bureau of Ocean Energy Management
Alaska OCS Office
3801 Centerpoint Drive, Suite 500
Anchorage AK 99503-5820 Alaska Leasing Section

Bureau of Ocean Energy Management
Pacific OCS Office
760 Paseo Camarillo, Suite 102
Camarillo CA 93010
Lease Management

Paperwork Reduction Act of 1995 (PRA) Statement: The PRA (44 U.S.C. 3501 *et seq.*) requires us to inform you that BOEM collects this information to hold the surety liable for the obligations and liability of the Principal (lessee or operator). Responses are mandatory. No proprietary information is collected. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. Public reporting burden for this form is estimated to average 15 minutes per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Comments regarding the burden estimate or any other aspect of this form should be directed to the Information Collection Clearance Officer, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, VA 20166.

POWER OF ATTORNEY

LX- 11071

Lexon Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that **LEXON INSURANCE COMPANY**, a Texas Corporation, with its statutory home office in Austin, Texas, does hereby constitute and appoint: Edwin H. Frank, III, Michele K. Tyson, W. Russell Brown, Jr., Meredith K. Anderson, Stephen Michael Smith its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of **LEXON INSURANCE COMPANY** on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed $10,000,000.00 Ten Million Dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, **LEXON INSURANCE COMPANY** has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 22nd day of June, 2018.

LEXON INSURANCE COMPANY

BY _____
Brian Beggs
President

ACKNOWLEDGEMENT

On this 22nd day of June, 2018, before me, personally came Brian Beggs to me known, who be duly sworn, did depose and say that he is the President of **LEXON INSURANCE COMPANY**, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.

AMY TAYLOR
Notary Public- State of Tennessee
Davidson County
My Commission Expires 07-08-19

BY _____
Amy Taylor
Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of **LEXON INSURANCE COMPANY**, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the forgoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Seal at Mount Juliet, Tennessee this 13th Day of August, 2019.

BY _____
Andrew Smith
Assistant Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."



PETRO-MARINE UNDERWRITERS, INC.

1515 Poydras Street, Suite 1120
New Orleans, Louisiana 70112
Phone (504) 593-9399 or Fax (504) 267-0659
petro_marine@msn.com
www.Petro-MarineBonding.com

August 21, 2019

Re: Request for Acceptance of Bond Rider No. 3 for Bond No. 1136950

TO ONRR:

Office of Natural Resource Revenue
Denver Federal Center, Building 85
Room A-614, Document Processing Team
Denver, CO 80225-0165

Please accept the attached "Bond Rider No. 3" associated with Bond No. 1136950 (the "Bond"), posted in favor of the United States Office of Natural Resource Revenue by W & T Offshore, Inc., (as Principal) and Lexon Insurance Company (as Surety).

Bond No.	Bill #	Docket #	Surety Amount Required
1136950	OTH100002745	11-0001	$117,279.00

As this request is accepted and processed, please provide notification via email to the following parties:
Todd Grabois, W&T Offshore, Inc.: tgrabois@wtoffshore.com
Michele Tyson, Attorney-In-Fact Lexon Surety Group, LLC: mytyson@indemco.com
Alice Dornan, Petro-Marine Underwriters, Inc.: AliceDornan@msn.com
Scott Sewell, Petro-Marine Underwriters, Inc.: Sewell504@gmail.com

Should you have any questions in this matter, please contact our office at (504) 593-9399 or by email at AliceDornan@msn.com.

Sincerely,

S. Scott Sewell

S. Scott Sewell
Petro-Marine Underwriters, Inc.

ENC:

alicedornan@msn.com

From: TrackingUpdates@fedex.com
Sent: Thursday, August 22, 2019 10:26 AM
To: alicedornan@msn.com
Subject: FedEx Shipment 776040892673 Delivered

Your package has been delivered

Tracking # 776040892673

Ship date:
Wed, 8/21/2019

Scott Sewell
Petro-Marine Underwriters, Inc.
New Orleans, LA 70124
US

Delivered

Delivery date:
Thu, 8/22/2019 9:22 am

Kim Werner
Office of Natural Resource Revenue
Denver Federal Center, Building 85
Room A-614 Document Processing Team
DENVER, CO 80225
US

Shipment Facts

Our records indicate that the following package has been delivered.

Tracking number:	776040892673
Status:	Delivered: 08/22/2019 09:22 AM Signed for By: J.GIRON
Signed for by:	J.GIRON
Delivery location:	Denver, CO
Delivered to:	Receptionist/Front Desk
Service type:	FedEx Priority Overnight®
Packaging type:	FedEx® Envelope
Number of pieces:	1
Weight:	0.50 lb.
Special handling/Services:	Deliver Weekday
Standard transit:	8/22/2019 by 10:30 am

Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 10:26 AM CDT on 08/22/2019.

U.S. DEPARTMENT OF THE INTERIOR
Bureau of Ocean Energy Management

Bond No. 1159776 OCS Lease/RUE/ROW No. OCS-G 10942

Bond Type Supplemental Amount $ 3,000,000.00

OUTER CONTINENTAL SHELF (OCS) MINERAL LESSEE'S OR OPERATOR'S SUPPLEMENTAL BOND

The **Surety** is the entity Guaranteeing Performance.

Name of Surety: Lexon Insurance Company

Mailing Address: 12890 Lebanon Road
Mt. Juliet, Tennessee 37122-2870

If a Corporation, Incorporated in the State of: Texas ; County or Parish of: Travis

☒ Check here if Surety is certified by U.S. Treasury as an acceptable surety on Federal Bonds and listed in the current U.S. Treasury Circular No. 570.

The **Principal** is the Lessee or Designated Operator for Whom the Bond is Issued.

Name of Principal: W & T Energy VI, LLC

Mailing Address: 5718 Westheimer Road, Suite 700, Houston, TX 77057-5745

Schedule A, the lease/RUE/ROW covered by this bond, is composed of: (add legal description)

☐ Check here if additional information is on attached sheet.

The following lease/RUE/ROW: All of Block 823 Viosca Knoll, as show on OCS Official Protraction Diagram NH16-7.

In addition to the Obligations of the Principal during the period of liability of this bond, the Surety also accepts the following Obligations: (Check one)

☒ No Obligations other than the Obligations of the Principal during the period of liability of this bond.

☐ All Obligations of all previous Sureties or guarantors even if the Obligations are not Obligations of the Principal during the period of liability of this bond.

☐ All Obligations of all previous Sureties or guarantors even if the Obligations are not Obligations of the Principal during the period of liability of this bond with the following exceptions or limitations (use an attached rider).

Definitions For the purposes of this document:	A **Principal** includes an entity holding an interest in the oil & gas lease in one or more of the following ways: (1) as an approved record title owner of all or a portion of the lease, (2) as an approved operating rights owner of all or a portion of the lease, or (3) as a designated operator or designated agent in all or a portion of the lease. A **Lessee** includes an approved record title owner of all or a portion of the lease or an approved operating rights owner of all or a portion of the lease. An **Obligation** includes any obligation arising from any regulations of the Department of the Interior or any Instrument issued, maintained, or approved under the OCS Lands Act (43 U.S.C. 1331 et seq.). An **Instrument** includes individually or collectively any lease, operating agreement, designation of operator or agent, storage agreement, compensatory royalty agreement, transfer of operating rights, permit, license, or easement, whereunder the Principal has the right, privilege, or license to conduct operations on the OCS. A **Person** includes an individual, a public or private entity, a State, a political subdivision of a State, any association of individuals, corporations, States, or subdivisions of States, or a government agency.

By signing below, the Principal verifies that the information above is correct and agrees to the following:
The Principal as agent on behalf of all lessees, operating rights owners, and operators will fulfill all Obligations for the entire leasehold and to the same extent as though the Principal were the sole lessee for the lease/RUE/ROW in Schedule A.

By signing below, the Surety verifies that the information above is correct and agrees to the following:

1. The Surety does hereby absolutely and unconditionally bind itself to the United States of America acting through and by the Bureau of Ocean Energy Management (BOEM), or such other official designated by the Secretary of the Interior for this purpose, for the payment of all of the cost of the plugging and abandonment Obligations.
2. The Surety will be responsible for all Obligations of the Principal in existence at the time this document becomes effective and all Obligations that accrue after that date and until all Obligations are met or until the Regional Director terminates the period of liability of this bond.
3. If the Regional Director terminates the period of liability of this bond, the Surety will remain responsible for Obligations that accrued during the period of liability until the Regional Director issues a written cancellation of the bond in favor of the Surety.
4. If this bond is cancelled, the Regional Director may reinstate this bond as if no cancellation had occurred if any payment of any Obligation of the Principal(s) is rescinded or must be restored pursuant to any insolvency, bankruptcy, reorganization, or receivership, or should the representation of the Principal that it has paid its financial Obligations or performed the other

Obligations of the lease in accordance with BOEM specifications be materially false and BOEM relied upon such representation in canceling the instrument.

5. The Surety waives any right of notice of this bond taking effect and agrees that this bond will take effect upon delivery to BOEM.
6. The Surety's Obligations will remain in full force and effect, even if:
   (a) Any person assigns all or part of any interest in an Instrument covered by this document.
   (b) Any person modifies an Instrument or Obligation under an Instrument in any manner including modifications that result from a commitment to a unit, cooperative, communitization, or storage agreement; suspension of operations or production; suspension or changes in rental, minimum royalty, or royalties; modification of regulations or interpretations of regulations; creation or modification of compensatory royalty agreements or payments; or creation of any mortgage, pledge, or other grant of security interest in the Instruments.
   (c) Any person, event, or condition terminates any Instrument covered by this bond, whether the termination is by operation of law or otherwise.
   (d) BOEM takes or fails to take any action in enforcing, as against any party to the Instrument, the payment of rentals or royalties or the performance of any other covenant, condition or agreement of the lease, or giving notice of or making demand with respect to such nonperformance.
   (e) The Surety suffers any loss by reason of any law limiting, qualifying, or discharging the Principal's Obligation.
7. The Surety agrees to be bound under this bond as to the interests in any Instrument retained by the Principal when BOEM approves the transfer of any or all of the Instruments or interests in the Instruments.
8. In the event of any default under a lease, the Surety must provide payment of all of the cost of the Obligations of the Principal upon demand by BOEM.
9. If BOEM decides to commence suit to enforce its rights, it may commence and prosecute any claim, suit, action, or other proceeding against the Principal and Surety, or either of them, whether or not BOEM joins the lessees or any other party.
10. In the event there is more than one Surety for the Principal's performance of the Obligations, as to any Instrument, the Surety's Obligation and liability under this bond is on a "solidary" or "joint and several" basis along with other guarantors or sureties.
11. The Surety agrees to give prompt notice to BOEM and the Principal of any action filed alleging the insolvency or bankruptcy of the Surety or the Principal, or alleging any violation that would result in suspension or revocation of the Surety's charter or license to do business.
12. The Surety's Obligation and liabilities under this Bond are binding upon the Surety's successors and assigns. Nothing in this document permits assignment of the Surety's Obligation without the written consent of BOEM.
13. The Surety hereby waives any defenses to liability on this bond based on an unauthorized Principal signature.

Lexon Insurance Company	W & T Energy VI, LLC
Name of Surety	Name of Principal
Signature of Person Executing for Surety	Signature of Person Executing for Principal
Timothy J. Briggs, Attorney-in-Fact	Janet Yang, Representative
Name and Title (typed or printed)	Name and Title (typed or printed)
12890 Lebanon Road	5718 Westheimer Road, Suite 700
Business Address	Business Address
Mt. Juliet, Tennessee 37122-2870	Houston, Texas 77057-5745
Business Address	Business Address

Signed on this 20th day of December, 2021, in the State of Texas, in the presence of:

Signature of Witness	Signature of Witness
Nancy A. Rios	Denise Linthicum
Name (typed or printed)	Name (typed or printed)
777 Post Oak Boulevard, Suite 330	5718 Westheimer, Suite 700
Address	Address
Houston, Texas 77056	Houston, TX 77057
Address	Address

Note: The person executing for the Surety must attach a corporate resolution and power of attorney stating his or her authority to undertake this Obligation, pursuant to the acts of the corporate board of directors and the laws of the State of incorporation. The corporation executing this bond as Surety and the Principal, if a corporation, must affix their corporate seals.

BOEM-2028A (January 2020)
Previous Editions are Obsolete.

SOMPO INTERNATIONAL
INSURANCE

POWER OF ATTORNEY

11071

KNOW ALL BY THESE PRESENTS, that **Endurance Assurance Corporation**, a Delaware corporation, **Endurance American Insurance Company**, a Delaware corporation, **Lexon Insurance Company**, a Texas corporation, and/or **Bond Safeguard Insurance Company**, a South Dakota corporation, each, a "Company" and collectively, "**Sompo International**," do hereby constitute and appoint: **Edwin H. Frank, III, Michele K. Tyson, Meredith K. Anderson, Stephen Michael Smith, Timothy J. Briggs** as true and lawful Attorney(s)-In-Fact to make, execute, seal, and deliver for, and on its behalf as surety or co-surety; bonds and undertakings given for any and all purposes, also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking so made, executed and delivered shall obligate the Company for any portion of the penal sum thereof in excess of the sum of **ONE HUNDRED MILLION Dollars ($100,000,000.00)**.

Such bonds and undertakings for said purposes, when duly executed by said attorney(s)-in-fact, shall be binding upon the Company as fully and to the same extent as if signed by the President of the Company under its corporate seal attested by its Corporate Secretary.

This appointment is made under and by authority of certain resolutions adopted by the sole shareholder of each Company by unanimous written consent effective the 15th day of June, 2019, a copy of which appears below under the heading entitled "Certificate".

This Power of Attorney is signed and sealed by facsimile under and by authority of the following resolution adopted by the sole shareholder of each Company by unanimous written consent effective the 15th day of June, 2019 and said resolution has not since been revoked, amended or repealed:

RESOLVED, that the signature of an individual named above and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signature or seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, each Company has caused this instrument to be signed by the following officers, and its corporate seal to be affixed this 15th day of June, 2019.

Endurance Assurance Corporation
By: Richard Appel
Richard Appel; SVP & Senior Counsel

Endurance American Insurance Company
By: Richard Appel
Richard Appel; SVP & Senior Counsel

Lexon Insurance Company
By: Richard Appel
Richard Appel; SVP & Senior Counsel

Bond Safeguard Insurance Company
By: Richard Appel
Richard Appel; SVP & Senior Counsel

Endurance Assurance Corporation CORPORATE SEAL 2002 DELAWARE

Endurance American Insurance Company CORPORATE SEAL 1996 DELAWARE

LEXON INSURANCE COMPANY CORPORATE SEAL MARCH 16, 1994 STATE OF TEXAS

BOND SAFEGUARD INSURANCE COMPANY A SOUTH DAKOTA INSURANCE COMPANY

ACKNOWLEDGEMENT

On this 15th day of June, 2019, before me, personally came the above signatories known to me, who being duly sworn, did depose and say that he/they is/are officer of each of the Companies; and that he executed said instrument on behalf of each Company by authority of his office under the by-laws of each Company.

By: Amy Taylor
Amy Taylor, Notary Public - My Commission Expires 5/9/23

AMY TAYLOR STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

CERTIFICATE

I, the undersigned Officer of each Company, DO HEREBY CERTIFY that:

1. That the original power of attorney of which the foregoing is a copy was duly executed on behalf of each Company and has not since been revoked, amended or modified; that the undersigned has compared the foregoing copy thereof with the original power of attorney, and that the same is a true and correct copy of the original power of attorney and of the whole thereof;
2. The following are resolutions which were adopted by the sole shareholder of each Company by unanimous written consent effective June 15, 2019 and said resolutions have not since been revoked, amended or modified:

"RESOLVED, that each of the individuals named below is authorized to make, execute, seal and deliver for and on behalf of the Company any and all bonds, undertakings or obligations in surety or co-surety with others: RICHARD M. APPEL, BRIAN J. BEGGS, CHRISTOPHER DONELAN, SHARON L. SIMS, CHRISTOPHER L. SPARRO, MARIANNE L. WILBERT

; and be it further

RESOLVED, that each of the individuals named above is authorized to appoint attorneys-in-fact for the purpose of making, executing, sealing and delivering bonds, undertakings or obligations in surety or co-surety for and on behalf of the Company."

3. The undersigned further certifies that the above resolutions are true and correct copies of the resolutions as so recorded and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal this 20th day of December, 2021.

By:
Daniel S. Lurie, Secretary

NOTICE: U. S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL (OFAC)

No coverage is provided by this Notice nor can it be construed to replace any provisions of any surety bond or other surety coverage provided. This Notice provides information concerning possible impact on your surety coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous foreign agents, front organizations, terrorists, terrorist organizations, and narcotics traffickers as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's website – https://www.treasury.gov/resource-center/sanctions/SDN-List.

In accordance with OFAC regulations, if it is determined that you or any other person or entity claiming the benefits of any coverage has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, any coverage will be considered a blocked or frozen contract and all provisions of any coverage provided are immediately subject to OFAC. When a surety bond or other form of surety coverage is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments may also apply.

Any reproductions are void.
Surety Claims Submission: LexonClaimAdministration@sompo-intl.com
Telephone: 615-553-9500 Mailing Address: Sompo International; 12890 Lebanon Road; Mount Juliet, TN 37122-2870

U.S. DEPARTMENT OF THE INTERIOR
Bureau of Ocean Energy Management

Bond No. 1097677 OCS Lease/RUE/ROW No. OCS-G 10942

Bond Type Supplemental Amount $1,000,000.00

OUTER CONTINENTAL SHELF (OCS) MINERAL LESSEE'S OR OPERATOR'S SUPPLEMENTAL BOND

The **Surety** is the entity Guaranteeing Performance.

Name of Surety: Lexon Insurance Company

Mailing Address: 10002 Shelbyville Road, Suite 100
Louisville, Kentucky 40223

If a Corporation, Incorporated in the State of: Texas ; County or Parish of: Travis

☑ Check here if Surety is certified by U.S. Treasury as an acceptable surety on Federal Bonds and listed in the current U.S. Treasury Circular No. 570.

RECEIVED
JUN 6 2015
LEASING & FINANCIAL RESPONSIBILITY SECTION

The **Principal** is the Lessee or Designated Operator for Whom the Bond is Issued.

Name of Principal: W & T Energy VI, LLC

Mailing Address: 9 Greenway Plaza, Suite 300
Houston, Texas 77046

Schedule A, the lease/RUE/ROW covered by this bond, is composed of: (add legal description)

☑ The following lease/RUE/ROW: All of Block 823, Viosca Knoll, as shown on OCS Official Protraction Diagram, NH16-7.

In addition to the Obligations of the Principal during the period of liability of this bond, the Surety also accepts the following Obligations: (Check one)

☐ No Obligations other than the Obligations of the Principal during the period of liability of this bond.

☑ All Obligations of all previous Sureties or guarantors even if the Obligations are not Obligations of the Principal during the period of liability of this bond.

☐ All Obligations of all previous Sureties or guarantors even if the Obligations are not Obligations of the Principal during the period of liability of this bond with the following exceptions or limitations (use an attached rider).

Definitions For the purposes of this document:	A **Principal** includes an entity holding an interest in the oil & gas lease in one or more of the following ways: (1) as an approved record title owner of all or a portion of the lease, (2) as an approved operating rights owner of all or a portion of the lease, or (3) as a designated operator or designated agent in all or a portion of the lease. A **Lessee** includes an approved record title owner of all or a portion of the lease or an approved operating rights owner of all or a portion of the lease. An **Obligation** includes any obligation arising from any regulations of the Department of the Interior or any Instrument issued, maintained, or approved under the OCS Lands Act (43 U.S.C. 1331 et seq.). An **Instrument** includes individually or collectively any lease, operating agreement, designation of operator or agent, storage agreement, compensatory royalty agreement, transfer of operating rights, permit, license, or easement, whereunder the Principal has the right, privilege, or license to conduct operations on the OCS. A **Person** includes an individual, a public or private entity, a State, a political subdivision of a State, any association of individuals, corporations, States, or subdivisions of States, or a government agency.

By signing below, the Principal verifies that the information above is correct and agrees to the following:
The Principal as agent on behalf of all lessees, operating rights owners, and operators will fulfill all Obligations for the entire leasehold and to the same extent as though the Principal were the sole lessee for the lease/RUE/ROW in Schedule A.

By signing below, the Surety verifies that the information above is correct and agrees to the following:

1. The Surety does hereby absolutely and unconditionally bind itself to the United States of America acting through and by the Bureau of Ocean Energy Management (BOEM), or such other official designated by the Secretary of the Interior for this purpose, for the payment of all of the cost of the plugging and abandonment Obligations.
2. The Surety will be responsible for all Obligations of the Principal in existence at the time this document becomes effective and all Obligations that accrue after that date and until all Obligations are met or until the Regional Director terminates the period of liability of this bond.
3. If the Regional Director terminates the period of liability of this bond, the Surety will remain responsible for Obligations that accrued during the period of liability until the Regional Director issues a written cancellation of the bond in favor of the Surety.
4. If this bond is cancelled, the Regional Director may reinstate this bond as if no cancellation had occurred if any payment of any Obligation of the Principal(s) is rescinded or must be restored pursuant to any insolvency, bankruptcy, reorganization, or receivership, or should the representation of the Principal that it has paid its financial Obligations or performed the other

Obligations of the lease in accordance with BOEM specifications be materially false and BOEM relied upon such representation in canceling the instrument.

5. The Surety waives any right of notice of this bond taking effect and agrees that this bond will take effect upon delivery to BOEM.
6. The Surety's Obligations will remain in full force and effect, even if:
   (a) Any person assigns all or part of any interest in an Instrument covered by this document.
   (b) Any person modifies an Instrument or Obligation under an Instrument in any manner including modifications that result from a commitment to a unit, cooperative, communitization, or storage agreement; suspension of operations or production; suspension or changes in rental, minimum royalty, or royalties; modification of regulations or interpretations of regulations; creation or modification of compensatory royalty agreements or payments; or creation of any mortgage, pledge, or other grant of security interest in the Instruments.
   (c) Any person, event, or condition terminates any Instrument covered by this bond, whether the termination is by operation of law or otherwise.
   (d) BOEM takes or fails to take any action in enforcing, as against any party to the Instrument, the payment of rentals or royalties or the performance of any other covenant, condition or agreement of the lease, or giving notice of or making demand with respect to such nonperformance.
   (e) The Surety suffers any loss by reason of any law limiting, qualifying, or discharging the Principal's Obligation.
7. The Surety agrees to be bound under this bond as to the interests in any Instrument retained by the Principal when BOEM approves the transfer of any or all of the Instruments or interests in the Instruments.
8. In the event of any default under a lease, the Surety must provide payment of all of the cost of the Obligations of the Principal upon demand by BOEM.
9. If BOEM decides to commence suit to enforce its rights, it may commence and prosecute any claim, suit, action, or other proceeding against the Principal and Surety, or either of them, whether or not BOEM joins the lessees or any other party.
10. In the event there is more than one Surety for the Principal's performance of the Obligations, as to any Instrument, the Surety's Obligation and liability under this bond is on a "solidary" or "joint and several" basis along with other guarantors or sureties.
11. The Surety agrees to give prompt notice to BOEM and the Principal of any action filed alleging the insolvency or bankruptcy of the Surety or the Principal, or alleging any violation that would result in suspension or revocation of the Surety's charter or license to do business.
12. The Surety's Obligation and liabilities under this Bond are binding upon the Surety's successors and assigns. Nothing in this document permits assignment of the Surety's Obligation without the written consent of BOEM.
13. The Surety hereby waives any defenses to liability on this bond based on an unauthorized Principal signature.

Lexon Insurance Company	W & T Energy VI, LLC
Name of Surety	Name of Principal
Michele K. Tyson	
Signature of Person Executing for Surety	Signature of Person Executing for Principal
Michele K. Tyson, Attorney-in-Fact	Jamie L. Vazquez, Representative
Name and Title (typed or printed)	Name and Title (typed or printed)
10002 Shelbyville Road, Suite 100	9 Greenway Plaza, Suite 300
Business Address	Business Address
Louisville, Kentucky 40223	Houston, Texas 77046
Business Address	Business Address

Signed on this 3rd day of June, 20 15, in the State of Texas, in the presence of:

Wendy Pierson	
Signature of Witness	Signature of Witness
Wendy Pierson	Todd Labois
Name (typed or printed)	Name (typed or printed)
777 Post Oak Boulevard, Suite 330	9 Greenway Plaza, Ste 300
Address	Address
Houston, Texas 77056	Houston, Tx 77046
Address	Address

Note: The person executing for the Surety must attach a corporate resolution and power of attorney stating his or her authority to undertake this Obligation, pursuant to the acts of the corporate board of directors and the laws of the State of incorporation. The corporation executing this bond as Surety and the Principal, if a corporation, must affix their corporate seals.

BOEM-2028A (March 2014) **Page 3 of 3**
Previous Editions are Obsolete

U.S. Department of the Interior
Bureau of Ocean Energy Management

OMB Control No.: 1010-0006
Expiration Date: 3/31/17

Cover Page

OUTER CONTINENTAL SHELF (OCS) MINERAL LESSEE'S OR OPERATOR'S SUPPLEMENTAL BOND

Form BOEM-2028A

This form dated March 2014 supersedes all previous versions of form BOEM-2028A

Paperwork Reduction Act of 1995 (PRA) Statement: The PRA (44 U.S.C. 3501 *et seq.*) requires us to inform you that BOEM collects this information to hold the surety liable for the obligations and liability of the Principal (lessee or operator). Responses are mandatory. No proprietary information is collected. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. Public reporting burden for this form is estimated to average 15 minutes per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Comments regarding the burden estimate or any other aspect of this form should be directed to the Information Collection Clearance Officer, Bureau of Ocean Energy Management, 381 Elden Street, Herndon, VA 20170.

EXHIBIT 10

POWER OF ATTORNEY LX- 224592

Lexon Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that **LEXON INSURANCE COMPANY**, a Texas Corporation, with its principal office in Louisville, Kentucky, does hereby constitute and appoint: Edwin H. Frank, III, Michele K. Tyson, W. Russell Brown, Jr. its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of **LEXON INSURANCE COMPANY** on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed $ 3,000,000.00, Three Million dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, **LEXON INSURANCE COMPANY** has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 21st day of September, 2009.

LEXON INSURANCE COMPANY

BY _____
David E. Campbell
President

ACKNOWLEDGEMENT

On this 21st day of September, 2009, before me, personally came David E. Campbell to me known, who be duly sworn, did depose and say that he is the President of **LEXON INSURANCE COMPANY**, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.

AMY L. TAYLOR
Notary Public- State of Tennessee
Davidson County
My Commission Expires 01-09-16

BY _____
Amy L. Taylor
Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of **LEXON INSURANCE COMPANY**, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the forgoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Seal at Mount Juliet, Tennessee this 3rd Day of June, 20 15.

BY _____
Andrew Smith
Assistant Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."

Bond No. 1097677

BOND RIDER TO ASSUME LIABILITY
Rider No. 1

Attaching to and forming part of Outer Continental Shelf (OCS) Mineral Lessee's or Operator's Supplemental Bond No. 1097677 (Hereinafter "Bond"), executed on behalf of W & T Energy VI, LLC, as Principal, Lexon Insurance Company, as Surety, in favor of the United States of America acting through and by the Bureau of Ocean Energy Management, as Obligee, in the amount of One Million and No/100 Dollars ($1,000,000.00).

Lease Number: OCS-G 10942

It is understood and agreed that as of June 3, 2015, this Bond hereby replaces, extends to and covers all obligations of all previous sureties or guarantors even if the Obligations are not Obligations of the Principal during the period of liability of the following bond(s):

Bond No.	Surety	Principal	Bond Type	OCS Lease / Area Block	Bond Amount	Date of Execution
SUR0001670	Argonaut Insurance Company	W & T Energy VI, LLC	Supplemental	OCS-G 10942	$1,000,000.00	January 14, 2011

All other conditions and terms to remain as originally written.

Signed, sealed and dated this 3rd day of June, 2015.

W & T Energy VI, LLC
Nine Greenway Plaza, Suite 300
Houston, Texas 77046

By: Jamie L Vazquez
Name: Jamie L Vazquez
Title: Representative

Lexon Insurance Company
10002 Shelbyville Road, Suite 100
Louisville, Kentucky 40223

By: Michele K. Tyson
Name: Michele K. Tyson
Title: Attorney-in-Fact

POWER OF ATTORNEY LX- 224593

Lexon Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that **LEXON INSURANCE COMPANY**, a Texas Corporation, with its principal office in Louisville, Kentucky, does hereby constitute and appoint: Edwin H. Frank, III, Michele K. Tyson, W. Russell Brown, Jr. its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of **LEXON INSURANCE COMPANY** on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed $ 3,000,000.00, Three Million dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, **LEXON INSURANCE COMPANY** has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 21st day of September, 2009.

LEXON INSURANCE COMPANY

BY _____
David E. Campbell
President

ACKNOWLEDGEMENT

On this 21st day of September, 2009, before me, personally came David E. Campbell to me known, who be duly sworn, did depose and say that he is the President of **LEXON INSURANCE COMPANY**, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.

AMY L. TAYLOR
Notary Public- State of Tennessee
Davidson County
My Commission Expires 01-09-16

BY _____
Amy L. Taylor
Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of **LEXON INSURANCE COMPANY**, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the forgoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Seal at Mount Juliet, Tennessee this 3rd Day of June, 2015.

BY _____
Andrew Smith
Assistant Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."

Bond No. 1097677

Bond Rider No. 1

Attaching to and forming part of Outer Continental Shelf (OCS) Mineral Lessee's or Operator's Supplemental Bond No. 1097677, executed June 3, 2015, on behalf of W & T Energy VI, LLC, as Principal, Lexon Insurance Company, as Surety, in favor of the United States of America acting through and by the Bureau of Ocean Energy Management (BOEM) as Obligee, in the amount of One Million and No/100 Dollars ($1,000,000.00).

Lease No.: OCS-G 10942
All of Block 823, Viosca Knoll

Effective Date of Change: February 14, 2017

In consideration of the mutual agreement contained herein, the Principal and the Surety hereby consent to the following changes:

The ***penalty amount*** has increased by Eight Million and No/100 Dollars ($8,000,000.00) from:

One Million and No/100 Dollars ($1,000,000.00)

to:

Nine Million and No/100 Dollars ($9,000,000.00)

All other conditions and terms to remain as originally written.

Signed, sealed and dated this 14th day of February, 2017.

W & T Energy VI, LLC
Nine Greenway Plaza, Suite 300
Houston, Texas 77046

By: _____

Name: Thomas F. Getten

Title: Representative

Lexon Insurance Company
10002 Shelbyville Road, Suite 100
Louisville, Kentucky 40223

By: _____

Name: Meredith K. Anderson

Title: Attorney-in-Fact

POWER OF ATTORNEY

LX- 298727

Lexon Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that **LEXON INSURANCE COMPANY**, a Texas Corporation, with its principal office in Louisville, Kentucky, does hereby constitute and appoint: Edwin H. Frank, III, Michele K. Tyson, W. Russell Brown, Jr., Meredith K. Anderson its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of **LEXON INSURANCE COMPANY** on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed $9,000,000.00, Nine Million dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, **LEXON INSURANCE COMPANY** has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 5th day of August, 2015.

LEXON INSURANCE COMPANY

BY _____
David E. Campbell
President

ACKNOWLEDGEMENT

On this 5th day of August, 2015, before me, personally came David E. Campbell to me known, who be duly sworn, did depose and say that he is the President of **LEXON INSURANCE COMPANY**, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.

AMY TAYLOR
Notary Public- State of Tennessee
Davidson County
My Commission Expires 07-08-19

BY _____
Amy Taylor
Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of **LEXON INSURANCE COMPANY**, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the forgoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Seal at Mount Juliet, Tennessee this 14th Day of February 20 17

BY _____
Andrew Smith
Assistant Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."

REINSURANCE AGREEMENT IN FAVOR OF THE UNITED STATES

(See instructions on reverse)

OMB Control Number: 9000-0045
Expiration Date: 7/31/2019

Paperwork Reduction Act Statement - This information collection meets the requirements of 44 USC § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget (OMB) control number. The OMB control number for this collection is 9000-0045. We estimate that it will take 25 minutes to read the instructions, gather the facts, and answer the questions. Send only comments relating to our time estimate, including suggestions for reducing this burden, or any other aspects of this collection of information to: General Services Administration, Regulatory Secretariat Division (M1V1CB), 1800 F Street, NW, Washington, DC 20405.

1. DIRECT WRITING COMPANY*	1A. DATE DIRECT WRITING COMPANY EXECUTES THIS AGREEMENT
Lexon Insurance Company 10002 Shelbyville Road, Suite 100 Louisville, KY 40223	02/14/2017
	1B. STATE OF INCORPORATION TX
2. REINSURING COMPANY*	2A. AMOUNT OF THIS REINSURANCE ($)
Bond Safeguard Insurance Company 10002 Shelbyville Road, Suite 100 Louisville, KY 40223	3,051,000
	2B. DATE REINSURING COMPANY EXECUTES THIS AGREEMENT 02/14/2017
	2C. STATE OF INCORPORATION SD

3. DESCRIPTION OF BOND

3A. DESCRIPTION OF BOND *(Type, purpose etc.) (If associated with contract number, date, amount, etc., include name of Government agency involved.)*	3B. PENAL SUM OF BOND	
Bureau of Ocean Energy Management 1201 Elmwood Park Boulevard New Orleans, LA 70123 Outer Continental Shelf (OCS) Mineral Lessee's or Operator's Supplemental Bond Form BOEM-2028A Lease No. OCS-G 10942 All of Block 823, Viosca Knoll	$ 9,000,000	
	3C. DATE OF BOND 06/03/2015	3D. BOND NUMBER 1097677
	3E. PRINCIPAL* W & T Energy VI, LLC Nine Greenway Plaza, Suite 300 Houston, TX 77046	
	3F. STATE OF INCORPORATION *(If Corporate Principal)* TX	

AGREEMENT:

(a) The Direct Writing Company named above is bound as surety to the United States of America, on the bond described above, wherein the above-named is the principal. The bond is given for the protection of the United States and the Direct Writing Company has applied to the above Reinsuring Company to be reinsured and counter-secured in the amount shown opposite the name of the Reinsuring Company (referred to as the "Amount of this Reinsurance"), or for whatever amount less than the "Amount of this Reinsurance" the Direct Writing Company is liable to pay under or by virtue of the bond.

(b) For a sum mutually agreed upon, paid by the Direct Writing Company to the Reinsuring Company which acknowledges its receipt, the parties to this Agreement covenant and agree to the terms and conditions of this agreement.

TERMS AND CONDITIONS:

The purpose and intent of this agreement is to guarantee and indemnify the United States against loss under the bond to the extent of the "Amount of this Reinsurance," or for any less sum than the "Amount of this Reinsurance," that is owing and unpaid by the Direct Writing Company to the United States.

THEREFORE:

1. If the Direct Writing Company fails to pay any default under the bond equal to or in excess of the "Amount of this Reinsurance," the Reinsuring Company covenants and agrees to pay to the United States, the obligee on the bond, the "Amount of this Reinsurance." If the Direct Writing Company fails to pay to the United States any default for a sum less than the "Amount of this Reinsurance," the Reinsuring Company covenants and agrees to pay to the United States the full amount of the default, or so much thereof that is not paid to the United States by the Direct Writing Company.

2. The Reinsuring Company further covenants and agrees that in case of default on the bond for the "Amount of this Reinsurance," or more, the United States may sue the Reinsuring Company for the "Amount of this Reinsurance" or for the full amount of the default when the default is less than the "Amount of this Reinsurance."

WITNESS

The Direct Writing Company and the Reinsuring Company, respectively, have caused this Agreement to be signed and impressed with their respective corporate seals by officers possessing power to sign this instrument, and to be duly attested to by officers empowered thereto, on the day and date above -- written opposite their respective names.

(Over)

**Items 1, 2, 3E - Furnish legal name, business address and ZIP Code.*

4. DIRECT WRITING COMPANY		
4A.(1). SIGNATURE Robert J. DeLafontaine	(2). ATTEST: SIGNATURE Betsye Thomas	Corporate Seal
4B.(1). NAME AND TITLE *(Typed)* Robert J. DeLafontaine, Attorney in Fact	4B.(2). NAME AND TITLE *(Typed)* Betsye Thomas, Witness	
5. REINSURING COMPANY		
5A.(1). SIGNATURE Betsye Thomas	(2). ATTEST: SIGNATURE Robert J. DeLafontaine	Corporate Seal
5B.(1). NAME AND TITLE *(Typed)* Betsye Thomas, Attorney in Fact	5B.(2). NAME AND TITLE *(Typed)* Robert J. DeLafontaine, Witness	

INSTRUCTIONS

This form is to be used in cases where it is desired to cover the excess of a Direct Writing Company's underwriting limitation by reinsurance instead of co-insurance on bonds running to the United States except Miller Act Performance and Payment Bonds. See FAR (48 CFR) 28.202-1 and 53.228(j) and 31 CFR 223.11(b)(1). If this form is used to reinsure a bid bond, the "Penal Sum of Bond" and "Amount of this Reinsurance" may be expressed as percentage of the bid provided the actual amounts will not exceed the companies' respective underwriting limitations.

Execute and file this form as follows:

Original and copies (as specified by the bond-approving officer), signed and sealed, shall accompany the bond or be filed within the time period shown in the bid or proposal.

One carbon copy, signed and sealed, shall accompany the Direct Writing Company's quarterly Schedule of Excess Risks filed with the Department of Treasury.

Other copies may be prepared for the use of the Direct Writing Company and Reinsuring Company. Each Reinsuring Company should use a separate form.

REINSURANCE AGREEMENT IN FAVOR OF THE UNITED STATES

(See instructions on reverse)

OMB Control Number: 9000-0045
Expiration Date: 7/31/2019

Paperwork Reduction Act Statement - This information collection meets the requirements of 44 USC § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget (OMB) control number. The OMB control number for this collection is 9000-0045. We estimate that it will take 25 minutes to read the instructions, gather the facts, and answer the questions. Send only comments relating to our time estimate, including suggestions for reducing this burden, or any other aspects of this collection of information to: General Services Administration, Regulatory Secretariat Division (M1V1CB), 1800 F Street, NW, Washington, DC 20405.

1. DIRECT WRITING COMPANY* Lexon Insurance Company 10002 Shelbyville Road, Suite 100 Louisville, KY 40223	1A. DATE DIRECT WRITING COMPANY EXECUTES THIS AGREEMENT 02/14/2017 1B. STATE OF INCORPORATION TX
2. REINSURING COMPANY* Ironshore Indemnity Inc. PO Box 3407 New York, NY 10008-3407	2A. AMOUNT OF THIS REINSURANCE ($) 1,149,000 2B. DATE REINSURING COMPANY EXECUTES THIS AGREEMENT 02/14/2017 2C. STATE OF INCORPORATION MN

3. DESCRIPTION OF BOND

3A. DESCRIPTION OF BOND *(Type, purpose etc.) (If associated with contract number, date, amount, etc., include name of Government agency involved.)* Bureau of Ocean Energy Management 1201 Elmwood Park Boulevard New Orleans, LA 70123 Outer Continental Shelf (OCS) Mineral Lessee's or Operator's Supplemental Bond Form BOEM-2028A Lease No. OCS-G 10942 All of Block 823, Viosca Knoll	3B. PENAL SUM OF BOND $ 9,000,000 3C. DATE OF BOND: 06/03/2015 3D. BOND NUMBER: 1097677 3E. PRINCIPAL* W & T Energy VI, LLC Nine Greenway Plaza, Suite 300 Houston, TX 77046 3F. STATE OF INCORPORATION *(If Corporate Principal)* TX

AGREEMENT:

(a) The Direct Writing Company named above is bound as surety to the United States of America, on the bond described above, wherein the above-named is the principal. The bond is given for the protection of the United States and the Direct Writing Company has applied to the above Reinsuring Company to be reinsured and counter-secured in the amount shown opposite the name of the Reinsuring Company (referred to as the "Amount of this Reinsurance"), or for whatever amount less than the "Amount of this Reinsurance" the Direct Writing Company is liable to pay under or by virtue of the bond.

(b) For a sum mutually agreed upon, paid by the Direct Writing Company to the Reinsuring Company which acknowledges its receipt, the parties to this Agreement covenant and agree to the terms and conditions of this agreement.

TERMS AND CONDITIONS:

The purpose and intent of this agreement is to guarantee and indemnify the United States against loss under the bond to the extent of the "Amount of this Reinsurance," or for any less sum than the "Amount of this Reinsurance," that is owing and unpaid by the Direct Writing Company to the United States.

THEREFORE:

1. If the Direct Writing Company fails to pay any default under the bond equal to or in excess of the "Amount of this Reinsurance," the Reinsuring Company covenants and agrees to pay to the United States, the obligee on the bond, the "Amount of this Reinsurance." If the Direct Writing Company fails to pay to the United States any default for a sum less than the "Amount of this Reinsurance," the Reinsuring Company covenants and agrees to pay to the United States the full amount of the default, or so much thereof that is not paid to the United States by the Direct Writing Company.

2. The Reinsuring Company further covenants and agrees that in case of default on the bond for the "Amount of this Reinsurance," or more, the United States may sue the Reinsuring Company for the "Amount of this Reinsurance" or for the full amount of the default when the default is less than the "Amount of this Reinsurance."

WITNESS

The Direct Writing Company and the Reinsuring Company, respectively, have caused this Agreement to be signed and impressed with their respective corporate seals by officers possessing power to sign this instrument, and to be duly attested to by officers empowered thereto, on the day and date above -- written opposite their respective names.

(Over)

**Items 1, 2, 3E - Furnish legal name, business address and ZIP Code.*

4. DIRECT WRITING COMPANY		
4A.(1). SIGNATURE Robert J. DeLafontaine	(2). ATTEST: SIGNATURE Tracy L Carlile	Corporate Seal
4B.(1). NAME AND TITLE *(Typed)* Robert J. DeLafontaine, Attorney in Fact	4B.(2). NAME AND TITLE *(Typed)* Tracy L. Carlile, Witness	
5. REINSURING COMPANY		
5A.(1). SIGNATURE Tracy L Carlile	(2). ATTEST: SIGNATURE Robert J. DeLafontaine	Corporate Seal
5B.(1). NAME AND TITLE *(Typed)* Tracy L. Carlile, Attorney in Fact	5B.(2). NAME AND TITLE *(Typed)* Robert J. DeLafontaine, Witness	

INSTRUCTIONS

This form is to be used in cases where it is desired to cover the excess of a Direct Writing Company's underwriting limitation by reinsurance instead of co-insurance on bonds running to the United States except Miller Act Performance and Payment Bonds. See FAR (48 CFR) 28.202-1 and 53.228(j) and 31 CFR 223.11(b)(1). If this form is used to reinsure a bid bond, the "Penal Sum of Bond" and "Amount of this Reinsurance" may be expressed as percentage of the bid provided the actual amounts will not exceed the companies' respective underwriting limitations.

Execute and file this form as follows:

Original and copies (as specified by the bond-approving officer), signed and sealed, shall accompany the bond or be filed within the time period shown in the bid or proposal.

One carbon copy, signed and sealed, shall accompany the Direct Writing Company's quarterly Schedule of Excess Risks filed with the Department of Treasury.

Other copies may be prepared for the use of the Direct Writing Company and Reinsuring Company. Each Reinsuring Company should use a separate form.

EXHIBIT 10

POWER OF ATTORNEY LX- 234109

Lexon Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that **LEXON INSURANCE COMPANY**, a Texas Corporation, with its principal office in Louisville, Kentucky, does hereby constitute and appoint: Robert J. DeLafontaine, Betsye Thomas, Chetta Ellis, Jodi Stewart, Diana Rea its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of **LEXON INSURANCE COMPANY** on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed $ 8,000,000.00, Eight Million dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, **LEXON INSURANCE COMPANY** has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 21st day of September, 2009.

LEXON INSURANCE COMPANY

LEXON INSURANCE COMPANY CORPORATE SEAL MARCH 18, 1994 STATE OF TEXAS

BY _____
David E. Campbell
President

ACKNOWLEDGEMENT

On this 21st day of September, 2009, before me, personally came David E. Campbell to me known, who be duly sworn, did depose and say that he is the President of **LEXON INSURANCE COMPANY**, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.

AMY TAYLOR STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

AMY L. TAYLOR
Notary Public- State of Tennessee
Davidson County
My Commission Expires 01-09-16

BY _____
Amy L. Taylor
Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of **LEXON INSURANCE COMPANY**, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the forgoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Seal at Mount Juliet, Tennessee this 14TH Day of Feb., 20 17.

LEXON INSURANCE COMPANY CORPORATE SEAL MARCH 18, 1994 STATE OF TEXAS

BY _____
Andrew Smith
Assistant Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."

EXHIBIT 10

POWER OF ATTORNEY

BSIC- 262477

Bond Safeguard Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that **BOND SAFEGUARD INSURANCE COMPANY**, a South Dakota Corporation with its principal office in Sioux Falls, South Dakota, does hereby constitute and appoint: Robert J. DeLafontaine, Betsye Thomas, Jodi Stewart, Diana Rea its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of **BOND SAFEGUARD INSURANCE COMPANY** on the 7th day of November, 2001 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond, $8,000,000.00, Eight Million dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed to by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond or undertaking to which it as attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, **BOND SAFEGUARD INSURANCE COMPANY** has caused this instrument to be signed by its President, and its Corporate seal to be affixed this 5th day of August, 2015.

BOND SAFEGUARD INSURANCE COMPANY

BY _____
David E. Campbell
President

ACKNOWLEDGEMENT

On this 5th day of August, 2015, before me, personally came David E. Campbell to me known, who being duly sworn, did depose and say that he is the President of **BOND SAFEGUARD INSURANCE COMPANY**, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.

AMY TAYLOR
Notary Public- State of Tennessee
Davidson County
My Commission Expires 07-08-19

BY _____
Amy Taylor
Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary **of BOND SAFEGUARD INSURANCE COMPANY**, A South Dakota Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the foregoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Sealed at Mount Juliet, Tennessee this 14TH Day of FEBRUARY, 2017

BY _____
Andrew Smith
Assistant Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."

EXHIBIT 10

POWER OF ATTORNEY

III- 20000750

Ironshore Indemnity Inc.

KNOW ALL MEN BY THESE PRESENTS, that IRONSHORE INDEMNITY INC., a Minnesota Corporation, with its principal office in New York, NY does hereby constitute and appoint: Chris Dobbs, Jalene Brown, and Tracy L. Carlile its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of IRONSHORE INDEMNITY INC. on the 22nd day of April, 2013 as follows:

Resolved, that the Director of the Company is hereby authorized to appoint and empower any representative of the company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed $7,500,000.00 dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the Director and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, IRONSHORE INDEMNITY INC. has caused this instrument to be signed by its Director, and its Corporate Seal to be affixed this 7th day of August, 2013

IRONSHORE INDEMNITY INC.

By: _____
Daniel L. Sussman
Director

ACKNOWLEDGEMENT

On this 7th Day of August, 2013, before me, personally came Daniel L. Sussman to me known, who being duly sworn, did depose and say that he is the Director of Ironshore Indemnity, Inc. , the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.

AMY TAYLOR
Notary Public- State of Tennessee
Davidson County
My Commission Expires 07-08-19

BY _____
Amy Taylor
Notary Public

CERTIFICATE

I, the undersigned, Secretary of IRONSHORE INDEMNITY INC., a Minnesota Company, DO HEREBY CERTIFY that the original Power of Attorney of which the foregoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Sealed at this 14th Day of February, 20 17

Paul S. Giordano
Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."

Bond No. 1152011

****This bond replaces and supersedes Aspen American Insurance Company Bond No. SU41107****

TIEBACK ABANDONMENT PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That We, W&T Offshore, Inc. with its main office at Nine Greenway Plaza, Suite 300; Houston, Texas 77046 ("Principal") and Lexon Insurance Company, an insurance corporation domiciled in the State of Texas with its main office at 10002 Shelbyville Road, Suite 100, Louisville, Kentucky 40223 ("Surety") are held and firmly bound unto Woodside Energy (USA), Inc. with its main office at 5151 San Felipe, Suite 1200; Houston, Texas 77056 ("Obligee"), in the penalty sum of Three Hundred Seventy-six Thousand Six Hundred Eighty-eight and No/100 Dollars ($376,688.00) in lawful money of the United States of America ("Penalty Sum"), for the payment of which sum Principal and Surety hereby bind themselves, their respective successors and assigns, jointly, severally, and in solido, firmly by these presents.

WHEREAS, Principal and Obligee have entered into and executed that certain Purchase and Sale Agreement (the "Agreement"), effective August 1, 2013, wherein Obligee conveys the oil and gas leases and associated property more fully described in "Attachment A" (the "Leases") on which are situated wells (producing, abandoned, injection and/or other), pits, platforms, pipelines, flowlines, and/or other property and equipment (the "Facilities") together with all rights and responsibilities in connection therewith; and

WHEREAS, Principal and Surety agree this written instrument (this "Bond") shall remain in full force and affect until (*a*) the Obligations as defined below are performed; (*b*) a release is granted by the appropriate regulatory authority; or (*c*) this Bond is replaced with another bond or other form of financial assurance acceptable to Obligee; and

WHEREAS, Surety represents it is duly authorized by the proper authorities to transact the business of indemnity and suretyship in the state where it executed this Bond and represents it is qualified to be surety and guarantor on bonds and undertakings, which certificate has not been revoked; and

WHEREAS, Surety represents it has duly executed a Power of Attorney appointing the hereinafter named representative as its duly authorized deputy and the true and lawful Attorney-in-Fact of such Surety as evidenced by the Power of Attorney attached hereto.

NOW THEREFORE, Principal and Surety agree as follows:

Surety hereby guarantees Principal's full and faithful performance of abandonment of the subsea tieback from the OCS-G 27632 Well 002 ST2, also called the GB 258 002 ST2, to the Garden Banks 259 Unit Platform, also called the Baldpate Facilities, and removal of associated property and equipment, site restoration and/or environmental remediation consistent with the Agreement and in compliance with the rules and regulations promulgated by the appropriate regulatory authority (the "Obligations").

EXHIBIT F

IndemCo

PROVIDED, HOWEVER, that at such time as the Obligations have been fully and faithfully performed, then this Bond shall be null and void; otherwise, it shall remain in full force and effect.

PROVIDED FURTHER, whenever Principal fails to perform the Obligations and is in default thereof, Obligee shall present separate written notice (one to Principal at its address, one to Surety at its address and one to IndemCo, LP at 777 Post Oak Blvd., Suite 330, Houston, TX 77056, each delivered by overnight delivery service with recipients' signature required) stating Principal has defaulted in its performance of the Obligations. If said default condition persists for thirty (30) days after the recipients' receipt of the written notice, Obligee shall present Surety and IndemCo with a written bid(s) to perform the Obligations, such bid(s) to be delivered in the same manner as the written notice. Within fifteen (15) days following receipt of the bid(s), Surety shall elect whether to (*i*) pay Obligee an amount not to exceed the lesser of such written bid(s) or the remaining unpaid amount of the Penalty Sum; or (*ii*) commence performance of the Obligations. If Surety fails to inform Obligee of Surety's election in writing, it shall be deemed Surety has elected to pay Obligee as in item (*i*).

If Surety commences performance of the Obligations as set forth in (*ii*) above, **THE SURETY SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS OBLIGEE, ITS DIRECTORS, AND AGENTS FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION FOR PERSONAL INJURY, DEATH, PROPERTY AND/OR ENVIRONMENTAL DAMAGE RESULTING IN WHOLE OR IN PART FROM THE SURETY'S OR THE SURETY'S CONTRACTORS' NEGLIGENCE, WHETHER JOINT (INCLUDING WITH OBLIGEE OR THE PRINCIPAL) ACTIVE, PASSIVE, CONCURRENT OR SOLE, OR WILLFUL MISCONDUCT WITH RESPECT TO PERFORMANCE OF THE OBLIGATIONS.**

Each and every payment of a claim under this Bond, whether one or more, shall permanently reduce the Penalty Sum by each amount so paid, and this Bond shall become null and void when the aggregate amount paid for claim(s) equals the Penalty Sum; notwithstanding the foregoing, in the event Surety commences any performance of the Obligations, Surety's performance shall continue until the operation is completed in full, and Surety shall be responsible for all costs therefor including any and all costs in excess of the then current Penalty Sum amount that existed immediately before commencement of the operation.

No delay, neglect or failure of Obligee to proceed promptly in the event of any default on the part of Principal and/or Surety shall in any degree relieve Principal and/or Surety of their responsibilities under this Bond.

FURTHERMORE, No right or action shall accrue on this Bond to or for the use of any person or corporation other than the Principal, the Obligee, their heirs, executors, administrators, or successors.

This Bond shall be subject to the laws of the State of Texas, and the Surety consents to be sued in any court of competent jurisdiction in Harris County, Texas, hereby irrevocably submitting itself to the jurisdiction of said courts.

In the event the Surety determines the Obligee's claim or demand is improper or unlawful under applicable law, Surety shall have the right to file and pursue such litigation as may be necessary in order to contest such improper or unlawful claim or demand at the sole cost and expense of Surety.

At any time, including but not limited to an assignment and/or sale or conveyance of the Agreement, the Leases and/or property associated therewith to third party(ies) including their successors and/or assigns in whole or in part, this Bond may be replaced by other security acceptable to Obligee in the form of bond(s) or other financial assurance(s) in an amount equal to the then current Penalty Sum that exists at the time of the replacement(s). Obligee shall not unreasonably withhold acceptance of such replacement security(ies) and shall unconditionally release this Bond in less than thirty (30) days after receiving such replacement security(ies).

This Bond may not and shall not be assignable or transferable by Principal without the advance, written consent of the Surety. In the event of such transfer without Surety's consent, this bond shall be null and void immediately.

NOW THEREFORE, if Principal shall faithfully perform the Obligations, this Bond shall become null and void and of no effect, and Obligee will issue a full and complete release of this Bond less than thirty (30) days after receipt of satisfactory evidence that performance of the Obligations has been completed, and such release shall not unreasonably be withheld.

Remainder of page intentionally left blank

Bond No. 1152011

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their several seals effective as of this 8th day of January, 2018, the name and corporate seal of each corporate party being hereto affixed and those presents duly signed by its undersigned representative pursuant to authority of its governing body.

WITNESSES:

Todd Grebois

Nancy A. Rios

Senia Hernandez

PRINCIPAL
W&T Offshore, Inc.

By: Thomas P. Murphy

Thomas P. Murphy Chief Operations Officer
(Name / Title)

SURETY
Lexon Insurance Company

By: Michele K. Tyson
Michele K. Tyson, Attorney-in-Fact

Bond No. 1152011

Attachment "A"
Attached to and made a part of that certain Tieback Abandonment Performance Bond
by and between W&T Offshore, Inc., Lexon Insurance Company in favor of
Woodside Energy (USA) Inc.

A. Leases:
   1. OCS-G 27632, being all of Block 258, Garden Banks, INSOFAR AND ONLY INSOFAR as to those depths from the surface to the stratigraphic equivalent of the top of salt or 24,000' SS TVD, whichever is the lesser depth, 5,760 acres.
   2. OCS-G 24479, being all of Block 302, Garden Banks, INSOFAR AND ONLY INSOFAR as to those depths from 13,501' TVD down to 24,000' TVD, 5,760 acres.

EXHIBIT 10

POWER OF ATTORNEY

LX- 309835

Lexon Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that **LEXON INSURANCE COMPANY**, a Texas Corporation, with its principal office in Louisville, Kentucky, does hereby constitute and appoint: Edwin H. Frank, III, Michele K. Tyson, W. Russell Brown, Jr., Meredith K. Anderson its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of **LEXON INSURANCE COMPANY** on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed $3,000,000.00, Three Million dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, **LEXON INSURANCE COMPANY** has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 5th day of August, 2015.

LEXON INSURANCE COMPANY

BY _____
David E. Campbell
President

ACKNOWLEDGEMENT

On this 5th day of August, 2015, before me, personally came David E. Campbell to me known, who be duly sworn, did depose and say that he is the President of **LEXON INSURANCE COMPANY**, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.

AMY TAYLOR
Notary Public- State of Tennessee
Davidson County
My Commission Expires 07-08-19

BY _____
Amy Taylor
Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of **LEXON INSURANCE COMPANY**, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the forgoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Seal at Mount Juliet, Tennessee this 5th Day of January, 2018.

BY _____
Andrew Smith
Assistant Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."

Bond No. 1152010

****This bond replaces and supersedes Aspen American Insurance Company Bond No. SU41106****

WELL ABANDONMENT PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That We, W&T Offshore, Inc. with its main office at Nine Greenway Plaza, Suite 300; Houston, Texas 77046 ("Principal") and Lexon Insurance Company, an insurance corporation domiciled in the State of Texas with its main office at 10002 Shelbyville Road, Suite 100, Louisville, Kentucky 40223 ("Surety") are held and firmly bound unto Woodside Energy (USA), Inc. with its main office at 5151 San Felipe, Suite 1200; Houston, Texas 77056 ("Obligee"), in the penalty sum of One Million Nine Hundred Thirty-one Thousand Five Hundred Sixty-two and No/100 Dollars ($1,931,562.00) in lawful money of the United States of America ("Penalty Sum"), for the payment of which sum Principal and Surety hereby bind themselves, their respective successors and assigns, jointly, severally, and in solido, firmly by these presents.

WHEREAS, Principal and Obligee have entered into and executed that certain Purchase and Sale Agreement (the "Agreement"), effective August 1, 2013, wherein Obligee conveys the oil and gas leases and associated property more fully described in "Attachment A" (the "Leases") on which are situated wells (producing, abandoned, injection and/or other), pits, platforms, pipelines, flowlines, and/or other property and equipment (the "Facilities") together with all rights and responsibilities in connection therewith; and

WHEREAS, Principal and Surety agree this written instrument (this "Bond") shall remain in full force and affect until (*a*) the Obligations as defined below are performed; (*b*) a release is granted by the appropriate regulatory authority; or (*c*) this Bond is replaced with another bond or other form of financial assurance acceptable to Obligee; and

WHEREAS, Surety represents it is duly authorized by the proper authorities to transact the business of indemnity and suretyship in the state where it executed this Bond and represents it is qualified to be surety and guarantor on bonds and undertakings, which certificate has not been revoked; and

WHEREAS, Surety represents it has duly executed a Power of Attorney appointing the hereinafter named representative as its duly authorized deputy and the true and lawful Attorney-in-Fact of such Surety as evidenced by the Power of Attorney attached hereto.

NOW THEREFORE, Principal and Surety agree as follows:

Surety hereby guarantees Principal's full and faithful performance of the plugging and abandonment of the OCS-G 27632 Well 002 ST2, also called the GB 258 002 ST2, and removal of property and well equipment, site restoration and/or environmental remediation consistent with the Agreement and in compliance with the rules and regulations promulgated by the appropriate regulatory authority (the "Obligations").

Bond No. 1152010

PROVIDED, HOWEVER, that at such time as the Obligations have been fully and faithfully performed, then this Bond shall be null and void; otherwise, it shall remain in full force and effect.

PROVIDED FURTHER, whenever Principal fails to perform the Obligations and is in default thereof, Obligee shall present separate written notice (one to Principal at its address, one to Surety at its address and one to IndemCo, LP at 777 Post Oak Blvd., Suite 330, Houston, TX 77056, each delivered by overnight delivery service with recipients' signature required) stating Principal has defaulted in its performance of the Obligations. If said default condition persists for thirty (30) days after the recipients' receipt of the written notice, Obligee shall present Surety and IndemCo with a written bid(s) to perform the Obligations, such bid(s) to be delivered in the same manner as the written notice. Within fifteen (15) days following receipt of the bid(s), Surety shall elect whether to (*i*) pay Obligee an amount not to exceed the lesser of such written bid(s) or the remaining unpaid amount of the Penalty Sum; or (*ii*) commence performance of the Obligations. If Surety fails to inform Obligee of Surety's election in writing, it shall be deemed Surety has elected to pay Obligee as in item (*i*).

If Surety commences performance of the Obligations as set forth in (*ii*) above, **THE SURETY SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS OBLIGEE, ITS DIRECTORS, AND AGENTS FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION FOR PERSONAL INJURY, DEATH, PROPERTY AND/OR ENVIRONMENTAL DAMAGE RESULTING IN WHOLE OR IN PART FROM THE SURETY'S OR THE SURETY'S CONTRACTORS' NEGLIGENCE, WHETHER JOINT (INCLUDING WITH OBLIGEE OR THE PRINCIPAL) ACTIVE, PASSIVE, CONCURRENT OR SOLE, OR WILLFUL MISCONDUCT WITH RESPECT TO PERFORMANCE OF THE OBLIGATIONS.**

Each and every payment of a claim under this Bond, whether one or more, shall permanently reduce the Penalty Sum by each amount so paid, and this Bond shall become null and void when the aggregate amount paid for claim(s) equals the Penalty Sum; notwithstanding the foregoing, in the event Surety commences any performance of the Obligations, Surety's performance shall continue until the operation is completed in full, and Surety shall be responsible for all costs therefor including any and all costs in excess of the then current Penalty Sum amount that existed immediately before commencement of the operation.

No delay, neglect or failure of Obligee to proceed promptly in the event of any default on the part of Principal and/or Surety shall in any degree relieve Principal and/or Surety of their responsibilities under this Bond.

FURTHERMORE, No right or action shall accrue on this Bond to or for the use of any person or corporation other than the Principal, the Obligee, their heirs, executors, administrators, or successors.

This Bond shall be subject to the laws of the State of Texas, and the Surety consents to be sued in any court of competent jurisdiction in Harris County, Texas, hereby irrevocably submitting itself to the jurisdiction of said courts.

Bond No. 1152010

In the event the Surety determines the Obligee's claim or demand is improper or unlawful under applicable law, Surety shall have the right to file and pursue such litigation as may be necessary in order to contest such improper or unlawful claim or demand at the sole cost and expense of Surety.

At any time, including but not limited to an assignment and/or sale or conveyance of the Agreement, the Leases and/or property associated therewith to third party(ies) including their successors and/or assigns in whole or in part, this Bond may be replaced by other security acceptable to Obligee in the form of bond(s) or other financial assurance(s) in an amount equal to the then current Penalty Sum that exists at the time of the replacement(s). Obligee shall not unreasonably withhold acceptance of such replacement security(ies) and shall unconditionally release this Bond in less than thirty (30) days after receiving such replacement security(ies).

This Bond may not and shall not be assignable or transferable by Principal without the advance, written consent of the Surety. In the event of such transfer without Surety's consent, this bond shall be null and void immediately.

NOW THEREFORE, if Principal shall faithfully perform the Obligations, this Bond shall become null and void and of no effect, and Obligee will issue a full and complete release of this Bond less than thirty (30) days after receipt of satisfactory evidence that performance of the Obligations has been completed, and such release shall not unreasonably be withheld.

Remainder of page intentionally left blank

Bond No. 1152010

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their several seals effective as of this 8th day of January, 2018 the name and corporate seal of each corporate party being hereto affixed and those presents duly signed by its undersigned representative pursuant to authority of its governing body.

WITNESSES:

Todd Grabois

Nancy A. Rios

Senia Hernandez

PRINCIPAL
W&T Offshore, Inc.

By: Thomas P. Murphy

Thomas P. Murphy Chief Operations Officer
(Name / Title)

SURETY
Lexon Insurance Company

By: Michele K. Tyson
Michele K. Tyson, Attorney-in-Fact

Bond No. 1152010

Attachment "A"
Attached to and made a part of that certain Well Abandonment Performance Bond by and between W&T Offshore, Inc. and Lexon Insurance Company in favor of Woodside Energy (USA) Inc.

A. Leases:
   1. OCS-G 27632, being all of Block 258, Garden Banks, INSOFAR AND ONLY INSOFAR as to those depths from the surface to the stratigraphic equivalent of the top of salt or 24,000' SS TVD, whichever is the lesser depth, 5,760 acres.
   2. OCS-G 24479, being all of Block 302, Garden Banks, INSOFAR AND ONLY INSOFAR as to those depths from 13,501' TVD down to 24,000' TVD, 5,760 acres.

EXHIBIT 10

POWER OF ATTORNEY

LX- 309834

Lexon Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that **LEXON INSURANCE COMPANY**, a Texas Corporation, with its principal office in Louisville, Kentucky, does hereby constitute and appoint: Edwin H. Frank, III, Michele K. Tyson, W. Russell Brown, Jr., Meredith K. Anderson its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of **LEXON INSURANCE COMPANY** on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed $3,000,000.00, Three Million dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, **LEXON INSURANCE COMPANY** has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 5th day of August, 2015.

LEXON INSURANCE COMPANY CORPORATE SEAL MARCH 10, 1994 STATE OF TEXAS

LEXON INSURANCE COMPANY

BY _____
David E. Campbell
President

ACKNOWLEDGEMENT

On this 5th day of August, 2015, before me, personally came David E. Campbell to me known, who be duly sworn, did depose and say that he is the President of **LEXON INSURANCE COMPANY**, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.

AMY TAYLOR NOTARY PUBLIC STATE OF TENNESSEE DAVIDSON COUNTY

AMY TAYLOR
Notary Public- State of Tennessee
Davidson County
My Commission Expires 07-08-19

BY _____
Amy Taylor
Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of **LEXON INSURANCE COMPANY**, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the forgoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Seal at Mount Juliet, Tennessee this 8th Day of January, 2018.

LEXON INSURANCE COMPANY CORPORATE SEAL MARCH 10, 1994 STATE OF TEXAS

BY _____
Andrew Smith
Assistant Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

W&T OFFSHORE, INC., AND W&T ENERGY VI, LLC, Plaintiffs, v. ENDURANCE ASSURANCE CORPORATION, LEXON INSURANCE COMPANY, PENNSYLVANIA INSURANCE COMPANY, U.S. SPECIALTY INSURANCE COMPANY, AND UNITED STATES FIRE INSURANCE COMPANY Defendants.	§	**CIVIL ACTION NO. 4:24-CV-3047**

PLAINTIFFS' FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF AND DAMAGES

W&T Offshore, Inc. ("W&T Offshore") and W&T Energy VI, LLC ("W&T Energy," and collectively with W&T Offshore, "W&T") file this First Amended Complaint to seek declaratory relief and damages not only against Endurance Assurance Corporation ("Endurance") and Lexon Insurance Company ("Lexon," and collectively with Endurance and Lexon, the "Sompo Sureties" or "Sompo"), but also against Pennsylvania Insurance Company a/k/a Applied Surety Underwriters ("Applied"), U.S. Specialty Insurance Company ("U.S. Specialty"), and United States Fire Insurance Company ("U.S. Fire") (collectively, the "Other Sureties," and, with the Sompo Sureties, the "Sureties" or "Defendants"), whose cases were consolidated into this action.[1]

[1] Civil Action Nos. 4:24-cv-04113, 4:24-cv-04400, and 4:24-cv-04395 were consolidated into this action on November 22, 2024. (*See* Dkt. 33.) Thus, these parties are already joined in this action.

I. SUMMARY

1. In a scheme to force W&T to make unprecedented and impossible collateral payments, W&T's sureties have colluded to combine their leverage and jointly demand roughly $250 million in immediate collateral from W&T without any historical, contractual, or financial justification. The Sureties in this lawsuit, and their co-conspirators, must be stopped.

2. Years ago, W&T obtained government-mandated and private bonds from the Sureties to secure *potential* decommissioning obligations that W&T may have with respect to oil and gas assets on the Outer Continental Shelf. For years, W&T has complied with its indemnity agreements (which were non-negotiable and offered on a take-it-or-leave-it basis) and paid all required and negotiated premiums. W&T has remained solvent and capable of meeting its financial obligations.

3. However, in 2024, the Sureties conspired to use a change in government rules as a pretext to extract outrageous sums from smaller oil and gas companies like W&T. The new rules arguably required supplemental surety bonds for certain companies who were not deemed investment-grade. The rule *did not* alter existing bonds previously issued to W&T by the Sureties nor alter the underlying contract terms. The rule also *did not* require the Sureties to demand immediate collateral from W&T.

4. Yet, the Sureties devised an illegal scheme to jointly demand extremely high collateral for the very first time. The Sureties met and agreed to "collectively" change their "analysis" and "terms" for smaller companies like W&T. By locking arms, these competing Sureties agreed to greatly increase their leverage, restrict competition, and thereby attempt to: (1) jointly squeeze their targets' assets; (2) jointly force their targets to accept commercially

unreasonable terms; and (3) jointly increase premiums, collateral, and bonding costs against their targets.

5. In the spring of 2024, the Sureties, led by Sompo, began implementing their strategy. Sompo and its co-conspirators, in concerted rapid succession, began demanding immediate crippling deposits of collateral on W&T's outstanding bonds, all for the very first time. Even though the Sureties' demands were not supported by their contracts, W&T, in good faith, offered to provide the Sureties collateral in forms other than cash or letters of credit. The Sureties refused these offers in bad faith—continuing to insist on commercially unreasonable terms and attempting to permanently change the parties' rights for the Sureties' sole benefit.

6. The Sureties' scheme violates not only the parties' contracts, but also federal and Texas antitrust law. Accordingly, W&T seeks damages from the Sureties and declaratory relief to end their scheme, not only for W&T, but also for any of the Sureties' other targets.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over this civil action pursuant to 28 U.S.C. § 1331 and 43 U.SC. § 1349, as this dispute arises out of and would not exist but for operations conducted on the Outer Continental Shelf. The surety bonds and related indemnity agreements that are at issue in this civil action were issued in connection with operations conducted on the Outer Continental Shelf.

8. The Court also has jurisdiction over this civil action pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, because this action arises under the antitrust laws of the United States.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2). The relevant agreement between W&T and the Sompo Sureties provides that: (i) the place of performance is

Harris County, Texas; and (ii) the exclusive venue and jurisdiction for any disputes arising under that agreement lies with the federal and state courts sitting in Harris County, Texas. The relevant agreement between W&T and Applied provides that jurisdiction for any legal proceeding related thereto shall be Texas, or any state where W&T resides, has property, or performs, which includes Texas. The relevant agreement between W&T and U.S. Specialty provide for mandatory venue in Texas and/or Harris County. In any case, venue is proper in this district under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to W&T's claims occurred in this District. All parties have consented to the consolidation of the parties' lawsuits in this District.

10. Among other things, this civil action seeks declaratory relief pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure for the purpose of determining questions of actual controversy between W&T and the Sureties.

III. THE PARTIES

11. W&T Offshore is a corporation organized under the laws of the State of Texas with its principal place of business located in Houston, Texas.

12. W&T Energy is a limited liability company organized under the laws of the State of Delaware, with its principal place of business located in Houston, Texas.

13. Endurance is a corporation organized under the laws of the State of Delaware, with its principal place of business located in Mt. Juliet, Tennessee.

14. Lexon is a corporation organized under the laws of the State of Texas, with its principal place of business located in Mt. Juliet, Tennessee.

15. Applied is a corporation organized under the laws of the State of New Mexico with its principal place of business located in Santa Fe, New Mexico.

16. U.S. Specialty is a Texas corporation with its principal place of business in the State of Texas.

17. U.S. Fire is a corporation organized and existing under the laws of the State of Delaware with its principal place of business and corporate headquarters located in Morristown, New Jersey.

18. Other sureties who, on information and belief, are potential co-conspirators with the Sureties' scheme described herein, include Philadelphia Indemnity Insurance Company, and others who will become known during discovery.

IV. INTERSTATE COMMERCE

19. The Sureties, who are federally certified, issued bonds to W&T for its operations on the federally controlled Outer Continental Shelf. The Sureties, who are organized and operate across many states, including Delaware, Tennessee, Texas, New Mexico, and New Jersey, issue bonds to companies like W&T throughout the United States.

20. The Sureties' conduct substantially affected interstate commerce throughout the United States and caused antitrust injury throughout the United States.

V. BACKGROUND

A. The U.S. Offshore Regulatory Environment and Offshore Surety Market.

21. In 1953, the United States Congress enacted the Outer Continental Shelf Lands Act ("OCSLA" or the "OCS Lands Act"). 43 U.S.C. § 1331 *et seq.*

22. In the OCS Lands Act, Congress affirmed that the United States has exclusive control over the Outer Continental Shelf. OCSLA defines the Outer Continental Shelf to be "all submerged lands" beyond the lands reserved to the States, in the Submerged Lands Act, 43 U.S.C. § 1301 *et seq.*, up to the edge of the jurisdiction of the United States. *Id.* § 1331 (a).

23. The OCS Lands Act sets forth a comprehensive scheme for the leasing and development of resources on the Outer Continental Shelf. 43 U.S.C. §§ 1334.

24. OCSLA specifically authorizes the Secretary of the United States Department of the Interior (the "Secretary") to issue regulations to administer the Outer Continental Shelf for mineral development. 43 U.S.C. § 1334.

25. Compliance with the regulations issued by the Secretary is a condition of "[t]he issuance and continuance of any OCSLA lease." 43 U.S.C. § 1334 (b).

26. The Secretary established the Bureau of Ocean Energy Management ("BOEM") to carry out conventional and renewable energy-related functions on the Outer Continental Shelf. Dep't of the Interior Secretarial Ord. 3299 (May 19, 2010).

27. Order 3299 also established the Bureau of Safety and Environmental Enforcement ("BSEE"). Dep't of the Interior Secretarial Ord. 3299 (May 19, 2010).

28. BSEE and BOEM work together to protect the United States from incurring financial losses associated with the decommissioning facilities and other structures on the Outer Continental Shelf in conjunction with the development of mineral and/or energy resources.

29. BOEM is responsible for managing the development of offshore energy and mineral resources in an environmentally and economically responsible manner.

30. BSEE provides estimates to BOEM regarding the financial assurance needed to cover decommissioning costs.

31. BOEM's predecessor, the Minerals Management Service ("MMS"), established the financial requirements applicable to Outer Continental Shelf leases and pipeline rights of way in 1997. 62 Fed. Reg. 27948 (May 22, 1997).

32. The MMS regulations also provided a mechanism for the government to require supplemental financial assurance based on the regulatory agency's interpretation of the financial health of the lessees.

33. The MMS issued regulations providing a mechanism for the government to require Outer Continental Shelf oil and gas lessees to post bonds. 62 Fed. Reg. 27948 (May 22, 1997).

34. BOEM continues to require Outer Continental Shelf lessees to post bonds as a condition of lease issuance and/or continuance. *See* 89 Fed. Reg. 31544 (Apr. 24, 2024).

35. The offshore surety market in the United States is heavily concentrated and controlled by the Sureties and other key players. For instance, they are all part of and/or actively support similar trade associations, including The Surety & Fidelity Association of America ("SFAA"), based in Washington, D.C.[2] According to SFAA's website, their goals are to, among other things, provide "a clear, strong and unified voice for the industry" and "[t]racking and responding to any threats to the industry."[3]

36. The offshore surety market is united in their strategic plan and their leaders often work for multiple sureties in their career. They also participate in regular meetings around the nation to respond to industry threats and jointly influence government decisions.[4] For example, in February 2024, SFAA and another surety trade association hosted a "2024 Legislative 'Fly-in'" in Washington, D.C. The Fly-in "enabled surety professionals from across the country to educate members of Congress and staff about the value of construction surety bonds and advocate for their

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2 *See* SFAA, "Membership List," https://surety.org/wp-content/uploads/2024/01/Membership-Directory-01-29-24.pdf (last visited Dec. 11, 2024).

3 *See* SFAA, "Advocacy and Policy," https://surety.org/advocacy-policy/ (last visited December 11, 2024).

4 *See* SFAA, "Meetings & Events," https://surety.org/press-releases/sfaa-meetings-events/ (last visited December 11, 2024); NASBP "2024 Annual Meeting," https://www.nasbp.org/events/annualmeeting/2024amhighlights (last visited December 11, 2024).

legislative priorities." By their own words, "[i]n over 100 meetings, construction bonding experts met with their elected representatives and their staff to educate them on surety bonds' significant role in advancing and protecting public infrastructure projects."

37. The Sureties use the same collective influence in the offshore surety market. For example, in 2024, representatives of the Sureties and co-conspirators met to discuss their collective response to the BOEM rule and agreed to collectively change their analysis and terms at the expense of smaller companies like W&T. The Sureties' opportunities for collusion continues through major annual events, conferences, and meetings each year, with companies like Sompo and Applied entrenched in trade associations and actively seeking to influence other sureties to follow their lead.

B. Insurance Regulations.

38. Sureties are regulated by the Texas Insurance Code. *See* Tex. Ins. Code §§ 3503.001 – 3503.204.

39. The Texas Insurance Code definition of the "Business of Insurance" includes the making of a surety contract. Tex. Ins. Code § 101.051(b)(2).

40. Chapter 541 regulates unfair methods of competition and unfair or deceptive acts or practices in the Business of Insurance. Tex. Ins. Code §§ 541.001 – 541.454.

41. Chapter 541 permits a private cause of action for damages. Tex. Ins. Code § 541.151.

C. The Relationship Between Sompo and W&T.

42. W&T Offshore is an independent oil and natural gas producer—exploring, developing, and acquiring oil and natural gas in the Gulf of Mexico, subject to the jurisdiction of the United States Department of Interior.

43. W&T Energy is a subsidiary of W&T Offshore that explores, develops, acquires, and operates oil and natural gas properties in the Gulf of Mexico, also subject to the jurisdiction of the United States Department of Interior.

44. Endurance is a foreign insurer that issues surety bonds required by BOEM with respect to operations conducted on the Outer Continental Shelf.

45. Lexon is a Texas domestic insurer that issues surety bonds required by BOEM with respect to operations conducted on the Outer Continental Shelf.

46. In accordance with the regulations issued by BOEM, W&T was required to post bonds in favor of the United States.

47. W&T obtained surety bonds from, among others, both Endurance and Lexon. ("Bonds").

48. W&T is the principal under the Bonds.

49. Pursuant to the terms of the Bonds, all "obligations and liabilities of Principal to abandon, restore and remediate the Properties" subject to the Bond are set forth in the "P&A Obligations." As such, the P&A Obligations form part of the Bonds.

50. The rights and obligations of W&T and the Sompo Sureties are stated in their Payment and Indemnity Agreement No. 1380 effective as of September 14, 2020 (the "Sompo Indemnity Agreement").

51. The Sompo Indemnity Agreement was executed by W&T Offshore, as Principal, and U.S. Specialty Insurance Company, as Surety, "in connection with any bond or bonds executed or to be executed on behalf of any principal and to induce the Surety to execute or procure of the execution of such bond(s) and any extensions, modifications, or renewals thereof, additions thereto, or substitutions therefor."

52. A true and correct copy of the Sompo Indemnity Agreement is attached hereto as Exhibit "A." The Sompo Indemnity Agreement provides, in paragraph 3 entitled "Security":

> The Surety may at any time and from time to time hereafter, in its sole and absolute discretion, require the Principals to provide collateral, in form and amounts acceptable to the Surety (such amounts not to exceed the aggregate penalty sum of all then-issued Bonds) to secure the Principals' obligations to the Surety hereunder and/or to establish reserves ***to cover any actual or potential liability, claim, suit, or judgment under any Bond***.
>
> Within thirty (30) days after the Surety has made written demand on Principals, each Principal shall execute such documents and take such further action as may be necessary in order to provide such collateral. Each Principal hereby grants to the Surety a security interest in all money and other property now or hereafter delivered by such Principal to the Surety, and all income (if any) thereon.
>
> If a Principal provides the Surety with a letter of credit or similar instrument, such Principal agrees that the Surety has the right to call on the same from time to time, in whole or in part and for any reason or no reason, and to hold the proceeds thereof as collateral for the obligations of the Principals hereunder. Any collateral provided at any time by any Principal shall be available, in the discretion of the Surety, as collateral security on any or all Bonds heretofore or hereafter executed for or at the request of such Principal or any other Principal.

(Ex. A at Sec. 3 (emphasis added).)

53. Paragraph 5 of the Sompo Indemnity Agreement, entitled "Additional Sureties," is a risk-shifting mechanism that permits Sompo to move some bond obligations to other entities. It provides that, should the Surety "procure any other company or companies including but not limited to . . . Endurance Assurance Corporation . . . Lexon Insurance Company . . . to execute or join with it in the executing, or to reinsure any Bond, this Agreement shall inure to the benefit of such other company or companies, its or their successors and assigns, so as to give it or them a direct right of action against the Principals to enforce the provisions hereof."

54. However, nothing in the Agreement states that Sompo can collude with such "Additional Sureties" or jointly demand immediate payments of collateral.

55. Endurance joined in and issued bonds covered by the Sompo Indemnity Agreement.

56. Accordingly, the Sompo Indemnity Agreement governs the relationship between W&T and Endurance.

57. Lexon joined in and issued bonds covered by the Sompo Indemnity Agreement.

58. Accordingly, the Sompo Indemnity Agreement governs the relationship between W&T and Lexon.

59. Other surety companies also joined in and issued bonds covered by the Sompo Indemnity Agreement.

D. The Sompo Sureties Issue BOEM-Required Bonds on W&T's Behalf.

60. Pursuant to and in accordance with the Sompo Indemnity Agreement, Endurance issued the following bonds in connection with W&T's obligations to BOEM:

Bond No.	Form	Amount
ZEACX226000039	BOEM -2028A	$3,830,148.00
ZEACX226000040	BOEM -2028A	$13,126,457.00
ZEACX226000038	BOEM -2028A	$1,482,000.00
EACX226000025	BOEM -2028A	$3,000,000.00
EACX226000047	BOEM -2028A	$2,285,584.00
EACX226000044	BOEM -2028A	$3,000,000.00
EACX226000022	BOEM -2028A	$1,461,000.00

61. True and correct copies of the above bonds are attached hereto as Exhibit "B".

62. Endurance also issued the following bonds to nongovernmental parties. These bonds were also issued in conjunction with W&T's operations on the Outer Continental Shelf:

Bond No.	Form	Amount
EACX226000043	N/A	$7,000,000.00

63. A true and correct copy of the above bond is attached as Exhibit "C."

64. Endurance also issued a bond in favor of the Texas Railroad Commission:

Bond No.	**Form**	**Amount**
EACX226000045	P-5PB	$125,000.00

65. A true and correct copy of the above bond is attached as Exhibit "D."

66. Lexon also issued the following bonds in connection with W&T's obligations to BOEM:

Bond No.	**Form**	**Amount**
1156846	BOEM -2028A	$5,000,000.00
1136949	ONRR -4435	$1,166,860.00
1136950	ONRR -4435	$117,279.00
1159776	BOEM -2028A	$3,000,000.00
1097677	BOEM -2028A	$9,000,000.00

67. True and correct copies of the above bonds are attached as Exhibit "E".

68. Lexon also issued the following bonds to nongovernmental parties. These bonds were also issued in conjunction with W&T's operations on the Outer Continental Shelf:

Bond No.	**Form**	**Amount**
1152011	N/A	$376,688.00
1152010	N/A	$1,931,562.00

69. A true and correct copy of the above bonds are attached hereto as Exhibit "F."

E. Sompo's Bad Faith Collateral Demands

70. Under the Sompo Indemnity Agreement, the Sompo Sureties could each individually demand collateral **only** "to cover any actual or potential liability, claim, suit, or judgment under any Bond." (Ex. A at ¶ 3.)

71. The Sompo Indemnity Agreement does not contemplate or otherwise permit the Sureties to act jointly in demanding additional collateral from W&T.

72. To date, no "actual or potential" liability, claim, suit, or judgment exists "under any Bond."

73. At all times, W&T has complied with the Sompo Indemnity Agreement and paid all premiums for all bonds issued by the Sompo Sureties. W&T has also remained solvent and capable of meeting its financial obligations.

74. Despite its consistent financial health, in 2024, W&T became one of Sompo's first targets in its scheme with other sureties when W&T refused to accept Sompo's demands involving non-W&T bonds.

75. Specifically, Sompo had previously issued bonds to a company unrelated to W&T, Fieldwood Energy LLC ("Fieldwood"), which had filed for bankruptcy in 2020. Quarter North Energy ("QNE") subsequently acquired a portion of Fieldwood's assets, some of which were later sold to W&T.

76. As part of that transaction, W&T purchased private bonds of roughly $11 million from Applied (not from Sompo) to benefit QNE and guarantee W&T's decommissioning obligations.

77. W&T had no obligation to assume Sompo's separate financial exposure caused by the separate Fieldwood bankruptcy. But that is exactly what Sompo demanded from W&T.

78. On April 19, 2024, Sompo demanded that W&T replace the Fieldwood bonds despite W&T's total lack of liability. Sompo wanted W&T to bail it out of its obligations for Sompo's benefit alone. Sompo and its representative, Patrick Hennesy, claimed they could not "retain bonds in the name of Fieldwood and continue to pursu[e] legal action in relation to the Fieldwood Case." (Fieldwood Emails, attached as Exhibit "G".)

79. Sompo also claimed that the replacement bonds would be cheap and wouldn't affect W&T's costs with Sompo across the board: "In order to facilitate the replacement, Sompo is offering to replace the bonds on Lexon paper at a nominal rate that will be offset elsewhere in the

portfolio. … [Patrick Hennesy] said he needs to do some Chinese algebra to confirm the rate, but assures that it will be cost neutral when balanced across the current program." (*Id.*)

80. Sompo tried to force W&T to accept a new bond amount of $7,745,000.

81. W&T's broker reiterated Sompo's power in the offshore surety market, particularly given the new BOEM rule:

> We feel this is a good deal for W&T, as it preserves an ***important relationship in Sompo***, and ***allows W&T to procure favorable terms on assuming bonds we believe BOEM will force W&T to post once the rule is in place***.
>
> I recommend we move on this quickly to capture these terms before they change and ***create goodwill prior to the Sompo meeting*** in the coming weeks.

(*Id.* (emphasis added).)

82. W&T did not want to take on unnecessary liabilities and was shocked by Sompo's attempted blackmail.

83. On April 29, 2024, W&T informed Sompo that it did not wish to take on Sompo's other bonds or exposure.

F. Sompo Causes the Sureties To Jointly Pursue Unreasonable Collateral Demands.

84. Upon information and belief, following the events of April 2024, Sompo began conspiring with others in the offshore surety market to retaliate against W&T, interfere with its contracts and business relationships, and force W&T back into submission at any cost.

85. During this conspiracy, on July 9, 2024, Endurance and Lexon, through Sompo, demanded that W&T immediately pay collateral of $7.5 million in cash without any support or explanation (Sompo's Demand, July 9, 2024, attached as Exhibit "H".) Sompo intended to use this money for Sompo's unrelated Fieldwood liability and, if not paid, Sompo would then demand

the full $55.9 million from W&T. Notably, Sompo's surprise demand was roughly the same amount as Sompo's replacement bonds it had tried to extort from W&T.

86. As part of its scheme, upon information and belief, Sompo apparently encouraged and enlisted the support of other Sureties, in rapid succession, to demand additional collateral, including U.S. Specialty, Applied, and U.S. Fire.

87. W&T sought to resolve the Sureties' demands in good faith. For example, W&T offered to provide collateral to the Sureties in forms other than cash or letter of credit. But the Sureties held fast and jointly refused all overtures from W&T.

88. As noted above, W&T's financial status has remained substantially the same since the Sureties issued bonds to W&T, making it abundantly evident the Sureties' call for collateral was made for nefarious purposes.

89. The only material change regarding the bonds involves not W&T, but the Sureties' agreements and strategy of collusion.

90. The Sureties have decided to alter their business model by jointly squeezing smaller oil and gas companies like W&T. Sompo's own representative admittedly met with other sureties in 2024 to "collectively" change their "analysis" and "terms" for these companies. Part of this agreement was jointly restructuring their strategy for collateral calls. Essentially, the Sureties jointly demand extreme and unprecedented collateral amounts, requiring joint submission to all Sureties. Sompo readily admits that, as part of its scheme, it tried to convince W&T "to establish a shared collateral escrow account [for all sureties] to [also] satisfy Lexon's need for collateral." (Dkt. 30 at 16.).

91. The Sureties' unjustified and unprecedented demands in collateral and their continued collusion cannot be permitted by this Court.

G. Sureties Try to Cripple W&T with Baseless Claims.

92. The Other Sureties' execution of their collateral strategy mirrored Sompo's.

93. Like Sompo, Applied is a foreign insurer, which issues surety bonds with respect to operations conducted on the Outer Continental Shelf.

94. W&T obtained surety bonds from Applied.

95. The rights and obligations of W&T and Applied are stated in a General Indemnity Agreement dated February 2, 2023 (the "Applied Indemnity Agreement"). The Applied Indemnity Agreement is attached as Exhibit "I."

96. Similar to the Sompo Indemnity Agreement, the Applied Indemnity Agreement requires a request for collateral to be related to actual or potential liability or claims against the Surety—Applied cannot demand collateral based on speculation or collusion:

> [T]he Indemnitors agree to deposit with the Surety, upon demand, an amount of money or other collateral security acceptable to the Surety, ***as soon as liability exists or is asserted against the Surety***, whether or not the Surety shall have made any payment therefor, equivalent to such amount that the Surety, in its sole judgment, shall deem sufficient ***to discharge any Losses or to protect it from any potential or anticipated Losses***.

(Ex. I at ¶ 4 (emphasis added).)

97. Applied has never had the right to demand collateral from W&T because: (1) no actual or potential liability against Applied exists; (2) no actual or potential loss to Applied exists; and (3) there are no actual or anticipated claims against the Applied Bonds.

98. However, in 2024, Applied tried to unilaterally increase W&T's premium payments without justification, seeking $276,000 more from W&T. When W&T would not agree to the attempted extortion, Applied demanded that W&T either release it from the bonds within 30 days or provide Applied "collateral in the amount of 100% of all unreleased liability" under the bonds: $11,343,949.00. (Applied Demand, attached as Exhibit "J".)

99. Without support, Applied asserted that it "has determined, in its sole discretion, that [W&T Offshore's] financial condition has been or is believed to be deteriorating and/or that there has been or is believed to be other changes adversely impacting the Surety's rights under the Bonds." (*Id.*)

100. Again, W&T's financial status has remained substantially the same since the execution of the Applied Indemnity Agreement and the issuance of the bonds thereunder. Further, to the extent there has been an adverse change impacting Applied's rights under the bonds, which W&T denies, the agents of such change are the Sureties—not W&T—and the change was one collectively fabricated by the Sureties.

101. Applied asked W&T to comply with an unreasonable demand (for release) or, in the alternative, a more unreasonable demand (for collateral) as part and parcel of the Sureties' scheme.

102. Applied is not the only surety who has joined the conspiracy.

103. On July 31, 2024, U.S. Specialty demanded that W&T immediately deposit $23,000,000 in collateral, based on the parties' Payment and Indemnity Agreement No. 1380 ("U.S. Specialty Indemnity Agreement"). (U.S. Specialty Demand, attached as Exhibit "K".) The U.S. Specialty Indemnity Agreement, the same form as the Sompo Indemnity Agreement (Ex. A), did not give U.S. Specialty the ability to demand collateral without actual or potential liability. However, on October 25, 2024, U.S. Specialty filed suit seeking immediate payment of the $23,000,000 from W&T.

104. Similarly, on October 14, 2024, U.S. Fire demanded that W&T immediately deposit $89,501,222.00 as collateral based on the Rider To General Indemnity Agreement ("U.S. Fire

Indemnity Agreement"). (U.S. Fire Demand, attached as Exhibit "L".) A true and correct copy of the U.S. Fire Indemnity Agreement is attached as Exhibit "M."

105. Like the other indemnity agreements, the U.S. Fire Indemnity Agreement does not give U.S. Fire the ability to demand collateral without actual or potential liability. And like the Sompo Indemnity Agreement, the U.S. Fire Indemnity Agreement allows for a demand for collateral solely to address an existing liability or claim. (*See id.* at ¶ 4 (allowing a demand for collateral to "in the amount of any reserve Surety establishes for any ***existing liability or claim***" (emphasis added).) However, on November 8, 2024, U.S. Fire filed suit against W&T, increasing its collateral demand to $93,492,509.00.

106. The Sureties' collateral demands against W&T total $183,739,036:

Surety	**Collateral Demand**
Sompo Sureties	$55,902,578.00
Applied	$11,343,949.00
U.S. Specialty	$23,000,000.00
U.S. Fire	$93,492,509.00
Total	**$183,739,036.00**

107. Even worse, the above total only includes demands from the Sureties in this lawsuit. The total amount jointly demanded from all surety co-conspirators is roughly $250 million—more than W&T's cash reserves.[5] Upon information and belief, the Sureties are still meeting with other co-conspirators to increase their joint demands and interfere with W&T's contracts and business relationships.

[5] On July 2, 2024, Philadelphia Indemnity Insurance Company ("PIIC") demanded collateral of $31 million. On November 13, 2024, PIIC increased their collateral demand to $71 million.

H. The Sureties' Joint Demands Are Part of an Illegal Conspiracy.

108. As discussed above, ***W&T has complied with its indemnity agreements and paid all required and negotiated premiums.*** W&T is and has remained, since execution of its indemnity agreements, solvent and capable of meeting its financial obligations. *Id.*

109. W&T has not advised the Sureties that it was unwilling or unable to post collateral. Contrary to their contention, W&T's financial status has not deteriorated—in fact, W&T is in an *improved* financial position as compared to September 2020.

110. Seeking to combine their leverage to extract the maximum amount of collateral from their principals, even if it requires their liquidation, the Sureties have conspired to participate in an unlawful scheme against smaller oil and gas companies like W&T. And the Sureties found the ideal pretext to execute their collective scheme.

111. Specifically, in 2020, BOEM had announced a Proposed Rule (the "2020 Proposed Rule") that required supplemental bonds only for sole-liability properties, which are leases without an investment-grade party—typically a major company, such as Shell—in the chain of title either as a predecessor or co-lessee.

112. However, last June, the BOEM abandoned this 2020 Proposed Rule and, instead, issued a 2023 Proposed Rule, under which the 2020 Proposed Rule's financial assurance criteria applied even to leases with an investment-grade company in the chain of title.

113. BOEM's new rule, if enforced, would not require companies with an investment-grade credit rating to provide supplemental bonds. But independent producers like W&T overwhelmingly do not have the investment-grade credit rating. Importantly, though, this rule does not alter *existing* bonds issued by sureties or their respective indemnity agreements. Simply put,

neither this rule—nor the contracts under which the sureties issued bonds to W&T—provide a standalone rationale for a surety to demand additional collateral for an existing surety obligation.

114. Despite the preceding, the Sureties nevertheless used BOEM's rule as a pretext to collectively and in concerted fashion demand nearly $250 million from W&T. (Doc. 30 at 15 ("[A]nother factor in Lexon's decision to demand additional collateral was a new rule, finalized in April 2024, to determine if and how much supplemental financial assurance is required for offshore operations on the OCS. The Risk Management and Financial Assurance for OCS Lease and Grant Obligations rule toughens the supplemental financial assurance requirements for offshore operations on the OCS and imposes additional obligations upon a principal.").

115. The Sureties cannot use the new rule to demand what, in effect, are ransoms. First, the Rule does not permit the Sureties to collude or violate antitrust law. Second, the Rule itself is being challenged by several entities and may become void. *State of Louisiana, et al. v. Haaland, et al.*, No. 2:2024-cv-00820 (W.D. La.) (the "Louisiana Lawsuit"). In fact, in the Louisiana Lawsuit, the Texas Attorney General specifically cites W&T (and this case) as an example of how BOEM's rule can be misused to irreparably harm companies like W&T. (*Id.* at Dkt. 76 at 4 – 5) (Texas Attorney General's Office recognizing that the Sureties' joint unjustified request for collateral can be "economically devastating" to companies like W&T).

116. The Sureties **know** the BOEM rule does not support their scheme, but they seek to deceive the market and this Court. The Sureties and their cohorts recently admitted as much during a presentation on November 12, 2024, led by representatives of Sompo and Applied, including Mr. Hennesy and Mr. Jason Kilpatrick ("Sompo-Applied Presentation"). Discussing the imminent change of administration from President Biden to President Trump, the Sompo-Applied Presentation represented that the BOEM rule would most likely be withdrawn, as similar rules

were withdrawn during the change of administration from President Obama to President Trump. The Sompo-Applied Presentation acknowledged that any concern about the BOEM rule "could all be for nothing," and Sompo acknowledged the lower "magnitude of impact as a result of the new President Elect coming into office." By the Sureties' own admissions, the BOEM rule provides no basis for their collusion and changed course of dealing against smaller companies like W&T.

117. The Sureties also **know** their demands for punitive collateral amounts from W&T are unprecedented and wrong. During the Sompo-Applied Presentation, Mr. Hennesy stated:

> "[The decommissioning work] ***doesn't just come at once***. You have … a number of different assets that have different lives and different costs and ***different timing*** of plugging and abandonment and decommissioning. So as you're working through that portfolio of assets and liabilities you have collateral and/or performance of the decommissioning that could come into play as well. So it's a little bit of a perform or pay - perform or fund ***collateral as you go along for your long-term deal***."

118. As a result of the "different timing" of "decommissioning" as the parties "go along for [their] long term deal," Sompo represented that sureties should "work with operators and provide surety support by setting out reasonable time frames to achieve the funding of decommissioning and/or the performance of decommissioning, which is ultimately … what we're guaranteeing."

119. Against companies like W&T, however, the Sureties agreed to depart from their custom of "work[ing] with operators" and "reasonable time frames" for requesting collateral. Instead, upon information and belief, the Sureties met one or more times in 2024 to jointly increase their premiums, expedite their collateral demands, and change the terms of their contracts and dealings.

120. The Sureties were able to meet and agree to this scheme based, in part, on their engagement in similar trade associations, including SFAA. For example, Patrick Hennesy, Sompo's National Underwriting Officer, is entrenched in the SFAA. In fact, Mr. Hennesy is the

Chairman of the SFAA Energy Subcommittee. And his cohort, Mr. Kilpatrick, works for Sompo's co-conspirator and co-Defendant, Applied. They even worked together for another potential co-conspirator and W&T surety, RLI Insurance. Mr. Hennesy and Mr. Kilpatrick are also well-connected with surety associations like the National Association of Surety Bond Producers ("NASBP"), which hosted the Sompo-Applied Presentation.

121. As admitted during the Sompo-Applied Presentation, Sompo's and Applied's representatives had previously met to discuss recent bankruptcies and the BOEM rule, agree to fix new terms against companies like W&T, and pursue a "collective" strategy to benefit the surety industry. According to Applied, "[E]veryone started generating heartburn trying to figure out, okay, we used to make a lot of money; now we're not. So how do we move forward on this space?" Upon information and belief, this was not the first time W&T's sureties met to discuss their scheme, nor their last: they meet regularly to collude and profit against companies like W&T, including through NASBP's and SFAA's events.

122. Upon information and belief, through Mr. Hennesy's influence, Sompo chose W&T as an early target of the Sureties' scheme. Sompo formulated a scheme with all other sureties of W&T to demand roughly $250 million in collateral. Through their demand, the Sureties planned to: (1) jointly squeeze their targets' assets; (2) jointly force their targets to accept commercially unreasonable terms it would not otherwise accept with any individual; and (3) jointly increase premiums, collateral, and bonding costs against their targets.

123. Sompo, Mr. Hennesy, Mr. Kilpatrick, and Applied were able to collude with others based on several features of the offshore surety market. First, the market has high barriers to entry and high concentration due to capital requirements, risk tolerance, and government relations. Second, members in the market have extensive social ties between key personnel, encouraging

trust and cooperation among competitors. Third, members often work for multiple sureties in their career, uniting their strategies. This is further illustrated by (1) Mr. Hennesy (Sompo's National Underwriting Officer), who had worked for ***two other*** co-conspirators—Philadelphia Insurance Companies (from 2007 to 2008) and RLI Insurance (2008 to 2016); and (2) Mr. Kilpatrick (Applied's Senior Vice President) who had also worked for RLI Insurance (from 2010 to 2017). Fourth, the Sureties have opportunities to collude at industry events and social events with key decision-makers and industry leaders. This is further illustrated by the co-conspirators' extensive influence over surety trade associations like SFAA and NASBP, including through Mr. Hennesy, Chairman of SFAA's Energy Subcommittee, and Mr. Kilpatrick, a member of and contributor to SFAA and NASBP.

124. Upon information and belief, the co-conspirators had opportunities and motives to collude, and did in fact collude, in connection with several surety industry events. These events include but are not limited to the SFAA-NASBP Legislative Fly-In on February 29, 2024, the NASBP Annual Meeting & Expo from April 30-May 3 in Austin, Texas, and the SFAA Annual Meeting on May 9, 2024. Coincidentally, these events were held soon before the Sureties began jointly demanding immediate collateral from W&T in rapid succession. The Sureties and their representatives, including Mr. Hennesy and Mr. Kilpatrick, continued meeting throughout 2024 to further plan and execute their scheme.

I. The Sureties Have Market Power in a Relevant Product and Geographic Market That Has Been Harmed by Sureties' Anticompetitive Conduct.

125. The relevant market is the market for the provision of federally certified surety bonds for offshore oil and gas producers.

126. Non-investment-grade offshore oil and gas producers often need to obtain surety bonds from federally certified sureties to conduct oil and gas operations on the Outer Continental

Shelf and there are no close economic and/or functional substitutes for these federally certified surety bonds.

127. The relevant geographic market is the United States. Non-investment-grade oil and gas producers that conduct operations on the Outer Continental Shelf rely on sureties that are certified by the United States' federal government and conduct business in the United States.

128. The Sureties have had power in the relevant market during the entire relevant time due to their substantial share of this market and substantial barriers such as capital requirements and government regulations that prevent others from readily entering the relevant market. The Sureties and their cohorts claim they have the power to "say no," even to the federal government. They claim they can jointly decide to not write a "single new bond" in the Gulf of Mexico. They claim they can "collectively" make more money and remain profitable by "collectively" agreeing to change their "analysis" and "terms" against companies like W&T.

129. The Sureties' illegal conspiracy has harmed W&T and other offshore oil and gas producers that rely on robust competition in the provision of federally certified surety bonds to make offshore oil and gas drilling economically feasible. But for the Sureties' conspiracy, W&T and other offshore oil and gas producers would have been able to continue to obtain and maintain the surety bonds on economically feasible terms.

VI. CAUSES OF ACTION

COUNT ONE – DECLARATORY RELIEF

130. W&T incorporates the allegations contained in the above paragraphs of this Amended Complaint as if set forth fully herein.

131. A justiciable controversy exists between W&T and the Sureties.

132. The parties are governed by and bound to comply with their respective indemnity agreements.

133. While the Sureties' indemnity agreements impose certain obligations on W&T, they also impose obligations on the Sureties, including the obligation of good faith, fair dealing, and to not abuse rights granted under the agreements.

134. The Sureties have acted to try to cripple W&T rather than exercise any valid contractual right.

135. The Sureties have acted to put W&T in an impossible position, as compliance with one indemnification demand ensures a breach of obligations to the other.

136. The Sureties' demands for collateral are unreasonable in that they are not based on any need of the Sureties other than a change in their business model or scheme and they conflict with the terms of the parties' indemnity agreements.

137. W&T is entitled to a judgment declaring the rights of the parties including, without limitation, the following

a. the Sureties may not enforce their indemnity agreements such that their actions constitute an abuse of right;
b. the Sureties' interpretation of the indemnity agreements render the agreements illusory;
c. the Sureties may not make an unreasonable demand for collateral;
d. the Sureties must accept reasonable collateral as offered by W&T;
e. no additional collateral is required of W&T;
f. the Sureties may not make demands for collateral that are inconsistent such that W&T cannot comply with each others' demands; and
g. the Sureties' changed business model and scheme are not legitimate grounds to demand further collateral beyond that offered by W&T.

COUNT TWO – VIOLATION OF THE SHERMAN ANTITRUST ACT (GROUP BOYCOTT)

138. W&T incorporates the allegations contained in the above paragraphs of this Amended Complaint as if set forth fully herein.

139. The Sureties, by and through their officers, directors, employees, or other representatives, have entered into an unlawful agreement, combination, and conspiracy in restraint of trade, in violation of 15 U.S.C. § 1.

140. Specifically, the Sureties engaged in a conspiracy not to deal with smaller oil and gas companies, including W&T, by demanding collateral terms that would effectively prevent them from obtaining government-mandated bonding that is essential to engage in offshore oil and gas production. This agreement was a *per se* violation of 15 U.S.C. § 1. However, even if the Sureties' agreement were viewed through the quick-look or rule-of-reason lens, the anticompetitive effects of the agreement render it unlawful.

141. The relevant product or service market is the market for the provision of federally certified surety bonds for offshore oil and gas producers, and the relevant geographic market is the United States.

142. The Sureties' collectively possess market power in the relevant market. The Sureties and co-conspirators together control a substantial and controlling percent of the relevant market.

143. W&T has been injured and will continue to be injured in its business and property as a result of the Sureties' conspiracy, which has virtually eliminated competition in the offshore surety market.

COUNT THREE – VIOLATION OF THE SHERMAN ANTITRUST ACT (PRICE-FIXING)

144. W&T incorporates the allegations contained in the above paragraphs of this Amended Complaint as if set forth fully herein.

145. The Sureties, by and through their officers, directors, employees, or other representatives, have entered into an unlawful agreement, combination, and conspiracy in restraint of trade, in violation of 15 U.S.C. § 1.

146. Specifically, the Sureties engaged in a conspiracy to artificially increase the cost, premiums, and collateral requirements of their bonds through inflated and extortionate collateral demands. As a result of the Sureties' conduct, prices were actually raised, fixed, maintained, and stabilized in the market. This agreement was a *per se* violation of 15 U.S.C. § 1. However, even if the Sureties' agreement were viewed through the quick-look or rule-of-reason lens, the anticompetitive effects of the agreement render it unlawful.

147. The relevant product or service market is the market for the provision of federally certified surety bonds for offshore oil and gas producers, and the relevant geographic market is the United States.

148. The Sureties collectively possess market power in the relevant market. The Sureties and co-conspirators together control a substantial and controlling percent of the relevant market.

149. W&T has been injured and will continue to be injured in its business and property as a result of the Sureties' conspiracy, which has virtually eliminated competition in the offshore surety market.

COUNT FOUR – VIOLATION OF THE TEXAS FREE ENTERPRISE AND ANTITRUST ACT (TEX. BUS. & COM. CODE § 15.05)

150. W&T incorporates the allegations contained in the above paragraphs of this Amended Complaint as if set forth fully herein.

151. Section 15.05(a) of the Texas Business and Commerce Code, provides "[e]very contract, combination, or conspiracy in restraint of trade or commerce is unlawful." TEX. BUS. & COMM. CODE §15.05(a).

152. The Sureties have engaged in boycotting, price-fixing, market allocation, and other anticompetitive conduct that has harmed trade, commerce, and competition in the oil and gas industry and federal certified surety industry in Texas.

153. Beginning in early 2024 and continuing through the present, the Sureties entered into a continuing contract, combination, or conspiracy to unreasonably restrain trade by artificially increasing the costs and premiums of their bonds and reducing or eliminating alternatives through impossible collateral demands.

154. In particular, the Sureties combined and conspired to raise, fix, maintain, or stabilize the availability, price, and bargaining power for surety bonds and federally certified sureties. As a result of the Sureties' conduct, prices were actually raised, fixed, maintained, and stabilized in the industry.

155. Specifically, the Sureties engaged in a scheme to exclude smaller oil and gas companies, like W&T, from the offshore energy industry and from government-mandated bonding in the surety industry.

156. The Sureties also engaged in a scheme to punish or control smaller oil and gas companies, like W&T, who would not agree to their commercially unreasonable terms and demands. The Sureties' conspiracy has harmed competition in the offshore surety market and W&T has likewise been harmed by this illegal conduct.

157. Pursuant to Section 15.21(a)(1) of the Texas Business and Commerce Code, the Sureties' unlawful conduct has been willful and flagrant which requires the Court to treble the

damages awarded in connection with its violations of Section 15.05(a). *See* TEX. BUS. & COMM. CODE §15.21(a)(1). W&T is also entitled to recover its costs and reasonable attorneys' fees.

COUNT FIVE –VIOLATION OF THE TEXAS INSURANCE CODE SECTION 541

158. W&T incorporates the allegations contained in the above paragraphs of this Amended Complaint as if set forth fully herein.

159. Pursuant to Texas Insurance Code Section 541.051 (1), making statements misrepresenting the terms and benefits of a policy constitute an unfair method of competition and an unfair or deceptive act or practice in the business of insurance.

160. The Sureties' extortion, blackmail, and demands for additional collateral misrepresent the language of the P&A Obligations in the absence of any change in the financial strength of W&T and in the absence of any pending claims under the surety bonds.

161. As a result of the Sureties' unfair and deceptive acts, W&T has incurred damages.

162. Pursuant to Section 541 of the Texas Insurance code, W&T is entitled to recover:

a. The amount of actual damages, courts and reasonable and necessary attorney's fees.

b. An order enjoining the Sureties from persisting with their unfair and deceptive demands regarding the payment of additional collateral.

c. An award of treble damages for the amount of actual damages.

COUNT SIX – TORTIOUS INTERFERENCE WITH EXISTING CONTRACTS AND PROSPECTIVE BUSINESS RELATIONSHIPS

163. W&T incorporates the allegations contained in the above paragraphs of this Amended Complaint as if set forth fully herein.

164. As described in this Complaint, W&T has valid existing contracts and/or business relationships with its sureties. The Sureties have willfully and intentionally interfered with these contracts and prospective business relationships.

165. The Sureties, including Sompo, have induced, or attempted to induce, W&T's sureties, creditors, and other financial partners to reduce or negatively alter their business relationship with W&T.

166. The Sureties' acts are independently tortious in that, among other things, these acts constitute violations of antitrust law, insurance law, and civil conspiracy.

167. The Sureties did such acts knowing that their interference with W&T's existing contracts and prospective business relationships was certain, or substantially certain, to occur as a result of their conduct. As discussed herein, the Sureties also acted to take W&T's business hostage and control its capital, including through unlawful demands that had no contractual or financial justification.

168. The Sureties interference is not privileged or justified. As a result of the Sureties interference with W&T's existing contracts and prospective business relationships, W&T has suffered actual damages and irreparable damages, including, among other things, loss of goodwill, damage to its reputation, and other pecuniary loss. Based on the Sureties' unlawful interference, W&T is entitled to all proximately caused, actual damages.

169. Additionally, W&T is entitled to exemplary damages because the Sureties' acts of interference were willful and malicious.

COUNT SEVEN – CONSPIRACY

170. W&T incorporates the allegations contained in the above paragraphs of this Amended Complaint as if set forth fully herein.

171. The Sureties have knowingly encouraged, participated in, and benefited from the wrongful conduct described in this Complaint.

172. A civil conspiracy exists under the facts of this case because two or more persons have acted in collusion to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means, joint communications, and joint meetings.

173. The Sureties have engaged in a civil conspiracy to violate antitrust law, insurance law, and other Texas common law.

174. The Sureties have associated together through a meeting of their minds and for a common purpose of engaging in a course of conduct, and as an ongoing and continuing organization or unit, to conduct the unlawful and tortious activities described in this Complaint.

175. The Sureties have secretly conspired among themselves, and possibly with others to be uncovered in discovery, to devise and implement, and the Sureties have devised and implemented, wrongful and unlawful schemes to harm W&T.

176. The Sureties have conspired and aided and abetted each other in furtherance of these unlawful schemes. This conduct was caused, permitted, aided and abetted, and assisted by each of the Sureties in order to maintain their pattern of unlawful activity.

177. Accordingly, W&T has been, and continues to be, damaged in its business. W&T is entitled to all damages caused by this conspiracy.

VII. PRAYER

WHEREFORE, W&T Offshore, Inc., and W&T Energy VI, LLC, pray that, after due proceedings are had, this Court enter judgment in their favor and against the Sureties:

1. Declaring that:

a. the Sureties are bound by the terms of their indemnity agreements with W&T;

b. the Sureties may not enforce their indemnity agreements such that their actions constitute an abuse of right;

c. the Sureties' interpretation of the indemnity agreements render the agreements illusory;

d. the Sureties may not make an unreasonable demand for collateral;

e. the Sureties must accept reasonable collateral as offered by W&T;

f. no additional collateral is required of W&T;

g. the Sureties may not make joint demands for collateral that are inconsistent with those of each other such that W&T cannot comply with each demand;

h. the Sureties' changed business model and desire to boycott companies like W&T are not legitimate grounds to demand further collateral beyond that offered by W&T;

2. Finding that the Sureties' actions alleged herein be adjudged and decreed to be in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;

3. Finding that the Sureties' actions constitute unfair and deceptive practices under Tex. Ins. Code Section 541;

4. Finding that the Sureties' actions constitute tortious interference with existing contracts and prospective business relationships;

5. Finding that the Sureties' actions constitute a conspiracy;

6. Awarding W&T damages from each Defendant, jointly and severally, in an amount to be determined, and that this damages amount be trebled pursuant to 15 U.S.C. § 15(a) and Tex. Ins. Code Section 541.152;
7. Awarding W&T its pre- and post-judgment interest at the highest legal rate;
8. Awarding W&T all costs of this proceeding, including attorneys' fees; and
9. Granting all other legal and equitable relief to which W&T may be entitled.

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Dated: December 11, 2024

Respectfully submitted,

McGuireWoods LLP

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CERTIFICATE OF SERVICE

I certify that on December 11, 2024, the foregoing pleading was filed electronically using the CM/ECF system. Notice of this filing will be sent to all counsel of record registered to receive electronic service by operation of the Court's electronic filing system.

/s/ Miles O. Indest
Miles O. Indest

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

W&T OFFSHORE, INC., and W&T ENERGY VI, LLC, Plaintiffs and Counterclaim-Defendants, v. ENDURANCE ASSURANCE CORPORATION and LEXON INSURANCE COMPANY Defendants and Counterclaim-Plaintiffs.	§ § § § § § § § § § §	Civil Action No. 4:24-cv-03047

ENDURANCE ASSURANCE CORPORATION AND LEXON INSURANCE COMPANY'S FIRST AMENDED ANSWER AND DEFENSES, COUNTERCLAIM, AND APPLICATION FOR PRELIMINARY INJUNCTION

Defendants and Counterclaim-Plaintiffs Endurance Assurance Corporation ("**Endurance**") and Lexon Insurance Company (together with Endurance, "**Lexon**") file this First Amended Answer, Affirmative and Other Defenses, Counterclaim to Plaintiffs W&T Offshore, Inc. and W&T Energy VI, LLC's ("**Plaintiffs**" or "**W&T**") Complaint for Declaratory Relief ("**Complaint**"), and Application for Preliminary Injunction and would respectfully show as follows:

ANSWER[1]

JURISDICTION AND VENUE[2]

1. Paragraph 1 of the Complaint constitutes conclusions of law to which no response is required, except Lexon admits that W&T purports to assert jurisdiction under the statutes cited.

[1] The introductory paragraph of the Complaint describes W&T's allegations, to which no response is required. To the extent a response is required, the allegations in the introductory paragraph are denied.

[2] Lexon states that the headings throughout the Complaint do not constitute well-pleaded allegations of fact and, therefore, require no response. To the extent a response is required, Lexon denies the allegations in the headings of the Complaint. Notwithstanding the foregoing, Lexon has included the headings used in the Complaint in its Answer for convenience.

2. The allegations in Paragraph 2 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is required, Lexon admits that it issued surety bonds to, and entered into a related indemnity agreement with, W&T, and refers to those bonds and that agreement for the true and correct contents thereof. Lexon denies the remainder of the allegations set forth in Paragraph 2.

3. The allegations in Paragraph 3 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is required, Lexon admits that it issued surety bonds to, and entered into a related indemnity agreement with, W&T, and refers to those bonds and that agreement for the true and correct contents thereof. Lexon denies the remainder of the allegations set forth in Paragraph 3.

4. The allegations in Paragraph 4 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is required, Lexon admits that the indemnity agreement provides that all obligations of each Principal (as defined in the Indemnity Agreement) are performable in Harris County, Texas and that each Principal "IRREVOCABLY CONSENTS TO THE EXCLUSIVE VENUE AND JURISDICTION OF THE FEDERAL AND STATE COURTS SITTING IN HARRIS COUNTY, TEXAS, AND DOES FURTHER WAIVE ANY AND ALL RIGHTS TO OBJECT TO SUCH VENUE OR JURISDICTION." Lexon denies the remainder of the allegations set forth in Paragraph 4.

5. The allegations in Paragraph 5 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is required, Lexon admits that Plaintiffs purport to seek declaratory relief in the Complaint and refers to the Complaint for the contents thereof. Lexon denies the remainder of the allegations in Paragraph 5 of the Complaint.

THE PARTIES

6. Lexon has insufficient knowledge to admit or deny the allegations in Paragraph 6 of the Complaint and therefore denies them.

7. Lexon has insufficient knowledge to admit or deny the allegations in Paragraph 7 of the Complaint and therefore denies them.

8. Lexon admits that Endurance is a corporation organized under the laws of the State of Delaware. Lexon denies the remainder of the allegations in Paragraph 8.

9. Lexon admits the allegations set forth in Paragraph 9.

BACKGROUND

The Offshore Regulatory Environment

10. The allegations in Paragraph 10 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is required, Lexon admits that the Complaint purports to characterize certain actions of Congress, but denies the remainder of the allegations set forth in Paragraph 10, and refers the Court to the Outer Continental Shelf Lands Act ("**OCS Lands Act**") for the true and correct contents thereof.

11. The allegations in Paragraph 11 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is required, Lexon admits that the Complaint purports to characterize certain actions of Congress and the contents of the OCS Lands Act, but denies the remainder of the allegations set forth in Paragraph 11, and refers the Court to the OCS Lands Act for the true and correct contents thereof.

12. The allegations in Paragraph 12 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is required, Lexon admits that the Complaint purports to characterize the OCS Lands Act but denies the remainder of the allegations

set forth in Paragraph 12 and refers the Court to the OCS Lands Act for the true and correct contents thereof.

13. The allegations in Paragraph 13 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is required, Lexon admits that the Complaint purports to characterize the OCS Lands Act but denies the remainder of the allegations set forth in Paragraph 13 and refers the Court to the OCS Lands Act for the true and correct contents thereof.

14. The allegations in Paragraph 14 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is required, Lexon admits that the Complaint purports to characterize the OCS Lands Act but denies the remainder of the allegations set forth in Paragraph 14 and refers the Court to the OCS Lands Act for the true and correct contents thereof.

15. The allegations in Paragraph 15 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is required, Lexon admits that the Complaint purports to characterize Dep't of the Interior Secretarial Ord. 3299 but denies the remainder of the allegations set forth in Paragraph 15 and refers the Court to the Dep't of the Interior Secretarial Ord. 3299 for the true and correct contents thereof.

16. The allegations in Paragraph 16 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is required, Lexon admits that the Complaint purports to characterize Dep't of the Interior Secretarial Ord. 3299 but denies the remainder of the allegations set forth in Paragraph 16 and refers the Court to Order 3299 for the true and correct contents thereof.

17. The allegations in Paragraph 17 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is required, Lexon admits that the

Complaint purports to characterize certain activities conducted by the Bureau of Safety and Environmental Enforcement ("**BSSE**") and the Bureau of Ocean Energy Management ("**BOEM**") but denies the remainder of the allegations set forth in Paragraph 17.

18. The allegations in Paragraph 18 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is required, Lexon admits that the Complaint purports to characterize certain responsibilities on the part of BOEM but denies the remainder of the allegations set forth in Paragraph 18.

19. The allegations in Paragraph 19 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is required, Lexon admits that the Complaint purports to characterize certain activities performed by BSEE but denies the remainder of the allegations set forth in Paragraph 19.

20. The allegations in Paragraph 20 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is required, Lexon admits that the Complaint purports to characterize 62 Fed. Reg. 27948 but denies the remainder of the allegations set forth in Paragraph 20 and refers the Court to 62 Fed. Reg. 27948 for the true and correct contents thereof.

21. The allegations in Paragraph 21 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is required, Lexon admits that the Complaint purports to characterize the Minerals Management Service ("**MMS**") regulations but denies the remainder of the allegations set forth in Paragraph 21, and refers the Court to the MMS regulations referred to in this paragraph for the true and correct contents thereof.

22. The allegations in Paragraph 22 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is required, Lexon admits that the Complaint purports to characterize 62 Fed. Reg. 27948 but denies the remainder of the allegations

set forth in Paragraph 22 and refers the Court to 62 Fed. Reg. 27948 for the true and accurate contents thereof.

23. The allegations in Paragraph 23 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is required, Lexon admits that the Complaint purports to characterize 89 Fed. Reg. 31544 but denies the remainder of the allegations set forth in Paragraph 23 and refers the Court to 89 Fed. Reg. 31544 for the true and correct contents thereof.

24. Lexon denies the allegations set forth in Paragraph 24, except admits that the Complaint purports to characterize certain unidentified regulations issued by BOEM and refers the Court to such regulations for the true and correct contents thereof.

25. Lexon denies the allegations set forth in Paragraph 25, except to the extent the allegations therein constitute conclusions of law to which no response is required.

The Relationship Between the Sompo Sureties and W&T

26. Lexon lacks sufficient knowledge to admit or deny the allegations set forth in Paragraph 26 and therefore denies them.

27. Lexon lacks sufficient knowledge to admit or deny the allegations set forth in Paragraph 27 and therefore denies them.

28. Lexon denies the allegations in Paragraph 28, except admits that Endurance is not incorporated pursuant to the laws of the State of Texas and has issued surety bonds with respect to certain entities' business activities.

29. Lexon denies the allegations as set forth in Paragraph 29, except admits that Lexon is incorporated pursuant to the laws of the State of Texas and has issued surety bonds with respect to certain entities' business activities.

30. The allegations in Paragraph 30 constitute conclusions of law to which no response is required. To the extent a response is required, Lexon admits that W&T has obtained surety bonds from Lexon with respect to certain of W&T's business activities but denies the remainder of the allegations as set forth in Paragraph 30.

31. Lexon lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 31 and therefore denies them, except admits that Lexon has issued surety bonds with respect to certain of W&T's business activities.

32. The allegations in Paragraph 32 constitute conclusions of law to which no response is required. To the extent a response is required, Lexon denies the allegations set forth in Paragraph 32, except admits that certain of the parties' rights and obligations are set forth in the Indemnity Agreement and refers the Court to the Indemnity Agreement for the true and correct contents thereof.

33. Lexon denies the allegations set forth in Paragraph 33, except admits that one of the signatories to the Indemnity Agreement is W&T Offshore and that the Indemnity Agreement contains the quoted language and refers the Court to the Indemnity Agreement for the true and correct contents thereof.

34. Lexon admits that the Complaint alleges that Exhibit A is a true and correct copy of the Indemnity Agreement and refers the Court to the Indemnity Agreement for the true and correct contents thereof.

35. Lexon denies the allegations set forth in Paragraph 35, except admits that the Indemnity Agreement contains the quoted language and refers the Court to the Indemnity Agreement for the true and correct contents thereof.

36. Lexon denies the allegations in Paragraph 36, except admits that Paragraph 36 reproduces in part Paragraph 17 of the Indemnity Agreement and refers the Court to the Indemnity Agreement for the true and correct contents thereof.

37. Lexon denies the allegations in Paragraph 37, except admits that Paragraph 37 reproduces in part Paragraph 5 of the Indemnity Agreement and refers the Court to the Indemnity Agreement for the true and correct contents thereof.

38. Lexon denies the allegations in Paragraph 38, except admits that Endurance is a surety pursuant to the Indemnity Agreement.

39. The allegations in Paragraph 39 constitute conclusions of law to which no response is required. To the extent a response is required, Lexon denies the allegations set forth in Paragraph 39, except admits that certain of W&T and Endurance's rights and obligations are set forth in the Indemnity Agreement and refers the Court to the Indemnity Agreement for the true and correct contents thereof.

40. Lexon denies the allegations in Paragraph 40, except admits that Lexon is a surety pursuant to the Indemnity Agreement.

41. The allegations in Paragraph 41 constitute conclusions of law to which no response is required. To the extent a response is required, Lexon denies the allegations set forth in Paragraph 41, except admits that certain of W&T and Lexon's rights and obligations are set forth in the Indemnity Agreement and refers the Court to the Indemnity Agreement for the true and correct contents thereof.

42. Lexon lacks sufficient information to admit or deny the allegations set forth in Paragraph 42, and therefore denies them.

W&T Obtains BOEM-Required Bonds from the Sompo Sureties and Others

43. Lexon admits that Endurance issued Bond Nos. EACX226000039, EACX226000040, EACX226000038, EACX226000025, EACX226000047, EACX226000044, and EACX226000022, but otherwise denies the allegations in Paragraph 43 except to the extent they constitute conclusions of law to which no response is required.

44. Lexon admits that the Complaint purports to attach in Exhibit B certain bonds issued by Endurance with respect to W&T's business activities and refers the Court to those bonds for their true and correct contents, but otherwise denies the allegations in Paragraph 44.

45. Lexon admits that Endurance issued Bond No. EACX226000043, but otherwise denies the allegations in Paragraph 45 except to the extent they constitute conclusions of law to which no response is required.

46. Lexon admits that the Complaint purports to attach in Exhibit C that certain bond issued by Endurance with respect to W&T's business activities, refers the Court to that bond for its true and correct contents, and otherwise denies the allegations in Paragraph 46.

47. Lexon admits that Endurance issued Bond No. EACX226000045, but otherwise denies the allegations in Paragraph 47 except to the extent they constitute conclusions of law to which no response is required.

48. Lexon admits that the Complaint purports to attach in Exhibit D that certain bond issued by Endurance with respect to W&T's business activities and refers the Court to that bond for its true and correct contents, but otherwise denies the allegations in Paragraph 48.

49. Lexon admits that Lexon issued Bond Nos. 1156846, 1136949, 1136950, 1159776, and 1197677, but otherwise denies the allegations in Paragraph 49 except to the extent they constitute conclusions of law to which no response is required.

50. Lexon admits that the Complaint purports to attach in Exhibit E certain bonds issued by Lexon with respect to W&T's business activities, refers the Court to those bonds for their true and correct contents, and otherwise denies the allegations in Paragraph 50.

51. Lexon admits that Lexon issued Bond No. 1152011 and Bond No. 1152010, but otherwise denies the allegations in Paragraph 51 except to the extent they constitute conclusions of law to which no response is required.

52. Lexon admits that the Complaint purports to attach in Exhibit F certain bonds issued by Lexon with respect to W&T's business activities, refers the Court to those bonds for their true and correct contents, and otherwise denies the allegations in Paragraph 52.

The Sompo Sureties Conflicting Collateral Demands

53. Lexon denies the allegations set forth in Paragraph 53.

54. Lexon lacks sufficient information to admit or deny the allegations set forth in Paragraph 54, and therefore denies them.

55. Lexon denies the allegations in Paragraph 55, except admits that Paragraph 55 reproduces in part Paragraph 3 of the Indemnity Agreement and refers the Court to the Indemnity Agreement for the true and correct contents thereof.

56. Lexon denies the allegations in Paragraph 56, except admits that it, through Sompo International, issued a written demand for collateral in the form of cash or an irrevocable letter of credit on July 9, 2024.

57. Lexon admits that the Complaint purports to attach as Exhibit G a demand letter from Sompo International dated July 9, 2024, and refers the Court to that letter for its true and correct contents.

58. Lexon lacks sufficient information to admit or deny the allegations set forth in Paragraph 58 and therefore denies them.

59. Lexon lacks sufficient information to admit or deny the allegations set forth in Paragraph 59 and therefore denies them, except admits that W&T suggested that Lexon accept collateral in forms other than cash or a letter of credit.

60. Lexon lacks sufficient information to admit or deny the allegations set forth in Paragraph 60 and therefore denies them.

61. Lexon lacks sufficient information to admit or deny the allegations set forth in Paragraph 61 and therefore denies them.

62. Lexon lacks sufficient information to admit or deny the allegations set forth in Paragraph 62 and therefore denies them.

63. Lexon denies the allegations set forth in Paragraph 63.

64. Lexon denies the allegations as set forth in Paragraph 64.

65. Lexon lacks sufficient information to admit or deny the allegations set forth in Paragraph 65 and therefore denies them.

66. Lexon denies the allegations set forth in Paragraph 66.

67. Lexon denies the allegations set forth in Paragraph 67, except states that it lacks sufficient information to admit or deny the allegations set forth in Paragraph 67 regarding conduct by or discussions with "Other Sureties" and therefore denies them.[3]

CAUSES OF ACTION

COUNT ONE – DECLARATORY RELIEF

68. Lexon repeats and realleges and incorporates by reference its answers and responses to Paragraphs 1-67 above as if fully repeated herein.

69. Paragraph 69 states a legal conclusion to which no response is required.

[3] The Complaint defines "Other Sureties" as "other surety companies." Dkt. 1 at ¶ 42.

70. Paragraph 70 states a legal conclusion to which no response is required.

71. Paragraph 71 states a legal conclusion to which no response is required; however, if and to the extent an answer is required, these allegations are denied.

72. Lexon denies the allegations set forth in Paragraph 72.

73. Lexon denies the allegations set forth in Paragraph 73.

74. Lexon denies the allegations set forth in Paragraph 74.

75. Paragraph 75 states a legal conclusion to which no response is required; however, to the extent an answer is required, Lexon denies the allegations and relief sought in Paragraph 75.

PRAYER

76. The Prayer states a legal conclusion to which no response is required; however, to the extent an answer is required, Lexon denies the allegations and that W&T is entitled to the relief sought in the Prayer.

AFFIRMATIVE AND OTHER DEFENSES

Lexon asserts the following defenses and reserves the right to amend this Answer and these Affirmative and Other Defenses, and assert other and further defenses, when and if, in the course of its investigation, discovery, or preparation for trial, it becomes appropriate. By designating these matters as defenses, Lexon does not intend to assume a burden of proof it does not otherwise have or to suggest either that Plaintiffs do not bear the burden of proof as to such matters or that such matters are not elements of Plaintiffs' prima facie case against Lexon.

FIRST DEFENSE

W&T's claims are barred, in whole or in part, on the grounds that the Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

W&T's claims are barred, in whole or in part, by the doctrine of estoppel.

THIRD DEFENSE

W&T's claims are barred, in whole or in part, by the doctrine of unclean hands.

FOURTH DEFENSE

W&T's claims are barred, in whole or in part, by the doctrine of laches.

FIFTH DEFENSE

W&T's claims are barred, in whole or in part, by the doctrine of waiver.

SIXTH DEFENSE

W&T's claims are barred, in whole or in part, because Lexon at all times acted reasonably and in good faith.

COUNTERCLAIM

Pursuant to Federal Rule of Civil Procedure 13(a), Lexon Insurance Company and Endurance Assurance Corporation (collectively, "**Lexon**"), on knowledge as to their own actions and otherwise on good faith information and belief, hereby assert this First Amended Counterclaim against W&T Offshore, Inc., and W&T Energy VI, LLC (collectively, "**W&T**" or "**Counterclaim-Defendants**").

INTRODUCTION

1. This action arises from W&T's breach of its obligations under the terms of Payment and Indemnity Agreement No. 1380 (the "**Indemnity Agreement**" or "**Agreement**"), which was executed by each of the Counterclaim-Defendants on September 14, 2020.[4] W&T executed the Indemnity Agreement "to induce the Surety," *i.e.*, Lexon, to issue bonds (the "**Bonds**") with respect to W&T's operations on the Outer Continental Shelf ("**OCS**"). In reliance on the protections afforded to Lexon under the Indemnity Agreement, Lexon issued bonds that, to date, expose Lexon to over $55 million in potential liability (referred to as the "penalty amount" on the Bonds) should W&T default on the bonded obligations.

2. W&T is required to obtain surety bonds in order to conduct oil and gas exploration operations on the OCS pursuant to the OCS Lands Act, which charges the Secretary of the Interior with the administration of leases authorizing private parties to explore the OCS for oil and natural gas and with the regulation of such activities. The Bonds at issue here secure W&T's obligations to, among other things, restore and remediate properties once W&T completes its oil and gas operations, including plugging and abandoning wells, removing equipment, and restoring surface, subsurface, and sites to their original form. In addition, companies operating on the OCS are

[4] A true and correct copy of Indemnity Agreement is attached hereto as Exhibit 1, the terms of which are incorporated herein by reference.

subject to general financial assurance requirements to address decommissioning liabilities, which are overseen by the Bureau of Ocean Energy Management ("**BOEM**). These regulations ensure that exploration companies, rather than taxpayers, fund the restoration of the land and infrastructure associated with offshore oil, gas, or sulfur development.

3. As a general matter, Lexon remains potentially responsible for W&T's obligations under the Bonds until W&T satisfies such obligations or the Regional Director of the BOEM issues a written cancellation in favor of Lexon. If W&T defaults on the obligations covered by the Bonds, Lexon is responsible for performing the underlying obligations and potentially can be sued by BOEM or other relevant parties in connection with W&T's failure to perform. Lexon's obligations under the Bonds cannot be cancelled unilaterally by Lexon and remain in full force and effect, even if, among other things, Lexon suffers any loss "by reason of any law limiting, qualifying, or discharging" its obligations. *See, e.g.*, Plaintiffs' Ex. B ¶ 6(e).

4. In light of the risk borne by Lexon as surety, chief among the bargained-for protections in the Indemnity Agreement is Lexon's right to demand collateral from W&T, which provides security for Lexon before any event of default occurs. In fact, the requirement to provide collateral in response to a surety's demand is so integral to the surety receiving the benefit of its contractual bargain that courts repeatedly have found that the refusal to provide such collateral constitutes irreparable harm. Here, in the Agreement, Lexon has the right, "at any time and from time to time hereafter, in its sole and absolute discretion, [to] require the Principals [*i.e.*, W&T] to provide collateral, in forms and amounts acceptable to [Lexon] . . . to secure the Principals' obligations to [Lexon] hereunder and/or to establish reserves to cover any actual or potential liability, claim, suit, or judgment under any Bond." Agreement ¶ 3 (the "**Collateral Demand Provision**"). On its face, the Collateral Demand Provision—contained in a section in the Agreement titled "Security"—could hardly be more clear: it entitles Lexon "at any time" to use its

"sole and absolute discretion" to determine the amount of collateral necessary "to secure the Principals' obligations" to Lexon and the form that such collateral must take.

5. By way of further background, the key parties to the surety relationship are the (i) obligee, which is the entity to whom the obligation is owed (often, as here, a state or local government), (ii) principal, which is the primary party charged with performing the obligation (*i.e.*, W&T), and (iii) surety (*i.e.*, Lexon), which, according to the bond's terms, is responsible for the principal's obligations in the event of the principal's default, subject to the surety's right to seek indemnification from the principal.

6. As a surety, Lexon incurs exposure based on the contractual obligation of the principal to repay the surety for any payments the surety makes towards the principal's bonded obligations. This contractual reimbursement obligation seeks to ensure that the principal bears the ultimate financial responsibility for any claims relating to the surety bond.

7. This is a key difference between surety bonds, which essentially serve as a form of credit, and insurance, which provides financial protection against potential future losses. Insurance protects the insured from unforeseen risks, such as accidents, natural disasters, or health issues. When an insurance claim is made, the insurer compensates the insured for covered losses according to the policy terms. This compensation is typically final, and the insured does not have to repay the insurer.

8. In contrast, surety bonds ensure that contractual obligations are met, often in the context of construction, environmental projects, or other business agreements, to assure the obligee that the principal will fulfill their commitments, either through performance or financial compensation. Therefore, when a claim is made against a surety bond, the surety may cover the costs of the principal's obligations, but, unlike insurance, the principal is contractually obligated to repay the surety for any amounts paid on its behalf.

9. Given the nature of the surety's obligations, Lexon generally exercises its contractual right to procure collateral from the principal *prior to* a potential default in order to protect Lexon against any actual or potential liability.

10. Consistent with this authority, in a letter dated July 9, 2024 (the "**July 9 Demand**"), Lexon demanded that W&T provide as collateral $7.5 million cash via wire transfer or an irrevocable letter of credit within 30 days. A true and correct copy of the July 9 Demand is attached hereto as Exhibit 2.

11. W&T did not provide the collateral within 30 days, and, to date, has not provided any of the collateral sought in the July 9 Demand.

12. W&T's failure to satisfy the July 9 Demand constitutes a material breach of the Indemnity Agreement.

13. That breach, in turn, has additional consequences.

14. First, the Agreement provides that if "any Principal fails to pay within thirty (30) days after written demand any premium or portion thereof, *or fails to pay within thirty (30) days after written demand of any other sum becoming due [to Lexon] hereunder,* then," absent securing the release and discharge of all of Lexon's liability under the bonds and paying Lexon all amounts then owed, Lexon "may require there to be paid, and the Principals jointly and severally agree they shall forthwith pay to [Lexon], an amount equal to the full penalty amount of the Bonds, to be held as collateral until (i) all sums due and to become due to [Lexon] have been paid and (ii) [Lexon] shall be wholly discharged and released from all liability under the Bonds." Agreement ¶ 1 (emphasis added). By virtue of having failed to provide collateral in response to the July 9 Demand, W&T triggered the obligation to provide collateral "equal to the full penalty amount of the Bonds," or in excess of $55 million.

15. Second, W&T's failure to provide collateral in response to the July 9 Demand entitles Lexon to recover its costs and fees incurred to enforce its rights under the Agreement. Specifically, the Agreement provides that the "Principals shall jointly and severally indemnify and keep indemnified [Lexon] and hold and save it harmless from and against any and all liability, damage, loss, cost and expense of whatsoever kind or nature, including reasonable counsel and attorneys' fees which [Lexon] may at any time sustain or incur or in enforcing this Agreement against any Principal." Agreement ¶ 2.

16. Likewise, the Agreement separately provides that in "the event any action is instituted to enforce any of the provisions of this Agreement or to recover damages for the breach of any provision hereof, the prevailing party therein shall be entitled to recover any costs or expenses incurred, including without limitation, costs of court and reasonable attorneys' fees." Agreement ¶ 26.

17. Despite Lexon's clear and unambiguous right to the demanded collateral, to date, Lexon has gone to great lengths to resolve the issue without resorting to litigation, including demanding less collateral than is necessary to adequately secure W&T's performance obligations under the Bonds and proposing a variety of structures whereby W&T could satisfy the July 9 Demand. In response, W&T not only has refused to honor its obligations to Lexon but—adding insult to injury—instituted this action to, in effect, declare its "right" not to abide by its obligations under the Agreement.

18. W&T's ongoing refusal to satisfy the July 9 Demand—and initiating the present action—makes clear that it has no intention of honoring its contractual commitments.

19. As set forth further below, Lexon is entitled to recover in excess of $55 million, constituting the penalty amount of the Bonds, plus the attorneys' fees and other costs it has incurred to enforce its rights under the Agreement, including in connection with this action.

PARTIES

20. W&T Offshore, Inc., is a corporation organized under the laws of the State of Texas with its principal place of business in Houston, Texas. W&T Energy VI, LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business in Houston, Texas.

21. Endurance is a corporation organized under the laws of the State of Delaware with its principal place of business in Purchase, New York. Lexon is a corporation organized under the laws of the State of Texas with its principal place of business in Mt. Juliet, Tennessee. As relevant here, Endurance and Lexon issue surety bonds for companies operating in a wide range of industries, including construction contractors and sub-contractors; home builders and developers; financial services companies; service companies with an emphasis on transportation, waste, and security; renewable energy as well as oil and gas companies; and hard-rock mining and waste companies. Lexon and Endurance are wholly owned subsidiaries of Sompo International Holdings Ltd. ("**Sompo**"), a global specialty provider of property and casualty insurance and reinsurance.

JURISDICTION

22. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 43 U.S.C. § 1349 because this dispute arises out of or in connection with operations conducted on the Outer Continental Shelf ("**OCS**"). This Court also has supplemental jurisdiction over this claim pursuant to 28 U.S.C. § 1367(a).

23. Venue is proper because W&T initially filed its action in this District, and the Indemnity Agreement mandates exclusive venue in federal and state courts in Harris County, Texas. Agreement ¶ 17.

FACTUAL BACKGROUND

I. Lexon Provides Surety Bonds to W&T in Connection with W&T's Offshore Operations

24. As explained, surety bonds cover the performance of specified obligations.

25. As relevant here, in order for W&T to conduct operations on the OCS, it must obtain surety bonds and meet general financial assurance requirements to address decommissioning liabilities.

26. Currently, BOEM requires all lessees of an OCS oil and natural gas lease to post base-level financial assurance bonds ranging from $50,000 to $3 million, in addition to supplemental financial assurance determined by the lessee's ability to carry out present and future financial obligations.

27. The BOEM also requires that lessees demonstrate financial strength and reliability according to its regulations and provide acceptable financial assurances to assure satisfaction of lease obligations. These obligations may include decommissioning operations, plugging and abandoning wells, removing and disposing of equipment and facilities, and restoring and remediating surface and subsurface properties used for oil and gas exploration and production.

28. Thus, in order to obtain permits to conduct drilling on the OCS from the United States Department of the Interior (obligee), W&T (principal) was required to obtain surety bonds to secure its performance of the various obligations under the permits. Should W&T default on those obligations, according to the terms of the bond, Lexon (surety) is responsible for arranging to fulfill W&T's obligations under the permits, as well as defending against any legal proceedings initiated by the obligee in connection with the principal's defaults. As part of its exploration work, W&T also obtained surety bonds from Lexon in connection with work performed for Exxon Mobil Corporation, Railroad Commission of Texas, and Woodside Energy USA.

29. The surety receives compensation in the form of premiums in exchange for undertaking these obligations, and often also requires, as Lexon did here, two forms of financial protection. First, the surety typically demands that the principal post collateral as security to protect against an increased likelihood of potential bond default. In that event, the collateral could be used toward payment of losses, costs, or expenses incurred in discharging the principal's obligations should a bond default occur. Second, the principal agrees to indemnify the surety against losses and expenses incurred in connection with the bond, with the obligation typically memorialized, as here, in a general indemnity agreement.

30. Since 2014, Lexon has issued Surety Bonds, currently with a total exposure in excess of $55 million, in connection with energy exploration operations conducted by W&T on the OCS.

31. The Bonds at issue here include the following:

Bond Schedule:

Bond Number	Principal Name	Obligee Name	Bond Amount	Current Effective Date	Expiration Date
EACX226000022-04	W & T Energy VI LLC	US Department of Interior	$1,461,000.00	9/15/2023	9/15/2024
EACX226000025-04	W & T Energy VI LLC	US Department of Interior	$3,000,000.00	11/5/2023	11/5/2024
1156846-07	W & T Energy VI LLC	US Department of Interior	$5,000,000.00	5/4/2024	5/4/2025
1097677-10	W & T Energy VI LLC	US Department of Interior	$9,000,000.00	6/3/2024	6/3/2025
1159776-03	W & T Energy VI LLC	US Department of Interior	$3,000,000.00	12/20/2023	12/20/2024
EACX226000038-03	W & T Energy VI LLC	US Dept of Interior	$1,482,000.00	1/10/2024	1/10/2025
EACX226000039-03	W & T Energy VI LLC	US Dept. of the Interior	$3,830,148.00	1/10/2024	1/10/2025
EACX226000040-03	W & T Energy VI LLC	US Dept of Interior	$13,126,457.00	1/10/2024	1/10/2025
EACX226000044-02	W & T Energy VI LLC	US Dept. of the Interior	$3,000,000.00	10/1/2023	10/1/2024
1136949-08	W&T Offshore Inc	United States Department of the Interior	$1,166,860.00	9/9/2023	9/9/2024
1136950-08	W&T Offshore Inc	United States Department of the Interior	$117,279.00	9/9/2023	9/9/2024
1152010-07	W&T Offshore Inc	Woodside Energy USA Incoprorated	$1,931,562.00	1/8/2024	1/8/2025
1152011-07	W&T Offshore Inc	Woodside Energy USA Incoprorated	$376,688.00	1/8/2024	1/8/2025
EACX226000043-03	W&T Offshore Inc	Exxon Mobile Corporation et al	$7,000,000.00	6/1/2024	6/1/2025
EACX226000045-01	W&T Offshore Inc	Railroad Commission of Texas	$125,000.00	3/1/2023	8/1/2024
EACX226000047-02	W&T Offshore Inc	US Dept of Interior	$2,285,584.00	6/7/2024	6/7/2025

32. Lexon's exposure with regards to these Bonds totals $55,902,578.

33. Thus, Paragraph 3 of the Indemnity Agreement, entitled "Security," provides:

> The Surety may at any time and from time to time hereafter, in its sole and absolute discretion, require the Principals to provide collateral, in form and amounts acceptable to the Surety . . . to secure the Principals' obligations to the Surety hereunder and/or to establish reserves to cover any actual or potential liability, claim, suit, or judgment under any Bond. Within thirty (30) days after the Surety has made written demand on Principals, each Principal shall execute such documents and take such further action as may be necessary in order to provide such collateral. Each Principal hereby grants to the Surety a security interest in all money and other property now or hereafter delivered by such Principal to the Surety, and all income (if any) thereon. If a Principal provides the Surety with a letter of credit or similar instrument, such Principal agrees that the Surety has the right to call on the same from time to time, in whole or in part and for any reason or no reason, and to hold the proceeds thereof as collateral for the obligations of the Principals hereunder. Any collateral provided at any time by any Principal shall be available, in the discretion of the Surety, as collateral security on any or all Bonds heretofore or hereafter executed for or at the request of such Principal or any other Principal.

Agreement ¶ 3.

34. Paragraph 4 of the Indemnity Agreement provides Lexon the right to inspect the financial records of W&T at any time, providing, in relevant part:

> Until the Surety shall have been furnished with evidence of its full, final and complete discharge without loss from any and all Bonds, the Surety and its agents shall have reasonable access, at any and all reasonable times, to the financial books and records (including but not limited to reserve reports, engineering data and like information) of each Principal relevant to the obligations under this Agreement . . .

Agreement ¶ 4.

35. The Indemnity Agreement also expressly affords Lexon indemnification rights, stating in relevant part,

> The Principals shall jointly and severally indemnify and keep indemnified the Surety and hold and save it harmless from and against any and all liability, damage, loss, cost, and expense of whatsoever kind or nature, including reasonable counsel and attorneys' fees which the Surety may at any time sustain or incur or in enforcing this Agreement against any Principal or in procuring or in attempting to procure the Surety's release from liability or a settlement under any Bonds. . . .

Agreement ¶ 2.

36. The Indemnity Agreement also entitles Lexon to "recover any costs or expenses incurred, including without limitation, costs of court and reasonable attorneys' fees" for any action "to enforce any of the provisions of this Agreement or to recover damages for the breach of any provision hereof" should it prevail in such action. Agreement ¶ 26.

37. Finally, the Indemnity Agreement entitles Lexon to interest on "[a]ny and all sums not paid when due" in the amount of "the lesser of (a) ten (10%) per annum, or (b) the maximum non-usurious rate of interest allowed by applicable law." Agreement ¶ 23.

II. Lexon's Concern Over the Adequacy of Its Collateral with Regards to the Bonds

38. A number of factors led Lexon to conclude that it was appropriate and necessary to demand additional collateral from W&T, culminating in the July 9 Demand.

39. First, Lexon's Bond exposure has increasingly become a concern given W&T's financial performance. According to its 2023 annual report,[5] W&T's Total Revenues declined from $920.9 million in 2022 to $532.7 million in 2023; Operating Income declined from $454 million in 2022 to $29.5 million in 2023; and Net Income decreased from $231.2 million in 2022 to $25.6 million in 2023. Ex. 3, pp. 47, 67. W&T also reported, "We have a significant amount of indebtedness and limited borrowing capacity under our Credit Agreement. Our leverage and debt service obligations may have a material adverse effect on our financial condition, results of operation and business prospects, and we may have difficulty paying our debts as they become due." *Id.*, p. v.

40. In that same report, W&T acknowledged its collateral obligations to Lexon, stating:

> In prior years, some of the sureties that provide us surety bonds used for supplemental financial assurance purposes have requested and received collateral from us and may request additional collateral from us in the future, which could be significant and could impact

[5] A true and correct copy of W&T's 10-K for the fiscal year ended December 31, 2023, is attached hereto as Exhibit 3.

> our liquidity. In addition, pursuant to the terms of our agreements with various sureties under our existing bonds or under any additional bonds we may obtain, we are required to post collateral at any time, on demand, at the surety's discretion. In both 2023 and 2022, we have not had to post collateral for sureties . . . . [C]ollateral requests from surety bond providers and collateral requests from other third-parties may require the posting of cash collateral, which may be significant . . . .

Id. at 46.

41. In May 2024, W&T reported a first quarter 2024 net loss of $11.5 million, down 144% from a Q1 2023 profit, while revenue and earnings per share missed analysts' consensus estimates. Since prior to the July 9 Demand, credit-ratings provider Fitch Ratings has maintained a B- rating on W&T, indicating that "material default risk is present, but a limited margin of safety remains. Financial commitments are currently being met; however, capacity for continued payment is vulnerable to deterioration in the business and economic environment."[6] Similarly, prior to the July 9 Demand, credit-ratings provider S&P Global revised its outlook on W&T from stable to negative to reflect its expectation of reduced cash-flow generation in 2024.

42. Along with W&T's worsening financial condition, another factor in Lexon's decision to demand additional collateral was a new rule, first proposed by the BOEM in June 2023 and finalized in April 2024, to determine if and how much supplemental financial assurance is required for offshore operations on the OCS. Under the Risk Management and Financial Assurance for OCS Lease and Grant Obligations rule—which toughened the supplemental financial assurance requirements for offshore operations on the OCS—supplemental financial assurance is waived for companies only if (1) the companies meet an investment grade credit rating of at least BBB- (under S&P Global Ratings and Fitch Ratings, Inc.) or Baa3 (Moody's Investors Service, Inc.) or (2) the

[6] *See Issuer Default Ratings*, FITCH RATINGS, https://your.fitch.group/rating-definitions.html (last visited Oct. 9, 2024).

companies' proved reserves exceed the estimated decommissioning costs by a 3-to-1 ratio. The new rule also imposes additional obligations, including an updated calculation for the amount required as supplemental financial assurance and instituting a phase-in period with strict deadlines. Under this new rule, Lexon reasonably concluded that W&T will likely be required to secure additional bonds, which will require W&T to divert assets to these other financial obligations, further straining it financially and thus increasing Lexon's risk.

III. Lexon Seeks Collateral According to the Terms of the Indemnity Agreement

43. As noted, under the Indemnity Agreement, W&T was required to provide Lexon with collateral as security for its obligations. Agreement, ¶ 3. W&T's obligations under the Indemnity Agreement were absolute and unconditional. Specifically, under the Collateral Demand Provision, Lexon "may at any time and from time to time hereafter, in its sole and absolute discretion, require [W&T] to provide collateral, in form and amounts acceptable to [Lexon] . . . to secure [W&T's] obligations to [Lexon] hereunder." Agreement, ¶ 3. The Collateral Demand Provision further provides that "[w]ithin thirty (30) days after [Lexon] has made written demand on [W&T], [W&T] shall execute such documents and take such further action as may be necessary in order to provide such collateral." *Id.*

44. Notwithstanding Lexon's "sole and absolute" right to demand additional collateral, as well as its reasonable conclusion that additional collateral is appropriate in light of W&T's deteriorating financial condition and the more stringent financial regulatory requirements imposed on it to conduct operations (although such a demand by Lexon is not subject to a reasonableness standard under the Agreement's clear terms), Lexon did not immediately send a formal collateral demand to W&T.

45. Instead, Lexon provided W&T with a slate of options for potential collateral structures, including installment payments or renegotiating certain bonds, over multiple

conversations and communications. None of these proposals moved W&T to make good on its collateral obligations to Lexon.

46. On or about June 20, 2024, Lexon offered W&T five different collateral replacement options:

i. $7.5 million upfront collateral deposit;

ii. $5 million upfront collateral deposit followed by two annual installments of $2.5 million;

iii. Replacement or release of Bond Nos. 1152010, 1152011, EACX226000022, 1136949, 1136950, and EACX226000038; and payment of $1 million collateral deposit followed by three annual installments of $1 million;

iv. Replacement or release of Bond Nos. 1097677, 1156846, 1159776, EACX226000025, EACX226000039, EACX226000044, and EACX226000047; and payment of $2 million collateral deposit followed by four annual installments of $1 million; or

v. Replacement or release of all bonds except for Bond Nos. EACX226000043 and EACX226000040.

47. In addition, Lexon expressed to W&T its willingness to work on an "all surety solution" and offered to provide suggestions on a framework for any such collaboration. W&T never pursued any such conversation with all surety parties.

48. Despite the variety of options presented, W&T instead insisted that Lexon take a third lien position in W&T's debt as "additional security" in lieu of cash or a letter of credit (the same debt rated B- by Fitch as in material risk of default). Lexon rejected that proposal because a third lien did not actually provide Lexon with the additional security it deemed necessary and appropriate and which it was seeking.

49. In response, Lexon reiterated to W&T the five potential options for collateral and its willingness to work with W&T and its other sureties to establish a shared collateral escrow account to satisfy Lexon's need for collateral. Lexon then set a revised deadline for W&T to select

their preferred option with the "original" collateral installment due by close of business July 5, 2024. W&T refused to provide collateral and was unresponsive to Lexon's suggestion to engage all sureties to arrive at an amenable collateral structure for all parties.

50. On or about July 9, 2024, Lexon followed up with the July 9 Demand for $7,500,000 of collateral pursuant to the Collateral Demand Provision, which represented a fraction of Lexon's total exposure and was well within Lexon's rights under the Indemnity Agreement. The collateral demanded was to be provided to Lexon no later than August 9, 2024.

51. To date, W&T has not provided any collateral to Lexon in response to the July 9 Demand, in material breach of the Indemnity Agreement. Instead, W&T instituted this action.

52. W&T's refusal to provide collateral is particularly striking given that Lexon provided W&T with a slate of options for potential collateral structures, including installment payments or renegotiating certain bonds, over multiple conversations and communications. None of these proposals moved W&T to make good on its collateral obligations to Lexon.

53. By virtue of its material breach of the Indemnity Agreement, Lexon is entitled to collateral in excess of $55 million, constituting the penalty amount of the Bonds, plus the attorneys' fees and other costs it has incurred to enforce its rights under the Agreement, including in connection with this action.

IV. W&T's Failure to Comply with its Obligations Constitutes Irreparable Harm

54. Lexon is threatened with irreparable injury absent an order from this Court requiring W&T to satisfy its collateral payment obligations to Lexon. Courts have held that the failure to provide collateral in response to a surety's demand constitutes irreparable injury in recognition of the fact that a surety's right to collateral is fundamental to the surety-principal relationship and the surety's bargain in contracting.

55. W&T's financial condition coupled with additional financial obligations associated with increasingly stringent regulatory requirements call into question W&T's ability to satisfy Lexon's collateral demands, including as set forth herein.

56. Compounding Lexon's concerns about W&T's deteriorating financial condition, W&T appears to have similarly refused to satisfy its collateral obligations to other sureties. After the filing of this action, three separate sureties commenced actions against W&T for failing to satisfy collateral demands ("**Surety Actions**"). *See U.S. Specialty Insurance Company v. W&T Offshore, Inc., et al.*, C.A. No. 4:424:cv-04113; *Pennsylvania Insurance Company v. W&T Offshore Inc.*, C.A. No. 4:24-cv-04400; *United States Fire Insurance Company v. W&T Offshore, Inc., et al.*, C.A. No. 4:24-cv-04395. The total amount sought in those actions is in excess of $120 million and sureties in two of the actions have filed preliminary injunctive relief with respect to the collateral payment demands.

57. Not only does W&T's failure to honor its obligations to other sureties further evidence its strained financial condition, but it also poses a new and significant threat to Lexon's ability to realize its bargained-for rights to collateral upon demand. That is because W&T's creditors, i.e., its sureties, including Lexon, are demanding approximately $175 million from it, representing approximately a third of W&T's total annual revenues in 2023, while its operating income in 2023 was just $29.5 million (down from $454 million in 2022) and its net income was just $25.6 million (down from $231.2 million in 2022). Ex. 3, pp. 47, 67.

58. Moreover, in the Surety Actions, certain sureties have sought an order enjoining W&T from "transferring, encumbering or otherwise dissipating any of their assets until sch time as they have posted the full amount of collateral demanded by" the other sureties. Such relief, if granted with respect to payments to Lexon, would irreparably impair Lexon's right to enforce its own claims against W&T and recover the amounts due under the Indemnity Agreement.

59. Given the questions surrounding W&T's financial performance, particularly in light of the Surety Actions, on November 20, 2024, Lexon's counsel requested access to W&T's financial books and records pursuant to Paragraph 4 of the Indemnity Agreement. A true and correct copy of the letter to W&T is attached hereto as Exhibit 4.

COUNT I
(BREACH OF THE INDEMNITY AGREEMENT - SPECIFIC PERFORMANCE)

60. Lexon incorporates and re-alleges each of the preceding paragraphs of the First Amended Counterclaim as if fully set forth herein.

61. The Indemnity Agreement is a valid, binding, and enforceable contract.

62. Under the Indemnity Agreement, Lexon "may at any time and from time to time hereafter, in its sole and absolute discretion, require [W&T] to provide collateral, in form and amounts acceptable to [Lexon] . . . to secure [W&T's] obligations to [Lexon] and/or to establish reserves to cover any actual or potential liability, claim, suit, or judgment under any Bond." Agreement ¶ 3. Further, "[w]ithin thirty (30) days after [Lexon] has made written demand on [W&T], [W&T] shall execute such documents and take such further action as may be necessary in order to provide such collateral." *Id.*

63. The Agreement also provides that if "any Principal . . . fails to pay within thirty (30) days after written demand of any other sum becoming due [to Lexon] hereunder, then," absent securing the release and discharge of all of Lexon's liability under the bonds, Lexon "may require there to be paid, and the Principals jointly and severally agree they shall forthwith pay to [Lexon], an amount equal to the full penalty amount of the Bonds, to be held as collateral until (i) all sums due and to become due to [Lexon] have been paid and (ii) [Lexon] shall be wholly discharged and released from all liability under the Bonds." Agreement ¶ 1.

64. Lexon sent W&T the July 9 Demand demanding that W&T provide collateral under the Collateral Demand Provision in the form of cash or an irrevocable letter of credit.

65. W&T never provided collateral to Lexon in response to the July 9 Demand.

66. The failure of W&T to provide to Lexon the demanded collateral constitutes a material breach of the Indemnity Agreement.

67. Lexon was, and remains, at all times ready, willing, and able to perform, and has performed, under the Indemnity Agreement.

68. As a direct and proximate result of W&T's breach, Lexon has suffered and will continue to suffer irreparable harm. Lexon has no adequate remedy at law that would compensate it for its injury.

69. Lexon is therefore entitled to entry of an order preliminarily and permanently compelling W&T to specifically perform its duties under the Indemnity Agreement, including to provide collateral in the amount equal to the full penalty amount of the Bonds to be held as collateral.

70. Lexon is further entitled to an order preliminarily enjoining W&T from transferring, encumbering, or otherwise disposing of and from concealing and secreting any of their property and assets, real, personal and mixed, whether jointly or solely owned, which might serve as collateral to which Lexon is entitled, until such time as the required collateral is deposited with Lexon.

COUNT II
(DECLARATORY JUDGMENT – LEXON'S CONTRACTUAL RIGHT TO COLLATERAL)

71. Lexon incorporates and re-alleges each of the preceding paragraphs of the First Amended Counterclaim as if fully set forth herein.

72. The Indemnity Agreement is a valid, binding, and enforceable contract.

73. Pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57, Lexon requests that the Court enter an order declaring its rights with respect to the Indemnity Agreement.

74. Under the Indemnity Agreement, Lexon "may at any time and from time to time hereafter, in its sole and absolute discretion, require [W&T] to provide collateral, in form and amounts acceptable to [Lexon] . . . to secure [W&T's] obligations to [Lexon] and/or to establish reserves to cover any actual or potential liability, claim, suit, or judgment under any Bond." Agreement ¶ 3. Further, "[w]ithin thirty (30) days after [Lexon] has made written demand on [W&T], [W&T] shall execute such documents and take such further action as may be necessary in order to provide such collateral." *Id.*

75. W&T disputes its obligations under the Agreement to provide collateral in the form Lexon requested, claiming that Lexon's demand for collateral is unreasonable. However, the Agreement does not contain a requirement that Lexon's demand must satisfy a reasonableness test—instead, it provides that Lexon "in its sole and absolute discretion" may "require" W&T to provide collateral "in form and amounts acceptable" to Lexon.

76. To the extent that less than the full penalty amount of the Bonds is provided to Lexon pursuant to Count I, the relationship between W&T and Lexon is ongoing, and the Indemnity Agreement will continue to govern aspects of the future relationship between W&T and Lexon with regards to the Bonds at issue in this litigation or potential future bonds that may be issued. As such, Lexon may demand collateral payment from W&T in the future under the Agreement.

77. An actual, justiciable controversy has arisen and presently exists concerning Lexon's aforementioned rights and W&T's obligations under the Indemnity Agreement.

78. Accordingly, the Court should declare that W&T has an ongoing and future obligation under the Indemnity Agreement to provide Lexon collateral in form and amounts acceptable to Lexon within 30 days of Lexon's written demand.

COUNT III
(DECLARATORY JUDGMENT – LEXON'S CONTRACTUAL RIGHT TO INDEMNITY, ATTORNEYS' FEES, AND OTHER ENFORCEMENT-RELATED COSTS)

79. Lexon incorporates and re-alleges each of the preceding paragraphs of the First Amended Counterclaim as if fully set forth herein.

80. The Indemnity Agreement is a valid, binding, and enforceable contract.

81. Pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57, Lexon requests that the Court enter an order declaring its rights with respect to the Indemnity Agreement.

82. Specifically, under the Indemnity Agreement, W&T "shall jointly and severally indemnify and keep indemnified [Lexon] and hold and save it harmless from and against any and all liability, damage, loss, cost and expense of whatsoever kind or nature, including reasonable counsel and attorneys' fees which [Lexon] may at any time sustain or incur or in enforcing this Agreement against [W&T.]" Agreement ¶ 2. Likewise, the Agreement separately provides that in "the event any action is instituted to enforce any of the provisions of this Agreement or to recover damages for the breach of any provision hereof, the prevailing party therein shall be entitled to recover any costs or expenses incurred, including without limitation, costs of court and reasonable attorneys' fees." Agreement ¶ 26.

83. Lexon has incurred and continues to incur costs, expenses, and fees, including attorneys' fees, as a result of W&T's breach of the Indemnity Agreement, including its failure to provide collateral in forms and amounts acceptable to Lexon, and in enforcing the Indemnity Agreement against W&T.

84. W&T denies that it has breached the Indemnity Agreement or that it is obligated to pay Lexon any amounts, including costs, fees, or expenses incurred by Lexon in enforcing the Agreement and/or as a result of W&T's breaches of the Agreement.

85. An actual, justiciable controversy has arisen and presently exists concerning Lexon's aforementioned rights and W&T's obligations under the Indemnity Agreement.

86. Accordingly, the Court should declare that W&T must indemnify Lexon for:

a) all liability, damage, loss, cost, and expense of whatsoever kind or nature suffered by Lexon as a result of having to enforce the Indemnity Agreement;

b) all losses and expenses resulting from the issuance of the Bonds; and

c) the amounts sustained or incurred by Lexon as a result of W&T's breaches of the Indemnity Agreement.

COUNT IV
(*QUIA TIMET*)

87. Lexon incorporates and re-alleges each of the preceding paragraphs of the First Amended Counterclaim as if fully set forth herein.

88. Lexon faces risk of significant loss under the Bonds. W&T has outstanding performance obligations and associated liability under the Bonds. W&T's failure to honor the express and unequivocal terms of the Indemnity Agreement, as well as its indemnity agreements with other sureties, indicates that sufficient funds to cover W&T's principal obligations under the Bonds may not be available at the conclusion of the litigation.

89. Given W&T's precarious financial condition, the financial obligations associated with newly finalized regulatory requirements, and the financial demands place on W&T by other sureties, as evidenced by the Surety Actions, Lexon anticipates that demand may be made by the bond obligees against Lexon for performance of W&T's principal obligations for which W&T has primary responsibility due to W&T's inability to fund its own obligations.

90. W&T has failed to provide Lexon with adequate assurance that it will be able to perform its obligations under the Bonds.

91. Therefore, the Court should order W&T and its agents to deposit collateral with Lexon in an amount of $55,902,578.

92. The Court should also enjoin W&T from transferring, encumbering, or otherwise disposing of and from concealing and secreting any of their property and assets, real, personal and mixed, whether jointly or solely owned, which might serve as collateral so as to secure Lexon from liability herein until proof of record satisfactory to the Court is presented to establish that all claims to which the Surety is exposed have been liquidated and discharged.

COUNT V
(LEXON'S RIGHT TO INSPECT W&T'S FINANCIAL BOOKS AND RECORDS)

93. Lexon incorporates and re-alleges each of the preceding paragraphs of the First Amended Counterclaim as if fully set forth herein.

94. The Indemnity Agreement is a valid, binding, and enforceable contract.

95. Under the Indemnity Agreement, "[u]ntil [Lexon] shall have been furnished with evidence of its full, final and complete discharge without loss from any and all Bonds, [Lexon] shall have reasonable access, at any and all reasonable times, to the financial books and records . . . of [W&T] relevant to the obligations under this Agreement . . ." Agreement ¶ 4.

96. Lexon sent W&T a request for access to W&T's financial books and records on November 20, 2024. *See* Ex. 4.

97. Lexon's inspection rights under Paragraph 4 of the Agreement are necessary for the protection of Lexon's rights under the Agreement, and integral to its ability to ensure that any relief ordered herein is effective and recoverable.

98. Lexon is therefore entitled to entry of an order compelling W&T and its agents to provide Lexon reasonable access, at any and all reasonable times, to the financial books and records of each Principal relevant to the obligations under the Indemnity Agreement.

ATTORNEYS' FEES AND COSTS

99. Lexon incorporates and re-alleges each of the preceding paragraphs of the First Amended Counterclaim as if fully set forth herein.

100. Pursuant to Paragraph 2 and Paragraph 26 of the Indemnity Agreement, Lexon is entitled to the recovery of costs, expenses, and attorneys' fees incurred to enforce its rights under the Agreement, including via this action. As such, Lexon respectfully requests that this Court award such fees, costs, and expenses.

101. Lexon is also entitled to attorneys' fees, costs, and expenses under any and all bases provided by law or equity, under all applicable state and federal laws, including but not limited to Federal Rule of Civil Procedure 54(d) and Texas Civil Practices & Remedies Code § 38.001.

102. Lexon is entitled to interest on all such amounts, including pursuant to Paragraph 23 of the Indemnity Agreement.

103. Lexon presented a demand to W&T for collateral in the amount of $7.5 million via the July 9 Demand before filing this lawsuit. W&T has not tendered the demanded collateral.

PRAYER

WHEREFORE, premises considered, Lexon prays that W&T take nothing by way of its claims, and respectfully requests relief and judgment as follows:

a) Enter an order compelling W&T and its agents to specifically perform their obligations under the Indemnity Agreement by providing to Lexon collateral in an amount equal to $55,902,578, the full penalty amount of the Bonds;

b) Enter an order pursuant to the common law doctrine of *quia timet* directing W&T and its agents to immediately deposit cash collateral with Lexon in an amount equal to $55,902,578, the full penalty amount of the Bonds;

c) Enter a preliminary injunction (i) ordering W&T and its agents to deposit $55,902,578, the full penalty amount of the Bonds; (ii) ordering W&T and its agents to specifically perform its books and records obligations under the Indemnity Agreement by producing or providing access to material responsive to the letter from Lexon demanding access to such documents, attached hereto as Exhibit 4; (iii) enjoining W&T from transferring, encumbering, or otherwise disposing of any of its assets until such time as it has posted the full amount of collateral demanded by Lexon; (iv) awarding such other relief as may be appropriate;

d) Enter a judgment declaring that, to the extent that less than the full penalty amount of the Bonds is provided to Lexon pursuant to Count I, W&T has an ongoing and future obligation under the Indemnity Agreement to provide Lexon collateral in form and amounts acceptable to Lexon within 30 days of Lexon's written demand;

e) Enter an order enjoining W&T from transferring, encumbering, or otherwise disposing of and from concealing any of its property and assets, real, personal and mixed, whether jointly or solely owned, which might serve as collateral so as to secure Lexon from liability herein until proof of record satisfactory to the Court is presented and establish that all claims to which Lexon is exposed have been liquidated and discharged;

f) Enter a judgment declaring that W&T is required to indemnify Lexon for all liability, damage, loss, cost and expense of whatsoever kind or nature suffered by Lexon as a result of having to enforce the Indemnity Agreement or resulting from the issuance of the Bonds;

g) Enter a judgment declaring that W&T is required to indemnify Lexon for all amounts sustained or incurred by Lexon as a result of W&T breaches of the Indemnity Agreement;

h) Pursuant to Paragraphs 2 and 26 of the Indemnity Agreement, award Lexon its costs, expenses and fees (including the reasonable fees and expenses of its counsel) to enforce its rights under the Indemnity Agreement, including fees incurred in connection with this action;

i) Award Lexon its attorneys' fees under all available and applicable state and federal laws;

j) Award Lexon pre- and post-judgment interest, including pursuant to Paragraph 23 of the Indemnity Agreement; and

k) Such other and further relief as the Court deems proper and just.

Dated: November 20, 2024

Respectfully submitted,

VINSON & ELKINS LLP

/s/ Jason M. Halper

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ATTORNEYS FOR ENDURANCE ASSURANCE CORPORATION AND LEXON INSURANCE COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2024, a true and correct copy of the above and foregoing document was served on all counsel of record in compliance with the Federal Rules of Civil Procedure.

/s/ Jason M. Halper
Jason M. Halper

APPENDIX E

United States District Court
Southern District of Texas
ENTERED
November 27, 2024
Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

W&T OFFSHORE, INC., and W&T ENERGY VI, LLC,	§	
Plaintiffs and Counterclaim-Defendants,	§	
v.	§	Civil Action No. 4:24-cv-03047
ENDURANCE ASSURANCE CORPORATION and LEXON INSURANCE COMPANY	§	
Defendants and Counterclaim-Plaintiffs.	§	

ORDER GRANTING JOINT MOTION TO CONSOLIDATE

Before the Court is W&T Offshore, Inc., W&T Energy VI, LLC, Endurance Assurance Corporation, and Lexon Insurance Company's Joint Motion to Consolidate. ECF No. 31. The Court has determined that the Motion should be **GRANTED**.

IT IS THEREFORE ORDERED that Civil Action Nos. 4:24-cv-04113, 4:24-cv-04400, and 4:24-cv-04395 are consolidated into Civil Action No. 4:24-cv-03047, and that all further proceedings shall occur in this action.

Signed on November 22, 2024, at Houston, Texas.

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

APPENDIX F

EXHIBIT 10

June 17, 2025

W&T Announces Settlement Agreement with Majority of Surety Providers

HOUSTON, June 17, 2025 (GLOBE NEWSWIRE) -- W&T Offshore, Inc. (NYSE: WTI) ("W&T" or the "Company") today announced that it has come to a settlement agreement with two of its largest surety providers which calls for the dismissal of a previously filed lawsuit. The settlement agreement requires the surety providers to withdraw their current collateral demands, and further provides that the surety providers may not make additional collateral demands or increase premiums through December 31, 2026.

Key highlights for the settlement agreement include:

- Dismissal of all claims by the applicable party in the lawsuit, without prejudice;
- Two participating surety providers, together with W&T's other major surety provider who did not attempt to increase premiums or call for collateral, represent nearly 70% of W&T's surety bond portfolio;
- Premium rates for all existing bonds provided by the two surety providers will be locked in at W&T's historical rates without increase through December 31, 2026, representing a prolonged rate lock in excess of "ordinary course" rate negotiations, thereby providing consistency and predictability in W&T's premium expense;
- W&T is not required to provide any collateral to the applicable sureties, and the applicable surety providers will immediately withdraw all demands for collateral;
- Surety providers may not make demands for collateral through December 31, 2026, outside certain limited circumstances involving unlikely events of default; and
- Parties retain the right to negotiate and establish new surety bonds at rates to be determined in the ordinary course.

Tracy W. Krohn, W&T's Chairman and Chief Executive Officer stated, "We are pleased with the agreement that we have reached with two of our largest surety providers, and we believe that the objectives achieved in this outcome illustrate the strength of the legal position that W&T has aggressively advanced since the beginning of these unnecessary surety lawsuits. This outcome is very positive for W&T overall, as we will not acquiesce to unjustified collateral demands made by the applicable sureties and we have locked in our historical premium rates through the end of 2026. We believe the entry into these settlement agreements vindicates our resolve to stand up to surety providers' unjustified demands on independent oil and gas operators, such as W&T. For the past 40 plus years, W&T has reliably plugged and abandoned assets, paid its negotiated premiums and operated responsibly in the Gulf of America. We demand fairness and transparency for all oil and natural gas producers in the Gulf of America and will continue to pursue the pending litigation against our other surety providers that have unlawfully colluded and decided to not deal fairly with W&T and other independent oil and gas producers."

"This agreement, coupled with the promising developments in the regulatory environment driven by the White House's directives, alleviates some of the uncertainty that has unnecessarily and artificially suppressed our stock price and we expect that this will allow us to deliver more value to our shareholders. Since the start of the year, we have strengthened our balance sheet, and we have a solid cash position with sufficient liquidity to enable us to continue to evaluate growth opportunities, both organically and inorganically. Operationally and financially, our start to 2025 has been strong, and we expect production to continue to increase thus driving more value creation. We are well-positioned to succeed and believe that the future is bright for W&T."

About W&T Offshore

W&T Offshore, Inc. is an independent oil and natural gas producer with operations offshore in the Gulf of America and has grown through acquisitions, exploration and development. As of March 31, 2025, the Company had working interests in 52 fields in federal and state waters (which include 45 fields in federal waters and seven in state waters). The Company has under lease approximately 634,700 gross acres (496,900 net acres) spanning across the outer continental shelf off the coasts of Louisiana, Texas, Mississippi and Alabama, with approximately 487,200 gross acres on the conventional shelf, approximately 141,900 gross acres in the deepwater and 5,600 gross acres in Alabama state waters. A majority of the Company's daily production is derived from wells it operates. For more information on W&T, please visit the Company's website at www.wtoffshore.com.

Forward-Looking and Cautionary Statements

This press release contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. All statements other than statements of historical facts included in this release, including those regarding the potential outcome of the litigation, the impact of the settlement on the Company, potential growth opportunities, and the Company's future production are forward-looking statements. When used in this release, forward-looking statements are generally accompanied by terms or phrases such as "estimate," "project," "predict," "believe," "expect," "continue," "anticipate," "target," "could," "plan," "intend," "seek," "goal," "will," "should," "may" or other words and similar expressions that convey the uncertainty of future events or outcomes, although not all forward-looking statements contain such identifying words. Items contemplating or making assumptions about actual or potential future production and sales, prices, market size, and trends or operating results also constitute such forward-looking statements.

These forward-looking statements are based on the Company's current expectations and assumptions about future events and speak only as of the date of this release. While management considers these expectations and assumptions to be reasonable, they are inherently subject to significant business, economic, competitive, regulatory and other risks, contingencies and uncertainties, most of which are difficult to predict and many of which are beyond the Company's control. Accordingly, you are cautioned not to place undue reliance on these forward-looking statements, as results actually achieved may differ materially from expected results described in these statements. The Company does not undertake, and specifically disclaims, any obligation to update any forward-looking statements to reflect events or circumstances occurring after the date of such statements, unless required by law.

EXHIBIT 10

Forward-looking statements are subject to risks and uncertainties that could cause actual results to differ including, among other things, the regulatory environment, including availability or timing of, and conditions imposed on, obtaining and/or maintaining permits and approvals, including those necessary for drilling and/or development projects; the impact of current, pending and/or future laws and regulations, and of legislative and regulatory changes and other government activities, including those related to permitting, drilling, completion, well stimulation, operation, maintenance or abandonment of wells or facilities, managing energy, water, land, greenhouse gases or other emissions, protection of health, safety and the environment, or transportation, marketing and sale of the Company's products; inflation levels; global economic trends, geopolitical risks and general economic and industry conditions, such as the global supply chain disruptions and the government interventions into the financial markets and economy in response to inflation levels and world health events; volatility of oil, NGL and natural gas prices; the global energy future, including the factors and trends that are expected to shape it, such as concerns about climate change and other air quality issues, the transition to a low-emission economy and the expected role of different energy sources; supply of and demand for oil, NGLs and natural gas, including due to the actions of foreign producers, importantly including OPEC and other major oil producing companies ("OPEC+") and change in OPEC+'s production levels; disruptions to, capacity constraints in, or other limitations on the pipeline systems that deliver the Company's oil and natural gas and other processing and transportation considerations; inability to generate sufficient cash flow from operations or to obtain adequate financing to fund capital expenditures, meet the Company's working capital requirements or fund planned investments; price fluctuations and availability of natural gas and electricity; the Company's ability to use derivative instruments to manage commodity price risk; the Company's ability to meet the Company's planned drilling schedule, including due to the Company's ability to obtain permits on a timely basis or at all, and to successfully drill wells that produce oil and natural gas in commercially viable quantities; uncertainties associated with estimating proved reserves and related future cash flows; the Company's ability to replace the Company's reserves through exploration and development activities; drilling and production results, lower–than–expected production, reserves or resources from development projects or higher–than–expected decline rates; the Company's ability to obtain timely and available drilling and completion equipment and crew availability and access to necessary resources for drilling, completing and operating wells; changes in tax laws; effects of competition; uncertainties and liabilities associated with acquired and divested assets; the Company's ability to make acquisitions and successfully integrate any acquired businesses; asset impairments from commodity price declines; large or multiple customer defaults on contractual obligations, including defaults resulting from actual or potential insolvencies; geographical concentration of the Company's operations; the creditworthiness and performance of the Company's counterparties with respect to its hedges; impact of derivatives legislation affecting the Company's ability to hedge; failure of risk management and ineffectiveness of internal controls; catastrophic events, including tropical storms, hurricanes, earthquakes, pandemics and other world health events; environmental risks and liabilities under U.S. federal, state, tribal and local laws and regulations (including remedial actions); potential liability resulting from pending or future litigation; the Company's ability to recruit and/or retain key members of the Company's senior management and key technical employees; information technology failures or cyberattacks; and governmental actions and political conditions, as well as the actions by other third parties that are beyond the Company's control, and other factors discussed in W&T Offshore's most recent Annual Report on Form 10-K and subsequent Quarterly Reports on Form 10-Q found at

www.sec.gov or at the Company's website at www.wtoffshore.com under the Investor Relations section.

CONTACT:	**Al Petrie** Investor Relations Coordinator investorrelations@wtoffshore.com 713-297-8024	**Sameer Parasnis** Executive VP and CFO sparasnis@wtoffshore.com 713-513-8654



Source: W&T Offshore, Inc.

APPENDIX G

United States District Court
Southern District of Texas
ENTERED
June 26, 2025
Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

W&T OFFSHORE, INC., AND W&T ENERGY VI, LLC,	§	
	§	Lead Case No. 4:24-cv-3047
v.	§	
	§	
ENDURANCE ASSURANCE CORPORATION AND LEXON INSURANCE, CO., ET AL.,	§	

JUDGE PALERMO'S
REPORT AND RECOMMENDATION[1]

Before the Court is U.S. Fire Insurance Co. and Pennsylvania Insurance Co.'s (collectively, "the Sureties") motions for preliminary injunction. ECF Nos. 93, 94. The Sureties contend that they are entitled to preliminary injunctions because they are necessary to preventing significant, imminent, and irreparable harm to the Sureties. ECF Nos. 93, 94. Plaintiffs respond that the Sureties have not carried their burden for a preliminary injunction. ECF Nos. 54, 55. Based on the briefing,[2] arguments of counsel,[3] and relevant law, the Court finds that the Sureties have not

[1] The district judge to whom this case is assigned referred all pretrial proceedings to the undersigned. ECF No. 77.

[2] The Sureties filed replies. ECF No. 61, 62.

[3] The Court heard argument on the motions at the motion hearing held on June 3, 2025. ECF No. 114. After the hearing, the parties submitted additional documentation related to Plaintiffs' financial health. Along with a letter, the Sureties provided Plaintiffs' 2022, 2023, and 2024 financial records. Plaintiffs submitted a letter and their 2019–2024 financial records. The Sureties objected to Plaintiffs' letter, arguing it exceeded the scope of arguments raised in the briefing. ECF No. 127. The Court need not rule on the objection because consideration of Plaintiffs' letter is unnecessary—without considering Plaintiffs' submissions, including the letter, the Sureties have

carried their burden and therefore recommends denying the motions for preliminary injunction.

I. BACKGROUND

W&T is an oil and natural gas producer in the Gulf of Mexico. Pls.' First Amended Complaint, ECF No. 36 ¶¶ 42-43. The Bureau of Ocean Energy Management ("BOEM") and the Bureau of Safety and Environmental Enforcement issued regulations that require W&T to post surety bonds in favor of the United States to secure its decommissioning obligations. *Id.* ¶¶ 21–37, 46. W&T obtained BOEM-required surety bonds from the Sureties and executed Indemnity Agreements memorializing the suretyship. ECF No. 36 ¶¶ 2, 92–107. The Indemnity Agreements both contain provisions that permit the Sureties to demand collateral from Plaintiffs—the parties dispute under what circumstances, if any, the Sureties may make such demands. ECF Nos. 36, 116, 118.

On August 14, 2024, Plaintiffs filed the instant suit against two other sureties, Endurance Assurance Corporation and Lexon Insurance Company (collectively, the "Sompo Sureties"), after the Sompo Sureties made a written demand to W&T to provide collateral in the form of cash or a letter of credit under their Indemnity Agreements. Plaintiffs sought a declaration that the Sompo Sureties' Indemnity Agreement did not allow the Sompo Sureties to demand the requested collateral.

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not established irreparable harm.

ECF No. 1.

Thereafter, the Sureties made formal demands on Plaintiffs, as Indemnitors under the Indemnity Agreements, to replace the Sureties or deposit multiple millions of dollars as collateral sufficient to protect the Sureties from loss in connection with the bonds. ECF No. 36 ¶¶ 2, 92–107. Despite the demand, Plaintiffs did not deposit collateral with the Sureties. In response, the Sureties filed lawsuits, which on November 22, 2024, the Court consolidated into the instant case. ECF No. 33.

The Sureties now request a preliminary injunction that orders Plaintiffs to: (1) deposit cash collateral in the amount of $93,665,179.00 with the U.S. Fire, such amount representing the amount that U.S. Fire deems sufficient to protect itself from loss in connection with certain bonds; (2) deposit cash collateral in the amount of $11,343,949.00 with the Pennsylvania Insurance, such amount representing the amount that Pennsylvania Insurance deems sufficient to protect itself from loss in connection with certain bonds; (3) specifically perform their books and records obligations under the Indemnity Agreement by providing the Sureties with access to the books, records, and accounts of Plaintiffs, on an ongoing and continuing basis until all claims and liabilities in connection with the Bonds have been extinguished; and (4) not transfer, encumber or otherwise dissipate any of their assets until such time as they have posted the full amount of the collateral. ECF Nos. 93, 94.

II. RELEVANT LAW[4]

Federal injunctive relief is "an extraordinary and drastic remedy" that "should only be granted when the movant has clearly carried the burden of persuasion." *Gray Cas. & Sur. Co. v. 3i Contracting, LLC*, No. 3:23-CV-2511-L, 2024 WL 1121800, at *3 (N.D. Tex. Mar. 13, 2024) (quoting *Anderson v. Jackson*, 556 F.3d 351, 360 (5th Cir. 2009) (quoting *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 997 (5th Cir. 1985))). The movant seeking a preliminary injunction must establish: (1) there is a substantial likelihood that the movant will prevail on the merits; (2) there is a substantial threat that irreparable harm will result if the injunction is not granted; (3) the threatened injury [to the movant] outweighs the threatened harm to the defendant; and (4) the granting of the preliminary injunction will not disserve the public interest. *Id.* (citing *Clark v. Prichard*, 812 F.2d 991, 993 (5th Cir. 1987); *Canal Auth. of the State of Florida v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974) (*en banc*)); *see also Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 582 (5th Cir. 2013).

Whether "to grant or deny a preliminary injunction is discretionary with the district court." *Harco Nat'l Ins. Co. v. Gaspard & Menon Constr., LLC*, No. 4:24-

[4] Although the Indemnity Agreements have choice of law provisions for Texas and New York law, federal procedural law applies to these motions. *EVEREST REINSURANCE COMPANY, Plaintiff, v. BRADLEY COX, COX OIL LLC, & COX INVESTMENT PARTNERS LP., Defendants.*, No. 3:24-CV-0756-X, 2025 WL 1519724, at *2 (N.D. Tex. May 28, 2025) ("standard for granting a preliminary injunction is a procedural matter, so the Federal Rules of Civil Procedure control, not state law.").

CV-01134-O, 2025 WL 1254440, at *1 (N.D. Tex. Apr. 23, 2025) (quoting *Miss. Power & Light Co. v. United Gas Pipe Line*, 760 F.2d 618, 621 (5th Cir. 1985)). The issuance of a preliminary injunction "is to be treated as the exception rather than the rule." *Id.* (quoting *Miss. Power*, 760 F.2d at 621).

III. THE SURETIES' MOTIONS FOR PRELIMINARY INJUNCTION SHOULD BE DENIED.

The movant must "satisfy a cumulative burden of proving each of the four elements enumerated before a preliminary injunction can be granted," and if the movant "fails to meet *any* of the four requirements, the court cannot grant the preliminary injunction." *Gray Cas. & Sur. Co. v. 3i Contracting, LLC*, No. 3:23-CV-2511-L, 2024 WL 1121800, at *4 (emphasis added) (quoting *Mississippi Power and Light Co. v. United Gas Pipeline*, 760 F.2d 618, 621 (5th Cir. 1985); *Clark*, 812 F.2d at 993). Because the Court finds that the Sureties fail to carry their burden of establishing irreparable harm, the Court focuses its analysis on this requirement.[5]

[5] As for the other requirements, the Court finds they are either neutral or weigh against granting a preliminary injunction. The likelihood of success on the merits is neutral because the briefing on this element is largely speculative and the record is not clear enough to adequately assess this factor. *See Gray*, 2024 WL 1121800, at *6 ("Plaintiff's sweeping statements regarding its likelihood of success are insufficient to show that all requirements for the relief sought have been satisfied."). Next, the Sureties have not shown the threatened harm to them outweighs the harm to Plaintiffs if the request is denied—as discussed *infra*, the Sureties fail to demonstrate that they will be harmed without the granting of a preliminary injunction. Additionally, the collection of over $100 million of dollars of collateral would undoubtedly burden Plaintiffs even though the Sureties allege that they will not be harmed. *See Gray*, 2024 WL 1121800, at *14. And finally, the public interest requirement is neutral: although the public has an interest in seeing contracts enforced and indemnity agreements' purposes fulfilled, this interest will be served by considering the Sureties' claims at the merits stage. *See EVEREST*, 2025 WL 1519724, at *3 ("While Everest is right that the public has an interest in freedom of contract and contracts' enforcement, these interests will be

The Sureties first argue a preliminary injunction should be granted because that the Indemnity Agreements contain a stipulation that the Sureties "will suffer irreparable harm and will not have an adequate remedy at law should [Plaintiffs] fail to perform the Collateral Requirement," ECF No. 93 at 11, and/or agreed to waive any contest to the collateral requirement, ECF Nos. 93 at 2; 94 at 21. The Sureties next argue that even if the Court considers the preliminary injunction requirements, then without a preliminary injunction, their contracted-for benefit of prejudgment collateralization and exoneration would be lost, thereby depriving them of the benefit of the bargain and rendering the collateral provision in the indemnity agreements meaningless. In other words, without their prejudgment collateralization, they are left without an adequate remedy at law and therefore irreparably harmed. ECF Nos. 93 at 18; 94 at 10, 25. The Sureties further contend that if Plaintiffs are "not required . . . to post collateral sufficient to cover its obligations to the Surety under the Indemnity Agreement it is unlikely [W&T] will retain any ability to satisfy their contractual promises later." ECF Nos. 93 at 22; 94 at 28–29.

Plaintiffs respond that the Sureties have not established irreparable harm because the alleged harm is strictly financial in nature and may be remedied by

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served by considering Everest's claims at the merits stage. Everest asks the Court to enforce terms against Cox before it knows whether such terms are enforceable, which the public interest in freedom of contract does not require. And if Cox is indeed obligated to post the sought collateral under the contract, he will be required to do so at the merits stage.").

specific performance post-judgment, and further, the Sureties have not shown Plaintiffs are in such dire financial conditions that they are unable to satisfy their contractual promises. ECF Nos. 54; 55.

A. A Preliminary Injunction is Meant to Prevent Irreparable Harm.

"[H]arm that cannot be undone authorizes exercise of this equitable power to enjoin before the merits are fully determined." *Gray*, 2024 WL 1121800, at *6 (quoting *Parks v. Dunlop*, 517 F.2d 785, 787 (5th Cir. 1975); citing *Canal Auth. of the State of Florida*, 489 F.2d at 576 ("The purpose of a preliminary injunction is always to prevent irreparable injury so as to preserve the court's ability to render a meaningful decision on the merits.")). So, "only those injuries that cannot be redressed by the application of a judicial remedy after a hearing on the merits can properly justify the extraordinary and drastic remedy of a preliminary injunction." *Id.* (quoting *Canal Auth. of the State of Florida*, 489 F.2d at 573, 576).

The Sureties must show that they are likely to suffer irreparable harm in the absence of preliminary injunctive relief before a decision on the merits can be rendered; "'harm for which there is no adequate remedy at law,' such as money damages."[6] *See id.* (quoting *Daniels Health Scis., L.L.C. v. Vascular Health Scis.,*

[6] "Mere injuries, however substantial in terms of money, time and energy necessarily expended in the absence of a stay, are not enough." *Id.* (quoting *Morgan v. Fletcher*, 518 F.2d 236, 240 (5th Cir. 1975). "The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weigh[]s heavily against a claim of irreparable harm." *Id.* (quoting *Enterprise Int'l, Inc. v. Corporacion Estatal Petrolera Ecuatoriana*, 762 F.2d 464, 474 (5th Cir. 1985) (quoting *Morgan*, 518 F.2d at 240)). "The absence of an available remedy

L.L.C., 710 F.3d 579, 585 (5th Cir. 2013) (quoting *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); and citing *Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2011))). This involves demonstrating "a real and immediate threat of future or continuing injury apart from any past injury." *Id.* (quoting *Aransas Project v. Shaw*, 775 F.3d 641, 663-64 (5th Cir. 2014) (per curiam) (citing *In re Stewart*, 647 F.3d 553, 557 (5th Cir. 2011))). A "[s]peculative injury is not sufficient; there must be more than an unfounded fear on the part of the applicant." *Id.* (quoting *Daniels Health Scis., LLC*, 710 F.3d at 585).

B. The Contractual Stipulation Does Not Establish Irreparable Harm.

The Sureties argue that the parties agreed to not contest the collateral requirement and further stipulated to irreparable harm:

> The Indemnitors waive, to the fullest extent permitted by law, each and every right that they have to contest this requirement to provide collateral under this Agreement. The Indemnitors stipulate and agree that the Surety will suffer immediate, irreparable harm and will have no adequate remedy at law should Indemnitors fail to perform this obligation, and therefore Surety shall be entitled to specific performance of this obligation.

ECF Nos. 116-2, ¶¶ 12, 14; 118-2 ¶ 12. Although the above language is clear and unambiguous, the Court does not find that the above stipulation is sufficient without more to meet the requirements of injunctive relief.

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by which the movant can later recover monetary damages, however, may also be sufficient to show irreparable injury." *Id.* (quoting *Enterprise Int'l, Inc.*, 762 F.2d at 474).

The Fifth Circuit has yet to address this issue, but "[m]ost courts agree [] that contractual stipulations such as this, without more, are insufficient to support a grant of injunctive relief, and those that do not agree are not binding on this court or persuasive." *Gray*, 2024 WL 1121800, at *7; *see also Dickey's Barbecue Restaurants, Inc. v. GEM Inv. Group, L.L.C.*, No. 3:11-CV-2804-L, 2012 WL 1344352, at *4 (N.D. Tex. Apr. 18, 2012) ("Other courts have found that '[c]ontractual stipulations of 'irreparable harm,' however, are insufficient by themselves to support a finding of irreparable harm to support injunctive relief.'") (quoting *Traders Int'l, Ltd. v. Scheuermann*, 2006 WL 2521336, *8 (S.D. Tex. Aug.30, 2006) (citing *Dominion Video Satellite, Inc. v. Echostar Satellite Corp.*, 356 F.3d 1256, 1266 (10th Cir. 2004) ("While courts have given weight to parties' contractual statements regarding the nature of harm and attendant remedies that will arise as a result of a breach of a contract, they nonetheless characteristically hold that such statements alone are insufficient to support a finding of irreparable harm and an award of injunctive relief."))).

Given that a preliminary injunction is an extraordinary remedy, the Court finds that the contractual provision does not conclusively establish irreparable harm, but rather is one factor to examine in making the irreparable harm determination. *See Gray*, 2024 WL 1121800, at *7; *Dickey's Barbecue*, 2012 WL 1344352, at *4; *Traders Int'l, Ltd.*, 2006 WL 2521336, *8. Even with the stipulation, the Sureties do

not carry their burden of establishing irreparable harm.

C. The Sureties Failed to Demonstrate Irreparable Harm Through Binding Authority or Evidence.

The Sureties continue that without a preliminary injunction, they will lose the contracted-for benefit of the bargain to receive pre-judgment collateral, without which they would not have entered into the Indemnity Agreements. ECF Nos. 93 at 18; 94 at 10, 25. The Sureties argue that there is no adequate remedy at law—and therefore irreparable harm—because "the surety has specifically bargained for prejudgment collateralization[,] and a [post]judgment [award] for money damages alone would deprive the surety of prejudgment relief to which it is contractually entitled." ECF No. 93 at 18. The Sureties continue that such harm is irreparable because if their right to collateralization cannot be enforced at the inception of a lawsuit, they are instead required to wait for final judgment, thus losing their bargained-for right to prejudgment collateralization.

The court in *Gray* analyzed and rejected identical arguments:

> although a showing of irreparable harm may be sufficient to establish the inadequacy of a legal remedy, the converse—that the lack of an adequate remedy is sufficient to establish a substantial threat of irreparable harm—is not necessarily true. . . . According to *Lewis*, this is so because "the irreparable injury rubric is intended to describe the quality or severity of the harm necessary to trigger equitable intervention. In contrast, the inadequate remedy test looks to the possibilities of alternative modes of relief, however serious the initial injury[.]" Absent guidance from the Fifth Circuit to support Plaintiff's argument—that an indemnitor's breach of and failure to comply with a contractual collateralization obligation to pay money demanded and the

> resulting damage to the surety *always* constitutes the type of irreparable harm required for a preliminary injunction that cannot be adequately remedied by monetary damages—it does not convince the court otherwise.

Gray, 2024 WL 1121800, at *10 (quoting *Lewis v. S. S. Baune*, 534 F.2d 1115, 1124 (5th Cir. 1976)). The Court agrees with the above analysis and the overview of the *Lewis* decision, also relied on by the Sureties here, and similarly rejects their argument that supposed inadequate legal remedies are sufficient to establish irreparable harm. *See id.*

The *Gray* court continued, distinguishing the Fifth Circuit opinions also relied upon by the Sureties in the instant case: *Travelers Cas. & Surety Co. of Am. v. Padron*, No. 5:15-CV-200-DAE, 2017 WL 9360906, at *1 (W.D. Tex. Aug. 2, 2017)) ("*Padron III*"); and *3i Constr., LLC*, 2017 WL 3209522, at *4. *Id.* at *10.[7] The Gray court found that "*Padron* and *3i Construction* both declined to enforce the irreparable harm contractual stipulation without evidence that there was a substantial threat the sureties would suffer irreparable harm in the absence of injunctive relief," and "[u]nlike this case, the courts in *Padron* and . . . *3i Construction* also based their

[7] Like in *Gray*, the Court is not convinced by the non-binding persuasive authority cited by the Sureties in their motions. *See Gray*, 2024 WL 1121800, at *10 ("Absent guidance from the Fifth Circuit to support Plaintiff's argument—that an indemnitor's breach of and failure to comply with a contractual collateralization obligation to pay money demanded and the resulting damage to the surety *always* constitutes the type of irreparable harm required for a preliminary injunction that cannot be adequately remedied by monetary damages—it does not convince the court otherwise. Moreover, the authority cited by Plaintiff is not binding precedent. For purposes of brevity, the court limits its remaining discussion to the district court cases within this circuit on which Plaintiff relies.").

irreparable harm finding in part on evidence that the defendant indemnitors were likely dissipating assets, insolvent, or both." *Id.* at *10 (citing *Padron III*, 2017 WL 9360906, at *1; *3i Constr., LLC*, 2017 WL 3209522, at *4). Here, like the *Gray* court found, these cases are distinguishable from the instant case where the Sureties have offered no such evidence—in fact, the Sureties did not attach or reference any exhibits to their motions for preliminary injunction aside from their complaints. *See* ECF Nos. 93, 94.[8]

Although the Sureties conclude that it is unlikely Plaintiffs will "retain any ability to satisfy their contractual promises later," the Sureties offered no evidence that Plaintiffs are insolvent, dissipating or transferring assets, preparing to file for bankruptcy, facing bond claims or even soon-to-be filed bond claims. The Sureties also provided no evidence that they will suffer harm such that "threatens the very existence of [their] business if [they] are required to await a determination on the merits of its claim for specific performance by final judgment." *See Gray*, 2024 WL 1121800, at *10 (quoting *Texas v. United States Envtl. Prot. Agency*, 829 F.3d 405, 434 (5th Cir. 2016) (quoting *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) ("Recoverable monetary loss may constitute irreparable harm only where the loss threatens the very existence of the movant's business."))).

[8] At the hearing and in post-hearing submissions, the Sureties asserted that Plaintiffs' financial position is deteriorating due to decreasing net income from 2022 through 2024. This alone fails to establish that Plaintiffs are insolvent, on the verge of declaring bankruptcy, or facing bond claims.

Here, the Sureties' allegations do not amount to more than speculation, which is insufficient for the granting of a preliminary injunction. *See Higgins v. Lumpkin*, No. 21-20058, 2022 WL 1517039, at *1 (5th Cir. May 13, 2022) ("[U]nsupported and conclusory allegations show neither a likelihood of success on the merits, nor an irreparable injury warranting a preliminary injunction."); *Louisiana v. Biden*, 55 F.4th 1017, 1034 (5th Cir. 2022) (perceived harm "must be more than speculative; there must be more than an unfounded fear on the part of the applicant."); *Holland Am. Ins. Co.*, 777 F.2d at 997 ("[s]peculative injury is not sufficient [to show irreparable harm]; there must be more than an unfounded fear on the part of the applicant")). The Sureties only raise allegations of anticipated financial harm,[9] and do not assert that denial of a preliminary injunction will result in any non-monetary damages. *See Harco*, 2025 WL 1254440, at *2 (citing *Interox Am. v. PPG Indus., Inc.*, 736 F.2d 194, 202 (5th Cir. 1984) ("An injury is irreparable if it cannot be undone through monetary remedies.")); *see also Endurance Assurance Corp. v. Axon Power & Gas LLC*, No. 3:20-CV-00285-X, 2020 WL 3792259, at *1 (N.D. Tex. July 6, 2020) (the court found that Endurance's harm from indemnitor's failure to make a $1.4 million payment on a bond to protect Endurance against claims and losses pursuant to its alleged rights under an indemnity agreement was "strictly

[9] Or in the case of Plaintiff's request to access Defendants books and records *no harm*, much less irreparable harm, is established. *See Harco Nat'l Ins. Co. v. Gaspard & Menon Constr., LLC*, No. 4:24-CV-01134-O, 2025 WL 1254440, at *2 (N.D. Tex. Apr. 23, 2025).

financial" and further found that Endurance's doubt that the indemnitor would be able to pay on a later date was insufficient).

In sum, the Sureties have failed to carry their burden to establish irreparable harm,[10] and therefore, the motions for preliminary injunction should be denied.

IV. CONCLUSION

Therefore, the Court **RECOMMENDS** that the Sureties' motions for preliminary injunction, ECF Nos. 93 & 94, be **DENIED**.

The Parties have fourteen days from service of this Report and Recommendation to file written objections. 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b). Failure to file timely objections will preclude review of factual findings or legal conclusions, except for plain error. *Quinn v. Guerrero*, 863 F.3d 353, 358 (5th Cir. 2017).

Signed at Houston, Texas, on June 25, 2025.

Dena Palermo

Dena Hanovice Palermo
United States Magistrate Judge

[10] Also, in the Indemnity Agreement with Pennsylvania Insurance Company, the following provision undercuts the argument that Pennsylvania Insurance Company's only adequate remedy is specific performance of the amount demanded as collateral: "In the event of a default under a Bonded Contract, lndemnitors grant to Surety a security interest in all equipment, machinery, inventory, materials, and all proceeds and products in connection with any Bonded Contract." ECF No. 116-2 ¶ 28. *See Gray*, 2024 WL 1121800, at *13.

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

W&T OFFSHORE, INC., AND W&T ENERGY VI, LLC,	§	
	§	
V.	§	LEAD CASE NO. 4:24-CV-3047
	§	CONSOLIDATED ACTION
ENDURANCE ASSURANCE CORPORATION, AND LEXON INSURANCE CO., *ET AL.*	§	

W&T'S UNOPPOSED MOTION FOR ENTRY OF DOCKET CONTROL ORDER AND ORDER GOVERNING PRODUCTION OF ELECTRONICALLY STORED INFORMATION

Pursuant to the Federal Rules of Civil Procedure, the Local Rules of this Court, and this Court's prior orders, Plaintiffs W&T Offshore, Inc. and W&T Energy VI, LLC (collectively, "W&T"), hereby move the Court to enter a proposed Docket Control Order ("DCO"), attached as Exhibit A, and a proposed order governing the production of electronically stored information ("ESI Order"), attached as Exhibit B. As required by Local Rule 7.1(D), W&T has conferred with counsel for all Defendants, and this motion is unopposed.

MEMO IN SUPPORT

On February 4, 2025, the Court entered an order that "upon notification that the mediator has declared an impasse the Court will set a status and scheduling conference and enter a new Docket Control Order if necessary." Dkt. 60. On May

5, 2025, the Court instructed that "Counsel shall meet and confer and then notify the Court as to their agreed-upon deadline for the completion of discovery as if all current parties remain in the case. Once received, the Court will enter an amended docket control order." Dkt. 95. Consistent with the Court's order, the parties have served discovery requests on each other and have been meeting and conferring. The parties agree on the proposed DCO and ESI Orders attached as Exhibit A and B.

CONCLUSION

For the foregoing reasons, the Court should grant W&T's Unopposed Motion for Entry of Docket Control Order and Order Governing Production of Electronically Stored Information.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I hereby certify that on September 10, 2025, counsel for W&T conferred with counsel for each of the Defendants on the relief sought by this motion, and they are unopposed.

/s/ Yasser A Madriz
Yasser A. Madriz

CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2025, Plaintiffs filed this document electronically with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to all parties of record in the captioned case.

/s/ Yasser A Madriz
Yasser A. Madriz

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

W&T OFFSHORE, INC., AND W&T ENERGY VI, LLC,	§	
v.	§	**LEAD CASE NO. 4:24-cv-3047**
	§	**CONSOLIDATED ACTION**
ENDURANCE ASSURANCE CORPORATION and LEXON INSURANCE CO., et al.	§	

DOCKET CONTROL ORDER

Anticipated Length of Trial: 10 Days Jury: X Non-Jury: _____

The disposition of this case will be controlled by the following schedule:[1]

1. (a) **NEW PARTIES** shall be joined by:
The attorney causing the addition of new parties must provide copies of this Order to new parties. N/A

(b) **AMENDMENTS to PLEADINGS** by Plaintiff or Counter-Plaintiff shall be filed by: N/A[2]

2. **INITIAL DISCLOSURES** shall be served or amended by: 6/30/25

3. **FACT DISCOVERY** must be completed by: 2/27/26

Document Productions Must Be Substantially Completed By 11/21/25

Written discovery requests are not timely if they are filed so close to this deadline that the recipient would not be required under the Federal Rules of Civil Procedure to respond until after the deadline.

[1] The parties have agreed to work cooperatively to propose reasonable extensions to the discovery schedule to the extent necessary as the litigation progresses.
[2] This docket control order is not intended to preclude plaintiff's ability to file a motion to amend the complaint under the Federal Rules or orders of this Court. Defendants reserve all rights to oppose such amendment on any and all grounds.

4. **EXPERT WITNESSES for PLAINTIFF/COUNTER-PLAINTIFF** shall be identified and a report shall be filed listing the qualifications of each expert, each opinion that the expert will present, and the basis for each opinion. DUE DATE: 4/9/26

5. **EXPERT WITNESSES for DEFENDANT/COUNTER-DEFENDANT** shall be identified and a report shall be filed listing the qualifications of each expert, each opinion that the expert will present, and the basis for each opinion. DUE DATE: 5/7/26

   5a. **REBUTTAL[3] OPINIONS FROM EXISTING EXPERTS** DUE DATE: 6/4/26

   5b. EXPERT DISCOVERY/DEPOSITIONS must be completed by DUE DATE: 6/26/26

6. **MEDIATION/ADR:**
   ___Required ____ Strongly Suggested
   _X_Parties' Option

   ADR TO BE COMPLETED BY: 7/3/26

7. **DISPOSITIVE MOTIONS** will be filed by: 7/3/26

8. **ALL OTHER PRETRIAL MOTIONS** (including *Daubert/Kumho* Motions, but *not* including other motions in limine) will be filed by: 7/31/26

9. **JOINT PRETRIAL ORDER** will be filed by: One week prior to trial
   Plaintiff is responsible for timely filing the complete Joint Pretrial Order in the form set forth in the published Court's Procedures.

10. **DOCKET CALL** is held in Courtroom 702, starting at ___ p.m. on the date listed here. (The Court will set this date.)
    Absent parties' agreement, no documents filed within 5 days before the Docket Call without prior permission of the Court to late file.

_____ _____

Date **DENA HANOVICE PALERMO**
UNITED STATES MAGISTRATE JUDGE

[3] Rebuttal expert reports should be limited to new opinions in the Defendant/Counter-Defendant reports.

Agreed:

9/10/2025	*/s/ Yasser A. Madriz*
_____	_____
Date	Counsel for Plaintiffs W&T Offshore, Inc. & W&T Energy VI, LLC
9/10/2025	*/s/ Jason Halper*
_____	_____
Date	Counsel for Defendants Endurance Assurance Corp. & Lexon Insurance Co.
9/10/2025	*/s/ Ryan Dry*
_____	_____
Date	Counsel for Defendants Pennsylvania Insurance Company & United States Fire Insurance Company

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

W&T OFFSHORE, INC., AND W&T ENERGY VI, LLC,	§	
v.	§	**LEAD CASE NO. 4:24-cv-3047**
	§	**CONSOLIDATED ACTION**
ENDURANCE ASSURANCE CORPORATION and LEXON INSURANCE CO., et al.	§	

ORDER GOVERNING PRODUCTION OF
ELECTRONICALLY STORED INFORMATION

WHEREAS, W&T Offshore, Inc. and W&T Energy VI, LLC (collectively, "***W&T***") and Endurance Assurance Corporation, Lexon Insurance Company, United States Fire Insurance Company, and Pennsylvania Insurance Company ("***Sureties***," and with W&T, the "***Parties***" and each a "***Party***") believe that information should be produced in a stipulated form and manner in the above-captioned case; and

WHEREAS, the Parties seek an order governing the production of such information, with the understanding and stipulation that any Party may apply to the Court for modification of and/or relief from said Order, after having first attempted to seek consent from the other Parties with respect thereto:

The Court ORDERS that the following restrictions and procedures (the "***Order***") apply to the production of electronically stored information ("***ESI***") that the Parties produce to each other during initial disclosures and in response to discovery requests.[1]

1. GENERAL FORMAT OF PRODUCTION

Whether originally stored in paper or electronic form, documents shall be produced in electronic image form in the manner as described below. Notwithstanding the foregoing provisions of this paragraph, the Parties reserve the right to request that an alternative format or method of production be used for certain documents, if such document is not susceptible to production in the format or methods of production addressed herein. In that event, the Party that produced the document(s) (the "***Producing Party***") and the Party that received the production of document(s) (the "***Receiving Party***") will meet and confer to discuss alternative production requirements, concerns, formats, or methods. If all parties agree in writing to an alternative format of production, the parties need not seek a modification of this Order.

[1] This Order supplements all other discovery rules and orders. The Court's intent is to streamline discovery of electronically stored information to promote a "just, speedy, and inexpensive determination" of this action. Fed. R. Civ. P. 1. The Parties must work cooperatively and in good faith to achieve these goals.

For documents redacted or entirely withheld from production pursuant to a claim of privilege or immunity, the designating Party shall produce one or more privilege logs consistent with Federal Rule of Civil Procedure 26(b)(5). The parties shall meet and confer regarding the exchange of privilege logs, including the timing for service and format of the privilege logs.

2. PRODUCTION OF ELECTRONICALLY STORED INFORMATION (ESI)

a. **Electronic Production.** Except as set forth below, each Party will produce ESI in single TIFF format with appropriate load files and corresponding multipage OCR text files. TIFF files shall be created directly from the original electronic documents; a Party may not create a TIFF file of ESI by printing out paper copies of that electronic document and then scanning the paper copy of the ESI. All TIFF files shall be single-page Group IV standard TIFF (300 DPI resolution). Each image shall have a unique file name, which is the Bates/control number of the document. Original document orientation shall be maintained (*i.e.*, portrait to portrait and landscape to landscape). TIFFs will show any and all text and images which would be visible to the reader using the native software that created the document such as tracked changes, comments, and other rich data. Documents containing color need not be produced initially in color. However, if an original

document contains color necessary to understand the meaning or content of the document, the Producing Party will honor reasonable requests for a color image of the document.

b. **Metadata.** Each of the metadata and coding fields set forth in Paragraph 4 infra that can be extracted from a document shall be produced for that document. The Parties are not obligated to populate manually any of the fields in Paragraph 4 if such fields cannot be extracted from a document, with the exception of the CUSTODIAN / ALL CUSTODIANS, PRODVOLID, and processing location TIMEZONE, which shall be populated by the Producing Party. Where native files are produced, each load file shall contain a link to natively produced documents via data values named "Native File." The Native Files must be named per the Bates number on the first page of each document.

c. **Email.** Email shall be collected in a manner that maintains reliable email metadata and structure. Whenever possible, email shall be collected from the Producing Party's email store or server. Metadata, including attachments and "header fields" shall be extracted from email messages.

d. **Document Unitization.** For electronic documents, the relationship of documents in a document collection (e.g., cover letter and enclosures, email and attachments, binder containing multiple documents, or other documents where a parent-child relationship exists between the documents) shall be maintained through the scanning or conversion process from native format to TIFF. Document images generated from "child" attachments to emails stored in native format shall be produced contemporaneously and sequentially immediately after the "parent" email.

e. **Parent-Child Relationships.** Parent-child relationships (the association between an attachment and its "parent" document) that have been maintained in the ordinary course of business should be preserved to the extent reasonably practicable. For example, if a Party is producing a hard copy printout of an email with its attachments, the attachments should be processed in order behind the email to the extent reasonable practicable. The Parties shall use their best efforts to collect and produce documents that are shared via hyperlinks within emails. Documents extracted from hyperlinks shall be populated with the PRODBEGATTACH and PRODENDATTACH metadata fields in order to show the family relationship. If any document in a document

family (i.e. parent or attachment) is responsive, the full family must be produced, except as must be withheld or redacted on the basis of of privilege, work-product protection, immunity, or any other applicable law, rule, or doctrine.

f. **De-Duplication.** Removal of duplicate documents shall only be done on exact duplicate documents (based on MD5 or SHA-1 hash values at the document level) across all custodians (global). Attachments to emails or other documents shall not be disassociated from the "parent" email or document even if they are exact duplicates of another document in the production. The Parties shall retain the custodian and file path metadata that would be lost following deduplication in the 'All Custodians' and 'File Path' fields, respectively. These fields should list each distinct value separated by a semicolon. If a Party is unable to maintain such information or if global deduplication could otherwise limit the ability to provide that a particular document was possessed by a custodian, then removal of duplicate documents shall only be done on exact duplicate documents (based on MD5 or SHA-1 hash values at the document level) within a source (Custodian).

g. **Embedded Objects.** Non-image files embedded within documents, such as spreadsheets within a PowerPoint, will be extracted as separate

documents and treated like attachments to the document in which they were embedded. Graphic objects embedded within documents or emails, such as logos, signature blocks, and backgrounds need not be extracted as separate documents.

h. **Compressed Files.** Compression file types (e.g., .CAB, .GZ, .TAR, .Z, .ZIP) shall be decompressed in a manner that ensures a container within a container is decompressed into the lowest uncompressed element resulting in individual files. The container file itself shall not be produced.

i. **Text Files.** For each document, a single text file shall be provided along with the image files and metadata. The text file name shall be the same as the Bates/control number of the first page of the document. Electronic text must be extracted directly from the native electronic file unless the document was redacted, an image file, or a physical file. In these instances a text file created using OCR will be produced in lieu of extracted text.

j. **Redaction.** If a file that originates in ESI needs to be redacted before production, the file will be rendered in TIFF, and the TIFF will be redacted and produced. The Producing Party will provide searchable text for those portions of the document that have not been redacted. The

redacted document will be marked with a "Y" in the load file under the "REDACTED DOCUMENTS" metadata field. To the extent that native spreadsheets require redactions, a native redaction tool shall be used to implement the redactions, and the document will be produced in native format.

k. **Native Files.** Various types of files, including but not limited to spreadsheets, presentation documents, media files, documents with embedded media files, documents with "macros," etc., lose significant information and meaning when produced as an image. Any files that are produced in native format shall be produced with a Bates-numbered TIFF image slip-sheet stating the document has been produced in native format, as well as all extracted text and applicable metadata set forth in Paragraph IV.

l. **Spreadsheets.** Excel spreadsheets shall be produced as a native document file along with the extracted text and relevant metadata set forth in Paragraph 4 for the entire spreadsheet, plus a Bates-numbered TIFF image slip-sheet stating the document has been produced in native format. All spreadsheets shall be produced in a manner that maintains the existence of any formulae.

m. **Word Processing Files.** Any word processing files, such as Microsoft Word files, shall be produced in a manner that maintains any comments or redlined revisions, if any.

n. **Presentation Files.** Any presentation files, such as Microsoft PowerPoint files, shall be produced in a manner that maintains any speaker's notes, if any.

o. **Non-Convertible Files.** Certain types of files such as system, program, video, and sound files may not be amenable to conversion into anything meaningful in TIFF format. Non-convertible files will be produced natively and with a placeholder TIFF image. Each TIFF placeholder will contain the endorsed Bates number, endorsed confidentiality designation (if any), and the name of the non-convertible file, including the file extension. Some examples of file types that may not convert include file types with the following extensions: *.ai, *.aif, *.bin, *.cab, *.chi, *.chm, *.com, *.iso, *.mpg, *.mov, *.mp3, *.mpe, *.obj, *.opt, *.pbd, *.psd, *.psp, *.ram, *.res, *.rmi, *.sys, *.tmp, *.tff, *.vbx, *.wav, *.wmv, *.wma, *.wpg, and *.xfd. Other files may not be able to be converted to TIFF due to password protection, corruption, or encryption. If reasonable efforts to obtain useful TIFF images of these files are unsuccessful, these non-convertible files will also be accounted

for with a TIFF placeholder. Nothing in this non-convertible file section is meant to include productions of data from databases.

p. **Other ESI that is Impractical to Produce in Traditional Formats (i.e., Structured Data).** The Parties understand and acknowledge that certain categories of ESI are structurally complex and do not lend themselves to production as native format or other traditional formats. To the extent a response to discovery requires production of discoverable electronic information contained in a database, the Parties agree to confer to define appropriate parameters for querying the database for discoverable information and generating a report in a reasonably usable and exportable electronic file (e.g., Excel, CSV or SQL format).

q. **Other Types of Electronically Stored Information.** The Parties understand and acknowledge that over the course of discovery other types of ESI (including, but not limited to, mobile device data, Slack, Microsoft TEAMS data, or collaborative online platforms) may need to be preserved, collected, and produced. The Parties agree to preserve that ESI until such time that they can confer to define appropriate parameters for production, including the format for production and metadata fields to be included.

r. **Endorsements.** The Producing Party will brand all TIFF images in the lower right-hand corner with the corresponding Bates/control numbers, using a consistent font type and size. The Bates number must not obscure any part of the underlying data. The Producing Party will brand all TIFF images in the lower left-hand corner with all confidentiality designations, as needed, in accordance with confidentiality definitions as agreed to by the Parties. Confidentiality designations will also be included as a field within the load files provided with each production volume.

s. **Exception Report.** The Producing Party shall compile and retain an exception report enumerating any unprocessed documents or documents which a processing tool is unable to fully render, their file type**,** and the file location.

t. **Passwords and Encryption.** The Parties will make all reasonable efforts to locate passwords or encryption keys for ESI containing potentially responsive Extracted Text. If the Producing Party is unable to locate such passwords or encryption keys, the Parties will meet and confer regarding the burden of cracking passwords or encryption keys for such ESI.

u. **Claw-Back Procedure.** Any documents recalled due to a mutually agreed upon claw-back provision shall have a specific protocol followed to ensure all copies of each such document are appropriately removed from the review system of the opposing Parties.

3. PRODUCTION OF PHYSICALLY STORED INFORMATION (HARD-COPY DOCUMENTS)

a. **TIFFs.** Hard-copy paper documents shall be scanned as single page, Group IV compression TIFF images using a print setting of at least 300 dots per inch (DPI). Each image shall have a unique file name, which is the Bates/control number of the document. Original document orientation shall be maintained (*i.e.*, portrait to portrait and landscape to landscape).

b. **Metadata Fields.** The following information shall be produced for hard-copy documents and provided in the data load file at the same time that the TIFF images and the Optical Character Recognition (OCR)-acquired text files are produced. Each metadata field shall be labeled as listed below.[2]

[2] These field names are intended as descriptive examples. Field names may vary slightly in production as long as the intended information is provided.

FIELD NAME	DESCRIPTION	EXAMPLE / FORMAT
PRODBEGBATES	The production Bates number associated with the first page of a document.	ABC0000001
PRODENDBATES	The production Bates number associated with last page of a document.	ABC0000003
PRODBEGATTACH	The production Bates number associated with the first page of the parent document.	ABC0000001
PRODENDATTACH	The production Bates number associated with the last page of the last attachment in the document family.	ABC0000008
PGCOUNT	Total number of pages for a document.	00006
CUSTODIAN	The name of the primary person the files belong to. This field should be populated as last name, first name.	Doe, John
PRODVOLID	Production volume name.	ABC_PROD001
TEXTLINK	The path to the full extracted OR OCR text of the document. Text files should be named per control number or Bates number if the document is produced.	\TEXT\ABC000001.txt

c. **OCR Acquired Text Files.** When subjecting physical documents to an OCR process, the settings of the OCR software shall maximize text quality over process speed. Any settings such as "auto-skewing," "auto-rotation" and the like should be turned on when documents are run through the process.

d. **Database Load Files/Cross-Reference Files.** Documents shall be provided with (a) a delimited metadata file (.dat or .txt) and (b) an image load file (.opt), as detailed in Paragraph 4, below.

e. **Unitizing of Documents.** In scanning paper documents, distinct documents shall not be merged into a single record, and single documents shall not be split into multiple records (i.e., paper documents should be logically unitized). In the case of an organized compilation of separate documents—for example, a binder containing several separate documents behind numbered tabs—the document behind each tab should be scanned separately, but the relationship among the documents in the binder should be reflected in proper coding of the beginning and ending document and attachment fields. The Parties will make their best efforts to unitize documents correctly.

f. **Parent-Child Relationships.** Parent-child relationships (i.e., the association between an attachment and its "parent" document) should be preserved.

g. **Detachable Notes.** Pages containing post-it notes or other detachable notes that obscure the underlying document should be scanned once with the detachable note intact, and then again without it, and made part of the same document.

h. **Color.** When color is necessary to interpret hard copy documents, they shall be produced in color. Paper documents or redacted ESI that contain color used to convey information (e.g., color-coding and highlighting versus merely decorative use) shall be produced as single-page, 300 DPI JPG images with JPG compression set to its highest-quality setting so as not to not degrade the original image.

4. REQUESTED LOAD FILE FORMAT

a. Delimited Text File. A delimited text file (.DAT or .CSV) containing the fields listed in Paragraph 3 should be provided. The delimiters for the file can be Concordance defaults, but defined delimiters are acceptable:

Comma - ASCII character 20 ( )
Quote - ASCII character 254 (þ)
Newline - ASCII character 174 (®)

b. File Names. To the extent possible, the Producing Party will maintain the original filename of any document in a separate metadata field.

c. Image Cross-Reference File (Load File). The Image cross-reference file (.OPT) is a comma delimited file consisting of six fields per line. There must be a line in the cross-reference file for every image in the database. The format for the file is as follows:

ImageID,VolumeLabel,ImageFilePath,DocumentBreak,PageCount

- ImageID: The unique designation used to identify an image. This should be the Bates number of the document.
- VolumeLabel: The name of the volume.
- ImageFilePath: The full path to the image file.
- DocumentBreak: If this field contains the letter "Y," then this is the first page of a document. If this field is blank, then this page is not the first page of a document.
- PageCount: Number of pages in the document.

Sample Data

CNTRL00000001,VOL001,\IMAGES001\CNTRL00000001.TIF,Y,,,1
CNTRL00000002,VOL001,\IMAGES001\CNTRL00000002.TIF,Y,,,2
CNTRL00000003,VOL001,\IMAGES001\CNTRL00000003.TIF,,,,
CNTRL00000004,VOL001,\IMAGES001\CNTRL00000004.TIF,Y,,,4
CNTRL00000005,VOL001,\IMAGES001\CNTRL00000005.TIF,,,,
CNTRL00000006,VOL001,\IMAGES001\CNTRL00000006.TIF,,,,
CNTRL00000007,VOL001,\IMAGES001\CNTRL00000007.TIF,,,

5. REQUESTED METADATA FIELDS FOR ESI

FIELD NAME[3]	DESCRIPTION	EXAMPLE / FORMAT
PRODBEGBATES	The production Bates number associated with the first page of a document.	ABC0000001

[3] These field names are intended as descriptive examples. Field names may vary slightly in production as long as the intended information is provided.

FIELD NAME[3]	DESCRIPTION	EXAMPLE / FORMAT
PRODENDBATES	The production Bates number associated with last page of a document.	ABC0000003
PRODBEGATTACH	The production Bates number associated with the first page of the parent document.	ABC0000001
PRODENDATTACH	The production Bates number associated with the last page of the last attachment in the document family.	ABC0000008
PARENTBATES	First Bates identifier of a parent document / email message (not populated for documents that are not part of a family).	ABC0000001
NATIVELINK	The full path to a native copy of a document.	\natives\001\ABC0000001. htm
PGCOUNT	Total number of pages for a document.	00006
ATTACHCOUNT	Number of attachments within a document family.	0 (Numeric)
FILENAME	The file name of a document.	Document Name.xls
FROM	The name of the person in the FROM field of every email.	John Doe <jdoe@acme.com>
TO	Recipients of the email. Multiple email addresses should be separated by semicolons.	Jane Smith <jsmith@acme.com
CC	Recipients in the cc: field of the email. Multiple email addresses should be separated by semicolons.	Bob Johnson <bjohnson@acme.com>; Sally May <smay@acme.com>
BCC	Recipients in the bcc: field of the email. Multiple email addresses should be separated by semicolons.	John Doe <jdoe@acme.com>
EMAILSUBJECT	Subject of an email.	Re: resume
DATE SENT	Date when an email was sent.	MM/DD/YYYY
TIME SENT	Time when an email was sent.	HH:MM:SS

FIELD NAME[3]	DESCRIPTION	EXAMPLE / FORMAT
DOCAUTHOR	The author of a document from entered metadata.	John Doe
DOCTITLE	The extracted document title for a loose file or attachment.	Resume.docx
DATE LASTMOD	The date a document was last modified.	MM/DD/YYYY
TIME LASTMOD	The time a document was last modified.	HH:MM:SS
ALL CUSTODIANS	Owner(s) of the document or file. Should list custodian and each de-duplicated custodian. Delimited by ";" when field has multiple values. This custodian name should match the following format: last name, first name.	Doe, John; Doe, Jane
FILEEXT	The file extension of a document.	Docx
APPLICATION	Type of document by application.	MS Word, MS Excel, etc.
RECORD TYPE	Type of ESI.	Email, Attachment, Edoc (loose, non-email file), etc.
TIMEZONE	The time zone the document was processed in.	PST, CST, EST, etc.
DATE CREATED	The date the document was created.	MM/DD/YYYY
TIME CREATED	The time the document was created.	HH:MM:SS
DATE RECEIVED	The date an email was received.	MM/DD/YYYY
TIME RECEIVED	The time an email was received.	HH:MM:SS
HASH	The MD5 or SHA Hash value or "de-duplication key" assigned to a document.	9CE469B8DFAD1058 C3B 1E745001158EA
PRODVOLID	Production volume name.	ABC_PROD001

FIELD NAME[3]	DESCRIPTION	EXAMPLE / FORMAT
TEXTLINK	The path to the full extracted OR OCR text of the document. Text files should be named per control number or Bates number if the document is produced.	\TEXT\ABC000001.txt
CONFIDENTIAL DESIGNATION	The confidential language applied to the produced document.	Confidential; Highly Confidential
REDACTED DOCUMENTS	States whether or not the document is redacted	Y or N
MSGID	E-mail: "Unique Message ID" field	
FILEPATH	E-mail: Original location of e-mail including original file name. Native: Originating path where native file document was collected including original file name. (If the document is a duplicate and has multiple custodians, please list only one file path, rather than a file path for each custodian.)	

It is so ORDERED.

Date

DENA HANOVICE PALERMO
UNITED STATES MAGISTRATE JUDGE

Agreed:

9/10/2025	*/s/ Yasser A. Madriz*
_____	_____
Date	Counsel for Plaintiffs W&T Offshore, Inc. & W&T Energy VI, LLC
9/10/2025	*/s/ Jason Halper*
_____	_____
Date	Counsel for Defendants Endurance Assurance Corp. & Lexon Insurance Co.
9/10/2025	*/s/ Ryan Dry*
_____	_____
Date	Counsel for Defendants Pennsylvania Insurance Company & United States Fire Insurance Company

EXHIBIT 10



Douglas R. Emerick

NMOGA Financial Assurance Expert

Direct and Rebuttal Testimony in OCC Case No. 24683| October-November 2025

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IPANM000448

Role and Background

- Douglas R. Emerick, Director of Operations, Insurance Expert Network
- Approx. 40+ years of experience in surety and insurance industries
- NMOGA's Financial Assurance expert

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Purpose of Testimony and Overarching Concerns

1. **Purpose of Testimony**: Explain the process for securing a surety, associated costs for bonding, and explaining challenges that companies will experience in securing sureties at reasonable costs upon WELC proposals
2. Applicants' proposed changes are not as straightforward as advertised and contain several unintended consequences
3. Applicants' proposals display a clear lack of understanding of insurance and surety market function and dynamics
4. Applicants' proposals are not based on robust industry input and fail to consider more viable alternatives

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Background on Financial Assurance Markets, Underwriting, and Practical Limitations

- **WELC proposals:**
  - Require single well FA of $150K for many wells types
    - Represents a dramatic increase in surety requirements
    - Increase will make sureties unavailable to many operators
    - Particularly high requirement for small and medium sized operators
    - High surety amounts are prohibitively expensive
- **Realities of Bond Market:**
  - Demanding and difficult to navigate
  - Surety companies require large collateral requirements, as is
    - WELC collateral requirements exceed ability to secure bond

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Surety Market Overview/Nature of Surety Bonds and Market Realities

- **A surety is NOT insurance: it's a financial guarantee**
  - It is a promise to pay
- **Three-party System: 1. Surety; 2. Obligee; and 3. Principal**
  - **Reality is that each bond account has an indemnity agreement (Surety and Principal)**
- **When "Called"**
  - Surety company will seek reimbursement from principal
- **Written to a Zero-Percent (0%) Loss Ratio**
  - Surety companies seek to avoid loss at all cost
  - Surety companies have become increasingly more restrictive in underwriting guidelines to minimize risk that bond will be called

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Surety Market Today/Surety Requirements Generally

- **Surety Requirements, Generally**
  - Provider will review principal financial statements to determine amount of working capital to account for portion of surety amount
    - This amount routinely exceeds 25% or more of surety amount requested
    - WELC proposals may result in required working capital increasing to 50-100% levels
  - As is, many companies in NM struggle to meet existing working capital level requirements demanded by surety companies
  - WELC proposal function to harm less well-off operators with limited working capital
    - Results in higher collateral amounts demanded by surety companies for those who have less working capital to give
  - Surety companies are in the business of minimizing risk, collateral amounts is integral in balancing risk

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Surety Companies Will Demand Increased Working Capital

- **Surety Companies Will Demand Increased Working Capital Levels with WELC Proposals**
  - Will require operators to demonstrate working capital in levels above what is necessary to maintain existing bonding
  - This is a direct result of:
    - Increased compliance costs
    - Higher risk of default due to regulatory goal posts constantly shifting
  - Wells with existing coverage will be viewed by surety companies as having increased exposure due to increased financial assurance amounts

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Practical Implications of WELC's Proposals

- **In Practice**
  - Under WELC's proposals, an operator with (10) wells requiring single well financial assurance will require surety in the amount of $1,500,000
  - (50) wells will require financial assurance valued at $7,500,000
- **Blanket Bonds Remain a Better Solution**
  - Easier to write
  - Constrain less levels of an operator's working capital
  - Easier for operators and surety providers to agree on and implement

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Zero-Loss Model in Practice

- Sureties avoid payout risk entirely
- Higher regulatory risk means higher collateral
- Non-cancelable NM Bonds magnify exposure

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Surety Bond Alternatives

- **Common Alternatives to Surety Bonds include:**
  - Letter of Credit – 100% collateralized
  - Cash Bond
- These types of assurance require 100% of associated costs to be “tied up” or not available for other operations or new projects
- **Function like bonds by:**
  - Operator could draw on line of credit, or
  - Post a cash certificate to back credit issued by operator’s bank
- **These options likely remain out of reach for medium and mid size operators**
  - Due to high bonding level and high number of single wells subject to this assurance as a result

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Practical Implications of WELC Proposals

- Increased costs from increased bonding = less profit and revenue to attract investors and ownership support for operations
  - Impacts are magnified for small and medium sized operators
- Surety providers less likely to approve larger bonds (blanket or single) when access to capital is diminished and existing capital is tied up in existing financial assurance
- More Costs leads to Less Capital leads to Less investment, resulting in Less New Projects (e.g., drilling new wells/workover of existing wells)
- Overburdened wells will negatively impact entire “unit” operations and economics
- Ultimate result will be increased premature well abandonment and increase in orphan wells
- Stable and productive companies will be unable to afford new sureties in the amounts proposed by WELC

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Surety Requirements, Generally

- Additive framework (blanket + single-well)
- Destroys scalability
- Triggers re-underwriting and collateral increases

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Existing OCD Bond/Noncancelable Form

- **Non-cancelable form**
  - Issued for life of well it secures
  - Cannot be canceled until wells are P&A'd
  - Does not allow for periodic review of operator financial situation
  - Surety industry disfavors this bond form since surety provider is unable to get off of noncancelable bond unless replaced by another company

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Collateral and Capital Requirements: Collateral Safeguards the Surety

- **Sureties require operators to demonstrate strong financials and adequate working capital**
- **Typical underwriting benchmark: ≥ 25 % of bond amount in working capital**
- **Weaker balance sheets trigger 50 – 100 % collateral requirements**
- **Collateral ties up capital needed for drilling, plugging, and maintenance**
- **Smaller operators have limited liquidity → greater exposure to collateral calls**
- **Result: Less investment, less production, and reduced field activity**

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How the Zero-Loss Model Drives Collateral and Premiums

- Surety business written to a 0 % loss ratio – no unpaid claims expected
- Every claim must be recoverable from the principal or collateral
- Regulatory changes = heightened risk → sureties act defensively
- Typical responses:
  - Increase collateral requirements
  - Raise premiums across portfolios
  - Exit high-risk markets altogether
- Fewer participating sureties → higher costs and reduced capacity for NM operators

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Other Forms of Financial Assurance Used in Practice

- **Letters of Credit (LOCs) – 100 % collateralized from day one**
- **Cash bonds – require full cash deposit up front**
- **Trust accounts – may be allowed but limited use and slow to implement**
- **Third-party guarantees – rarely accepted by sureties in current rules**
- **All alternatives immobilize working capital or credit lines**
- **Impractical for small and mid-sized operators under New Mexico's bond forms**

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How WELC's Proposals Redirect Capital and Reduce Production

- **Higher bond amounts → larger collateral calls from sureties**
- **Working capital diverted from drilling and plugging to meet bonding requirements**
- **Reduced investment in maintenance and field operations**
- **Fewer wells returned to production / more idle wells left in inventory**
- **Decreased tax and royalty revenues for New Mexico**
- **Overall: less capital, less activity, and more long-term liability exposure**

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Collateral Demands Increase as Operator Size Decreases

- **Typical forms of collateral required by sureties:**
  - **Cash deposits (fully restricted funds)**
  - **Irrevocable letters of credit (ties up credit lines)**
  - **Other policy coverages or pledged assets (on a case-by-case basis)**
  - **Smaller operators lack working-capital flexibility → face 50–100 % collateral demands**
  - **Larger operators may secure lower-collateral terms based on stronger balance sheets**
  - **As collateral rises, access to new capital and investment shrinks**
  - **Result: Market consolidation and loss of independent producers**

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Rising Premiums Reflect Shrinking Surety Capacity

- **Current market range: 1 % – 10 % of bond value**
- **Small & mid-sized operators: typically 2.5 % – 5 %**
- **Large operators: lowest rates due to stronger balance sheets**
- **Premiums increase when collateral or regulatory risk increases**
- **Sureties pass cost of risk through to operators via higher rates**
- **Higher premiums + higher collateral = reduced investment and fewer participants**

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Smaller Operators Bear the Greatest Burden

- **Collateral and premium increases hit small operators hardest**
- **Limited working capital → higher collateral ratios (50–100%)**
- **Sureties increasingly require collateral from all operators, regardless of credit quality**
- **Small and mid-sized producers pay higher premiums and lose access to surety credit**
- **Result: market contraction and fewer independent participants**
- **Long-term risk: more orphan wells, less state revenue, and diminished competition**

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Current Surety Market Lacks Capacity for WELC Proposals

- **Private surety market cannot absorb sweeping bonding increases**
- **Requires bonding of legacy wells pre-acquisition – not possible at scale**
- **Sureties already demand significant working-capital thresholds**
- **Market would become inaccessible to many operators**
- **Transactions and acquisitions would stall due to bonding limits**

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WELC Active Well Proposals – 19.15.8.9(C) NMAC

- WELC Proposes for Active Wells :
  - Increasing single well financial assurance to $150K for each “active well”
  - Allowing operator to post blanket bond of $250K
  - Even when blanket bond is used, operator remains subject to additional single well FA for “marginal wells”
- WELC’s “per well” requirements result in excessive and unnecessary bonding for individual wells not bonded through blanket bonding
- Mixture of single well and blanket bonds will be additive to operator and difficult to obtain and manage
- Underwriters are likely to decline bond requests if operator lacks clarity on bond amounts or criteria

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Non-Cancelable Bond Impacts

- Why New Mexico's Bond Form Amplifies Risk:
  - Non-cancelable bonds remain in force until wells plugged & released
  - Sureties cannot manage or exit risk mid-term
  - Higher collateral + premium demands follow every rule increase
  - Some sureties will refuse new NM business altogether
  - Magnifies every market shock caused by regulatory change

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Marginal and Inactive Wells

- Flat $150 K Approach Misclassifies Wells and Overstates Cost
  - Misclassifies viable producing wells as “marginal”
  - Replaces risk-based tiers ($25 K–$1 M) with flat $150 K per well
  - Average plug & abandon cost $40 K–$60 K – far lower than WELC estimate
  - Creates 7X bonding increase without safety benefit
  - Eliminates underwriting predictability and collapses capacity

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Overall Market Feasibility and Risk

- One-Size-Fits-All Rules Will Collapse Surety Capacity
  - Premiums are a result of the bond amount—collateral collected can reduce 25%-50%
  - Removes quantitative, risk-based underwriting standards
  - Surety industry depends on predictable loss data and risk tiers
  - Flat-rate system forces uniform collateral & premium increases
  - Market contraction + reduced participation inevitable
  - Regulatory simplicity = practical infeasibility

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Collateral Calls and Litigation Risk (W&T Offshore Case)

- Federal offshore rule changes triggered simultaneous collateral calls
- Sureties demanded new security on existing bonds
- Operators forced to divert cash or litigate to keep coverage
- Bonding capacity shrinks as disputes escalate

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Case Summary – W&T Offshore, Inc.

- 2024 Gulf of Mexico: new federal bonding rule imposed
- Sureties issued $7.5 M collateral demand within 30 days
- W&T filed suit – alleging breach & antitrust collusion
- Demonstrates industry-wide reaction to rapid rule change
- Parallel to NM's non-cancelable bond environment

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W&T Offshore, Inc. - Lessons for New Mexico

- NM's non-cancelable bond form = federal offshore model
- Sudden bonding increases → collateral calls & surety withdrawal
- Operators forced to tie up millions in new capital
- Reduced coverage + higher costs = greater orphan-well risk

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Antitrust and Coordination Risks

- Few active sureties = concentrated market power
- Parallel collateral demands look like coordinated action
- Shrinking capacity → less competition & uniform pricing
- WELC framework heightens antitrust exposure

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WELC's Definitional Changes Under 19.15.2.7 NMAC

- New terms: Marginal Well and Beneficial Use
- Definitions are vague & subjective → inconsistent application
- Misclassifies productive wells as "marginal"
- Creates unpredictable bonding obligations and underwriting risk
- Sureties require clear, objective criteria to price risk

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Definition of Marginal Well

- <1,000 BOE in 180 days = overinclusive
- Applies $150 K bond to productive wells
- Inflates liability estimates
- Captures viable producers
- Eliminates link between economic performance & risk
- Distorts liability and bonding metrics

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Definition – "Beneficial Use"

- WELC's proposed definition overly broad and vague; uncertainty for underwriters
    - Making bonds even more difficult to issue and obtain
    - "Speculative Purposes" is a subjective term
- WELC's proposed "presumption of no beneficial use"
    - If not refuted, would lead to premature determinations on well operations
        - In turn, would affect well classifications and corresponding level of bonding
        - Created underwriting risks by adding uncertainty and volatility to surety market
    - Misapplies lease level economic principles to individual wells
        - Will result in underwriting process uncertainty due to variable nature of a metric not intended for individual wells

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Definition – "Presumption of No Beneficial Use"

- 30-day rebuttal window → operational chaos
- Volatile well status → volatile bonding demand

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Effects of Definitions on Markets

- Inflated liability estimates
- Misclassification increases cost
- Deters investment and renewal of surety capacity

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Comparisons with Other States

- How Other States Handle Financial Assurance
  - Most states use risk-based or tiered blanket-bond systems
  - Example – Texas: $25 K (1-10 wells) → $250 K (100+ wells)
  - No production-level or “marginal-well” definitions
  - Oklahoma & Louisiana follow similar tiered models
  - Frameworks emphasize predictability and manageability for sureties

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Competitive Impacts

- WELC Proposals Would Undermine NM Competitiveness
    - Neighboring states: predictable, bankable bonding systems
    - WELC's one-size-fits-all model → capital flight to TX / OK / CO
    - Fewer wells • Fewer jobs • Less severance-tax revenue
    - Investors favor jurisdictions with clear, renewable FA structures
    - NM risks becoming regionally uncompetitive

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Bond Structure Differences

- Non-Cancelable Bonds Make NM an Outlier
    - Other states allow renewable / terminable bonds (annual or biennial)
    - NM's non-cancelable form = perpetual exposure for sureties
    - Higher collateral + premium demands result
    - WELC's proposals would exacerbate this existing barrier
    - Reform needed to align NM with peer-state practices

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Administrative Complexity of WELC's Framework

- Proposed Rules Create a Constantly Moving Target
    - Blanket-bond formula based on fluctuating average values
    - Well status changes (on/offline) → continuous recalculation
    - OCD lacks capacity for real-time oversight
    - Creates confusion and inconsistent enforcement across offices
    - Adds workload without improving accountability

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Enforcement Instability and Inconsistent Application

- Instability Breeds Inconsistent Enforcement
    - Different OCD offices could apply formulas inconsistently
    - Subjective interpretations → disparate treatment of operators
    - Litigation risk from uneven enforcement
    - Lack of clear criteria = unpredictable regulatory outcomes
    - Both operators and OCD face confusion and inefficiency

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Performance of Existing Blanket Bonds

- Existing Blanket Bonds Already Work
    - Predictable and enforceable structure
    - Provides adequate coverage for the State
    - Offers flexibility for operators and OCD
    - Efficient to administer and easy to monitor
    - Should be preserved—not replaced by untested models

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Combined Impacts of Administrative and Definitional Changes

- Definitional + Administrative Proposals = Dysfunction
    - Moving-target formulas create operational chaos
    - OCD overburdened by continuous recalculation
    - Surety market retreats under unstable framework
    - Enforcement delays and inconsistency increase
    - Financial assurance becomes a bottleneck, not protection

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Practical Alternatives to WELC's Proposal

- Workable Solutions that Preserve Accountability
    - Retain risk-based, tiered-blanket bond framework
    - Phase in any new bonding levels gradually
    - Expand approved assurance forms (trusts, guarantees, etc.)
    - Avoid market shock while maintaining environmental protection
    - Aligns with successful state models (TX, OK, CO, LA)

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Trust Accounts

- Trust Accounts – Secure and Flexible
    - Hold actual funds available for decommissioning
    - Can be funded incrementally over time
    - Transparent and regulator-accessible
    - Reduce risk of surety or insurer default
    - Free operators from large upfront capital freezes

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Comparing Trust Accounts and Surety Bonds

- Trust Accounts vs. Surety Bonds
    - Trusts hold real funds – no secondary liability
    - Surety bonds rely on surety solvency & approval
    - More secure and transparent for regulators
    - Already used in Louisiana and Colorado
    - LFC Report supports inclusion as viable alternative

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Third-Party Guarantees

- Third-Party Guarantees – Expanding Capacity
  - Used by BOEM offshore and other jurisdictions
  - Parent or affiliate guarantees smaller operator's obligations
  - Increases market participation and surety diversity
  - Reduces orphan-well risk without harming independents
  - Broadens financial assurance options for New Mexico

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Retain Tiered Blanket Bond System

- Keep New Mexico's Proven Tiered System
    - Risk-based tiers align coverage with actual exposure
    - Preserves liquidity for responsible operations
    - Encourages investment and avoids over-bonding
    - Protects small & mid-sized operators from exclusion
    - Replacing it would reduce competition and revenues

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Renewable Bond Instruments

- Convert Non-Cancelable Bonds into Renewable Forms
    - Allow two-year renewable bond periods
    - Expands surety underwriting eligibility
    - Simplifies approval for non-cancelable bond exceptions
    - Aligns NM with surety-industry norms
    - Reduces market barriers while keeping accountability

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Maintaining Protection While Improving Workability

- Accountability Without Market Collapse
    - Reforms retain full State protection
    - Ensure bonding availability and prevent stranded assets
    - Reduce orphan-well risk through market stability
    - Support a strong operator and surety base in NM
    - Achieve environmental goals without economic damage

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Reliability of LFC Averages

- LFC Averages Overstate Actual Plugging Costs
    - LFC cost figures don’t reflect industry efficiency
    - Operators plug and remediate faster and cheaper than OCD
    - State procurement process inflates cost averages
    - Using those numbers skews financial-assurance policy
    - Policy should reflect field data, not procurement inefficiency

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Comparing Industry and Government Plugging Costs

- Industry Costs Are Less Than Half of OCD Procurement Costs
    - Typical industry plug-and-abandon: $40K–$60K per well
    - WELC proposes $150 K per well based on LFC averages
    - OCD relies solely on vendor bids, not negotiated estimates
    - Procurement rules inflate costs and misrepresent real risk

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Risks of Inflated Cost Assumptions

- Inflated Assumptions = Market Distortion
    - Overstates real plugging costs by 2–3X
    - Creates unrealistic, uniform bonding levels
    - Penalizes efficient operators and deters investment
    - Makes blanket bonds effectively unusable
    - Disconnects assurance from true environmental risk

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Principles for Setting Financial Assurance

- Set Bond Levels by Realistic, Risk-Based Criteria
    - Base assurance on actual plugging cost data
    - Adjust for risk factors (well type, age, operator record)
    - Maintain fairness and functionality in the market
    - Align incentives for responsible operations and timely plugging
    - Ensure protection without distortion

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NMOGA's Key Recommendations

- Practical Reforms to Strengthen Financial Assurance
    - Retain risk-based, tiered-blanket bonds
    - Phase in increases to prevent collateral shocks
    - Adopt BOEM-style safety valve (30 C.F.R. § 556.901(c))
    - Use creditworthiness / reserve exemptions (30 C.F.R. § 556.901(d))
    - Authorize trust accounts & third-party guarantees
    - Clarify definitions for consistency & predictability

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Why These Recommendations Work

- Balancing Protection, Predictability, and Market Stability
    - Builds on NM's existing functional framework
    - Keeps market participation strong and surety capacity available
    - Provides clear standards and risk-based coverage
    - Avoids collateral calls and unintended orphan-well growth
    - Protects both the environment and State revenues

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Lessons from Other Models

- BOEM, Texas, and Oklahoma Offer Proven Templates
    - Use risk-based, flexible bonding frameworks
    - Allow operator-specific deviations when coverage is sufficient
    - Permit multiple assurance forms (trusts, guarantees, LOCs)
    - Provide stability and participation without weakening oversight
    - NM can adopt best practices while retaining its strengths

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Closing Observations

- Refine, Don’t Replace – Strengthen What Works
    - Current system balances protection & practicality
    - Reform should improve—not overhaul effective tools
    - Lead by example: strong environment & strong economy
    - Keep New Mexico competitive and responsible
    - Align with real-world costs, capacity, and experience

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WELC Proposals – Recommendations

- OCC should:
  - Strike or revise WELC's proposed "marginal well" FA requirements
  - Preserve existing blanket bond concepts
  - Implement a "risk-based" bonding system for single well FA
  - If necessary, tie FA to NM Specific index
  - Modify bond instrument to be a periodically renewable form

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EXHIBIT 10

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Miguel Suazo | Shareholder
Santa Fe, New Mexico

EXHIBIT 10

drivers that are non-U.S. citizens that drive on New Mexico's highway.

And I know that from personal experience because two non-U.S. citizens, 2 1/2 years ago, that were driving a -- a semi-truck after being up for over 20 hours crossed the median and ran into my father-in-law and his wife's car and killed them both instantly.

So -- so those -- so -- so New Mexico is allowing uninsured drivers to come through the state.

COMMISSIONER CHANG: Well, I don't -- I'm not -- well, that might -- I won't claim to be an expert in the statute on car insurances, but it seems like there is -- as far as I understand the statute, people are required to have a mandatory minimum, and certainly there are people who break the law; right? So --

MR. ARTHUR: My -- my only point -- point is -- what's -- what -- what I was really only trying to get to is that -- is that, typically, in -- in my experience, and I'm not an insurance expert, so maybe that should go -- those specific things should go to that one.

But what I have seen is -- is state oil

and gas regulatory agencies that look at the operators that they're -- that they're managing and -- and the risk, and typically, you have financial assurance that's risk-based. You know, that -- that -- blanket bonds and -- and so forth.

COMMISSIONER CHANG: That's all I have. Thank you.

THE HEARING EXAMINER: Thank you, Mr. Chang.

There's no reason not to excuse Mr. Arthur. Thank you very much, Mr. Arthur, for your testimony.

MR. ARTHUR: Thank you.

THE HEARING EXAMINER: Mr. Chair and Commissioners, it's approximately 11:30. We can take an early hour for lunch, come back at 12:30, or we can press on with NMOGA's next witness.

But it's likely that your next witness is going to take more than an hour; is that correct, Mr. Suazo?

MR. SUAZO: Most certainly.

THE HEARING EXAMINER: Great.

MR. EVERHART: Is Felix next or --

MR. SUAZO: No, it's actually our surety expert, Mr. Emerick.

THE HEARING EXAMINER: What say early lunch maybe?

MR. SUAZO: Yes. Always down.

THE HEARING EXAMINER: Or for some of you, second breakfast. Okay. 12:30 please.

(Off the record.)

THE HEARING EXAMINER: Let's come back from the lunch break, please.

UNIDENTIFIED SPEAKER: Still missing a bunch of parties.

THE HEARING EXAMINER: Is your next witness on the platform?

MR. SUAZO: Yes, Madam Hearing Officer. Our next witness is Doug Emerick. He's our surety expert in financial assurance.

THE HEARING EXAMINER: All righty. Mr. Emerick, can you unmute yourself?

Sheila, have you given him permission to unmute?

MS. APODACA: Yes, I have.

THE HEARING EXAMINER: Okay.

Mr. Emerick, I understand pressing Control, Shift, M might be the secret.

MR. EMERICK: Can you hear me?

THE HEARING EXAMINER: Yes, now I can.

Thank you. Would you spell your first and last name, please?

MR. EMERICK: My name is Douglas R. Emerick. First name, Douglas, D-O-U-G-L-A-S. Last name, Emerick, E-M-E-R-I-C-K.

WHEREUPON,

DOUGLAS R. EMERICK,

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

THE HEARING EXAMINER: Thank you very much.

Go ahead, Mr. Suazo.

DIRECT EXAMINATION

BY MR. SUAZO:

MR. SUAZO: Mr. Emerick, good afternoon. How are you today?

MR. EMERICK: I'm doing well.

MR. SUAZO: Excellent. Will you please state your name and occupation for the record?

MR. EMERICK: For the record, my name again is Douglas R. Emerick, and I am the director of operations of the Insurance Expert Network.

MR. SUAZO: Can you tell us about your educational background?

EXHIBIT 10

MR. EMERICK: Yes. I earned my bachelor's degree from Gannon University in business administration, and then I attended a training school for the insurance company I worked for and got my certificate for insurance and fidelity and surety bonding shortly thereafter.

MR. SUAZO: And how long have you worked in the surety and bonding industry?

MR. EMERICK: I worked for the insurance company and companies that sold things to the insurance industry, and finally, with the Insurance Expert Network. All told, over 40 years of experience in the surety and insurance industries.

MR. SUAZO: Do you also operate your own consulting firm?

MR. EMERICK: Well, I wouldn't call it an active operation, but I do locally offer computer help for people who need it.

MR. SUAZO: Okay. And can you describe your experience underwriting oil and gas plugging bonds?

MR. EMERICK: When I was with the insurance company, I was at one point in the Dallas office of that company, and I was an underwriter of oil and gas plugging bonds at that point. And I wrote

Texas, Louisiana, and Oklahoma plugging bonds.

Unfortunately, even though New Mexico was a neighboring state, I never looked at New Mexico at the time I was there.

MR. SUAZO: Okay. Are you familiar with the surety markets across multiple states, then? Specifically, as these sureties apply to energy companies?

MR. EMERICK: As far as surety underwriting and approach to surety matters, yes, I am.

MR. SUAZO: And have you previously been qualified as an expert witness in other proceedings on financial assurance?

MR. EMERICK: In several court cases around this country, including Massachusetts, Florida, California, I think, but all this information is in my CV. And Louisiana.

And every time I have been involved in such a matter, the court has confirmed that I am able to be considered an expert in surety and insurance matters.

MR. SUAZO: Very good. Turning to your role in this proceeding; for whom are you testifying today?

MR. EMERICK: I am testifying for NMOGA, and I will say even if I were hired by the applicants, I would be saying the very same thing about the process for securing surety bond, the associated costs for bonding, and explaining the challenges that companies will experience in securing sureties at a reasonable cost.

And, of course, that "reasonable cost" phrase is a very subjective term.

MR. SUAZO: And NMOGA appreciates you being here on their behalf today. Before we turn to the substance of -- let's start with your slide 3. Could you please summarize the purpose of your testimony and the main concerns that guide your analysis?

MR. EMERICK: The applicants' proposed changes are not as straightforward as indicated and can -- and may contain several unintended consequences because the surety industry is a very different animal if you will.

Applicants' proposals also display a clear lack of understanding of surety market functions and dynamics. And, of course, surety operations are primarily within insurance companies. Further, Applicants' proposals are not based on robust industry

input from the sureties and fail to consider more viable alternatives.

MR. SUAZO: Did you listen to the testimony of Dan Arthur earlier today?

MR. EMERICK: Yes, I did.

MR. SUAZO: Did you hear him discuss, I guess, kind of a rough comparison between an insurance policy and a surety?

MR. EMERICK: Yes I did.

MR. SUAZO: Okay. Do you have any thoughts about that for clarification purposes?

MR. EMERICK: Yes. The -- I think that the hearing officers may get the wrong idea. Insurance and surety, even though they are divisions, most of the time, of the same company, are very, very different.

Insurance, as was discussed, may contain liability or property coverages and a myriad of other matters. And it is written to people who want that insurance, and a premium is charged. And those insurance companies expect to lose on some of those policies.

Frequent loss -- losses overall on the whole portfolio of insurance for companies could be anywhere between 30, 60, and even 90 percent sometimes

EXHIBIT 10

for insurance policies. Whereas surety is always written to a zero-loss ratio, which means at no time do sureties expect to have a loss, and they change underwriting to maintain that zero-loss ratio.

Now, in reality, losses do occur. I'm not saying we're perfect as underwriters because we're not. But if losses go over 30 percent for the year, wholesale changes to that company's surety processes will begin.

Further, they constantly look at current events; changes of attitudes; and even legislation, court cases, et cetera, to inform surety underwriting practices. It depends on the type of surety that is being written and what the exposures are as far as the surety sees them.

MR. SUAZO: All right. And we'll get into greater detail later on in your testimony, but let's move on to slide 4 of your demonstrative exhibits. Can you please state your general understanding of the proposed amendments?

MR. EMERICK: Yes. I -- I'm not here to explain particular rules. I'm here, basically, to explain the reaction that sureties will have to what the rules are. And I particularly focused on the single-well financial assurance of 150K for many well

types. And it seems to me that they will generate a dramatic increase in surety requirements.

Further, the increase will make sureties unavailable to many operators simply because they have previously underwritten that operator for -- under the current regime. And this change, which, for some operators, not all, will increase the number of bonds necessary and the total liability at risk.

And that change in bond amounts are paramount to consider because that change will cause sureties to take many actions, and we can talk about that later.

MR. SUAZO: Sure. And based upon your review of the proposals from the applicants, is it clear to you how many operators and wells that these changes would apply to?

MR. EMERICK: Well, I didn't focus on that particular thing, but any well that is defined as marginal will require that.

And those operators that have multiple wells and particularly those operations that have more than 50 percent of the wells that they own classified as marginal; every single well of that operator will need that $150,000 single-well bond.

And for some operators with many wells,

that will astronomically increase the amount of liability that the surety has to consider for writing those bonds.

MR. SUAZO: Very good. And I'd like for you to help the Commission understand how the surety markets actually function. Can you explain to the Commission what a surety bond is and how it defer -- wells? Or -- sorry. Can you assess how the surety industry differs in its approach to risk when issuing bonds?

MR. EMERICK: Well, given that there is an attempt by sureties to maintain a zero-loss ratio, you can imagine, for these types of financial assurances, the surety will look at the financial. But not only the financial aspects of that operator, but also the past history of that operator.

So they will have information coming in to them of operators that have no violations. They will have information coming in to them of operators that have some violations. It -- it just depends on who they're looking at at the time.

And the important thing is that the surety wants to ensure that that bond that they're taking on will not cause them a loss. And remember, very different from an insurance policy, a surety bond

is tantamount to a loan that a bank would make.

It's not exactly that, and I don't intend to anybody to pin me with a suggestion that they -- they are the same. They're not the same, but they're closer to being a loan than they are an insurance policy.

An insurance policy is a promise to pay for the terms of the policy that the insured bought. Remember an insurance policy is a contract of adhesion, and that means the -- the insurance company wrote the policy. If you agree to -- to buy it, then you have to agree with the language that is in that policy. The --

MR. SUAZO: Okay. And you touched on -- sorry. I didn't mean --

MR. EMERICK: Go ahead.

MR. SUAZO: -- to cut you off. So, you touched on the zero-loss principle earlier in your testimony, so we're going to move on to slide 6. But before we do that, does this practice by the surety industry tie up additional operator capital and reduce liquidity?

MR. EMERICK: If it's -- if it's just a single -- if it's just a bond, the bond in and of itself doesn't tie up capital.

EXHIBIT 10

But some bonds that are particularly hazardous sureties will require capital -- I'm sorry -- collateral, and that collateral is what will tie up the working capital of the operator. So that can happen.

MR. SUAZO: Okay. Now, moving on to your slide 6. How do surety companies generally approach risk in underwriting commercial plugging bonds?

MR. EMERICK: Again, the more hazardous the bond is, the more information the attorney gathers to evaluate. And the surety will evaluate, again, the financial qualifications of the operator and will also look at the people running the operation.

They will pull in resumes. They will look for additional information from generally publicly available places. They will even pay for additional information at times in their analysis of the credit and the business qualifications and performance of operators before they make a -- a yes decision on the bonds.

And for the financial information, they will want each operator to have a certain amount of working capital on a continuous basis. And that is very important for a surety to know, understand, and

keep on top of over time for as long as they write that bond.

MR. SUAZO: And how does the amount of collateral as a percentage pertain to the bond amount that's issued?

MR. EMERICK: That is dependent on each surety company, but generally speaking, surety asks for collateral somewhere around 50 to 100 percent of the bond amount.

MR. SUAZO: Okay. And moving on to your slide 7. When financial assurance requirements are increased as they're proposed to in this proceeding, how does that affect a surety's behavior?

MR. EMERICK: Again, sureties will want to make sure that they will not have a loss on that bond. And the only way they have to do that is research -- as I have indicated -- the operator, and then also charge collateral to back up the bond.

And there is an indemnity agreement with each bond issued that guarantees to the surety as much as can be said to pay the surety back if the -- if the bond is forfeited.

MR. SUAZO: Okay. And moving to slide 8. Can you explain to the Commission how Applicants' proposals would affect operators with varying numbers

of wells?

MR. EMERICK: That is one of the most disturbing parts of this.

The -- there -- there are provisions that -- or a provision that says if you have more than 15 percent of your wells that are designated marginal, then not only are those marginal wells required, but every well of that operator is required to provide a single-well financial assurance of 150,000.

Now, it -- it doesn't make a whole lot of sense to me to require the other wells that that operator has that aren't marginal to provide that 150 single-well bond. It's -- they're not marginal and they don't show any sign of becoming marginal. Some of them, anyways.

And it doesn't make a whole lot of sense to do that unless you're characterizing that particular operator as someone that will send all their wells to marginal status. And that just doesn't make a whole lot of sense to me.

And, quite frankly, when you're increasing bond amounts from 250 to possibly someone with 10 wells to 1 1/2 million, or with 50 wells to a total bond amount of 7 1/2 million, many operators simply will not get a surety interested in writing

those bonds.

If they have been approved by a surety to provide a blanket bond, they have been approved for -- by the surety to 250,000, most likely.

MR. SUAZO: Okay. And --

MR. EMERICK: It -- it could be -- it could be one of the former blanket bonds of 50,000. Whatever that amount is, what I'm trying to say is that the surety approved that operator for whatever that bond amount is.

When you dramatically increase the bond amounts that that operator has to provide in total, that's when a surety will start refusing to write additional bonds for that operator or they'll approve so many to get up to what they think the operator can qualify for.

MR. SUAZO: Very good. And so, tying that information back to the zero-loss model that you discussed earlier, under -- in this situation or in under these proposals, why does the zero-loss model matter, as you kind of lay out on slide 9?

MR. EMERICK: And that is the real conundrum of surety underwriting because the sureties are always trying to avoid that payout. In other words, to avoid having any losses. That's what fires

EXHIBIT 10

the surety's decision for collateral and limiting the total amount of bonds for that particular operator.

Now, sureties also look at the regulatory risk for providing a bond to an operator. If they think badly -- for whatever reason, that the regulator is a little onerous to its operators, that means the surety will require higher collateral.

They might go from 50 to 100 percent, or they go from not asking for collateral at all to asking for collateral. And non-cancelable New Mexico bonds magnify that exposure because they're not cancelable.

One option that -- except for very few bonds, the surety is able to get off of them by canceling them or non-renewing them. One story I can tell you --

MR. SUAZO: But it's -- in New Mexico, that's not an option; correct?

MR. EMERICK: It isn't -- it -- for New Mexico, Colorado, and I'm not sure where else, those are non-cancelable bonds. Surety has no option.

And I can tell you that when I was underwriting them in -- in Texas, there was an oil and gas economy collapse at the time. And what we did in Texas and for all the states we were writing for at

that point, is when the bonds came up for renewal, we non-renewed.

It's not exactly a cancellation, but a non-renewal is a tough thing for these operators to handle.

MR. SUAZO: Okay. And moving on to slide 10, what other forms of financial assurance are available besides surety bonds?

MR. EMERICK: Right now, it appears that New Mexico allows letters of credit, which are usually 100-percent collateralized. And those are documents that are given to the State by financial institutions other than insurance companies. And there are also cash bonds.

Other types do exist, but most of them tie up and make operational capital less available to the operator.

Now, when there's lines of credit, an operator ties up part or all of the line of credit available to them from their bank. When they post a cash certificate, those funds are removed from the account of the operator and moved to that cash bond location.

MR. SUAZO: Okay. Now, moving on to slide 11. How would Applicants' proposed rules tie up

operator capital?

MR. EMERICK: When -- and I've had one surety tell me currently that -- and I expected this. I had one surety tell me that they hadn't before, but they're going to start asking for collateral.

When a surety asks for collateral, they are doing the same thing as a bank would do. They remove those funds from the operator, and when they do that, they could hamstring the operator.

They won't do that knowing the operator can -- is going to be hamstrung. But as always when you do these things, there are unintended consequences, and sometimes that will happen.

MR. SUAZO: Okay. And moving on to slide 12. How does the non-cancelable nature of New Mexico's bonds amplify underwriting risk?

MR. EMERICK: It -- it is known non-cancelable bonds -- I'm talking about in a -- in a general sense -- are generally considered very hazardous. And when there is an additive framework of blanket and single well, as the exposure increases, the more onerous that bond is or those bonds are to the surety.

And if it increases enough as these rules would indicate that they would, it will trigger

in the surety re-underwriting of that account -- the operator -- and collateral increases or creation of collateral requests.

MR. SUAZO: Okay. So you've already touched on New Mexico's non-cancelable bonds. Moving on to slide 13, how does this -- does this translate to higher premiums and collateral demands?

MR. EMERICK: The -- the only thing that increases the premium is the increase in bond amount for surety bonds.

Of course, if there's changes in the operator if the surety has written it for a long time, there are other conditions that can increase the premium when the credits they had been given before are removed and you get close to more of a manual premium for that particular bond for that particular operator.

MR. SUAZO: Do some surety companies offer certain companies preferred rates?

MR. EMERICK: When I was writing these, only the best-qualified people got the highest credits available. There were categories of credits available for me to use, and very few got the -- all of the credits available.

You could discount a premium as much as

EXHIBIT 10

50 percent, and I personally never had that premium credit credited to any account that I handled.

MR. SUAZO: Okay. And is the surety market a competitive one?

MR. EMERICK: It can be.

MR. SUAZO: Would the proposals from applicants impact the competitiveness of the market in New Mexico?

MR. EMERICK: It -- it can. It's the linkage between the non-cancelable form and the increased limits of liability that will reduce the number of sureties willing to write those bonds.

I don't know how many there were -- there will be, but some that New Mexico has approved that -- from the treasury list don't write bonds, and others who had been writing bonds will choose not to in New Mexico.

MR. SUAZO: Thank you, Mr. Emerick. Now let's move on to a deeper discussion on collateral, capital, and premiums starting with your slide 14. Explain in greater detail the role that collateral plays in actually securing a surety bond.

MR. EMERICK: Okay. When you write a bond, the principal on the bond, which would in this case be an operator, will sign an indemnity agreement.

And again, the indemnity agreement makes it clear to the -- to the operator that the surety will expect to be paid back if there's any loss.

Two, at all times during the underwriting process, the surety will look at the financials of the operator and determine if their working capital is sufficient to provide enough working capital to do the number of wells they're suggesting to do.

And the typical underwriting benchmark is around 25 percent or greater of the bond amount, at least, in working capital. And they like it higher.

MR. SUAZO: Okay. And, Emerick, in the interest of time, let's skip ahead to slide 18. Can you tell the Commission a little bit more about the types of collateral that sureties typically require?

MR. EMERICK: Sureties will generally require cash deposits. If the full amounts are not available, they will ask the -- just like New Mexico does -- irrevocable letters of credits, which will tie up, as we said before, the credit lines for that operator. That is -- those two categories are the two primary ones that sureties will consider.

MR. SUAZO: Okay. And the collateral --

MR. EMERICK: And there will be pledged assets that -- on a case-by-case basis that might be accepted, but that's a rare thing. If -- if -- because a -- a bond might be forfeited, they want assets to be easily turned over, and not all assets are.

MR. SUAZO: Do collateral requirements affect smaller operators differently than larger operators?

MR. EMERICK: There are some sureties that will write an operator that no one else will, and those are for hard-to-place bonds and if you have several operators needing extra bonds.

And small- and medium-sized operators are most likely, if no one else is, to be hit with collateral requirements because those balance sheets aren't as bulletproof as the larger operators' are.

MR. SUAZO: Okay. And on slide 19, you discussed premium ranges. What are the premium ranges that you're seeing in today's surety market?

MR. EMERICK: Today's -- and I didn't include, originally, the -- the surety writers that cater to poor businesses, but generally speaking, the -- the market range is 1 percent to 10 percent. And small- and medium-size operators can be in that

1-percent area but more typically in the 2 1/2-to-5-percent range.

Large operators get the lowest rates due to strong balance sheets. And as I said before, premiums increase when collateral or regulatory risk increases, and sureties pass the cost of risk through operators via higher rates.

MR. SUAZO: Very good. Let's move on to the feasibility of the applicants' proposals and how the market might react. Starting with your slide 21, based on your experience, is the current surety market capable of absorbing the sweeping new bonding requirements that are being proposed?

MR. EMERICK: Capable? Probably, yes. Not willing to do it is more likely. The thought that an operator, before he is approved for drilling, must provide that $150,000 bond on the one well he wants to transfer to someone else; once sureties find out that that is happening, they are less likely to write bonds in that particular situation.

Because if everything goes according to Hoyle, that $150,000 bond, once that well is transferred and that new owner provides the bond necessary, New Mexico is likely to release that bond.

But then the surety will be responsible

EXHIBIT 10

for -- for returning the premium for the amount of time that that bond was not in effect because these premiums are annual, and they'll be less likely to do that because that's a lot of work for a little bit of money.

MR. SUAZO: Okay. And moving on to slide 22; can you explain to the Commission your view on whether what Applicants propose is problematic?

MR. EMERICK: The -- and I mentioned it before -- and for -- requiring $150,000 for each active well in addition to the marginal wells; that I -- I don't see an easy road for operators and therefore New Mexico to get that done easily because each operator has to qualify for those higher amounts, which includes the re-underwriting process.

So there's time involved and the possible likelihood that the surety will just turn it down, and there isn't enough collateral available to guarantee those bonds for the surety, so they'll decline it.

MR. SUAZO: Okay. And does the non-cancelable nature of New Mexico's bonds have an impact on this situation?

MR. EMERICK: Absolutely. First of all, you have to understand that the surety approaches

this bond as very hazardous, and that is because the surety cannot cancel it. No matter what happens to the operator, not -- no matter what happens to the economy, they cannot cancel that bond.

And that's the -- the biggest thing that influences sureties' behavior on these particular types of bonds. If the surety had its heart's desire on writing bonds, they would never write a non-cancelable bond. That's how hazardous it can be.

MR. SUAZO: When you say "hazardous," what do you mean by that?

MR. EMERICK: Simply, they can't get off of it. No matter what happens in the world, no matter what happens to the operator, if anything happens that affects that particular operator's abilities to continue, the surety cannot get off the bond. And that's not the game that most sureties want to play.

MR. SUAZO: Okay. Now, let's move on to your next slide, which reviews inactive and temporarily abandoned wells. How would Applicants' proposals affect those types of wells?

MR. EMERICK: It's the same thing as we've been discussing. It -- the potential for misclassifying wells as marginal is very likely.

And I can't tell you how many wells are going to be misclassified, but I guarantee you because nobody's perfect if anything -- if nothing else, and wells that aren't marginal will be classified as marginal. And I think that is something the operators have to be prepared for.

MR. SUAZO: Okay.

MR. EMERICK: It reduces the risk-based tiers that previously existed with a 150-per-well arrangement, and that's, again, going to be a very, very tough ask of sureties to do.

MR. SUAZO: So you mentioned this flat $150,000 rate. And on slide 25, can you explain whether this would be manageable for the surety market if the Commission adopts this proposal?

MR. EMERICK: When -- when you say manageable, I -- I'd rather characterize it as the -- the sureties can manage it, but I don't think New Mexico is going to like how they choose to manage it.

Imagine a multi-well operation asking for 10 or 15 marginal-well $150,000 bonds as opposed to the single blanket bond or lower amounts. The surety will have to re-underwrite, and it's just, as far as New Mexico is looking at it, a luck of the draw on which ones they will approve and which ones they

will decline.

MR. SUAZO: All right. Thank you. Let's move on to a case study that you provided in your testimony. I believe it's called the W&T Offshore case. Can you explain the significance of this case and what happens in practice when regulators impose across-the-board increases?

MR. EMERICK: Well, that -- that was an interesting matter that I became aware of, and it's a federal bond, which is also non-cancelable. So the sureties are going to look at that as just like the New Mexico bond. It's non-cancelable.

And the sureties, because of alleged changes in W&T's financials as well as the regulatory environment, court decisions, and legislative changes, they asked for additional collateral. As we had indicated before, these increases of collateral may go from 50 to 100 percent or 25 to 75 percent. It just depends on the particular situation.

And the same things can happen in New Mexico. Collateral requests will happen; increases in collateral will be requested. All of this, and it's a very good case study of what happens when the landscape changes for the surety.

The surety needs to underwrite to a

zero-loss ratio, and they increase the collateral to ensure that the lead surety and the co-sureties will have a zero-loss ratio, and -- well, but, basically, that's what the case is.

MR. SUAZO: Okay. Did you hear Commissioner Bloom's question about the impact of, I guess, what happened in the W&T case on the overall market earlier in this proceeding?

MR. EMERICK: I'm not sure I did.

MR. SUAZO: Okay. Let me ask you this way. Is the significance of the W&T case to this proceeding the fact that both dealt with non-cancelable bonds?

MR. EMERICK: That is the big similarity.

MR. SUAZO: Okay.

MR. EMERICK: That is the prime -- that is the prime similarity. And again, collateralization of the bond is what is at the root of this case, and the non-cancelable provision of the bond is the thing that helped make the sureties decide that collateral was necessary.

MR. SUAZO: Okay. Did you hear the testimony of WELC's witness, Peter Morgan?

MR. EMERICK: Yes.

MR. SUAZO: He said that this was an antitrust case. Is that accurate? And if so, what is the significance?

MR. EMERICK: I'm sorry. I kind of laughed when -- when I heard him say that because it is far from an antitrust case. These bonds were big. And the big -- the size of the bonds themselves don't make the -- the situation any differently than what New Mexico is going to face on the bond amounts that they have.

It's -- it's the same situation because of the non-cancelable bond and the zero-loss ratio approach of sureties. It is not an antitrust case because there were co-sureties on these bonds. I don't know whether there were one or two, possibly three sureties on these large bonds.

And when sureties are sharing the liability of that bond, each surety is -- has the responsibility to get the information that the lead surety has. So that happens with every single co-surety ever written. Each surety knows just as much as the other surety, and to call that antitrust just doesn't make any sense.

MR. SUAZO: Okay. Let's move on to your slide 30. You're aware the applicants are

proposing to change certain definitions through this rulemaking; correct?

MR. EMERICK: Correct.

MR. SUAZO: Now, on slide 30, you discussed some of those changes. Can you please explain the significance in your concerns?

MR. EMERICK: Well, some of the marginal well and beneficial use definitions can be vague and subjective, which will lead to inconsistent application. And again, when marginal is defined, there will be misclassification of some marginal wells. Don't know how many, but there will be.

And it creates unpredictable bonding obligations and unpredictable underwriting risk. And when sureties face that, they will decline to write because if they can't predict it, they will not write it.

MR. SUAZO: Okay. Let's move on to your next slide. Let's start with marginal well. What are your concerns with that definition?

MR. EMERICK: The definition itself; I wasn't worried that much, and I can't talk about BOEs and that kind of thing, but the provision that puts $150,000 bond onto productive wells; it's what bothers me the most.

It -- good wells shouldn't be penalized for what the state is calling bad wells. And forgive my terming it of that, but it's almost like punishing an operator for having too many marginal wells, and I don't know that that is the right way to approach this.

It inflates the liability that sureties have to underwrite, and it eliminates the link between economic performance and risk. But beside that, it distorts liability and bonding metric -- metrics that the sureties had expected up until this point.

MR. SUAZO: Mr. Emerick, let's move on to your slide 33, which is another definitional change that's proposed dealing with presumption of no beneficial use. Can you explain how that would work and why it matters from a surety standpoint?

MR. EMERICK: From a surety standpoint, the sureties need to know that the operators they are writing have a clear window on what they're supposed to do, and I see possible difficulties for operators.

And when the status of a well can change and that causes volatile bonding demands, that's going to upset a lot of sureties, again because if they write a bond, they want to continue on that bond at least for a year. And if they can't, if it's

EXHIBIT 10

released early because of a new bonding request, they will lose premiums that they were expecting.

And also, even if they get more premium for the additional bond, the -- the potential is that sureties will actually decline to write the -- the larger bonds. And this 30-day rebuttal window; it's a challenging operational thing to consider, and I would expect a little bit of chaos for the reporting and the decision-making process.

MR. SUAZO: Now, does this presumption of no beneficial use utilize or rely on any sort of economic principles, to your knowledge?

MR. EMERICK: Not that I saw.

MR. SUAZO: Okay. Now let's move on to what some other states are doing, starting with slide 35. Do other jurisdictions use a marginal-well definition for purposes of bonding?

MR. EMERICK: I don't think they do, but the types -- the sizes of bonds are very different than what's seen here.

MR. SUAZO: Can you tell us how other major oil-producing states handle financial assurances for oil and gas wells?

MR. EMERICK: Well, Texas, for instance, puts a $25,000 bond for operations that have

1 to 10 wells and a $250,000 bond on an operation that has 100 wells. There are no production-level or marginal-well definitions attached to those as far as I know.

MR. SUAZO: Do you know if Texas's bonds are cancelable or non-cancelable?

MR. EMERICK: Yes, they're cancelable. They -- they actually terminate.

MR. SUAZO: Okay. And moving to slide 36. In your view, would adopting Applicants' proposals have any sort of impact on New Mexico's competitiveness with other states?

MR. EMERICK: I think it would.

When Texas is increasing bond amounts -- that is the potential here on a lot of wells -- that is a very different approach than the surrounding states take. And it -- I -- I expect some operators to flee the state and go to neighboring states, and -- because the states I mentioned have cancelable bonds.

Colorado is a continuous bond just like New Mexico, so I don't know, though, that they'll go to -- to Colorado, but Texas, Oklahoma, and Louisiana are potentials.

MR. SUAZO: Okay. Skipping forward to

slide 38. Let's move on to your testimony regarding administrative and enforcement types of issues. Have you identified any administrative problems that might be foreseeable if the Commission adopts Applicants' proposed framework?

MR. EMERICK: The biggest change that I saw is when operations are selling wells.

And for the requirement of the 150,000 bond -- single-well bond on the well they want to sell before they transfer it to the new owner, I think will become unworkable because sureties, once they find out that they will have the bond for two to three months -- three months, four months, five months -- however long the transfer takes, and the new owner may get the surety bond from another surety, I don't see that as being a very smooth transfer.

MR. SUAZO: Okay. Now, let's move on to your slide 40, which discusses blanket bonds. How do existing blanket bonds work in comparison to these single- well financial assurances that are proposed?

MR. EMERICK: Yeah, that's pretty simple. Blanket bonds cover the specified wells that the operator owns. Single-well bonds cover only one well, however many the operator has. And when blanket bonds are issued, the surety has one amount to

consider, one underwriting process.

When the single-well bonds are introduced into that environment, that causes the surety re-underwriting on every operator that is being asked for the single-well bonds.

MR. SUAZO: So just to conclude this section in your testimony, can you please summarize the practical impact of these definitional and administrative proposals on the market?

MR. EMERICK: Well, I see disruption in the surety market in the short term.

Operationally, it will become less predictable, and over the long term, I see the OCD overburdened by continuous recalculations of these amounts. And I think that will take -- that alone will take away from the OCD's necessity on oversight and the non-reporting of wells that Mr. Powell talked about.

That -- I don't think that is what is the proper purpose of the OCD, is to recalculate bond amounts. There'll be change premiums from sureties to the operators, and it's going to be a very difficult process to manage.

MR. SUAZO: All right. Well, we told the commissioners --

EXHIBIT 10

MR. EMERICK: And when -- I'm sorry. The commissioners?

MR. SUAZO: Yeah, let's move on to your next slide in the interest of time. I think you covered that, and so we really appreciate your testimony. But we told the commissioners that we'd provide some examples of alternatives or better approaches, so --

MR. EMERICK: Certainly.

MR. SUAZO: -- starting with slide 42, what are some workable alternatives that might better achieve the State's goals?

MR. EMERICK: I think that they should retain a risk-based, tiered, blanket-bond framework. That matches up the risk and security in handling these operators, and it -- it makes more sense. And I think most important is phasing in any -- any new bonding levels.

And I'm not denying that new bonding levels may be necessary; it's just how it's done. Is -- phase in any new bonding levels gradually. That will soften the blow to the surety industry and increase the likelihood that sureties will react favorably to these new rules.

Expand the approved assurance forms,

including decommissioning or plugging abandon trusts. And third-party guarantees, also. They -- these third-party guarantees and protections can be put in to protect New Mexico, but both are good options for the OCD to consider.

And always, this is with an eye to avoid market shock while maintaining environmental protection, and it aligns more closely to successful state models like Texas, Oklahoma, and Louisiana, including Colorado.

MR. SUAZO: So there's a lot in that slide. Let's unpack some of that a little bit. How do the trust accounts that you just mentioned compare in terms of security and flexibility to surety bonds?

MR. EMERICK: Well, surety bonds are -- have a particular amount associated with each one, and that is what is required by statute, and that's what the bond is for, and that's what the surety considers.

Trust accounts hold funds at all times available for that decommissioning, and these can be funded incrementally over time. They are transparent and regulator accessible. It also reduces the risk of the rare surety or insurer default, and it also is a benefit to the operator because it avoids large, up-front capital freezing.

MR. SUAZO: Very good. Let's move on to third-party guarantees, which you mentioned. Can you explain how third-party guarantees work, please?

MR. EMERICK: Certainly. Just like a indemnity agreements work, third-party guarantees are promises of -- well-endowed relatives and others can guarantee to provide funds if they are told what the exposures are.

It can be a parent or an affiliate operation, and many small operators have those kind of people that can offer their guarantee for their operations. It increases market participation and surety diversity.

Right now, New Mexico, from one report I saw, has about 70 percent of the financial assurance provided by surety companies. This will increase that market participation and reduces orphan-well risk without harming independents. It broadens financial assurance options for New Mexico.

MR. SUAZO: And moving on to your next slide. In your opinion, should New Mexico retain its risk-based model and tiered blanket bonding system instead of adopting a one-size-fits-all sort of model?

MR. EMERICK: The one-size-fits-all model that the 150,000 single-well bond represents is

problematic. And maintaining a risk-based tiers; you're actually aligning coverage with actual exposure.

And it may preserve liquidity for responsible operators and encourages investment and avoids over-bonding -- that's an important point -- protects small- and medium-size operators from exclusion, and replaces it -- replacing it would reduce competition and revenues possibly.

MR. SUAZO: All right. And moving on to your next slide. Can bond instruments be rewritten to make them more workable and maybe even be able to convert them to a periodically renewed sort of form?

MR. EMERICK: Certainly. It's not uncommon to have a renewable form in this type of bond, and a lot of bonds -- a lot of licensed bonds have cancellation provisions.

You can make it continuous for a two-year renewable period, but it does end after two years, and the surety can renew it or a new surety can write it, and it will expand surety underwriting eligibility.

When the exposures are understandable and sureties can put their arms around a particular risk and understand it properly, they are much more

willing to write it; and it simplifies the approval for non-cancelable bond exceptions, aligns New Mexico with bond-industry norms, and reduces market barriers while keeping accountability.

MR. SUAZO: Okay. And the last slide in this section of your testimony; in your view, would these reforms still protect the state if an operator defaults?

MR. EMERICK: There would be no change in protection for New Mexico. It retains full state protection. The New Mexico bond actually goes to the -- the obligee is the State of New Mexico for use by the Oil Conservation Division.

That remains -- that would remain the same, ensures bonding availability and prevents stranded assets that are -- are possible, and reduce orphan-well risk through market stability. And it will support a strong operator and surety base in New Mexico.

MR. SUAZO: All right. Now, Mr. Emerick, I'm going to move on to your slide 53 so you can go over your closing observations and -- and recommendations. If the Commission decides to move forward with the proposals at issue in this proceeding, what recommendations do you make to them?

MR. EMERICK: Well, I -- and we've touched on some of these before. Retain risk-based, tiered, blanket bonds -- I think that is a very effective way to do this -- and phase in increases to prevent collateral shocks.

And thirdly, adopt a BOEM-style safety valve, and that means that -- allow the Division to deviate from prescribed amounts where the operator demonstrates that the amount on file at least equals the estimated decommissioning cost. Get into talks with the operators, and this will go very, very easily.

And use creditworthiness and reserve exemptions like CFR section 556.901. Allow consideration of the value of the reserves for the well that the well is producing and the creditworthiness of the operator or its other co-interest holders in the well. Also, authorize additional proven assurance forms, which we just talked about.

Plugging in abandonment trust accounts and third-party guarantees with appropriate case safeguards to New Mexico diversify capacity while protecting the state.

And clarify the scope and effect of the

new definitions. If any definitional amendments are -- are adopted, specify their limited application to avoid open-end financial assurance triggers.

I don't know whether anybody realizes this, but beneficial use is used in the New Mexico Bond Form. And that carryover to the bond itself; I haven't really examined it, but it will be interesting to see how that affects the bond.

MR. SUAZO: Very good. And why would these specific reforms, in your opinion, work better than what Applicants have proposed?

MR. EMERICK: It -- what I propose builds on what -- New Mexico's existing functional framework.

It keeps market participation strong and surety capacity more available, provides clear standards and risk-based coverage, and avoids as much as possible collateral calls and unintended orphan-well growth. Protects both the environment and state revenues.

MR. SUAZO: All right. And moving on to your next slide. What lessons should the Commission draw from other regulatory models such as BOEM or other peer states?

MR. EMERICK: In the peer states, it's

most important to understand how many states offer a cancelable bond form. It's an effective way to handle the plugging and abandonment bond, and I think it needs to be maintained on a risk-based, flexible bonding framework as it is now.

It doesn't have to be exactly the same amounts, but it -- the -- the tier-based approach still works. Allow operator-specific deviations when coverage is sufficient, permit multiple assurance forms, and provide stability and participation without weakening oversight. Oversight is very important.

New Mexico can adopt best practices while retaining strengths, and they can learn from Texas and Oklahoma and other templates.

MR. SUAZO: Okay. And your next slide, 56. What are your closing observations to the Commission on New Mexico's current framework?

MR. EMERICK: I would prefer that they strengthen what is already working. Current system balances protection and practicality. Reform should improve, not overhaul, effective tools. And lead by example; strong environment, strong economy.

Keep New Mexico competitive and responsible, and align with real-world cost capacity and experience and knowledge that you're dealing with

a surety operation that is not at all like insurance.
MR. SUAZO: And your final slide. What are your recommendations to the Commission with respect to Applicants' proposals?
MR. EMERICK: I would suggest strike or revise WELC's proposed marginal-well FA requirements; preserve existing blanket bond concepts; implement a risk-based bonding system for single-well FA if you deem it necessary, and if necessary, the financial assurance to New Mexico's specific index rather than the consumer price index; modify bond instruments to be a periodically renewable form.
MR. SUAZO: Thank you, Mr. Emerick.
Madam Hearing Officer, that completes our direct and rebuttal. We do have a fair amount of surrebuttal slides. I don't know if you feel like since it's just after lunch if we should take a short break here or if you want us to continue.
THE HEARING EXAMINER: I would continue a bit, yeah.
COMMISSIONER CHANG: I would actually benefit from five minutes, so a short one would be great if I could --
THE HEARING EXAMINER: All right. Well, let's just come back at two, then.

(Off the record.)
THE HEARING EXAMINER: Let's come back from the break, please. There is Mr. Emerick.
All right, Mr. Suazo.
MR. SUAZO: Thank you, Madam Hearing Officer.
BY MR. SUAZO:
MR. SUAZO: Mr. Emerick, we're going to start with your surrebuttal testimony. Have you been observing this rulemaking proceeding thus far?
MR. EMERICK: For the most part, yes.
MR. SUAZO: Okay. And in response to Applicants' expert testimony, are there any additional remarks to the Commission made by those experts that you would like to address in your surrebuttal?
MR. EMERICK: I think there is.
MR. SUAZO: All right. Let's move on to your third slide, which deals with WELC's technical expert, Thomas Alexander.
MR. EMERICK: Yes. I thought it interesting that Mr. Alexander admitted the financial insurance rules that are -- that are put forth will affect every operator.
And if the new rules -- he also noted that if the new rules are put in place, there will be

small and medium operators that will forfeit any existing bonds and not be able to provide larger ones, which is, basically, what I've been saying here. OCD may grow their orphan-well problem as a result. We will see.
Mr. Alexander admitted speculation in one of the definitions was confusing and the new rules need to be interpreted, and with every interpretation, there comes confusion and uneven handling. It amplifies confusion and perceived risk in the surety under process -- surety underwriting process as well.
MR. SUAZO: All right. And moving on to slide 4; what about Applicants' other technical witness, Mr. Dwayne Purvis?
MR. EMERICK: Well, I noted that when the Commission was questioning Mr. Purvis, there was some answers he gave that were flat wrong, and it was clear to me he had no surety underwriting experience.
He said that collateral with the principal was being done because the principal was a poor risk. That is wrong. Collateral is taken by surety even if the principal is good.
Remember surety is written to a zero underwriting process. The zero underwriting process has no friends. It is -- that is what surety should

do, and I don't think Mr. Purvis understood that.
Mr. Purvis also told the Commission that bonds were written for one year. Now, I'm really surprised there weren't any comments heard after that because in New Mexico, that is just flat wrong. Premiums are paid once a year to the surety, but the bond is continuous in nature and is non-cancelable.
Purvis may have been thinking of annual premiums, but it had no -- premiums have nothing to do with the term of the bond. Annual premiums are charged even on non-cancelable bonds.
MR. SUAZO: All right. And let's move on to slide 5, Applicants' legal expert and self-proclaimed financial assurance expert, Peter Morgan. What is your response to his testimony?
MR. EMERICK: Well, I noted that he was forced to reveal that he was never worked for surety or has no surety experience and never has issued a bond. That is part of being a financial assurance expert, and he didn't have that experience.
Mr. Morgan compared New Mexico to -- to how the increase in financial assurance affected Texas, but he never looked at the bond form. How it affects New Mexico is going to be different than it affects Texas because Texas is written on a

EXHIBIT 10

cancelable, terminable bond. Texas, by the nature of the bond, is a less hazardous bond to write.

Mr. Morgan's statement during the Commission questioning said "Prudent operators will be rewarded by sureties with good terms." That's wrong. It does not matter. Prudent operators have to be financially stable and have to be a lot of other things, including a good operator and someone who follows the rules.

Mr. Morgan said that the State of New Mexico spent $15 million plugging 193 wells. That's over a five-year period, and that works out to an average P&A cost of $77,720 per well.

Now, I can't understand why there is such a difference in what the OCD is saying now, that the average cost is 163, because they themselves spent just 77,720 per well, and that needs to be explained.

MR. SUAZO: All right. Moving on to your next slide, Applicant subject matter expert Adam Peltz. What is your reaction to his testimony?

MR. EMERICK: Well, Peltz even admitted that financial assurance should be risk-based, and if the high-risk-operator portfolio category and the thresholds are adopted, OCD should have discretion to waive the single-well financial assurance for all

wells regardless of status of type. And I don't see that in the rules.

Mr. Peltz admitted under the rules as currently proposed, 19.15.8.9D(3) NMAC, there is no ability for OCD to waive the agreement requirement that all wells be secured by $150,000 worth of assurance when an operator has 15 percent or more marginal or inactive wells, and that is designated as a high-risk portfolio.

At a minimum, I think the 15 percent threshold should be increased as Mr. Powell has indicated would be reasonable if clear limitations are established.

MR. SUAZO: All right. Thank you, Mr. Emerick. Do you have any other overarching concerns with Applicants' remarks to the Commission?

MR. EMERICK: My overarching concern: It -- that the WELC and OCD mindsets appear to desire to eliminate the small operator, who they view as the perpetrator of New Mexico's orphan-well problem. I don't know whether that's true, but without proof of the same, they -- that's what their actions appear to say.

The unasked questions about these rules is if the current OCD couldn't keep orphan wells from

occurring, what makes them think the new rules will?

And I don't think in today's environment that they will be able to staff up properly -- their personnel -- very easily. There will be phone calls, emails, and possibly letters about these new rules when they are implemented that will drive OCD crazy.

MR. SUAZO: Let's move on to another witness in this proceeding, the bureau chief, Ms. Rosa Romero. Are there any remarks made to the Commission by Ms. Romero that you want to address?

MR. EMERICK: Yeah. I -- I just want to call their attention to Ms. Romero's confirmation that the remediation and reclamation costs are not included under the financial assurance authorized other than the New Mexico Oil and Gas Act at issue here.

The remediation examples provided by Ms. Romero were also not instructive here because it is unknown what financial assurance was in place on the wells she discussed.

She also admitted that the remediation and reclamation costs she reported represent such a small sample size that they cannot be used to determine what the average cost would be to perform

any statistical analysis. And similarly, the program she was talking about just started in 2023.

MR. SUAZO: All right. Let's move on to your next slide, which addresses some of the remarks made by Deputy Director Powell, who oversees OCD's engineering and environmental divisions. What are your concerns regarding forfeiture?

MR. EMERICK: Well, it was stated at some point in this hearing that bonds hadn't been forfeited by the OCD since 2018, and that is an issue because some of the data I've seen since somebody made that statement indicates that that simply is not true.

But in any case, this may endanger some operators with multiple bond requests, possibly, and possibly force them out of the business because of the amount of bonds requested.

And some people may consider this a governmental attack on its constituency, particularly that marginal-well rule that requires bonding of all wells of that operator.

These rules shouldn't be changed until the State of New Mexico knows what forfeiture the bonds would generate in total. And if the 2,000 -- $250,000 blanket bonds are not worth forfeiting, how are 150,000 single-well bonds going to change that?

MR. SUAZO: All right. Next slide. You had an interesting note about the operator analyses that OCD would have to undertake and how that may incorrectly place the agency in place of the private surety provider. Is that accurate?

MR. EMERICK: Yes, I think it is. I think some of the things I've said today will make it clear to the OCC and the OCD that the surety does a deep dive on their principals that they underwrite.

And the financial assurance rules cover the State, and the surety underwriters will have to perform their same analysis for -- before providing the bond to the under -- to the operator.

And therefore, for all surety bond providers for the state, I don't think it is a good use of OCD's time to do a deep dive on those operators. They have a lot of other things to concern themselves with, and they don't need to be doing that because the sureties are already doing it.

MR. SUAZO: Okay. Let's move on to your next slide. Do you have any comments in regard to SLO witness Allison Marks?

MR. EMERICK: Yes. The State Land Office discussed the use of OCD bond proceeds. As far as surety-provided funds through forfeiture, this

could only happen when OCD received funds -- funds from the surety. No surety with this bond form will pay the State Land Office on an OCD bond. They will not do it.

The surety will only pay either the State of New Mexico or the OCD, and the OCD is the obligee along with the State of New Mexico on the bond as the only entity the surety will pay.

MR. SUAZO: All right. Thank you. Next slide, please? Next slide. I think you wanted to add a little more color on the non-cancelable bond in New Mexico. Can you please elaborate?

MR. EMERICK: Well, keep in mind that non-cancelable means that no cancellation -- that there is no cancellation provision in the bond. Its absence is what makes -- the cancellation provision is what makes the bond cancelable, and it -- it is missing. I shouldn't say that. It's not present in the New Mexico bond.

The surety cannot cancel the bond once it's issued, and if the regulatory environment and risk change, the surety still cannot cancel that bond using a replacement non-cancelable bond -- unless -- I'm sorry -- unless a replacement non-cancelable bond is on file.

And non-cancelable bonds are inherently a riskier bond to write. It is written in surety training documents that non-cancelable bonds are highly hazardous. And finally, sureties perform deeper financial analysis than for -- than for a cancelable bond.

MR. SUAZO: All right. And I think you had some additional examples. Starting with the next slide, you provided some examples for the Commission to review. What are you showing on this slide?

MR. EMERICK: This is a very interesting bond form.

On the left-hand side, you see a gray box on the right that says "This bond is continuous," and that's simply not true because when you read the bond terms, and I've highlighted the part, it allows this bond to be canceled plain and simply. Those are the terms of the bond.

MR. SUAZO: All right. Next slide. What does this show?

MR. EMERICK: For Louisiana, the same thing. The provision highlighted is the provision that allows a surety to cancel the bond.

MR. SUAZO: Okay. And another example, I think in Texas, on the next slide?

MR. EMERICK: Yes. This particular provision is the one that terminates the bond on the date filled in in the blank in the highlighted area. And I didn't highlight it, but there is also a cancellation provision in this bond.

MR. SUAZO: Okay. Next slide, please. What does this slide show with respect to New Mexico's bond forms?

MR. EMERICK: Well, it's only the first page, but when you get to the bond terms on the second page of this bond form, it's a simple fact that there is no cancellation provision in this bond form, and that's what -- what's -- what makes it non-cancelable.

MR. SUAZO: Does this more clearly show what you're --

MR. EMERICK: That's it, that's it. So if you would scroll through the entire bond form, at nowhere -- in fact, the last paragraph:

"Then and in that event, this obligation shall be null and void. Otherwise, and in default of complete compliance with all of the obligations, this shall remain in full force and effect."

The last paragraph makes it very clear that this is non-cancelable, plus it's missing the

EXHIBIT 10

cancellation provision.

MR. SUAZO: All right. Anything else you want to add or can we move to the next slide?

MR. EMERICK: We can move to the next slide.

MR. SUAZO: What would you like the Commission to see about this slide on federal offshore bond forms?

MR. EMERICK: Federal offshore bond forms are very different, but again, the cancellation provision that would allow this bond to be canceled by the surety is not anywhere in this bond form. And that, again, is what makes the bond non-cancelable.

MR. SUAZO: All right. Next slide. Now, I would like to take us back to the W&T case because I think it's going to be brought up later, and I want to be clear about what your assessment of that case is and the applicability to the current proceeding.

MR. EMERICK: Okay.

MR. SUAZO: Can you please walk us through this case based on your slide 23?

MR. EMERICK: Well, it's -- I think it's a case study for non-cancelable financial assurance.

This case is used to substantiate the efforts I anticipate will happen here in New Mexico because of the non-cancelable bond form of New Mexico, and it proves collateral and premiums could be increased by sureties as a result of a financial assurance overhaul and increasing in bond amounts.

Proves existing bonds will be affected in addition to the new bonds. If the exposure of the operator becomes affected by these additional single-well bonds, that's when the surety may change its approach to the account and take action of collateral or having another surety take over it -- its responsibility.

It proves that for existing non-cancelable bonds, sureties can strategically demand amount increases of collateral to escape hostile and/or risky regulatory markets.

MR. SUAZO: All right. And on the next slide, you discuss in greater detail how New Mexico and the federal offshore bonding requirements are, you know, run in parallel in terms of form and in terms of the regulatory regime that supports them. Can you explain that for the Commission, please?

MR. EMERICK: Certainly.

As said, the New Mexico bond form and

the federal offshore bonds are both non-cancelable because they not -- they cannot be released by cancellation by the surety until the full terms of the lease, grant, or permit obligations are met or replacement non-cancelable assurance provided, including all plugging and abandonment requirements.

Regulations reflect the non-cancelable bond form, too. New Mexico regulators seeing both financial assurance and plugging and abandonment is the OCD. Federal offshore regulators seeing financial -- overseeing financial assurance is the Bureau of Ocean Energy Management, and federal offshore overseeing plugging and abandonment is the Bureau of Safety and Environmental Enforcement.

MR. SUAZO: Okay. Next slide. So this is the rule 19.15.8.12. Can you explain why you want the Commission to focus on this particular rule in this context?

MR. EMERICK: This -- this provision provides OCD with the capability to release a financial assurance upon the operator's or the surety's written request if all wells drilled or required under the financial assurance have been plugged and abandoned.

And that is what is -- is the reason

the non-cancelable provision is not in that bond form -- or that's why it was put in. It's not necessary that it's put in -- that it's not put in, but it's why it was -- that cancellation provision is not in the bond form.

MR. SUAZO: Okay. Next slide. And I guess this is for -- this is by way of comparison. Can you please walk us through --

MR. EMERICK: Right.

MR. SUAZO: -- this slide?

MR. EMERICK: Yeah. Both the BSEE and the BOEM -- the BSEE states "Lessees must permanently plug all wells on a lease within one year after the lease terminates," and the BOEM states that the provisions that allow release for the sureties -- different types of sureties -- on the BOEM side.

MR. SUAZO: Okay. Just a few more slides left. Let's move to slide 27. Now, I think you identified some language from Mr. Morgan that indicated that a mechanism allowing replacement of bonds might change this. What is your response?

MR. EMERICK: That's hard for me to read. I'm sorry. Oh, this is on the W&T case. He indicated that it was misidentified financial concerns, and that's not the only thing that the

sureties were considering.
There were other aspects of the underwriting environment that bothered them as much as whatever W&T's financials caused, and he was wrong to cite that.
MR. SUAZO: Sorry. I think we're on the wrong slide. Apologies. To your knowledge, was this complaint amended?
MR. EMERICK: Yes.
MR. SUAZO: And that amended complaint is attached to your rebuttal as Appendix A and B; correct?
MR. EMERICK: Correct.
MR. SUAZO: Okay. And to your knowledge, W&T's claims against Lexon and Endurance are still pending; is that right?
MR. EMERICK: Correct.
MR. SUAZO: Now, also on slide 29, Mr. Morgan focuses on Lexon's partial motion to dismiss, which is document 57 in the Pacer docket in this case that is pending. What is your response to Lexon's remarks here?
MR. EMERICK: Well, Lexon actually says that financial status was one consideration, but also industrywide situations such as court rulings,

industry losses, and reinsurance considerations were also involved in their decision to increase the collateral.
MR. SUAZO: Okay. And on your next slide -- sorry -- slide 31. Just to clarify for the record, Lexon was not one of the sureties that settled with W&T; is that accurate?
MR. EMERICK: I think that's right.
MR. SUAZO: Okay. And that's evidenced by the court documents that we're looking at on these next two slides?
MR. EMERICK: Right. The jury trial is scheduled for February 2027.
MR. SUAZO: Okay. And I think that brings us to the end of your surrebuttal testimony, Mr. Emerick. Is there anything else you'd like to add that I might have omitted?
MR. EMERICK: No, I don't think so.
MR. SUAZO: All right. Well, we certainly appreciate your time and your testimony in this proceeding.
Madam Hearing Officer, at this time, NMOGA moves to admit the testimony, rebuttal testimony, the appendices, the demonstrative exhibits, and the summary of his direct and surrebuttal

testimony into the record.
THE HEARING EXAMINER: Pause for a moment in the event there are any objections.
They are admitted. Thank you.
(NMOGA Exhibit F was received into evidence.)
THE HEARING EXAMINER: Ms. Fox or Ms. O'Grady, do you have any questions of Mr. Emerick?
MS. O'GRADY: We do. Thank you.
CROSS-EXAMINATION
BY MS. O'GRADY:
MS. O'GRADY: Mr. Emerick, good afternoon. How are you?
MR. EMERICK: I'm doing fine. Thank you.
MS. O'GRADY: Great. Glad to hear it. My name is Morgan O'Grady. I'm an attorney with the Western Environmental Law Center for Applicants.
I'd like to start with the W&T litigation. Mr. Emerick, you testified this afternoon that you were surprised to hear Mr. Morgan refer to the W&T case as an antitrust case; correct?
MR. EMERICK: Yes.
MS. O'GRADY: And you testified that the W&T case is not an antitrust case?

MR. EMERICK: No. I characterized it as it can't be antitrust because of the arrangement of the sureties, and that there cannot be antitrust on a co-surety arrangement.
MS. O'GRADY: But you would agree that the case -- it does include a listed count of a violation of the Sherman Antitrust Act?
MR. EMERICK: It may. Yeah.
MS. O'GRADY: And that on page 3 of the complaint, which is Appendix C to your rebuttal, the complaint alleges that the surety scheme violates federal and state antitrust law?
MR. EMERICK: Yes.
MS. O'GRADY: Great. Thank you. I'll move on.
Mr. Everhart, would you please pull up Mr. Emerick's slide number 42? Thank you so much; really appreciate it. Oh, on the direct and rebuttal, I believe, was one PDF. The version that was pre-filed did not have page numbers, so -- but I think it was 42 of the direct and rebuttal.
Perfect. Thank you.
BY MS. O'GRADY:
MS. O'GRADY: Mr. Emerick, you haven't proposed specific language for your proposals, have

EXHIBIT 10

you?
MR. EMERICK: No.
MS. O'GRADY: You haven't proposed specific bonding levels?
MR. EMERICK: No. I wasn't asked to do that.
MS. O'GRADY: And you haven't proposed graduated bonding levels?
MR. EMERICK: No.
MS. O'GRADY: Are you aware that if parties are to propose amendments to the proposed rules they were required to submit those proposed amendments with their direct and rebuttal testimony?
MR. EMERICK: I am not aware of the rules of these proceedings or the rulemaking in New Mexico. If you say so, I trust it.
MS. O'GRADY: Okay. Thank you.
Mr. Everhart, would you mind turning to slide 45, please? Thank you.
BY MS. O'GRADY:
MS. O'GRADY: Mr. Emerick, on this slide, you testified that you endorse various alternative forms of financial assurance such as decommissioning, trust accounts, and third-party guarantees; correct?

MR. EMERICK: Correct.
MS. O'GRADY: Oh. Actually, can we jump back to 42, please? No, I think 45 was correct. Thank you so much. Apologies.
BY MS. O'GRADY:
MS. O'GRADY: Are you familiar, Mr. Emerick, with the New Mexico Oil and Gas Act's provision on financial assurance at NMSA 70-2-14?
MR. EMERICK: No, I don't believe I have read that.
MS. O'GRADY: Okay. I am going to take over sharing the screen. Here is the New Mexico statute on financial assurance. Are you familiar with the provision? Or how about I read the provision as you indicated you're not familiar with the statute?
The statute specifies that "Each person, firm, corporation or association who operates any oil, gas, or service well within the state shall, as a conditioned precedent to drilling or producing the well, furnish financial assurance in the form of an irrevocable letter of credit or a cash or surety bond or a well-specific plugging insurance policy."
And then it goes on. Did I read that correctly?
MR. EMERICK: You did, indeed.

MS. O'GRADY: Do you agree that the statute limits what forms of financial assurance the Commission may allow by rule?
MR. EMERICK: It does.
MS. O'GRADY: Do you agree that the statute does not list third-party guarantees?
MR. EMERICK: Correct.
MS. O'GRADY: And third-party guarantees would therefore require a statutory change; correct?
MR. EMERICK: Correct.
MS. O'GRADY: Okay.
Mr. Everhart, can I trouble you to turn back to slide 53, please?
MR. EVERHART: We can bill this time to you for this; right?
MS. O'GRADY: Yeah, absolutely. Thank you so much.
BY MS. O'GRADY:
MS. O'GRADY: Would adopting a BOEM-style safety valve require a statutory change, Mr. Emerick?
MR. EMERICK: I do not know.
MS. O'GRADY: Would the use of creditworthiness or reserve exemptions require a

statutory change?
MR. EMERICK: I do not know.
MS. O'GRADY: Would the authorization of trust accounts and, as just discussed, third-party guarantees require a statutory change?
MR. EMERICK: I do not know.
MS. O'GRADY: And you haven't proposed any specific language for any of the proposals listed on this slide; correct?
MR. EMERICK: I think I've already answered that.
MS. O'GRADY: Okay. Not for this slide; I don't believe.
MR. EMERICK: But not for this slide; correct.
MS. O'GRADY: Okay.
MR. EMERICK: No, I have not provided any language for any slide subject.
MS. O'GRADY: Okay.
Last request, Mr. Everhart; would you please pull up slide 47 of the direct rebuttal? Perfect.
BY MS. O'GRADY:
MS. O'GRADY: Mr. Emerick, you testified about the importance to the surety industry

EXHIBIT 10

of non-cancelable bonds; correct?
MR. EMERICK: Correct.
MS. O'GRADY: Okay, I'm going to take over sharing my screen, and this is my last line of questioning.
So I'm jumping back to the statute here, and as we just discussed, the statute specifies various things for the financial assurance that must be provided, including that it must be irrevocable. Do you see that?
MR. EMERICK: Yes.
MS. O'GRADY: Would you agree, then, that any change to the revocability of the financial assurance that may be required would require a change to the statute?
MR. EMERICK: Well, the rules for the letter of credit in NMAC indicates that it can be canceled.
MS. O'GRADY: In -- can you clarify? In what?
MR. EMERICK: In the definition of irrevocable letter of credit.
MS. O'GRADY: Sorry. Can you repeat your original answer?
MR. EMERICK: My original answer?

MS. O'GRADY: NMAC. Oh, okay. So are you testifying that you believe that various existing rules allow for revocable financial assurance forms?
MR. EMERICK: I don't know.
MS. O'GRADY: Are you -- can you point us towards any provisions in the current existing rules that allow for revocable financial assurance forms?
MR. EMERICK: Not off the top of my head.
MS. O'GRADY: Okay. I have no further questions. Thank you so much for your time, Mr. Emerick.
MR. EMERICK: Certainly.
THE HEARING EXAMINER: Thank you.
Mr. Tremaine or Mr. Hall?
MR. HALL: Thank you, Madam Hearing Officer. I have a few questions.
CROSS-EXAMINATION
BY MR. HALL:
MR. HALL: Mr. Emerick, my name is Michael Hall. I'm an attorney at the Oil Conservation Division. How are you?
MR. EMERICK: I'm doing well. Thank you for asking.

MR. HALL: Certainly. I was a little unsure about a couple of just, kind of, predicate matters. Did I understand that the extent of your oil and gas insurance and/or underwriting experience was when you worked in Dallas?
MR. EMERICK: No, it wasn't just while I was underwriting in Dallas. After I left Dallas, in a later stage, I audited offices and I audited surety underwriting for these types of bonds through the 1990s.
MR. HALL: That was in the 1990s? When did you stop doing that?
MR. EMERICK: 1996.
MR. HALL: Okay. And so, since that time, you have not been involved other than as an expert witness with oil and gas underwriting?
MR. EMERICK: That's correct.
MR. HALL: Okay. Did you also -- were you involved with plugging insurance contracts in your time working in oil and gas underwriting?
MR. EMERICK: No.
MR. HALL: Do you have any familiarity with that concept?
MR. EMERICK: Well, as an insurance policy, I'm familiar -- familiar with insurance

policies, but not, specifically, that policy.
MR. HALL: Okay. And is that why you haven't discussed that as a form of -- applicable form of financial assurance in New Mexico?
MR. EMERICK: That's correct.
MR. HALL: Okay. Do you agree that it is available as a form of financial assurance in New Mexico?
MR. EMERICK: I don't like it. The claims process on insurance policies is very different than it is for surety, and I'm not as comfortable with providing an insurance policy for these types of bonds.
MR. HALL: Nevertheless, your comfort level notwithstanding, it is an available form of financial assurance in New Mexico?
MR. EMERICK: Yes, I do know that it is.
MR. HALL: However, those sorts of insurance policies don't have a zero-loss policy attached to them or zero-loss goal?
MR. EMERICK: I wouldn't know.
MR. HALL: Okay. Now, with regard to your testimony on oil and gas surety arrangements, would you agree that there are, generally, three

EXHIBIT 10

parties to those?
MR. EMERICK: For surety bonds, there always are. Yes.
MR. HALL: Okay. And in this case, it would be the operator, the State of New Mexico, and the surety; correct?
MR. EMERICK: And the operator is what's known as the principal as the -- one of the parties, yes.
MR. HALL: That would be the entity providing collateral and creditworthiness to the surety?
MR. EMERICK: That is correct.
MR. HALL: Okay. Now, I -- and I don't want to quibble over semantics, but I believe you distinguished between insurance and surety arrangements in your testimony; correct?
MR. EMERICK: Correct.
MR. HALL: However, both of those shift risk, don't they?
MR. EMERICK: Again, I can't speak to what the plugging insurance policy does because I don't know it. Surety, on the other hand; it does not shift necessarily. The surety will act in place of the principal if the principal does not fulfill its

responsibilities. Only at that point.
MR. HALL: How does risk -- excuse me. That was a bad start of a question.
The risk absolutely shifts away from the State of New Mexico in that arrangement; correct?
MR. EMERICK: Correct.
MR. HALL: Okay. Did you rely extensively on Mr. Arthur's testimony to form your analysis and conclusions in this matter?
MR. EMERICK: Not extensively. I did --
MR. HALL: Did you cite to him --
MR. EMERICK: I did cite to him.
MR. HALL: -- more than 30 times in your direct and rebuttal testimony?
MR. EMERICK: Yes.
MR. HALL: Okay. Would you -- you would not consider that extensive?
MR. EMERICK: No.
MR. HALL: Okay. What data did you rely on to form the basis of your testimony?
MR. EMERICK: I wouldn't consider underwriting experience as data, but that's what I based a lot of my testimony on.
MR. HALL: So this -- any data at all?

I just -- I didn't quite understand. Or only your underwriting experience?
MR. EMERICK: There may have been some data that I looked at, but I depended on my underwriting to reach my conclusions.
MR. HALL: And again, that ended in 1996; is that correct?
MR. EMERICK: Surety is a type of underwriting that has existed in the corporate environment since 1880, and those principles that guide underwriting have not changed significantly in that time. And that's why it's a reliable experience to base decisions on.
MR. HALL: But, sure. Okay. I just wanted to be clear. You might not have understood my question. Your experience ended in 1996 on that; is that correct?
MR. EMERICK: If that was the question, that is correct.
MR. HALL: Okay. Do you know how many contractors and subcontractors operate in the oil and gas industry in New Mexico?
MR. EMERICK: No.
MR. HALL: Are you familiar with insurance or financial assurance with regard to

operators and their subcontractors?
MR. EMERICK: I understand underwriting of the principal of the bond.
MR. HALL: Do other entities do work for operators?
MR. EMERICK: They might.
MR. HALL: Are there usually indemnity or insurance contracts, even bonding, with those sorts of arrangements?
MR. EMERICK: There's an indemnity agreement for every principal.
MR. SUAZO: Objection. This goes beyond the scope of witness's testimony, I believe.
THE HEARING EXAMINER: Mr. Hall?
MR. HALL: I believe he went in depth about the basic functions of indemnity financial assurance, and I'm probing that knowledge.
THE HEARING EXAMINER: Overruled.
BY MR. HALL:
MR. HALL: Would you like me to repeat my question, sir?
MR. EMERICK: Yes, please.
MR. HALL: Okay. I believe you said indemnity applies to all those agreements; is that right?

EXHIBIT 10

MR. EMERICK: I said with every bond, the principal signs an indemnity agreement.
MR. HALL: And what's the purpose of that?
MR. EMERICK: And I believe I stated this during my testimony; when a surety asks for and receives an indemnity agreement, it is a promise for the principal to pay back to the surety any funds that the surety is made to pay because of, in this state, forfeiture of the bond.
MR. HALL: And even with a two-party contract, say, between an operator and a subcontractor doing work on a well, there would be indemnity or agreements to pay in the event of some default on that agreement; correct?
MR. EMERICK: I would assume so, but I'm not talking about -- as an operator. I don't -- I -- I don't know, specifically, what they use.
MR. HALL: A general principle of risk shifting is those sorts of agreements so that, in this case, New Mexico is not left -- the citizens of New Mexico are not left paying for operators who don't plug and abandon their wells; correct?
MR. EMERICK: That's what the bond is for, to do exactly that.

MR. HALL: Now, speaking of that, I believe you were saying you were confused about the 77,000 or approximately 77,000 amount that you thought it cost OCD to plug and abandon wells?
MR. EMERICK: Those -- that was from a spreadsheet that I saw that had five years of spending from the reclamation fund to plug wells from 2019 to 2024, I do believe.
MR. HALL: And I believe you said OCD needs to explain that; is that right?
MR. EMERICK: No. I said with that number and the 163,000 average that they have since stated is the average for plugging and abandonment, I don't know whether that's one year or five years of experience or ten years of experience or just one single -- last year. So --
MR. HALL: I'll represent --
MR. EMERICK: -- the -- the difference between the two has to be explained.
MR. HALL: Sure. And did you -- I believe you said you'd listened to Mr. Powell; is that right?
MR. EMERICK: Yes.
MR. HALL: Do you recall him saying the 163,000 is the fiscal year '24 OCD plugging cost

average?
MR. EMERICK: And if that's the -- that's the case, then how do we get from 77,720 to 163,000?
MR. HALL: I believe he explained that, and I'm sorry if you didn't hear it, but I guess I'm not here to explain that since he's already testified to that.
MR. EMERICK: No.
MR. HALL: Now, non-cancelable form. I wanted to explore that a little bit with you. These other states that do allow sureties to cancel their agreements; that subjects those states to risk, doesn't it?
MR. EMERICK: Not necessarily.
MR. HALL: Well, let's go through a hypothetical here. A surety cancels the bond. An operator goes bankrupt. What happens?
MR. EMERICK: I don't know. There's lots of possibilities. That property could be taken over by another operator and bond supplied. I just don't know.
MR. HALL: All right. One --
MR. EMERICK: It's hard to deal with hypothetical situations.

MR. HALL: You've never seen that in your experience as a surety --
MR. EMERICK: No.
MR. HALL: -- expert?
MR. EMERICK: No.
MR. HALL: One result of that would be a state that allowed sureties to cancel bonds would be required to pay the plugging costs; correct?
MR. EMERICK: Not necessarily.
MR. HALL: Can you tell me -- well, okay.
MR. EMERICK: I -- I presented -- I presented to you one possibility from that situation. if indeed that operator went bankrupt, that well and property could be sold to another who then provides the bond to the State. In a cancelable situation, that is one possibility.
If that doesn't happen, there's a ton of other possibilities, and I can't predict what would happen.
MR. HALL: When a bond is canceled, there's no bond; is that correct?
MR. EMERICK: From that surety, correct.
MR. HALL: Are you suggesting that if

EXHIBIT 10

bonds can be canceled, which is a recommendation of yours, that they can't be -- they be non-cancelable unless there's another surety to take over that bond?

MR. EMERICK: No, I'm not.

MR. HALL: Okay. You have described these non-cancelable bonds as very hazardous. Who are they very hazardous to?

MR. EMERICK: The surety.

MR. HALL: They are the opposite of hazardous to the State of New Mexico, though; correct?

MR. EMERICK: Correct.

MR. HALL: Excuse me. I think I'm about done. I'm just double-checking my list.

You would agree the purpose of these rules is to protect the citizens of New Mexico from orphaned-well costs; correct?

MR. EMERICK: It is to protect the citizens, period.

MR. HALL: And not the sureties?

MR. EMERICK: No, the sureties are there to protect the citizens.

MR. HALL: Oh, I had another question from your direct testimony. Actually, this is from your rebuttal testimony. What did you mean when you suggested that OCD might undertake a -- a subjective

and/or disparate enforcement of these rules?

MR. EMERICK: With district offices, It's possible that some of the rules can be misinterpreted by certain people, and that is a possibility with multiple offices.

MR. HALL: Are you aware that OCD has eliminated district offices?

MR. EMERICK: No, I was not.

MR. HALL: Does that completely change your analysis on that matter?

MR. EMERICK: No. There are also individuals within OCD in one office that can cause the same problem.

MR. HALL: How would these new rules change the current framework of OCD with regards to enforcement?

MR. EMERICK: Enforcement? That's a broad term. I -- I couldn't explain that. I couldn't -- I -- I didn't look at that.

MR. HALL: What did you mean by the word "enforcement" in your testimony?

MR. EMERICK: Enforcement of the rules. "Enforcement" as a general term, I didn't look at.

MR. HALL: I'll move on with this caveat. Are you saying that these rules will make OCD

subjective and/or disparate with their enforcement, whereas it's not now? Or you think OCD is now?

MR. EMERICK: With the definitions of marginal well and the bonding requirements associated with them, it is possible that marginal wells can be misclassified and bonds requested that may not be necessary. Or too many bonds are requested from one operator, and that will affect how disparate or those rules can be applied.

MR. HALL: Okay. I think I'm pretty close, Mr. Emerick. But I wanted to quote you again from line 415 of your rebuttal testimony, and you stated, "If it's not broke, don't fix it." What did you mean by that?

MR. EMERICK: If present bonding rules are applied consistently and effectively, they can be effective in doing what is needed.

MR. HALL: I believe you testified about the LFC report; is that right?

MR. EMERICK: I'm not sure what you're referring to.

MR. HALL: Okay. The Legislative Finance report from the State of New Mexico.

MR. EMERICK: I'm aware of it, yes.

MR. HALL: Okay. I'm going to share

part of that. Can you see that headline there?

MR. EMERICK: Yes.

MR. HALL: And what does that say?

MR. EMERICK: "Current orphan wells will cost the state more than 200 million. Future liability very likely exceeding -- exceeds 700 million."

MR. HALL: You still maintain it's not broke and it needs no fix?

MR. EMERICK: What I'm saying is that the basic framework can be effective if assigned, but I see a lot of small bonds that have been issued to the State in the past.

And the current blanket bond and single-well bonds that have been issued under the present rules are very effective, but there are no 3,000 or 2,000 or 7,000 amounts anymore. What has gone on past, which is, I think, what has been causing the problem.

MR. HALL: I'll pass the witness. Thank you. Mr. Emerick.

MR. EMERICK: Thank you.

THE HEARING EXAMINER: Thank you, Mr. Hall.

Mr. Moore, do you have questions of Mr.

EXHIBIT 10

Emerick?
MR. EMERICK: Excuse me. Can I have a break?
THE HEARING EXAMINER: Yes, yes, certainly. It's -- let's come back at 3:05.
(Off the record.)
THE HEARING EXAMINER: All righty. It is -- let's see -- Mr. Moore's turn to ask questions of Mr. Emerick.
Mr. Moore, do you have questions?
MR. MOORE: I do, Madam Hearing Examiner. Thank you.
CROSS-EXAMINATION
BY MR. MOORE:
MR. MOORE: Good afternoon, Mr. Emerick. My name is Richard Moore. I represent the Commissioner of Public Lands and the State Land Office in this proceeding. How are you this afternoon?
MR. EMERICK: I'm doing well. Thank you.
MR. MOORE: Thank you. You testified in your surrebuttal that the State Land Office -- that no surety would pay the State Land Office on a bond to which the OCD is the obligee; is that correct?
MR. EMERICK: Correct.

MR. MOORE: So the State Land Office would not be able to collect on such a bond for damage to state minerals managed by the State Land Office?
MR. EMERICK: If the bond was written to New Mexico for the use and benefit of the OCD, no.
MR. MOORE: And if the bond was written that way, would the State Land Office be able to collect on the funds secured by that bond to conduct reclamation on state trust land?
MR. EMERICK: That I wouldn't know.
MR. MOORE: But your testimony is that no surety would pay the State Land Office for -- on a bond to which OCD is the obligee?
MR. SUAZO: Objection. Asked and answered.
MR. EMERICK: Correct.
THE HEARING EXAMINER: Okay. Go ahead, Mr. Moore.
BY MR. MOORE:
MR. MOORE: But is your answer different based on your prior answer that if the State Land Office was seeking those funds to conduct reclamation on state trust land?
MR. EMERICK: No. The bond is the commanding document and what the sureties have to

follow. They could not pay SLO directly, no. Unless, unless the OCD, who made the claim, would have an agreement to pay you. That is the only way that is possible.
MR. MOORE: Okay. And the State Land Office would not be able to directly draw on a bond to which the OCD is an obligee to conduct remediation of contamination on state trust land?
MR. EMERICK: Well, you're confusing the issue. Let me put it this way. SLO could not make claim on the bond.
MR. MOORE: Yes. Sorry if that -- if my question wasn't clear. So you agree that the State Land Office could not make a claim on a bond to which the OCD is the obligee in order to remediate -- to pay for remediation of contamination on state trust land?
MR. EMERICK: For whatever purpose. Yes, that's correct.
MR. MOORE: If a surety issued bonds to which the State Land Office was the obligee, would the State Land Office be able to claim those bonds to pay for damage to state minerals, remediation of contamination, or reclamation on state trust land?
MR. EMERICK: If the SLO was the obligee, yes.

MR. MOORE: And so, would you agree that in order to be in the position to be able to claim -- to draw on financial assurance in order to protect state trust land, the State Land Office would need to require bonds for which the State Land Office is the obligee?
MR. EMERICK: Well, if SLO wanted to receive -- make claim and receive the funds directly, yes, but isn't there also a possibility to come to agreement with the OCD to give you the funds once they receive it?
MR. MOORE: That's a separate issue. And I think as others have said, we're simply asking you the -- these questions, but --
MR. EMERICK: my apologies.
MR. MOORE: No. No worries. But I just wanted to -- yeah, I believe that you've answered my questions, and so I will pass the witness. Thank you.
THE HEARING EXAMINER: Thank you.
MR. EMERICK: Thank you.
THE HEARING EXAMINER: I don't know if Ms. Nanasi is with us. No. Mr. Maxwell?
MR. MAXWELL: No questions. Thank you.
THE HEARING EXAMINER: Thank you.

EXHIBIT 10

Mr. Rankin, do you have questions of Mr. Emerick?
MR. RANKIN: I do not. Thank you, Madam Hearing Officer.
THE HEARING EXAMINER: Mr. Sayer?
MR. SAYER: No questions.
THE HEARING EXAMINER: No questions?
Mr. Cloutier?
MR. CLOUTIER: Just a couple of questions, Madam Hearing Officer.
CROSS-EXAMINATION
BY MR. CLOUTIER:
MR. CLOUTIER: Good afternoon, Mr. Emerick. Thank you for your time and testimony. My name is Drew Cloutier, and I represent the Independent Petroleum Association of New Mexico.
Were you present when Applicants were presenting their case when, I believe, it was Mr. Morgan testified that ability to obtain a surety bond was a -- that ability for an operator was a proxy for the risk that the State of New Mexico takes that the operator will plug and abandon a well?
MR. EMERICK: I don't remember that specifically, but if he said that, fine.
MR. CLOUTIER: Okay. Would that be an

accurate statement if he said it?
MR. EMERICK: Well, I wouldn't say it exactly that way. I see things a lot simpler. The operator requires a bond; the surety provides it and provides it to the State. That's as simple as I can put it.
MR. CLOUTIER: And what about a operator's inability to obtain a surety for, say, 2 1/2 percent? Would that be a proxy for risk?
MR. EMERICK: Well, the surety market is one -- if he -- if the -- the surety market as a whole made that same decision, then he could explore either a letter of credit or a cash bond.
MR. CLOUTIER: Thank you, Mr. Emerick. Mr. Hall was asking you some questions about the cancelability of bonds and this OCD bond form. Do you recall those questions?
MR. EMERICK: Yes.
MR. CLOUTIER: Were you present for testimony that the OCD will release marginal-well bonds if the operator is able to restore production in such a way that a well will no longer be deemed marginal under the rules proposed?
MR. EMERICK: Yes.
MR. CLOUTIER: Would the surety price

the bond that it was -- in a form that it was releasable in your experience? Under the current bond form?
MR. EMERICK: Please ask that question again. I'm not sure I understand it.
MR. CLOUTIER: Sure, sure. We're talking about the bond form that you've testified to for the OCD; correct?
MR. EMERICK: Yeah. Correct.
MR. CLOUTIER: And did I understand your testimony correctly that the language in the bond form is read by the surety industry as it being a non-cancelable bond?
MR. EMERICK: Yes.
MR. CLOUTIER: With me so far?
MR. EMERICK: Yes.
MR. CLOUTIER: If there was a possibility that the OCD would release the bond because the well became non-marginal, would the surety industry price the bond as a cancelable bond?
MR. EMERICK: No.
MR. CLOUTIER: And why is that?
MR. EMERICK: Because it's a non-cancelable bond.
MR. CLOUTIER: All right. No further

questions, Madam Hearing Officer.
THE HEARING EXAMINER: Thank you.
Mr. Suazo, do you have redirect?
MR. SUAZO: Yes, I do, Madam Hearing Officer.
REDIRECT EXAMINATION
BY MR. SUAZO:
MR. SUAZO: Mr. Emerick, I'm going to ask you a few questions based on the questions that you were asked on cross. Let's talk about the cancelable nature of financial assurance. Is financial assurance a contract?
MR. EMERICK: It's a contract of a type, I suppose. Yes.
MR. SUAZO: Does that mean that the terms of the contract control?
MR. EMERICK: Yes.
MR. SUAZO: I'm going to show you a letter of credit.
Jacob, if you can pull that on the screen? It's in --
BY MR. SUAZO:
MR. SUAZO: Can you see that, Mr. Emerick?
MR. EMERICK: Yes.

EXHIBIT 10

MR. SUAZO: Does the New Mexico OCD Letter of Credit form have an expiration? Sorry. It's on page 2.
MR. EMERICK: It's an automatically renewable form. "Unless notice of non-renewal is provided to the OCD." Yes, it is cancelable.
MR. SUAZO: All right. Do you recall being asked -- sorry; just a second. Do you recall being asked about whether you reviewed the New Mexico Administrative Code, or NMAC as you call it?
MR. EMERICK: Yes.
MR. SUAZO: I'm going to pull up a section of NMAC for you to look at. It's 8.11. All right, Mr. Emerick, can you see rule 19.15.8.11?
MR. EMERICK: Yes. And this is what I think I saw before.
MR. SUAZO: So you have reviewed this section of the New Mexico Administrative Code before?
MR. EMERICK: Yes.
MR. SUAZO: Okay. And do you see subsection C?
MR. EMERICK: Yes, I do.
MR. SUAZO: Can you tell us what that says?
MR. EMERICK: That says "Letters of

credit shall provide for automatic renewal for successive like terms upon expiration unless the issuer has notified the Division in writing of non-renewal at least 30 days prior to expiration."
MR. SUAZO: Does that mean it's cancelable?
MR. EMERICK: You know, yes. It -- in other words, the surety has to provide New Mexico notice.
MR. SUAZO: So that means -- sorry.
MR. EMERICK: That way, it's cancelable.
MR. SUAZO: So that means it's like the form; correct? The form?
MR. EMERICK: Oh, yes. Absolutely.
MR. SUAZO: Okay. So, then, is it accurate -- oh, and does it have a five-year maximum that you can tell?
MR. EMERICK: Yes. It's --
MR. SUAZO: So is it your understanding that they can call the letter of credit irrevocable, but that's not what the form and the regulations say; correct?
MR. EMERICK: Well, that's the way I'd view it. I don't know why they call it irrevocable if

it is non-renewable or cancelable. I -- I -- that doesn't -- that's not what I understand irrevocable to be -- irrevocable to mean.
If you look at 19.15.8.12, "The Division shall -- the Division shall release a financial assurance document upon the operator's or surety's written request if all wells drilled or acquired under that financial assurance has been plugged and abandoned and the location restored and remediated."
Now, that is exactly or more or less what the bond does, but the earlier provision makes it non-renewable or cancelable.
MR. CLOUTIER: Objection on optional completeness. I would ask the witness to read the rest of that section A there.
THE HEARING EXAMINER: Mr. Suazo, would you ask him to do that?
MR. SUAZO: Yes.
BY MR. SUAZO:
MR. SUAZO: Mr. Emerick, can you please read the rest of that rule?
MR. EMERICK: Let me start over.
"The Division shall release a financial assurance document on the operator's or surety's

written request if all wells drilled or acquired under the financial assurance have been plugged and abandoned and the location restored and remediated and released pursuant to 19.15.25.9 NMAC through 19.15.25.11 NMAC or have been covered by another financial assurance the Division has approved."
MR. SUAZO: And if you scroll further down where it says "Forfeiture of Financial Assurance" under 19.15.8.13, can you read subsection D please?
MR. EMERICK: B says "If the financial assurance proceeds exceed the cost" --
MR. SUAZO: D as in "delta."
MR. EMERICK: D. I'm sorry. "The Division shall deposit forfeitures and funds collected pursuant to a judgment in a suit for indemnification in the oil and gas reclamation fund."
MR. SUAZO: Thank you, Mr. Emerick.
No further redirect questions, Madam Hearing Officer.
THE HEARING EXAMINER: Thank you, Mr. Suazo.
Commissioner Ampomah, do you have questions of Mr. Emerick?
COMMISSIONER AMPOMAH: Yeah, would Commissioner Bloom go first?

EXHIBIT 10

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

IN THE MATTER OF PROPOSED AMENDMENTS TO 19.15.2, 19.15.5,19.15.8, 19.15.9, AND 19.15.25 NMAC

CASE NO 24683

DIRECT TESTIMONY OF TREVOR GILSTRAP

Q: Would you please introduce yourself to the Commission?

A: My name is Trevor Gilstrap. My business address is 4582 S. Ulster St., Suite 600 , Denver, Colorado 80237. I am the Senior Vice President and National Energy Practice Leader with AssuredPartners, an international insurance brokerage.

Q: Would you please give the Commission a summary of your education and work history?

A: After graduating with a Bachelor of Arts in Psychology, I started my career as a claims adjuster with Farmers Insurance. I initially worked as a Liability claims adjuster, and then transitioned to Farmers' dedicated Catastrophe team, where I handled large scale natural disaster claims to insured automobiles and property. In 2011, I started working for Sisk & Co., a local insurance brokerage that primarily focused on placing insurance and surety programs for upstream and midstream service contractors and operators. My role with Sisk & Co. was that of an insurance producer, and I specifically targeted the oil and gas industry. After Sisk & Co. was sold to AssuredPartners in 2015, I continued in the same production role for another two years, before developing and now leading the Energy

vertical within AssuredPartners. The vast majority of our AssuredPartners Energy clients are directly tied to the oil and gas industry. In my current role, I still actively produce my own new business opportunities, support other vertical and non-vertical producers in winning energy related opportunities, as well as dictate the overall direction and management of the Energy vertical.

Q: Are there any other experiences that support your testimony in this rulemaking proceeding?

A: I have over a decade of experience securing and placing insurance and surety needs for energy clients throughout the country. I was named a 2021 and 2024 "Top Producer" by Insurance Business America (IBA), and a "2021 Traditional Energy Power Broker" by Risk & Insurance magazine. Additionally, I hold the Energy Risk & Insurance Specialist (ERIS) designation from the International Risk Management Institute (IRMI). I regularly work with oil and gas client and companies in placing their surety need through various surety providers. The vast majority of AssuredPartners Energy clients are linked to the oil and gas industry, and we provide insurance and surety placements for a few dozen exploration and production companies.

Q: You understand that this is sworn testimony to be submitted in writing to the New Mexico Oil Conservation Commission in connection with a rulemaking proceeding concerning financial assurances?

A: Yes, I do.

Q: Have you been involved in other rulemaking or regulatory proceedings regarding financial assurance requirements in the oil and gas industry?

A: Yes, I testified as a witness for the Colorado Oil and Gas Association before the Colorado Oil and Gas Conservation Commission during the 2022 Financial Assurance Rulemaking which followed the Colorado Legislature's enactment of SB19-181, amending the Colorado Oil and Gas Conservation Act.

Q: Can you provide a summary of your testimony as it relates to Western Environmental Law Center's (WELC) proposed changes to financial assurance requirements?

A: I believe that WELC's proposed regulations, which require single well bonding of $150,000 for marginal wells or potentially all of an operator's registered wells, could have significant unintended consequences. The current version of WELC's proposal appears to require single-well financial assurance on a per-well basis for many smaller operators. My primary concern is the feasibility of implementing such a drastic increase in bonding because the level of surety required by WELC's proposal is simply not available to most smaller operators. Even for those operators who would qualify for the required level of surety, I believe it will be prohibitively expensive.

Q: How is the surety market different for small- to medium-sized operators?

A: In the decade plus that I've worked as an insurance broker, I have been primarily focused on placing insurance and bond programs for oil and gas companies. Currently, we are in one of the hardest surety markets I've experienced in my career. In recent years, sureties have become far more restrictive in their underwriting guidelines in

determining collateral amounts—the days of zero-dollar collateral are largely gone. While there is no formal written guideline, my experience over the past 15 years is that sureties are looking to see financial statements from the Principal with working capital of at least 25% or more of the surety amount required, if the surety is even willing to offer terms with limited collateral. For most smaller companies, that level of capital is not readily available and the current proposed rules will only exacerbate the squeeze felt by smaller operators.

Q: How does a bond differ from an insurance policy?

A: Unlike an insurance policy, a bond is simply a promise to pay. With insurance, the insured pays a premium and the insurer absorbs the risk. In a bond relationship, there is no shifting of risk the risk always remains with the Principal. In the event the bond is called upon, the Surety then immediately seeks reimbursement from the Principal. In general, the lower the working capital, the higher the collateral required by the surety. In many instances, sureties are now requiring collateral of 50%-100% of the bond amount because sureties are not in the business of losing money, and want to ensure they immediately collect from the Principal in the event of a bond claim.

Q: How much does a bond cost?

A: The vast majority of operators are going to be required to provide collateral to secure their bonds. The typical collateral we are seeing for most operators is ranging between 50%-100%. The larger the bond amount, the larger the collateral requirement. In addition to these collateral amounts, sureties also charge an annual bond premium for placing the bond. Again, specific to these types of bonds in my experience, typical annual premiums

range from 2.5%-3.5% (or more) of the bond amount. An increase in operating costs of this scale is neither achievable nor feasible for the majority of small to midsize operators.

Q: Can you provide a few scenarios to explain how the proposed increases in bonding would affect different operators?

A: Yes. A couple of examples to put the "costs" of full cost bonding in perspective are:

In the first scenario, an operator with 150 wells that is required to provide full-cost single-well financial assurance of up to $150,000 per well would be facing a P&A bond obligation of approximately $22.5 million. They would more than likely be facing a collateral requirement from the surety of at least 50% the bond amount, meaning the operator would need to provide $11,250,000 in collateral to secure the bonding. The operator in this scenario would also be paying an annual bond premium of $562,500 - $787,500, on top of the $11.25 million tied up in collateral.

In a second scenario, an operator with 1,000 wells who is subject to full-cost single-well financial assurance of up to $150,000 per well would be facing a P&A bond obligation of about $150,000,000. They would more than likely be facing a collateral requirement from the surety of at least 50% of the bond amount, requiring a collateral commitment of at least $75,000,000 to secure the bonding. The operator in this scenario would also be paying an annual bond premium of $3,750,000- $5,250,000, on top of the $75 million tied up in collateral.

But the above scenarios only come into play if the operator is able to qualify for a bond in the first place. When I said that the surety market is difficult, and it is, that statement

should be further qualified—because for many small operators bonds may not even be an option given the amount of collateral required.

Q: If bonds are not available, are there other methods to meet the financial assurance requirements in the proposed rules?

A: Yes, but alternate does not mean easier for medium and small operators. Here, the existing and proposed rule contemplate either a cash bond, a surety bond (discussed above), an irrevocable letter of credit, or a plugging insurance policy. The requirements for a plugging insurance policy are so onerous, that the most commonly used non-surety alternate to meet financial assurance obligations are posting a letter of credit or cash. Going this route, there is no potential "discount" on the assurance amount, meaning 100% of the associated bond amount would be tied up through a letter of credit or cash. To clarify, the letter of credit is typically secured through one of two options: (1)The operator will draw on their line of credit with their bank to post the irrevocable letter of credit or (2) in instances where their line of credit is not sufficient or non-existent, they will post cash in a certificate of deposit (CD), to back the letter of credit issued by their bank. But again, I do not believe the vast majority of small to medium size operators would be able to comply with alternate financial assurance options under the rule. At a minimum, full-cost bonding, and the associated collateral requirements of the surety and/or cash bond or letter of credit alternates will tie up large sums of money from the operator. This has the potential to significantly decrease the capital readily available for scheduled plugging and abandonment, new drilling, routine maintenance, et cetera.

Q: Are there other consequences for operators in requiring up-front, single-well financial assurance, outside of the initial capital commitment?

A: Yes, the unintended consequences of full cost or increasing bond amounts by double-digit multiples include increased bankruptcies, increased orphaning of wells, increased bank debt, less capital on-hand for normal plugging and abandonment operations, new drilling, workovers, routine maintenance, et cetera, and even operators exiting New Mexico to pursue exploration and production in more favorable states.

Q: How are other producing states addressing financial assurance for oil and gas wells?

A: In Colorado, although bond levels increased for most small operators, the 2022 rulemaking introduced six tiers based on multiple factors, including the operator's average daily per-well production, the number of wells operated, option to contribute a certain percentage over 10 or 20 years, and other individual circumstances. In Colorado, this "sinking fund" option may have allowed some smaller operators to continue operating wells, but extinguished their capacity for future development or acquisition in Colorado.

On the other hand, Wyoming recently enacted legislation which allows medium and smaller operators to combine resources to meet well bonding requirements through a state-run bonding pool. Other states, including Wyoming, Oklahoma, California and Mississippi have incorporated or are considering an insurance-like product, primarily offered in the United States by OneNexus. The OneNexus Oklahoma Captive Corporation, for example, is a licensed and regulated insurance company by the Oklahoma Insurance Department, and operators enter into Asset Retirement Agreements and Contractual Liability Insurance Policies to fund a financial assurance guarantee. In Wyoming, OneNexus pools collateral under Asset Retirement Agreements to obtain surety bonds for operators at preferred rates. In fact, New Mexico's own Legislative

Finance Committee Orphan Well Policy Spotlight Report, issued June 24, 2025, recommends alternate funding options, like a third-party trust or escrow account, which can be tailored or tiered to capture the bulk of the plugging costs during the most productive periods of the well's lifetime. My understanding is that New Mexico's Oil and Gas Conservation Tax and Reclamation Fund could be structured to accomplish a similar outcome because more tax revenue will be generated when the wells are most productive and funnel into the Reclamation Fund.

Q: Does the proposed rule contemplate any of the third-party alternatives you've mentioned to meet the proposed Financial Assurance requirements?

A. Based on my review of the proposal, no. Financial Assurance options remain limited to cash bond, surety bond, irrevocable letter of credit, or a statutorily defined plugging insurance policy.

Q: In your opinion, does increasing bonding reduce the number of orphaned wells?

A: No. If the proposed drastic increases in surety requirements are adopted in New Mexico, I fear that more wells will become orphaned, not less. The single-well bonding scheme proposed by WELC will likely create a situation where once stable operators can no longer afford the costs associated with operating their wells in New Mexico. Thus, the state will see a precipitous increase in abandoned wells when smaller operators can no longer meet or comply with New Mexico's requirements, and exit the state to operate under achievable regulatory and surety obligations. After Colorado's rulemaking, for example, not only did statewide bonding levels decrease by $4 million, the number of

orphan wells doubled in the first year, and has quadrupled to 941 orphan wells as of July 1, 2024.

Q: You've talked about the capital crunch on smaller operators where full-cost bonding is required prior to achieving production or profit from the well itself. How is this compounded during the plugging process?

A: Taking the first example operator, that operator has over $11 million in capital tied to the bonds, is paying the annual premiums of $600-$700,000, and then has to generate and pay the costs of plugging and remediating the well without access to any of those funds. Sureties will not cancel a bond until the original bond has been released by the obligee, and is returned to the surety with a letter of release. Based on my understanding of the New Mexico plugging and abandonment process, remediation efforts can take a year or more until the Division agrees to release the operator, let alone accomplish release of the bond. Then, the bond will be formally cancelled with a pro-rata return of premiums effective that date, with the first year of premium fully earned. The longer the bond is in place, the more premium the operator pays. With an average well life of about 25 years, operators could pay over $130,000 per well during its lifetime in premiums alone, and then must come up with the cash to pay out-of-pocket for plugging, remediation, and reclamation. On top of this squeeze, there is no formal timeline under the rules for the Division or the State to release bonds after an operator has satisfied its plugging obligations. Without a hard backstop from the Division, operators cannot prepare their own balance sheets for when premium and collateral obligations with the surety will cease.

Q: Based on your experience in the financial market and the effects of the Colorado rulemaking, do you see bonding increases as an effective policy to target orphan well liability?

A: No, under the levels of financial assurance required by the proposed rule, the vast majority of small to medium size operators will not be able to comply. Such drastic increases in financial assurance, which disproportionately target smaller operators with lower producing wells, will only increase the likelihood of bankruptcies, the orphaning of wells by previously-responsible operators made insolvent by burdensome FA requirements, increase bank debt, and leave less capital on-hand for operators to accomplish normal plugging and abandonment operations, new drilling, workovers, and routine maintenance. In Colorado, we saw the numbers of orphan wells double and available bonding decrease after adopting new financial assurance rules. Here, WELC's proposals target financial assurance as the answer when the Division itself testified, corroborated by the Orphan Well Spotlight Report, that not a single claim has been made against existing plugging bonds. In conclusion, not only do WELC's proposed rules fail to accomplish the plugging of a single orphan well, they have the capacity to kill off mid- and smaller operators, and leave a new generation of orphan wells numbering in the thousands. While admittedly, all wells at some point must be plugged, New Mexico has more tools at hand than bonds to address the issue.

TREVOR GILSTRAP

EXHIBIT 10

I hereby affirm under the penalty of perjury of the laws of the State of New Mexico that the above statements are true and correct to the best of my knowledge, information, and belief.

DATE: July 31st, 2025

TREVOR GILSTRAP

EXHIBIT 10

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

IN THE MATTER OF PROPOSED AMENDMENTS TO 19.15.2, 19.15.5,19.15.8, 19.15.9, AND 19.15.25 NMAC

CASE NO 24683

REBUTTAL TESTIMONY OF TREVOR GILSTRAP

Q: You testified previously in this Rulemaking. Do you understand that the rebuttal testimony submitted today is sworn testimony submitted in writing in the same New Mexico Oil and Conservation Commission rulemaking proceeding?

A: Yes, I do.

Q: Please recap your experience for the Commission.

A: I am the Senior Vice President and National Energy Practice Leader with AssuredPartners, an international insurance brokerage. I regularly work with oil and gas clients to obtain insurance and surety placement for exploration and production companies. For the purpose of this rulemaking, I am the "Bond" guy—along with New Mexico Oil and Gas Association's expert witness, Douglas Emerick.

Q: Have you reviewed anything in preparation to offer rebuttal testimony?

A: Yes, I have reviewed parts of the direct testimony of the following witnesses: Western Environmental Law Center ("WELC") expert witnesses Thomas Alexander and Peter Morgan. I have also reviewed the some of the direct testimony of Mr. Emerick, submitted on behalf of NMOGA.

Q: In your opinion, what is the most important point the Commission members should take from your rebuttal testimony?

A: The most important point is this: bonds are not insurance. Throughout the record, there are repeated references suggesting that increasing financial assurance levels will "insure"

the State or "decrease the risk" of orphaned wells. For example, Thomas M. Alexander states that requiring more adequate financial assurance "better insures the State in case of abandonment" (WELC Ex. 3, 33:15-17), and Peter Morgan opines that reclamation bonds "insulate" regulators from risk (WELC Ex. 15, 16:12; 17:3). These characteristics are fundamentally incorrect.

As I testified previously, bonds are simply a guarantee of payment, there is no shifting of "risk" among the three parties in a bond agreement. Further, while bonds are not an insurance policy—there is no transference of risk from the Operator to the Surety—Operators remain responsible for annual premiums to secure the bond. Increasing the total amount of the bond means operators will be paying more in annual premiums for the bonds, as well as increased collateral requirements tied to those bonds—both of which will draw on the operator's capex for actual plugging expenses. By raising bond requirements without regard to market realities, the state risks pushing responsible operators out of the market, reducing competition, and ultimately increasing the number of orphaned wells. That's not a win for the environment, the economy, or the state's long-term interests. If the goal is to ensure wells are plugged responsibly, then we need a collaborative approach that balances financial assurance with operational feasibility – not one that treats bonding like a limitless insurance policy in a market that's anything but.

Q: Can you walk us through the relevant steps in the bond process again?

A: Only when an event or inaction by the Principal (Operator) triggers or "calls" on a bond, does the Obligee (OCD) receive payment from the Surety. Surety companies are not in the business of losing money, and the Surety in turn requires reimbursement of that same

amount from the Principal (Operator). In one, short-sighted way, increasing financial assurance levels potentially increases the amount of funds that OCD could be eligible for by reimbursement, but not immediately and certainly not available to actually plug the well in question. Claims under a surety bond are triggered by nonperformance, meaning that the OCD must also demonstrate to the Surety that the Principal (Operator) has failed to perform, typically through an administrative enforcement action. It is not as simple as sending an e-mail or making a phone call. Under most commercial surety or indemnity agreements underlying a bond, the Surety also retains the power to negotiate or settle calls on bonds, which all Sureties enforce zealously. OCD is familiar with this dynamic, with over $700,000 in bonding by Cano Petro and having collected just over $161,000 four years later. *See* IPANM Ex. 27, LFC Spotlight Report at 11 ($161,300 in bond forfeitures recovered in FY22); *see also* Testimony of EMNRD Deputy Secretary Dylan Fuge, House Judicial Committee Hearing on House Bill 133 Committee Substitute January 31, 2024[1] (explaining that only a "handful" of bonds are pursued, OCD must submit evidence of plugging prior to payment, and EMNRD recovered just $161,000 on 300 wells from Cano Petro). Thus, the claim must (1) triggered by nonperformance, (2) investigated and deemed valid by the Surety, and (3) the Obligee (OCD) will have to demonstrate that the well covered by the bond has either been plugged or substantial work completed, all before the Surety agrees to pay anything on the bond. *See* IPANM Ex. 27, LFC Spotlight Report at 10 (describing bond forfeiture process, to include "The

[1] New Mexico Legislature Webcast for January 31, 2024, House Judicial Committee at 10:57-10:59 p.m., last accessed September 10, 2025, available at https://sg001-harmony.sliq.net/00293/Harmony/en/PowerBrowser/PowerBrowserV2/20240131/-1/74593?startposition=20240131225753&mediaEndTime=20240131225945&viewMode=3&globalStreamId=3 or https://tinyurl.com/HJCHB133

surety will then initiate an investigation to determine the validity of both the bond and the claim. Investigations can be lengthy..."). WELC's expert witness Mr. Morgan does not seem to grasp the practical delays in the process, offering instead that when "the operator forfeits the financial assurance ... the proceeds are used by the state to pay a third party to complete the plugging." *See* Direct Testimony of Peter Morgan, WELC Ex. 15, 16:3-4.[2] This has not been OCD's lived experience. *See* Fuge Testimony, *supra*. Notably, the same process will apply in the future, regardless of the financial assurance levels. Moreover, WELC's proposed FA increases do not account for the negative, possibly unintended, economic effects of placing higher demands on operator capital: less development, less investment, and less available capital to plug the 95% of wells industry already accomplishes annually.

Q: In your recent experience, is the Surety market accessible or available to most operators?

A: Not at today's collateral requirements, underwriting guidelines, and premium rates. I mean no offense, but obtaining the level of financial assurance required by WELC's proposed rules in today's market is nowhere near the experiences of Mr. Alexander or Mr. Morgan as typical consumers. While most markets for goods are characterized by abundance, flexibility, and relatively low barriers to entry, in contrast the P&A surety market is undergoing a period of significant contraction and increased scrutiny. There is not a simple supply-and-demand problem. *Cf.* Morgan, 49:7-13 ("If there is demand for a certain type of

[2] *But see Morgan*, Ex. 15, 19:15-16 (citing WELC Exhibit 23, which states "OCD has the authority to forfeit any applicable financial assurance once plugging work is complete."); and *id.*, 26:16-19 (describing forfeiture process to require legal action which may be contested).

financial assurance instrument, the market will fill that demand."). Surety providers are tightening underwriting standards, demanding higher collateral, and increasingly requiring personal indemnities. This is not a market flush with options – it's a market where even well-capitalized operators are struggling to secure bonds. To suggest that operators can simply shop around for bonds and pay a 1% premium ignores the reality of today's financial environment and the long-term obligations these bonds present. *See* Morgan, Ex. 15, 36:15-17 (estimating annual premiums for surety bonds between 1%-2.5%, based on a study of the 2001 Texas bonding change). I strongly disagree with Mr. Morgan's synopsis of the current surety market that "most operators" will be able "satisfy financial assurance requirements by posting surety bonds." Morgan, Ex 15, 36:12. As I stated previously, typical annual premiums ranging from 2.5% - 3.5% (or more) of the bond amount are regularly required of well-capitalized companies in the surety market.

Q: Does WELC's proposal to increase financial assurance levels for marginal wells to $150,000 merely target the "Bad Actors"?

A: No, the bonding increases will affect every operator in New Mexico and disproportionately burden smaller, independent operators of later-life assets. There are no carve-outs or safe harbors in the proposed rule changes for compliant, responsible, prudent operators. Additionally, WELC has not offered evidence in support of its "risk" theory that marginal well operators are more likely to be out of compliance or more likely to abandon wells. In contrast, however, than abundance of testimony for the Commission to consider from actual small, mid-size, and independent operators reflecting responsible operation of wells in New Mexico from end-of-life through decommissioning and reclamation. *See, e.g.*,

Direct Testimony of Kyle Armstrong, 9:6-13 (operator of 75 wells plugged 16 since 2019); *Direct Testimony of George Sharpe*, 2:18-21 (Merrion Oil & Gas, operating for forty years, has plugged twice as many wells—144—as it currently operates). There is also ample testimony that the impact of WELC's financial assurance rule would be astronomical: $9.45 million; (*Sharpe*, 4:17-18); $27 million (*Direct Testimony of Jeff Harvard*, 4:16-17), $11 million (*Direct Testimony of David Mitchell*, 2:17-19), both at the outset in capital commitment and in continuing to service those bonds. But according to Mr. Morgan, if a smaller, responsible operator cannot comply with the new levels, it is simply good-riddance, being "high risk" and "irresponsible" operators who deserve to be pushed out of the market. *Morgan*, Ex. 15, 34:5-7, 37:9-11. I strongly disagree with that position, from a personal and financial perspective. I likewise disagree with Mr. Alexander's position that "This class of operator has no business remaining in business if the operator cannot 'pay' for adequate financial assurance." *See* Alexander, Ex. 3, 12:23-13:2. It is unrealistic and uneconomic for an operator to carry millions in bonding, pay out hundreds of thousands in premiums, and still take on the cost of plugging and reclaiming that well when needed with the prospect of bonding for that well being released sometime thereafter.

Q: Do you see other problems with WELC's proposed financial assurance rules the Commission should consider?

A: After reviewing Mr. Alexander and Mr. Morgan's testimony, there are two more areas I would like to bring to the Commission's attention. First, I do not disagree with the idea that Mr. Morgan proposes, that "Operators who have profited from oil and gas production should be the ones to bear the costs of cleanup," Morgan, Ex. 15, 37:12-13. This makes perfect

sense, which is probably why the Oil and Gas Conservation Tax has been in place for decades, capturing the "costs of cleanup" throughout the life of the well by taxes on production. However, the fact that the New Mexico Legislature has re-allocated conservation funds to other purposes does not now support increasing financial assurance levels. Nor does targeting marginal wells proportionately distribute the burden of plugging and reclamation costs over the life of the well, which makes the most economic sense in the vein of recouping from available profits. Second, although a minor addition in the overall WELC proposal, the requirement that sureties be listed on the IRS Treasury Circular 570 further restricts an already narrowing market for operators. In conjunction with the sky-high FA levels proposed by WELC, Circular 570 carries with it a requirement that Sureties follow and comply with 31 CFR 223.9, which establishes a limit on underwriting any single risk exceeding 10% of paid-up capital and surplus, further narrowing the qualifying, available surety companies.

TREVOR GILSTRAP

EXHIBIT 10

I hereby affirm under the penalty of perjury of the laws of the State of New Mexico that the above statements are true and correct to the best of my knowledge, information, and belief.

DATE: 9-18-25

TREVOR GILSTRAP

EXHIBIT 10

Trevor Gilstrap



TREVOR GILSTRAP - BACKGROUND

- Since 2011, insurance and surety producer (broker) for upstream and midstream service contractors and operators
- Leader of AssuredPartners Energy Practice, providing insurance and surety placements for dozens of E&P companies
- Energy Risk & Insurance Specialist by International Risk Management Institute
- 2021 & 2024 Insurance Business America Top Producer
- 2021 Traditional Energy Power Broker by Risk & Insurance Magazine

Proposed Rule creates unintended consequences

- $150,000 Surety Bonds required under Proposed Rules for:
  - single active wells
  - marginal wells
  - approved TA wells

Where unavailable or prohibitively expensive, anticipate:

- Bankruptcy
- Orphaned Wells
- Exit from New Mexico

BONDS ARE NOT INSURANCE

Bond: promise to pay upon satisfaction of certain conditions or performance

Under NMAC 19.15.8.9(A) scheme and general Surety Contracts

Operator → Principal

Company that Issues Bond → Surety

New Mexico → Obligee

Bond: Risk always remains with Principal

Insurance: Insured pays premium, Insurer absorbs Risk

HOW MUCH DO BONDS COST?

- Operator/Principal must have minimum 25%-100% working capital to qualify
- ↓ % Working Capital, then ↑ % Collateral Required of Operator
- Typical Collateral Requirements 50-100% of Face Value of Bond
- Premiums range from 2.5-3.5%, due annually for life of Bond
- With average life span of 25 years and single-well bond of $150k, Operator pays over $130,000 in premiums to Surety

Scenario 1



Operator with 150 wells above the 15% threshold needs $22.5 million bond



Collateral @ 50% = $11,250,000 to secure bond



Annual Premium @2.5-3.5% = $562,500 to $787,500 /yr

Scenario 2



Operator with 1000 wells required to single-well bond has $150 million bond



Collateral @ 50% = $75 million to secure bond



Annual Premium @2.5-3.5% = $3.75M to $5.25M /yr

CASH BONDS & LETTER OF CREDIT

- Operators without required capital limited to cash bonds or LOC
- Both tie up large sums of money
- Decreases available cash and capital for Operator to carry out scheduled P&A, drilling & development, maintenance & repairs

ALTERNATIVES

COLORADO: Involved in 2022 Rulemaking; Tiers tied to production, # wells, with option to contribute annual fee to state sinking fund (Orphan Wells Mitigation Enterprise)

- OWME allowed small operators to stay in business briefly, cut off ability to grow

WYOMING: state run bonding pool

OKLAHOMA: OneNexus Oklahoma Captive Corporation pools Asset Retirement Agreement

NM LFC Report Recommendation: Third Part Trust or Escrow Account

Beware Following in Colorado's Footsteps

2022 Rulemaking in Colorado increased FA levels for small and mid-size operators

- Statewide Bonding levels fallen by $4 million

- Orphan Wells & Well sites have quadrupled (4X) since implementation

Response to WELC Testimony

- Mr. Alexander and Mr. Morgan assert that increasing FA levels will "**insure**" and "**insulate**" the State from risk.
- BUT raising FA levels without accounting for market increases risk of exit, abandonment, consolidation and reduced competition, and # orphan wells
- Surety Bond market is not a limitless insurance policy
- Increased FA requirement does not make more $$ immediately available to State
- Even after satisfying lengthy Surety Investigation, collecting $$ another hurdle
  - Cano Petro bonding of $700,000, but just $161,300 collected by State

Response to WELC Testimony

- Surety market undergoing significant contraction not likely to respond to supply-demand metrics
- Ability to "shop around" and obtain bond at 1% premium not reflective of current reality
- Proposed Rules structured to penalize responsible operators without targeting "high risk" or noncompliant individuals
- If Operators who benefit from productive life of well should share in costs of clean up, Proposed Rules fail to accomplish
- Circular 570 further narrows limited surety options

Surrebuttal

OCD Master Orphan Well List (Ex 17)

vs

OCD Financial Assurance (Ex 29)

IPANM

INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO

EXHIBIT 10

	OPERATOR	#Wells on Ex17	% of Total	Fee and State	SURETY COMPANY (Ex 29)
1	Cano Petro of New Mexico Inc.	329 wells	18.32%	33	US Specialty Insurance Company
2	Ridgeway Arizona Oil Corp	299 wells	16.65%	231	Pennsylvania Insurance Company
3	Canyon E&P Company	235 wells	13.08%	18	US Specialty Insurance Company
4	LLJ Ventures LLC DBA Marker Oil & Gas	149 wells	8.3%	34	Lexon Insurance Company
5	Northern Pacific Oil and Gas Inc	83 wells	4.62%	28	Fidelity and Deposit Company of Maryland
6	Xeric Oil and Gas Corp	69 wells	3.84%		NOT LISTED
7	Marks and Garner Production Ltd Co	64 wells	3.56%		Western Commerce Bank
8	Remnant Oil Operating LLC	52 wells	2.9%	28	Lexon Insurance Company
9	Energy Acumen LLC	50 wells	2.78%	9	Arch Insurance Company
10	Blue Sky NM Inc.	41 wells	2.28%		U.S. Specialty Insurance Company
11	Petrolia Energy LLC			29	Lexon Insurance Company
12	Roger Slayton LLC DBA ESCUDILLA OIL COMPANY			24	Bank of the Southwest
13	Sellers & Fulton Oil LLC			24	Lexon Insurance Company
14	Roca Production Inc.			10	Underwriters Indemnity Co; West Texas National Bank
	TOTAL	1371 wells	76.33%	86%	

EXHIBIT 10

PUBLIC HEARING
STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

Pecos Hall, 1st Floor, Wendell Chino Building
1220 S. Saint Francis Drive
Santa Fe, New Mexico

IN THE MATTER OF:
PROPOSED AMENDMENTS TO 19.15.2, 19.15.5 19.15.8, 19.15.9 and 19.15.25 NMAC

TRANSCRIPT OF PROCEEDINGS

November 3, 2025

HEARD BEFORE:

HEARING OFFICER FELICIA ORTH

COMMISSION MEMBERS:
ALBERT CHANG, Chair
GREGORY BLOOM, Member (virtual)
DR. WILLIAM AMPOMAH, Member

COUNSEL TO THE COMMISSION:

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I N D E X

PAGE
TRANSCRIPT OF PROCEEDINGS.....5
THE WITNESSES
JIM WINCHESTER
Direct Examination by Mr. Cloutier.....17
Cross-Examination by Mr. Nykiel.....46
Cross-Examination by Mr. Tremaine.....60
Cross-Examination by Mr. Moore.....72
Cross-Examination by Ms. Suazo.....81
Redirect Examination by Mr. Cloutier.....82
Examination by Commissioner Ampomah.....83
Examination by Commissioner Bloom.....87
Examination by Chair Chang.....90

KYLE ARMSTRONG
Direct Examination by Ms. Tripp.....97
Cross-Examination by Mr. Tisdel.....123
Cross-Examination by Mr. Tremaine.....131
Cross-Examination by Mr. Biernoff.....142
Cross-Examination by Mr. Suazo.....149
Redirect Examination by Mr. Tripp.....152
Examination by Commissioner Ampomah.....155
Examination by Commissioner Bloom.....161

TREVOR Gilstrap
Direct Examination by Ms. Tripp.....164
Cross-Examination by Mr. Tremaine.....192
Cross-Examination by Mr. Suazo.....202
Examination by Commissioner Ampomah.....205
Examination by Commissioner Bloom.....208
Examination by Chair Chang.....211

CALDER EZELL
Direct Examination by Mr. Cloutier.....213

EXHIBIT 10

I N D E X (Cont'd)

PAGE

ADMITTED EXHIBITS

IPANM Winchester Direct and Rebuttal Exhibits 10 through 13, 27, 28, 40, 43, 44 and 46 through 53.....20

IPANM Armstrong Direct, Surrebuttal Testimony and Demonstrative Slides.....122

IPANM Gilstrap Direct and Rebuttal Testimony, Demonstrative and Surrebuttal Slides.....191

IPANM Ezzell direct, rebuttal testimony, demonstratives, surrebuttal, and Exhibits 14 through 19, 20, 26, and 41.....219

TRANSCRIPT CERTIFICATE.....279

(On the record at 9:00 a.m.)

TRANSCRIPT OF PROCEEDINGS

HEARING OFFICER ORTH: Good morning. My name is Felicia Orth, hearing officer appointed by the Oil Conservation Commission to conduct a hearing on OCC 24683 relating to well plugging and financial assurance.

We are on day 11 of the hearing and have reached another public comment session. I don't believe I see anyone in the room here to offer public comment, but I believe we have several folks online.

Here in the room, we have Commissioner Ampomah and Commissioner Bloom. The Chair is online, Chair Chang is online.

So let's see, Sheila, who are we going to pull up first? This is Karen Kilpatrick.

Just a couple of things about public comment. I will ask you to spell your first and last name for the transcript. I will ask you, pursuant to Commission rules, to swear or affirm to tell the truth.

And I will ask you to keep your comments to three minutes. In the event you have a lot more to say, please submit your public comment and rating to the Commission administrator, Sheila Apodaca.

Ms. Kilpatrick, can you unmute yourself.

MS. KILPATRICK: My name is Karen Kilpatrick. It's K-A-R-E-N, K-I-L-P-A-T-R-I-C-K.

HEARING OFFICER ORTH: Thank you. Do you swear or affirm to tell the truth?

MS. KILPATRICK: Yes, ma'am, I do.

HEARING OFFICER ORTH: I'll start your time.

MS. KILPATRICK: Thank you for your time today. I was born in Gallup while my father was working at the Prewitt refinery in 1954. In 1956, my father took a job at the Conoco refinery in Artesia just before I turned two years old. He worked there in the lab for 25 years before his health forced him to retire.

My older brother went to work there shortly after my father's retirement and worked in the lab for 40 years before he retired. This brother also worked in a jewelry store or owned one from 1966 until he closed it and retired in 2011.

My younger brother graduated high school in 1977 and started at the refinery a year afterwards as a pot mechanic. He worked his way up to managing the asphalt plant. He was laid off after 32 years of work when he was 61 or 62 years old.

I have spent 60 years in Artesia with ten years in Texas and Virginia at different times. Most of the time, Artesia is self-sustainable, but there is a lot that would make it better. Our biggest and oldest oil drilling company, Yates Drilling and Production Company, sold out to EOG a few years back. EOG went through a reorganization and moved their offices from here to Midland, Texas.

We have the largest oil pool under our county that we cannot access due to drilling regulations already on the books. Why try to place more on companies that would leave the state? There are too many regulations on the state and federal lands where drilling could be done and was done in the past.

The new proposed regulations may cause the companies currently doing business in Eddy and Lea County to withdraw. This could lessen the influx of oil and gas money. This would mean less funds for schools.

I would really recommend the Commission to vote these new proposals down. Thank you very much for your time and listening to me.

HEARING OFFICER ORTH: Sheila, who do we have next?

EXHIBIT 10

Andrew Klooster, can you unmute yourself?

MR. KLOOSTER: Can you hear me all right?

HEARING OFFICER ORTH: Yes. Thank you. If you would spell your first and last name.

MR. KLOOSTER: Perfect. Thank you. My name is Andrew Klooster. It's A-N-D-R-E-W, K-L-O-O-S-T-E-R.

HEARING OFFICER ORTH: Do swear or affirm to tell the truth?

MR. KLOOSTER: I do.

HEARING OFFICER ORTH: I'll start your time.

MR. KLOOSTER: Thank you. I am the Colorado field advocate and an optical gas imaging thermographer with Earthworks, and I'm thankful for the opportunity today to lend my voice in support of stronger bonding and cleanup rules.

For over ten years, Earthworks has deployed optical gas imaging cameras here in New Mexico and in other states, both nationally and internationally, to document emissions from facilities throughout the oil and gas supply chain and at each stage in the lifecycle of an oil and gas well path.

We have used this experience to advocate

for new rules and regulations to mitigate emissions from facilities that pose a risk to public health and the environment. I personally served as a thermographer for Earthworks for the past five years, and in those five years I have conducted over 2,000 surveys of roughly a thousand different oil and gas facilities throughout the Mountain West, including Colorado, Idaho, Montana, Utah, and here in New Mexico in the San Juan Basin.

I've made multiple trips to San Juan and Rio Arriba counties, and what I've observed at marginal wells in New Mexico is not surprisingly, but unfortunately, no different than what I've observed at similar wells in Colorado or elsewhere.

Let me elaborate on that point. When you spend as much time as I have looking at low-producing and abandoned wells with an optical gas imaging camera, you will likely observe over and over again emissions from loose fittings and valves, cracked or unsealed stuffing boxes, broken gauges and controllers, improperly maintained storage tanks, malfunctioning flares and separators, and even as in the case of a facility in San Juan County a few years back, emissions wafting directly out of the ground itself due to a cracked flowline on a well pad.

These emissions are not just a sign of aging and perhaps in some instances poorly maintained equipment, they pose a threat to public health and the environment. I worked with a rural community here in Colorado where the emissions from just a single leaking tank battery on a low-producing well pad made multiple people from various households sick with nausea and headaches and potentially exposed them to a particularly dangerous pollutant, hydrogen sulfide.

Now that well pad is shut down, but the public will be footing the bill to clean up the mess because the operator was, for all intents and purposes, financially insolvent long before their equipment started leaking and impacting public health.

This should never happen. The public, particularly those who may have already suffered negative consequences from nearby oil and gas facilities, should never have to pay to clean up a mess they did not create, a mess that they may have already had to pay for in the form of bills for doctor's visits, laboratory tests, or air purifiers.

This really is a very common-sense proposition. The operators that drill the wells and

make a profit from the wells, should pay the cost to clean up those wells after their productive life cycle has ended.

New Mexicans have lived on and cared for this land for centuries. To honor that legacy, the state must adopt rules that ensure that New Mexico's people and land do not pay the price for a mess they did not create. Thank you.

HEARING OFFICER ORTH: Thank you, Mr. Klooster.

Next we have Matt Strickler.

Mr. Strickler, can you unmute yourself?

MR. STRICKLER: Yes.

HEARING OFFICER ORTH: Hello. Would you spell your first and last name, please?

MR. STRICKLER: Yes. My name is Matt Strickler. Matt, M-A-T-T, Strickler, S-T-R-I-C-K-L-E-R.

HEARING OFFICER ORTH: Do you swear or affirm to tell the truth?

MR. STRICKLER: Yes.

HEARING OFFICER ORTH: Thank you. I'll start your time.

MR. STRICKLER: Hello. My name is Matt Strickler. I'm a native New Mexican and a graduate

EXHIBIT 10

of Farmington High School. I chose a degree and career in the energy sector and have over 20-plus years experience in the industry.

The start of my energy career began in Texas and expanded to work in Colorado, Oklahoma, New Mexico, and internationally. I chose to return to the state in 2011 and hope to remain in New Mexico. My family and I love the climate and the people here in Northwest New Mexico. I would very much like to remain optimistic about our family and future generations having a life here.

Unfortunately, over the last 14 years, I've seen my focus shift from 100 percent progress in investments based in New Mexico to a de minimis amount of consideration in new investments in New Mexico. Aside from legacy assets in New Mexico, we have turned almost all of our efforts to investments in Oklahoma and Texas. The regulatory and energy policy environment in New Mexico has been the primary reason for our shift outside of the state as risk and returns are rarely competitive.

I do not believe my experience is unique, as policymakers have taken an increasingly hostile approach to small independent producers in favor of large corporate interests. I am concerned

that as the shale production, particularly in the southeastern New Mexico peaks, the budget level of Santa Fe has increased since the pandemic and will eventually lead to a cascade of insolvencies for the small producers in the state in favor of the larger oil and gas interests.

Policy measures like the proposed marginal well bonding will lead to a cascade of insolvencies if energy prices ever take a downturn. And I strongly urge the rulemaking bodies to stress test these measures before triggering a cascade of liabilities to the State of New Mexico as they take solvent companies and drive them into insolvency.

I thank you for your time and consideration and I hope this committee makes the right decision.

HEARING OFFICER ORTH: Thank you, Mr. Strickler.

If you're on the platform and would like to offer comment, please raise your virtual hand. If you have dialed in using a telephone, you can press star 5 to raise your hand. Is there anyone else at all who would like to offer comment at this time?

The next opportunity for public comment will be this afternoon at 4:00 p.m. And during that

comment session, there will be available an interpreter between English and Spanish, Spanish and English.

All right. If there's no one else, we will return to the technical case.

Thank you, Mr. Cloutier, for sending an updated lineup this weekend. Are we still on that path?

MR. CLOUTIER: Yes, Madam Hearing Officer. I were uncertain when Mr. Gilstrap is available this morning before noon. If he is, and we're done, we can put him on. If not, he's ready to go at 1:00.

Mr. Ezzell will be here to follow up on that. And we are well on our way unless, Mr. Tremaine and Mr. Hall try and ask more questions than they're entitled to, to finish on Tuesday.

HEARING OFFICER ORTH: Okay.

MR. CLOUTIER: I am obviously just teasing, since Mr. Tremaine's smiling. And Mr. Hall may be glaring.

HEARING OFFICER ORTH: Thank you very much, Mr. Cloutier.

MR. CLOUTIER: And then we will have the two witnesses available on Thursday, as outlined in my e-mail to you and all counsel.

HEARING OFFICER ORTH: All right. So we may have Commissioner Ampomah and others -- we may have a break, if you will, between today and Thursday or tomorrow and Thursday due to witness availability.

MR. CLOUTIER: I think we're just going to convene versus Microsoft Teams. Commissioner Ampomah's, the hearing officer's reference. But I have one witness who is out of the country until sometime tomorrow afternoon; another witness who's not available today, but is available tomorrow.

Since they're both available Thursday morning after conferring with the hearing officer and counsel, we thought it might be best if we just reconvene for those two witnesses virtually on Thursday morning.

HEARING OFFICER ORTH: It's something that's in discussion, but we don't have that discussion official yet.

MR. CLOUTIER: Yes.

HEARING OFFICER ORTH: Commissioner Ampomah.

COMMISSIONER AMPOMAH: Yeah, so if I can know the time, because I've already booked my hotel and I need to know that, and if I need to go back home or not.

HEARING OFFICER ORTH: Okay. Thank you.

EXHIBIT 10

MR. CLOUTIER: Thank you.
HEARING OFFICER ORTH: Commissioner Bloom.
COMMISSIONER BLOOM: That would certainly work for me. I'm glad you're discussing this with respect to Thursday. And just to note, tomorrow I will not be able to be in Santa Fe, but I will participate virtually. I don't think I'll miss any portion of the meeting, but I'll be virtual tomorrow.
HEARING OFFICER ORTH: Thank you.
Mr. Winchester, would you join us up here at the front, please. Thank you. If you would spell your first and last name, please.
THE WITNESS: All right. Is that better? Jim Winchester, last name is W-I-N-C-H-E-S-T-E-R.
HEARING OFFICER ORTH: Thank you. Do you swear or affirm to tell the truth?
THE WITNESS: I do.
HEARING OFFICER ORTH: Thank you. Go ahead, Mr. Cloutier.

JIM WINCHESTER,
having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CLOUTIER:

Q. Mr. Winchester, good morning. Would you please introduce yourself to the Commission?

A. Certainly. Good morning. Jim Winchester, director of the Independent Petroleum Association of New Mexico. We're a volunteer trade association, oil and gas producers who explore and produce E&P oil and gas in New Mexico. And we're made up of predominantly those independent producers, along with businesses and professions who support those producers.

Q. Thank you. Have you been in attendance in person or virtually throughout these proceedings?

A. On and off. I've been in the room for some parts of the proceeding. I've also been listening on the virtual platform. And at times I've been able to catch up a little bit on the department's YouTube channel. I have certainly not caught up on everything. And sometimes when I was listening, I was multitasking. So I'm not sure that I've caught everything.

Q. Okay, thank you. And you submitted direct and rebuttal testimony in these proceedings, Mr. Winchester?

A. Yes, that's correct.

Q. Do you have any corrections or clarifications to the testimony you submitted?

A. Yes. Thank you. Based on what occurred in the proceeding, I do have a couple of clarifications.

First, in my rebuttal, I testified concerning reaction from multiple members of my association to a form that was issued by the Division in August or September that interpreted as implementing -- as though this rulemaking had been adapted.

My testimony from the members at the time was truthful. My clarification is that after Mr. Hall questioned an earlier witness, and I apologize, I don't remember who that was, I discussed Mr. Hall's questions with members, and I wish to clarify that I think the initial form's reactions was misplaced.

Q. Anything else?

A. Yes. I spent a lot of time in my direct testimony talking about what was and what was not represented by the master orphaned well spreadsheet. Again, I do not think what I testified to in direct is inaccurate, however, in listening to the applicants and to the Division, I do not think that they are trying to use each entry on that spreadsheet as the scope of the current orphan well issue in New Mexico, which is something that I heard prior to the hearing.

Since both the Division and the applicants seem to be using the number of roughly 700

for the number of orphaned wells that the Division has the responsibility to plug, I think it's a number that is roughly accurate. So I don't think that my testimony about the spreadsheet has much relevance.

IPANM agrees with the applicants and the Division about the scope of the current orphan well problem. And to be clear, IPANM agrees that it is a problem that does need a solution.

MR. CLOUTIER: With that, Madam Hearing Officer, I'D move the admission of Mr. Winchester's direct and rebuttal testimony as demonstrative IPANM Exhibits 10 through 13, 27, 28, 40, 43, 44 and 46 through 53.

HEARING OFFICER ORTH: I'll pause for a moment in the event there are objections. Those exhibits are admitted.

(Admitted: IPANM Winchester Direct and Rebuttal Exhibits 10 through 13, 27, 28, 40, 43, 44 and 46 through 53.)

BY MR. CLOUTIER:

Q. You've already touched on this, Mr. Winchester, but would you describe your role in the oil and gas industry?

A. Yes, certainly. I am, as I mentioned, executive director of IPANM, again, a trade

EXHIBIT 10

association. And as a trade association, I do a number of administrative functions, everything from preparing a budget, membership trainings, industry events, communications, general operations, staff, including myself, and a part-time operations manager.

My primary duty, though, in this role, is to really listen to my board and the membership and communicate their collective views to the legislature, to the general public, and today to this Commission.

Q. Do you hold yourself out as an expert in things like day-to-day oil and gas operations, running an oil and gas company, or implementing the regulations that affect oil and gas companies.

A. Not at all. I did work here at EMNRD and NMED from 2011 to 2015. In my role with those departments, I learned about some of the issues at the time from the regulatory perspective. But safe to say I'm not an expert in those regulatory issues.

I'm also not a lawyer. I know that non-lawyers can contribute to drafting and interpreting regulations, but I don't hold myself as having a skill in that area.

In my role at IPANM, I learn things every day from members about the industry and their companies. But I've never been active or employed

directly for an oil and gas company.

So I guess that's a long way of saying that I have some knowledge about a number of industry matters, but not always in any great depth.

Q. Please explain to the Commission the purpose of your testimony here today.

A. Yeah, there's three things. First, we have a number of members who volunteered and even asked to tell the Commission about their company and how they would be affected by the rulemaking. In fact, some of those members initially submitted written testimony, but we have now submitted their comments in writing, as you and Ms. Tripp thought it best to pare down our presentation. I do think that those individual members have and will provide valuable insight.

However, there are other members that we represent that don't want to be in the limelight, which is certainly understandable. So in my capacity as their representative, where I heard some basic concerns multiple times, I'm here to tell the Commission about those concerns. So that's really my first purpose for being here and testifying.

Second, there were occasions in the rulemaking where we thought the Commission needed more information from industry than the testifying

operators could provide. So we did survey our members, and I'm presenting the results of those surveys.

And then the third thing is, we have been criticized for not engaging on this rulemaking. And I'm here to tell the Commission as to why that is.

Q. Let's move to specific areas of your direct testimony.

MR. CLOUTIER: If we could move to slide 3, please, Mr. Everhart.

BY MR. CLOUTIER:

Q. And there are changes to 19.15.5.9 proposed by the applicant. The first is a change to A(4). What's the purpose of your testimony today regarding that issue?

A. Okay. Certainly, I think in general IPANM members are concerned about two rule changes sort of related to what we're considering an operator in good standing. So 19.15.5.9A(4), so based on the current rule, the member feedback that I've received is that I'm told that the current regulations allow an operator to be maybe 1 or 2 percent out of compliance with the existing rule to plug. In other words, the rule, as it's written now, forces operators to plug, but it's a rule that recognizes the reality that there

may be some lag time between the need to plug in an actual plugging.

My understanding is that this has to do with any number of reasons, including but not limited, for example, like the availability of plugging crews, service companies to plug within a certain time frame.

I think the concern with the new 19.15.5.4A(4), and I think that starts at slide 3 as you mentioned, is what referring to as "the death penalty," that the new proposal seems to eliminate any tolerance for even being one well out of compliance.

Now my members read that as such, that if you are one day out of compliance with plugging one well, you're not eligible to operate any wells.

Q. And there is a new provision suggested at A(5) of that same rule. Can you tell the Commission what members' concerns are?

A. Okay. So just to clarify, this is 19.15.5.9A(5), correct?

Q. Correct.

A. So this, to my understanding, adds that one violation of the venting and flaring rule and the operator is deemed not in good standing. So I think it's the same deal where you're no longer eligible to operate any of your wells.

And in addition to that, my members have brought to me further concerns that by referencing Part A of the venting and flaring rule, even permissible venting and flaring under Subparts B, C, and D of that rule is not allowed. And again, I want to emphasize this is how it reads to our operators.

Q. And could you articulate the concerns that you've been told about that operators have expressed to you about these two changes?

A. Okay, sure. There's three things. First, if we go back, you and I, Mr. Cloutier, participated for IPANM in a civil penalties rulemaking a couple years ago. And we heard a number of times that the OCD has a toolbox, various tools at its disposal, when it finds an operator in non-compliance. This includes the civil penalty matrix, that waste factors and circumstances to come up with appropriate penalty. But here, there's no such discretion or penalty matrix available. I think that's why it's been dubbed the death penalty, one strike and you're out.

Second, and I think it needs to be asked both for the stated mission of the Oil Conservation Commission and the Division in terms of preventing resource waste and for the public, how is it good for the state to withdraw an operator's ability to

operate, say, you know, an additional hundred wells for one violation of one well.

Third, and this is really a central theme here throughout the rule, and this is the thinking, if the collective goal of these rules is to prevent orphan wells under this one strike and you're out provision, the proposed rule effectively orphans a lot of wells.

Q. Thank you, Mr. Winchester.

The next area of your testimony I want to talk about is concerns you expressed on the issue of bonding. Can you tell us, on an overall basis, what the concern is that IPANM had with it?

A. Okay. Thanks. And I think this is a slide 7. Adding the new bonding requirements is effectively a sledgehammer. And that gets to what I'm bringing up here and showing here on the slides moving forward.

In my direct written testimony, I testified that how bonding has historically been ineffective in New Mexico. And this is supported in slide 7 by the most recent seven annual reclamation reports showing that bonds were only drawn on to -- total two in the past seven years, amounting to less than $250,000 after plugging 193 wells.

Now, this is upsetting to IPANM members

first because the Division is asking for essentially a 600 percent increase for their individual bond, with no blanket option. And I'm not sure that any industry could survive a sudden 600 percent cost in its holdings.

And the industry is being asked this, when the state collects virtually none or very little of his existing bonds. It's just not good policy or practice, as it's been relayed to me.

And I think to sort of put a circle on this one, this was asked back in June at the LFC meeting, legislative finance committee meeting, in Taos. Assistant Deputy Secretary Sheldon testified in front of the legislative finance committee that this is the equivalent of that "The juice is, is not worth the squeeze." Should I go on?

I mean, I've noticed since then that there's been a slight change of approach, again, at the June LFC hearing, when that reference was made. You know, there was bipartisan pushback. And I know that I brought that up as a concern in my written testimony submitted on August 8th.

Now, in this rulemaking, I found out for the first time that in the last half of August, the OCD made bond demands of three of the largest

offenders on its orphan well list. And whether the timing suggests OCD got the message, it really doesn't matter. We just want to be on the record now as saying that we're glad to see that the Division is doing this.

But the argument remains, the bonding system right now offers us no evidence that it protects the taxpayer. And our members who are coming forward in this hearing are demonstrating that bonds only succeed in creating hardships for the good operators and, therefore, really risk increasing orphaned wells.

Q. Thank you, Mr. Winchester.

I'd like to move to your testimony concerning Exhibits 17 and 23. I think that's around slide 18 or so. These are two of the Division's exhibits. They're Exhibits 17 and 23. Tell the Commission what you did at a high level.

A. Sure. So I want to first give some context related to this. It's come up before in this rulemaking but most operators plug their wells. The Division or somebody else may wish that some of these wells get plugged sooner and there may be disagreements about when wells need plugging, but I want to make it clear good operators take care of

EXHIBIT 10

business, including the plugging of wells and reclaiming of property.

Now Exhibit 17, it's been clarified as I've been told, and it seems like the Division and the applicants agree, that there are a number of wells on the spreadsheet that have been plugged.

Exhibit 23 is one of the TA well exhibits submitted by the Division.

Q. So in addition to having talked about the number of wells that have already been plugged, does your testimony on these exhibits have any other relevance to the Commission in your mind?

A. Okay, sure. A couple of things. First, on Exhibit 17, when we analyze it, as we do on slide 8, I believe that's our slide, but correct me if I'm wrong --

Q. It's not on there?

A. -- it demonstrates that the population of those orphan wells is concentrated into a smaller number of operators; ten, to be exact.

And again, on that slide 8, this shows that the problem in scope is involved in ten operators that account for 75 percent of the total orphan wells.

Second, and most important, if we look at Exhibit 23, that is the basis, to my understanding,

of at least a good chunk of legislative finance committee's concerns about another 4,300 wells being orphaned in addition to the 700 unplugged. I think there ought to be real doubt as to whether these wells unfortunately will ever get bonded.

Q. Let's look at the next slide, please, and then the next one after that.

A. That's slide 22, I think.

Q. Tell us what's depicted here. This is taken from your testimony?

A. Okay, this is the number that we did and ran based on Exhibit 23, and you can see it again on page 22 of the slides. As you can see there, it indicates that almost 40 percent of the wells in Exhibit 23, the TA list, are concentrated into ten operators.

Based on the well count of those operators in Exhibit 23, we've calculated the amount of their extra bond under the new rule proposals. And under notes, there is publicly available information about those operators which we've compiled.

And if I may, I want to briefly walk through that list.

MR. CLOUTIER: If we could go to the next slide, please, slide 22.

A. Yeah, back to slide 22. I'm going to

briefly walk through this list just to illustrate something.

First you know we look at the top. There's Ridgeway in Arizona. It has 287 wells, it's under a compliance order. And the question I ask is and what members have asked me: Do we think that the state will come up with $43 million in extra bonding.

The next one, Acacia Operating, I believe it's pronounced, it has 231 wells in Exhibit 23. Only one well shows up on the orphaned well spreadsheet, Exhibit 17. But essentially, under the new bonding, they will owe an extra $34 million. And I think we are pretty uncertain regarding their bonding capacity.

The next one LLJ Ventures shows 149 orphaned, and I think we can conclude it's very unlikely that they will be able to post $40 million in bonds.

LH Operating has 131 wells, but recently sold to EON Resources, and they are planning secondary recovery through waterflooding. So that's substantial.

Q. Excuse me. Let me interrupt. Do you know that personally or was that the result of some other information that was provided to you?

A. No, I do not know that personally. But that is information that is publicly available, to my understanding.

Okay. Dominion Production holds various compliance orders, but with those -- regarding compliance orders on financial assurance violations, I think it's obvious that they will not meet the new bonding requirements. So that's another $18 million.

Cano Petro we know very well filed for bankruptcy, they're gone. So we know there's an additional 17 million in bonding coming there.

Hilcorp is on this list. And as we know, they have submitted information to the Commission. They have a very robust well program. They are successfully reworking wells, and that's transformed old wells into individual success stories. So they're responsible. They're actively plugging wells. They should be considered low risk and yet, this rule would cost them $15 million of bonding, which doesn't make sense because their plugging and repurposing track record is there.

They are concerned, however, that, you know, their ability to continue to grow through acquisitions in their business model is under tremendous threat with the uncertainty of the OCD

authority to reject acquisitions. So they're out there like that and they're not alone.

I'm moving on. The smaller operators, like OEM, they'll be asked to increase bonding, $13 million. I think it's unlikely given their portfolio.

Empire, Maverick, they're each being asked to increase 12, $11 million respectively. They're less known, but with uncertain bonding capacity.

And then at the bottom, Northern Pacific has 65 wells on the inactive list and 83 wells on the orphaned well spreadsheet.

So overall, I think the pattern we see here is that most of these operators, outside of Hilcorp, on the orphaned well list lack the financial ability to provide bonds.

Q. Thank you. Did members and you notice anything else about the population of Exhibit 23?

MR. CLOUTIER: Next slide, please.

A. Yeah, we noticed that there were other operators on 23, Exhibit 23, who we would describe as problem operators, again, publicly available information, that suggests they are no longer capable of plugging or bonding.

I think this is slide 25, is that

correct?

Q. That's one.

A. Okay. Slide 25, that is a list that we've compiled of those operators.

Q. And what's over there in the notes, just for a summary? I don't think we need to walk through it.

A. Yeah, I think what we're showing here is we're identifying the operators, we're showing how many wells we counted in Exhibit 23 for that operator. Then we multiplied that number by 150,000, and then that summarizes the information based on what we knew about that operator.

Now, this is a technicality I want to make clear. Exhibit 23 itself was presented as a PDF. It was not in Excel format. So you can't do a direct conversion of the data we're sorting through on a PDF as you could on an Excel. So we manually counted entries for each operator. And it's possible that our counts were a little off.

But they are as close to be expected, you know, when you're looking down at a PDF document like that. So point being is that they may be slightly off, but they're represented to make the same point.

Q. Could you summarize for the Commission what

you and membership would like the Commission to understand about the analysis done on 17 and 23, OCD Exhibits 17 and 23?

A. So on 26, that shows the summary, same as, you know, our previous analysis. You know, we've identified a total of 19 companies that are going to be asked to come up with a combined quarter billion dollars of bonding. And the information is clear that the capacity is simply not there.

But here's what we do know. The companies not showing up on this list, they're overall responsible. Their track record is such that they are not in a risky category because they plug their wells. And yet in this rule, it will saddle them, the good operators, with excessive bonding costs. And I think this is the fundamental argument with this bonding rule proposal.

I mean, in the minds of the members who I've talked to, it's clearly and unfairly putting an enormous burden on good actors. And that is going to be, you know, essentially 600 percent bonding increases per well thrust upon these less risky operators.

I think the conclusion based on the perspective of our members, is that with this rule,

the Division risks creating more orphan wells now from good companies. But the problem that this rule is supposed to be fixing is orphan wells.

Q. You've mentioned that 600 percent figure a couple of times. Is that going to be the cost for every operator?

A. Well, depending on the scope of the rule. And I believe there's a threshold analysis related to marginal wells that's being talked about or proposed. If that threshold is what falls under those marginal wells, then all those marginal wells will be bonded at 150,000, which is a 600 percent increase from the 25,000 that is on the rule now. And I hope I state that correctly, but it's a little confusing.

Q. It's a number that you've derived from listening to members overall, correct?

A. Yes, correct.

MR. CLOUTIER: Madam Hearing Officer, that concludes the direct testimony of Mr. Winchester, and we'd like to move to his rebuttal.

HEARING OFFICER ORTH: Thank you.

BY MR. CLOUTIER:

Q. First slide of the rebuttal will be --

A. 27?

Q. Yes, sir. So OCD employee Mr. Justin

Wrinkle submitted written testimony about lease operating expenses. Did you see that testimony?

A. Yes. And as a result of that, that was one of the surveys we ran internally with our association to get information, on some of which our members are testifying.

Q. And you ran a survey to get even more information than just the members who are testifying, as I appreciate it?

A. Yes, of course. Exactly. Some of the members are testifying.

Q. Okay. And what would you like to tell the Commission on an overall basis about what you found out from members?

A. Okay. As I understand Mr. Wrinkle's testimony, we may not have much disagreement.

Q. You're talking about his live testing to the Commission, correct?

A. Correct. And I'm talking about what we are presenting and finding in slide 23 -- or excuse me, 28. So this is slide 28, and Mr. Wrinkle identified cost of equipment that members in that first column generally referred to as "camp X." But what needs to be clear here, coming from my members, is that these expenses are almost always incurred at the beginning

of the life the well itself, not when it gets into so-called marginal status.

The second thing I want to point out here is that Mr. Wrinkle seem to agree that every well is different cost-wise. For the costs he identified and my members agreed with were true lease operating expenses. Many of them, my members report, are not common to every well. And those are the ones denoted in red in that second column on slide 28.

Q. We could go to the next slide. And could you briefly tell the Commission, on those items in that second column what your summary of member feedback revealed about those particular costs?

A. Okay, certainly. I'll be brief. Slide 29. The point here is to show the Commission that our members disagree with the high-cost assessments that Mr. Wrinkle is presenting, depending upon how members in the real world come up with those cost numbers.

So I just want to point out these in particular. Compression in itself as a cost becomes less prevalent the lower the capacity of the well in terms of production.

Road/access, most just blade roads every one or two years. It's often that these roads are spread across multiple wells and sometimes multiple

operators. Nobody that we had talked to within the Independent Petroleum Association had heard of numbers related to high figures related to road/access like that.

The field operator, every well, you know, they use contractors and cost is one-third or less than what Mr. Wrinkle experienced at Marathon.

Hot oil chem treatments, you know, no more than once per year; often less or none.

Marketing is taken out of the price paid, runs about 2 percent. The marketer is getting better prices than the operator.

And then water removal is common for oil wells only. A well would only use, you know, that one way.

So again, just to reemphasize that there is disagreement on those costs and we believe, based on what was presented by Mr. Wrinkle and then what was discussed within the membership, it's high.

Q. And we've got a couple of surrebuttals. Let's walk through your conclusions about the lease operating expenses that you and the members were able to come to. Tell the Commission kind of bullet point fashion.

A. So these were some just quick number

comparisons that members had discussed and come up with. So when the capital expenditures are eliminated from Mr. Wrinkle's testimony, his cost figures are in the range of about $1,925 per month.

Our members are reporting that the marginal well falls in the range of $600 to $300 -- or, excuse me, $1,300 per month.

The difference, perhaps, Mr. Wrinkle is coming from a big company versus our members, who testify that they can operate wells more efficiently than those larger companies.

And then even if you run a calculation accepting Mr. Wrinkle's figure at the price of $65 per barrel, less $1.35 marketing fee, essentially one barrel per day is a break-even point at 63.65 times 1 times 30 is $1,928.60. So I think that shows what we're talking about.

MR. CLOUTIER: That concludes Mr. Winchester's rebuttal testimony, Madam Hearing Officer. We have a couple of items in surrebuttal.

BY MR. CLOUTIER:

Q. First, Mr. Winchester, some new information's come to you and membership. And would you raise that?

MR. CLOUTIER: I think next slide, please.

EXHIBIT 10

BY MR. CLOUTIER:

Q. All right. Tell us about the new information and what you would request the Commission do with it.

A. Okay, sure. This one caught us by surprise. And by "us," I mean membership. I think it late on a Friday in early October that the State Land commissioner announced that rulemaking will be forthcoming to substantially increase bondings on leases.

And they are in the early stages of that. They have announced a number of discussions, open discussions regionally, to gather and talk a little bit more and share information about that. So that is on top of obviously what we're talking about here.

Q. And the concern is what, double bonding or excess bonding?

A. Yeah, I think that's a --

MR. NYKIEL: Madam Hearing Officer.

HEARING OFFICER ORTH: Yes.

MR. NYKIEL: I'm going to object. This is Matt Nykiel with applicants. I'm not clear what he's surrebutting. He hasn't identified rebuttal testimony or page number, so I'm not sure what he's

surrebutting here.

MR. CLOUTIER: This is a concern, Madam Hearing Officer, that came up after all rebuttal testimony was submitted and public information. This is my last question on the point and just wanted to express the industry's concern. But if you deem fit, we'll move on.

HEARING OFFICER ORTH: All right. Yeah, let's move on.

Thank you, Mr. Nykiel.

BY MR. CLOUTIER:

Q. Mr. Winchester, have you heard that in these proceedings, IPANM has been accused of not having a solution?

A. Yes, I've heard that and I disagree. And I think for some context, my observation from memory personally is that industry expressed major concerns about what turned in to be HB133 and that was a significant stakeholder discussion that occurred in 2023 before the 2024 session.

And we met up to about ten exhaustive meetings with industry participants that included NMOGA, it included the Division, it included the applicants. And the concerns that we had then are the same basic concerns that we have about this proposal.

And there was never any material movement on the issues about how to address those concerns in that stakeholder process in the first go-around.

Independent operators in those meetings and I felt that the smaller operator concerns specifically were never given -- were not addressed. And in many instances, the proposals came back a week later even worse for industry as the weeks progressed.

So I viewed the entire process as very frustrating. It was a waste of time. And my members who invested time expressed a feeling of futility, especially when HB133 was filed and it did not address our fundamental concerns.

So HB133 died in the legislature back in 2024 as we brought our valid concerns to them.

Now, as far as this hearing, it was within months after that bill died that the Western Environmental Law Center gave industry notice that it was proposing rulemaking and that was forthcoming.

Now, I'll be honest, I can't remember the sequence of e-mails, I can't remember necessarily if NMOGA brought this to our attention or if Ms. Fox reached out to us directly. Regardless, we were on those e-mails.

But when that happened, the question

from my members immediately to me were, "Well, the bill died, right?" The second question was, "Has there been any discussion since that session a couple months ago on how to best address orphaned wells, how to best anticipate orphaned wells or any of the big issues that the applicants in the Division say that they're now seeking to address?" The answer is no.

And days later, just like that, the new proposals were filed for rulemaking. Now, after the filing our members took time to digest the rulemaking proposals. We were aware that overtures were being made to further discuss this. But it was after the fact, without prior scoping to see if anything had changed in the views of the Division or the applicants.

Thus, after reviewing those rules, the consensus with my members was these already filed rules had shifted even further away from workability for small operators. And IPANM members simply can't invest time, people, resources and money on another long stakeholder process based on what had happened the first time around.

And I just want to illustrate this for everybody involved. The undertaking that took place for all of those months, those ten sessions in '23,

EXHIBIT 10

was massive. Keep in mind, everyone is in the same position. But smaller operators don't have government affairs people. Our owners and operators' staffs had and would have to again sacrifice time from the field to attend to these meetings, and they already proved fruitless and a waste of their time and their resources.

And filed rules, in its entirety, represents, in the minds of my members, an existential threat to their operations.

Now, I want to be clear, we do feel that there are solutions that are out there. And we want to and can and would be willing to continue to explore those. But in the paradigm and in terms under which this rule is proposed, membership from IPANM got the message that real changes in the rulemaking proposal were not going to come. So here we are today here making our case.

Industry did not ask for this rule. Members have varying opinions about the extent of the orphaned well problem. But I think all acknowledge there are orphaned wells that need to be attended to and there are ways to plug them. But my members have expressed to me, bonding is not that answer. It's punishing the good members, the ones, as far as we

know, who are plugging wells that need plugging.

The real question to IPANM is how to pay and plug the remaining orphan wells and those that might get into that situation. So that's why we've been proposing and pushing for a fix of the oil and gas conservation tax to go to the reclamation fund to get this done.

MR. CLOUTIER: Thank you, Mr Winchester.

That concludes Mr Winchester's surrebuttal testimony, Madam Hearing Officer.

HEARING OFFICER ORTH: Thank you very much, Mr. Cloutier.

Mr. Nykiel, will you be doing the cross-examination?

MR. NYKIEL: Yes, that's right. It sounds like you can hear me loud and clear.

HEARING OFFICER ORTH: Yes. Thank you.

CROSS-EXAMINATION

BY MR. NYKIEL:

Q. Good morning, Mr. Winchester. My name is Matt Nykiel. I'm an attorney with the Western Environmental Law Center, and I represent applicants. Thank you for your testimony.

Would you let me know, as we go on, if there's any trouble understanding me through the

virtual platform?

A. Certainly.

Q. Okay. Thank you. And it looks like you have a copy of your direct and rebuttal testimony in front of you?

A. Yes.

MR. NYKIEL: And, Madam Hearing Officer, may I have permission to share my screen? It looks like I do. Okay. Is that presenting?

HEARING OFFICER ORTH: Yes. It could be a little bigger for ease of reading. There we go. All right. Thank you.

BY MR. NYKIEL:

Q. All right. Mr. Winchester, I'm pulling up your direct testimony at page 6. At line 14, you testified that virtually all of applicant's proposal comes from parties that have little to zero understanding or experience, be it in government or industry; is that right?

A. Right.

Q. And you're aware, though, that Oxy USA, Inc. supports or doesn't object to several of the applicant's proposed rules; is that right?

A. Yes. With the clarifier that Oxy is in a different position than the membership of IPANM.

BY MR. NYKIEL:

Q. And among those proposed rules that Oxy has supported or not objected to, those include applicant's proposal to increase financial assurance for active and inactive wells?

A. If they said so, is that what you're saying? Oxy did? Mm-hmm. Okay, sure.

Q. And Oxy has also not objected to applicant's proposal to establish a presumption of no beneficial use?

A. Sure.

Q. Would you like me to bring up their demonstrative that they used in their slides to confirm that, or would you accept that as true?

A. Oh, no, I accept that.

Q. Okay. And lastly, just that Oxy is not objected to applicant's proposal to require that operators certify on registration or transfer that they are not subject to any forfeiture demands in any domestic jurisdiction; is that right? Or is that your understanding?

A. I will take that as your understanding, which I believe -- I'm sure I have no reason to believe why that's not the case.

Q. Okay. And you're also aware that the

New Mexico State Land Office strongly supports applicant's proposed rulemaking?

A. I just want to backtrack on that last line of questioning.

I think I've raised the point, but Oxy is not representative of small producers and is not a member of IPANM. So I just want to make that clear.

Q. Yeah, but they haven't objected to applicant's proposed rules that operators certify that they're not subject to any forfeiture demands in any other jurisdiction, though?

A. Yeah, that's -- I mean, that's from their position, certainly.

Q. And so, you're also aware that the New Mexico State Land Office strongly supports applicant's proposed rulemaking. I think I heard you testify that you're aware of that. Yes, very much so?

Okay. And you're also aware that the New Mexico Oil Conservation Division supports applicant's proposed rulemaking?

A. Right.

Q. And, in fact, some of the rules that applicants have adopted and proposed were first recommended by the Division? Is that your understanding?

A. I can't speak to that. In fact, we're starting to go back into the talks that took place for HB133, and there were so many regulation proposals that were bouncing around. I don't know if it came from the applicants or if it came from OCD.

Q. Okay. I'm just going to pull up here just very quickly, this is applicants Exhibit 15?

This is the testimony of Mr. Alexander. Would you please read lines 18 through 20 that are highlighted here.

A. "OCD initially proposed a definition for 'marginal well' in its February 12, 2025, Redline proposals to all parties in the proceeding and proposed increased financial assurance for these wells in 19.15.8 NMAC. Applicants adopted OCD proposals."

But again, that doesn't give context to what was going on before then. But regardless, I had no problem with this.

Q. Okay.

A. As I said, they were being bounced around between the two parties, the regulations and the proposals.

Q. In your preparation for your testimony, you reviewed the testimony of OCD's witnesses; is that correct?

A. Not line by line. I was more paying attention specifically to what was being said in oral testimony, and when I could. So I can speak to whatever questions you have, and if I have knowledge, I certainly will answer. If not, I definitely will say that I am not aware of that.

Q. Sure. Are you aware that both Mr. Wrinkle and Mr. Diede worked in the oil and gas industry prior to their employment with the OCD?

A. Yes. With larger companies.

Q. And are you aware that between the two of them, they have nearly 40 years of combined industry experience?

A. Sure. Certainly.

Q. And did you review the testimony of applicant's witnesses as well in your preparation for this hearing?

A. Same question. Hit or miss.

Q. Okay. Are you aware that --

MR. CLOUTIER: Sorry, Mr. Nykiel.

Mr. Winchester, because of the virtual platform, please try not to step on Mr. Nykiel's question when you answer. You're answering very quickly.

Apologize, Madam Hearing Officer.

MR. NYKIEL: Thanks, Mr. Cloutier.

MR. CLOUTIER: Apologies.

MR. NYKIEL: Oh, no worries.

BY MR. NYKIEL:

Q. So, are you aware that Mr. Alexander, applicant's first witness, worked in the oil and gas industry?

A. Yes. I saw his testimony and listened to it.

Q. Okay. And he had worked in the industry for over three decades, correct?

A. Correct. But again, to be clear, industry is a broad definition, representative of a wide spectre of companies in different positions financially, in terms of their place, in terms of their various producing basins that they're working in.

Q. And you're aware that Mr. Purvis, also applicant's second witness, also worked in the oil and gas industry and works in the oil and gas industry?

A. Yes, yes. For sure.

Q. And he has over three decades of experience at this point?

A. That, I can't attest to. But I take it as your word, as no reason to believe it's not true.

EXHIBIT 10

Q. Okay. I'm going to pull up your direct testimony again and bring us to page 1. At line 14, you testified that all the matters to which you testify were also raised by IPANM members, correct?
A. Correct.
Q. And on line 5, you testified that IPANM, quote, solicited and got a lot of member comments about applicant's proposed rulemaking, correct?
A. Correct.
Q. Now, neither you nor IPANM provided written copies of those comments that you received from your members?
A. Correct. That's information that is within the confines of private operating companies who are disclosing that internally, but who did not wish to be in the limelight.
Q. And your testimony doesn't provide the identity of the members you received comments from, correct?
A. Correct, with the same stated reason.
Q. And how many members does IPANM have?
A. Last count, 107 different companies; total members represented over those, in the range of 350.
Q. Okay. And I'm back at your direct testimony on the same page, line 7. You testified that of the

member comments you received, different members commented on different parts of the proposed rule, correct?
A. Correct.
Q. I'm going to jump to your rebuttal testimony. And just as an example, there on page 11, at line 12, you state that after you circulated the testimony of OCD expert Mr. Wrinkle, you received comments from seven companies, correct?
A. Right.
Q. And at line 13, I'm looking at the statement you made here when you state, "All those responses indicate that even if Mr. Wrinkle's testimony reflects his experience at Marathon, no member believed those costs were accurate for low-producing wells," correct?
A. Correct.
Q. Now when you say "no member," you're referring to the seven companies you received responses from, correct?
A. Correct. In that particular survey.
Q. Okay.
A. There were additional discussion with members who, you know, would make same comments.
Q. Okay. And --
A. But I didn't -- I didn't chart those or --

I'm sorry, I didn't mean to walk over you. I didn't chart those or log those.
Q. Okay. And I just scrolled to page 12 of your rebuttal testimony. At line 2, you state that members thought that Mr. Wrinkle's testimony was not accurate.
And the same question here. When you refer to "members," you're referring to the seven companies you received responses from?
A. I think it's the same response, the seven, and then those based on conversations anecdotally.
Q. And approximately, how many oil and gas companies would you estimate operate in New Mexico offhand?
A. Well, I think if you look at the number of entities that are currently on OCD's reporting list, I think it's in the neighborhood of 450, something like that.
Q. Now, Mr. Winchester, I want to ask about your personal testimony in this. And just to reiterate, your testimony is as a fact witness today, correct?
A. Yes, sir.
Q. And not as an expert?
A. Correct.

Q. And as you said, the summary of your experience indicates that you're the executive director of IPANM, right?
A. Right.
Q. And the summary of your experience also states that you're a former EMNRD employee, right?
A. Correct.
Q. What was your job title at EMNRD?
A. Communications director for both EMNRD and the New Mexico Environment Department. So I split time between those two divisions.
Q. So you haven't been qualified as a corporate finance or risk expert, right?
A. Certainly not.
Q. I'm going to direct us to your direct testimony again at page 4. At lines 6 through 22, you discuss applicant's proposed rules for operator transfer at 19.15.9.9B NMAC; is that right?
A. I apologize. Can you please reference again the page of the testimony in which one, if it's direct or the rebuttal?
Q. Yes. Direct testimony and page 4.
A. Okay, which lines?
Q. Lines 6 through 22. It's this paragraph that begins with the question, "What's your next

EXHIBIT 10

comment about the change of operator proposal?"
A. Correct.
Q. Okay. So, as you understand it, among other things, the proposed rule here would require a new operator to provide OCD a plugging and abandonment plan, correct?
A. Yes.
Q. And specifically at line 20, you opine that reviewing an operator's plugging and abandonment plan would do little to nothing to assure the state that an operator will have the funds available in the future to plug and abandon; is that right?
A. Correct.
Q. Okay. I'm going to pull up applicant's Exhibit 72-D, which is that rule we're talking about.
MR. CLOUTIER: And I'm going object, Madam Hearing Officer. This exhibit was admitted after the direct testimony that Mr. Nykiel is referencing and represents a change to the rulemaking that Mr. Winchester did not have available to him at the time of his direct.
HEARING OFFICER ORTH: Mr. Nykiel.
MR. NYKIEL: Yeah, my line of questions isn't -- it doesn't go to the changes that were made here. It goes to what was already existing in the

proposed rule at the time of his direct.
HEARING OFFICER ORTH: All right. Go ahead.
BY MR. NYKIEL:
Q. So I was trying not to introduce too many additional colors, to avoid a rainbow here. But there are colors, and I'd like you to focus on the light blue, please. Would you please read the first two sections that are highlighted in light blue, just to -- I just want to confirm that this is the plugging and abandonment plan you were talking about here.
A. What am I reading again?
Q. Just in light blue at the top, that one, and the second one. And then we'll follow up with the third light blue paragraph below.
A. Okay. Well, first of all, it's blocked because there's a thing that's in front of it. Okay. Good:
A new operator shall make such applications in writing and provide...a plugging and abandonment plan.
Q. Okay. So that's what you were talking about in your direct. Would you please read the final paragraph highlighted in blue.
A. The plugging and abandonment plan shall be certified by an authorized representative of the new

operator and shall demonstrate that the new operator has and will have financial ability to meet the plugging and abandonment requirements of 19.15.25 for the well or wells to be transferred in light of all operator's assets and liabilities. The Division may request the operator to provide additional information, including corporate credit rating, corporate financial statements, long-term liabilities, reserves and economics reports, records and historical records for documentation, decommissioning activities, estimated operators, Commission applications, and history of inactive wells.
So I read this, but I'm not sure if this was added or if this is initial, and really where we're going. I know that we have members who have concerns about this.
MR. CLOUTIER: Madam Hearing Officer, I think we're a little past 15 minutes, even accounting for the couple times I interrupted.
HEARING OFFICER ORTH: No, it just hit 15 -- 16 minutes.
Mr. Nykiel, are you done with your examination?
MR. NYKIEL: Have one final line of questions.

HEARING OFFICER ORTH: Okay.
MR. CLOUTIER: Line?
MR. NYKIEL: I'll conclude on this line.
BY MR. NYKIEL:
Q. So, Mr. Winchester, when you testified that the plugging and abandonment plan would serve no utility to the Division, that was not based on any expert experience you have in corporate finance analysis or risk assessment, was it?
A. I think I've made it clear that it's based on what we hear collectively from operators.
HEARING OFFICER ORTH: Yeah, I think he did make that clear, Mr. Nykiel.
All right. Thank you very much, Mr. Nykiel.
Mr. Tremaine or Mr. Hall.
MR. TREMAINE: Mr. Tremaine. Thank you, Madam Hearing Officer.
CROSS-EXAMINATION
BY MR. TREMAINE:
Q. Good morning, Mr. Winchester. We've had the opportunity to meet virtually before. I think this is maybe the first time in person, or online now. So, if that's the case, nice to meet you officially.
I'm Jesse Tremaine, I'm the legal

EXHIBIT 10

director for the Oil Conservation Division. I have a couple kind of general questions.

A lot of your testimony we've really kind of gone over quite a bit in hearings, so I'm going to try to be quick.

So, I just want to reiterate, you've already answered this, make sure you agree for foundation, that your testimony summarizes the concerns expressed by some of IPANM's membership, correct?

A. Correct.

Q. At the beginning of your testimony, which I very much appreciate, I believe that you had identified that some or two specifically of those concerns raised in your direct were alleviated after you clarified some of the information and discussed those issues with your membership. Is that fair?

A. Sure. Yes. Correct.

Q. Thank you for that. And you are a fact witness here, so you did not perform or provide any of your own analysis or expertise?

A. Correct. As a fact witness, to my understanding, yes, of course.

Q. So all of your testimony is presenting undocumented hearsay to the Commission?

A. I don't agree with that at all. I think that what we are presenting is the positions of operators who do not want to seek the limelight. And I think they're very justified in having concerns if they do step forward. So I think we're providing a summation, and I am representative of what those concerns are.

Q. Well, I'm not going to ask you to testify to the definition of hearsay, so I'll be move on.

I want to ask you some questions about financial assurance timing and forfeiture. So specifically and not to get into -- are you familiar with the provision of 19.15.9.8, operator registration provisions?

A. Um, no, if you bring it up, I could review it and maybe it will ring a bell. I just don't know the provisions by number.

Q. I still have share authorization. All right. So, Mr. Winchester, I want to point you to -- so this is -- again, this New Mexico OneSource. It's Compilation Commission, official legal publisher of the State of New Mexico. And I like to use these because there's no -- there's no reading rainbow.

So in 9.8A, operator registration, would you be so kind as to read that please, A.

A. "Prior to commencing operations, an operator of a well or wells in New Mexico shall register with the Division as an operator. Applicants shall provide the following to the financial assurance administrator in the division's Santa Fe office."

Q. All right. So before you begin operations as a new operator, you have to provide these three things listed under A. And do you agree with me that the third thing that you have to provide before beginning operations is the financial assurance that's required?

A. As it says here. Again, I'm not sure referring to 19.15.8 in particular is something that I have knowledge of by name.

Q. Right. But, I mean, you would agree it says the "financial assurance" and then provides another section of the rule?

A. Correct.

Q. And I'll represent and actually I'll show you here, just to make sure there's no trickery here, 19 Part A is the financial assurance requirements.

So 9.8 stands for the proposition that when you register as a new operator, you have to provide the financial assurance before you begin Operating. That's that reference.

So with that in mind, I want to ask you about your awareness of OCD's current practices in this regard. Are you aware that OCD currently requires financial assurance before well transfers?

A. I'm not sure of what the procedure is in the particulars.

Q. Okay. So you don't know?

A. I don't know off the top of my head.

Q. Well, I thought it was implied from your testimony that you were suggesting that the requirement to -- that OCD require and review financial assurance prior to a transfer was a new thing.

A. So, I'm confused I guess. Can you restate the question?

Q. Well, was it your testimony that it was going to be a problem for OCD to require financial assurance prior to approving a transfer of a well?

MR. CLOUTIER: Mr. Winchester did not testify to that here today, Madam Hearing Officer. Can I ask Mr. Winchester -- Mr. Tremaine to pull up --

MR. TREMAINE: I will rephrase.

BY MR. TREMAINE:

Q. Let me direct you to your testimony. So, on

EXHIBIT 10

page 2, line 6, you're referring to --
A. I'm sorry, which document?
Q. I have it up on the screen.
A. Rebuttal or direct?
Q. This is your direct.
A. Okay. Thank you.
Q. This is your direct?
A. Page 6.
Q. So, page 2, line 6, you stated the proposal for amending rule 19.15.8.9, which is financial assurance provision, is vague and very broad, it would not allow an operator to proceed with any proposed acquisition until the operator has furnished the required financial assurance.
You later state, starting on line 10, that obviously this is absurd and will not happen.
So, I'm just asking you, you seem to directly state or imply there that that's not already the practice. I'm just trying to clarify that that's your testimony.
A. That, I'm still a little confused in terms of I think we're getting bogged down in procedural order.
Q. Well, sir, your testimony is, which is on the screen, that it would be absurd and impractical

for an operator to provide financial assurance for a well that they do not yet have registered with the OCD and operate. Is that your testimony?
A. I think I'm pointing out the problems that operators would face if, upon acquisition, they had to take upon, under this rule, new financial assurance individually for each well, as opposed to what's currently in rule with a blanket fund.
And if I'm confused, it's because I am confused.
Q. So just to put a bow on this, it was not your understanding that OCD already requires financial assurance prior to transfer of wells.
A. As we sit here today, I will just stand by what I've put down in the document, because I'm actually not quite certain what your question is.
Q. Are you aware that it's OCD's practice that if a well transfer would cause the receiving operator to fall out of compliance with the financial assurance for the well plugging and inactive well requirements in OCD's rules, that OCD requires, on a case-by-case basis, agreed compliance orders for inactive wells prior to approving a transfer?
A. Are you asking me about an existing rule or are you asking me about information submitted in my

testimony?
Q. I'm asking you if you are aware of OCD's practice. Because you are stating in your testimony that this is impractical, it doesn't work, it won't happen. And I'm challenging that because OCD already does it.
A. Okay. So what's the question again, please?
Q. The question was, were you aware of the fact that OCD requires agreed compliance orders for inactive wells if the transfer would cause the receiving operator to fall out of compliance with existing OCD rules?
A. Again, we're getting into procedure and process and timing.
Q. Well, Mr. Winchester, we're getting into your knowledge of OCD's rules and practices, which is what you are testifying about and the implications of the new rules.
A. In regards to what I've been informed by members.
Q. So those statements are not based on any personal experience?
A. I think there's a combination, but based on predominantly the input from members.
Q. Okay. Thank you. I want to ask you about a

few things here with share screen again. You spent some time on this slide 22, just a demonstrative aid, and talked about some of these operators and the financial assurance implications for each of those.
You walk through here. Ridgway, Arizona, that's been the source of some discussion at the hearing. If OCD had not entered into the settlement agreement with Ridgway, Arizona, to your knowledge, what would have been OCD's other enforcement options regarding those 287 wells?
A. I can't answer that. I don't know --
Q. Okay.
A. -- the regs number by number.
HEARING OFFICER ORTH: Mr. Tremaine, five minutes.
MR. TREMAINE: Okay. Thank you.
BY MR. TREMAINE:
Q. So when we talk about this slide -- well, first of all, are you aware that Acacia Operating is one of the remaining interests from Remnant?
A. I am not aware beyond what is presented here.
Q. Okay. And are you aware that OCD brought at least two separate enforcement actions related to the LLJ Ventures wells?

A. Are we talking about Acacia or are we talking about the previous --
Q. No. I just referred to LLJ Ventures.
A. Oh, LLJ. Okay, I'm sorry. Could you restate the question? I thought we were still on Acacia.
Q. So, LLJ Ventures, there were two inactive well NOVs related to that. Were you aware?
A. No, sir.
Q. Okay. Were you aware that there is an NOV pending against LH Operating for inactive wells?
A. There is an NOV, is that what you're saying?
Q. Notice of violation, yes, for inactive wells.
A. My information here, you know, indicates that they've been acquired by Ian, so I'm not sure semantically. No, I'm not aware.
Q. Okay. Were you aware that OCD is engaged in extensive discussions with energy related to Dominion Production?
A. Three agreed compliance orders, correct. Two regarding financial assurance violations.
Q. Aside from the agreed compliance orders. I'll move on.
So, Mr. Winchester, do you agree -- I

mean, because the point of this slide is that we're not going to recover additional financial assurance from the operators that are already out of compliance, and I would very much agree with that.
Is it your testimony that there is not a concern that other currently solvent operators could end up in a similar posture?
A. I think the demonstration with this exhibit --
Q. That's not what I'm asking you about. I'm asking you if you are testifying as to the potential for other operators to end up in a situation.
A. No, sir. I'm testifying from the standpoint that the good operators that are out there are going to be saddled with excessive extra bonding that jumps in scale, that is unreasonable for a good operator to continue their operations.
Q. According to your own testimony, Cano Petro was a good operator until they were not, right?
A. I don't know if I ever said Cano Petro was a good operator.
MR. CLOUTIER: Objection. He never said that.
BY MR. TREMAINE:
Q. You said that they were solvent and they

were compliant with OCD rule until they filed bankruptcy.
A. I don't think I even said that either.
Q. Okay. I'll let the record stand.
I want to point out -- Mr. Winchester, there's been a lot of talk about the 66 million in the reclamation fund. And in your testimony on page 8, direct testimony on page 8, line 14, you're stating that the state is now under pressure to spend initial and follow-on federal sums awarded under the IIJA?
So first of all, under the IIJA funds, are you able to articulate for the Commission which phase of the federal grant? We are currently operating under?
A. No, sir.
Q. Okay. So you don't really know the terms or the conditions of the federal grant?
A. Based on conversations that were brought up specifically by former OCD Director Dylan Fuge, in which we were in those conversations in those extensive stakeholder meetings, it was made very clear, even with numbers that I don't recall, 25 million, 50 million, whatever, that there was pressure in statements that he had said that we need to spend that money first.

Q. Is it consistent with your understanding that --
MR. CLOUTIER: Madam Hearing Officer, we're well beyond 15 minutes. I didn't start my clock until after Mr. Tremaine's pleasantries to Mr. Winchester.
HEARING OFFICER ORTH: All righty. So I had that we started at 10:16 and it's just now turning 10:32, so this is 15 minutes.
MR. TREMAINE: Thank you, Madam Hearing Officer.
HEARING OFFICER ORTH: Thank you, Mr. Tremaine.
MR. CLOUTIER: Thank you.
HEARING OFFICER ORTH: Let's see. Mr. Moore or Mr. Biernoff or Mr. Grazer? Who do we have here?
MR. MOORE: Good morning, Madam Hearing Officer. I'll be representing the Commissioner this morning.
HEARING OFFICER ORTH: Terrific, thank you.
CROSS-EXAMINATION
BY MR. MOORE:
Q. Good afternoon, Mr. Winchester. My name is Richard Moore. I represent the Commissioner of Public Lands and the New Mexico State Land Office. Thank you

EXHIBIT 10

for your testimony this morning.

I just had a few questions concerning some of the things you testified about this morning. In your testimony, and I will share my screen here, you testified to what you referred to as the death penalty proposal.

In testifying to that, you referenced the current rule 19.15.5.9A(4), and I believe testified that the current rule allows an operator to be out of compliance with plugging obligations for 1 to 2 percent of its wells; is that correct?

A. I did. And I won't purport to be an expert on the specifics of that rule, but I will say that that was as, you know, indicated to me. And that's why I sort of used the approximation when describing that existing rule.

Q. Okay. And I'm just going to look and bring that rule up quickly. As I believe Mr. Tremaine already explained, this is the New Mexico OneSource and the administrative code as reflected on New Mexico OneSource. This is the current rule.

If you could read 19.15.5.9A(4) and how many wells that allows an operator to be out of compliance with.

A. So are you talking about A, B, C, D

specifically, two wells or 50 percent --

Q. Yes. 19.15.5.9A(4)(a), under that regulation as currently written, if a company operates four wells, how many wells under this regulation, as currently written, may it be out of compliance with?

A. Well, I mean, that's interpreting the rule. I can only read the rule. Two wells or 50 percent of the wells that the operator operates, whichever is less, if the operator operates 100 wells or less. Five wells if the operator operates between 101 and 500 wells. Seven wells if the operator operates between 501 and 1,000 wells. And then ten wells if the operator operates more than 1,000 wells.

Q. And so would you agree that under (4)(a), as written, an operator can be out of compliance for more than 1-2 percent of wells? Is that correct?

A. They can be out, as it reads, two wells or 50 percent of the wells the operator operates, whichever is less, if the operator operates 100 or less.

Q. And looking at subpart (b), five wells, if an operator operates between 105 and 500 wells. If an operator has 101 wells and five are out of compliance, that's more than 1 to 2 percent. Would you agree?

A. Five wells if the operator operates between

101 and 500 miles. That's how it reads.

Q. So, would you agree that it's only the larger operators that, as the rule currently reads, may be out of compliance with only 1 or 2 percent of their wells?

A. I think you are getting into semantics and interpretation of the rule. So I would say when you're talking about large operators, that's a very vague term. So I guess I can't answer that with the context in which the question is coming from.

I'm not trying to be difficult, Richard. I'm trying to further understand and not necessarily agree with your conclusion. Because I think large operators is a different definition to different people.

Q. I suppose, just to reframe the question, it's only if an operator is operating -- if they have ten wells that are inactive and they operate 1,000, that's in the 1 to 2 percent range. But if an operator is operating with fewer than 500 wells, has 5 wells out of compliance, that is a larger percentage than 1 to 2 percent?

A. If that is the correct math, then yes.

Q. All right. And then I'm going to turn to, you also testified to the operation of 19.15.25.8. So

I turn to that. This is also the rule as currently written and reflected on New Mexico OneSource.

So under 19.15.25.8B, the rule requires that an operator shell either properly plug and abandon a well or place that well into approved temporary abandonment, in accordance with 19.15.25, within 90 days after first a 60-day period following suspension of drilling operations, correct?

A. Correct. As the rule reads, yes.

Q. And then B(2), a determination that the well is no longer useful for beneficial purposes, or B(3), a period of one year in which the well has been continuously inactive; is that correct?

A. That is the rule, correct.

Q. So just to be clear, under 19.15.25.8, as currently written, the rule does not allow an operator to be out -- the rule doesn't allow 1 to 2 percent of an operator's well or really any percentage of an operator's wells to be out of compliance with this rule?

A. I don't know what you're stating essentially. I think the rule speaks for itself.

Q. And you don't see any language -- I guess, just to be clear, you don't see any language in 19.15.25.8, as currently written, that provides leeway

EXHIBIT 10

for when a well has to be plugged under B(1), (2), or (3)?

MR. CLOUTIER: Madam Hearing Officer, Mr. Winchester stated clearly at the beginning he's not an expert on rule interpretations, and we're asking him to interpret rules that he's never held himself out to the Commission as having any expertise on that.

HEARING OFFICER ORTH: Yeah, Mr. Moore. I think he has offered up his limits.

MR. MOORE: Fair enough. I'll move on from this specific language.

BY MR. MOORE:

Q. But given the two rules we just discussed, and what you did discuss in your direct testimony, would you say that there is currently a conflict between 19.15.25.8 and 19.15.5.9, as currently written?

MR. CLOUTIER: Same objection.

HEARING OFFICER ORTH: Mr. Winchester, if you can answer the question.

A. I don't know.

Q. And leaving the specific language of the four members, would you agree that clarity in the regulations that apply to your members is beneficial?

A. I'm sorry, Mr. Moore, you were cutting out. Can you repeat the question, please.

Q. I apologize. I was just wondering if you would agree that for your members, that clarity in the in the regulations that apply is useful?

A. Yes.

Q. And same with regulators, clarity in the rules concerning when a well must be plugged is beneficial for that regulators of your industry?

A. Yes, certainly.

Q. And now you mentioned briefly in discussing upcoming state land office bonding rule changes, that it would be best for these rulemaking proceedings to wait for the State Land Office proceedings to continue or even conclude; is that correct?

A. I don't know if I stated that. I think the discussion point there is the introduction of a State Land Office rule proposal, and the timing of that coming in the midst of this. And the process, again, by which prior to, there was rumors that something was forthcoming, but that there was no prior input. And, again, the rule just was posted.

Q. And just one question on that. Are you aware that the State Land Office does not require bonds for wells on any private land?

A. I am not an expert on State Land Office rules and regulations.

HEARING OFFICER ORTH: Mr. Moore, five minutes.

MR. MOORE: Thank you, Madam Hearing Officer. I just have one final line of questioning.

BY MR. MOORE:

Q. So I'll share my screen again with the slides from your direct testimony. In that testimony, you discussed a number of companies seen on the screen that account for around 1,300 wells on the inactive list, roughly 74 percent of the total list; is that correct?

A. As presented, correct.

Q. Now, if these companies, such as Cano Petro or Ridgeway Arizona, if they had been required to provide higher bonding while they still had assets and some of their wells were still producing, would you agree that the OCD would be in a better position to address the plumbing expenses for these companies?

A. But I can't agree, only because I think you're asking a speculative question. So I just don't know. I don't think anyone really knows if so and so had been with this. Well, they weren't.

MR. MOORE: Fair enough. And I believe that

those are all the questions that I have. Thank you for your testimony today.

HEARING OFFICER ORTH: Thank you, Mr. Moore and Mr. Winchester. Let's take a break at this point and come back at 11:00.

THE WITNESS: I have a quick question. Was there any redirect, or are we done?

HEARING OFFICER ORTH: No, there's still more people to come along.

MR. CLOUTIER: She's giving you a break before Miguel breaks you over the coals.

THE WITNESS: Okay. Thank you. I wasn't sure if I was dismissed or not.

(Recess held from 10:44 to 11:00 a.m.)

HEARING OFFICER ORTH: We have Ms. Nanasi with us. Who would be next?

Mr. Maxwell, do you have questions?

MR. MAXWELL: No questions. Thank you.

HEARING OFFICER ORTH: Thank you.

Mr. Rankin, do you have questions?

MR. RANKIN: None. Thank you, Madam Hearing Officer.

HEARING OFFICER ORTH: Thank you.

EOG is monitoring.

Mr. Suazo, do you have questions?

EXHIBIT 10

MR. SUAZO: Just a few questions, Madam Hearing Officer.

CROSS-EXAMINATION

BY MR. SUAZO:

Q. Mr. Winchester, good morning?

A. Good morning.

Q. I'm Miguel Suazo. I'm representing NMOGA in these proceedings?

And Mr. Tremaine asked you about financial assurances the operators must have in place before they're operating, under the current rules, and what the changes would be under the proposed rules.

Is it your understanding of the current rules that they require operators to have financial assurance in place before they operate and produce wells?

A. I think we're getting back into the timing of when that procedure takes place. But based on what you are presenting, yes.

Q. Okay. And so is it your understanding that applicants are essentially proposing requiring operators to have financial assurance in place before they even acquire the rights to operate or own those wells?

A. Yes. And I think, to my understanding, the

analogy is you're buying a car and you have to put the payment down before you even kick the tires or check it out. Is that the correct analogy?

Q. Well, I mean, I think it's one analogy. I think, really, to your point, though, what I'm just trying to understand is that IPANM opposes these proposed changes primarily because of the timing associated with the acquisition of financial assurances in relation to the actual acquisition of the wells themselves, correct?

A. Yes. And I hope that that was what I was trying to illustrate with the car acquisition analogy.

MR. SUAZO: Thank you, Mr. Winchester. No further questions.

HEARING OFFICER ORTH: Thank you.

Mr. Cloutier, do you have redirect?

MR. CLOUTIER: Just one question, if I could have Mr. Everhart share a slide, please.

REDIRECT EXAMINATION

BY MR. CLOUTIER:

Q. Mr. Winchester, I don't remember exactly this table, but Mr. Tremaine put up a table like this, and there are a few of them in your testimony. A couple of questions?

Were you intending by presenting these

tables for the information in them to imply or actually make any criticism of the Division for their enforcement actions against any of these operators?

A. Absolutely not.

Q. And do you intend, do you purport that on your notes column that every single enforcement action that the Division has taken is described there and that there can't be any others?

A. No. This is all, as far as I know, in terms of the knowledge that we have.

MR. CLOUTIER: Okay. That's all.

HEARING OFFICER ORTH: Thank you.

Commissioner Ampomah, do you have question?

EXAMINATION

BY COMMISSIONER AMPOMAH:

Q. Good morning, sir. I'm William Ampomah, a professional engineer from New Mexico Tech. Nice to meeting you, sir?

A. Nice to meet you, sir.

Q. So I do have just probably two or three questions for you. So if we can bring up your testimony, direct testimony. I want to start with Page 10 of the direct testimony?

A. Yes sir, I have that.

Q. So you were asked a question about can you go into more detail why increasing the FA levels impact small operators. And you said -- you answered: The surety market is not just tighter or more difficult for small operators. It is unavailable?

Can you explain a little bit on that to the Commission?

A. Certainly. And I will do this to the best of my understanding, based on education that I've received from my membership.

The surety market, again, to my understanding, is essentially not available for the smaller operators because they have made concerted decisions not to get involved in those companies for whatever reasons of their analysis.

And from that standpoint, what I hear from operators is that our options are cash. And to expound upon that a little bit more, it's daunting when a $25,000 bond for one well is to be increased 600 percent.

We're doing a paradigm shift to essentially a very high number bonding level, which I believe our members don't agree with in terms of that number. I think it's been clear and we wanted to be clear from the get-go, even in our prior negotiations,

EXHIBIT 10

that we don't agree with the $150,000 amount.
Q. Thank you, sir. Now, so based on your testimony, you did a lot of surveying, you know, to get your members' thoughts about these proposed rules? I want to know, is there any bonding options that your members really recommend to the Commission for a consideration?
A. I'm sorry, you're asking for are there any other options, is what you're saying?
Q. Yeah. So you said that your members totally disagree with the $150,000?
A. Yeah.
Q. So based on the survey, did you ask your members the type of bonding levels that they will be comfortable with? Especially we all agree that this is a problem.
A. I think that I would have to defer back to my board in order to get direction to put out any sort of a number. But that being said, I don't think we in any way want to close the door about talking about it. Does that make sense?
Q. Yeah, that makes sense. So, you know, the commissioners have tried very hard to more or less push for some consensus between all the parties. And definitely NMOGA is open to more or less discuss more

with the Division and also with the applicant? I want to ask if IPANM is also on board to discuss and see if there could be any consensus between all the parties.
A. Certainly. But I want to be very clear and nuanced because of what we are talking about in our direct testimony. I think the willingness is to definitely talk, but there are still some fundamental differences. And there's also still the question looming out there of whether or not the Commission has the authority.
So I don't want to say that we're going to come into it and be able to necessarily reach a number. However, I think that discussion is helpful for everyone. I don't know what the outcome would be, but I certainly want to make sure that that is something that we are involved with, but also, you know, not in any way -- making clear that our fundamental arguments still are in play. Does that make sense?
COMMISSIONER AMPOMAH: Yeah, that makes sense. Thank you so much for your time. No further question.
THE WITNESS: Okay. Thank you.
HEARING OFFICER ORTH: Thank you.

Commissioner Bloom, do you have a question?
COMMISSIONER BLOOM: Yes. Thank you, Madam Hearing Officer.
EXAMINATION
BY COMMISSIONER BLOOM:
Q. Mr. Winchester, good morning?
A. Good morning, sir.
Q. Just a couple questions for you. At the outset here today, did Mr. Cloutier state that you would reply to OCC criticism that IPANM hasn't engaged with applicants?
A. Would I agree that we haven't engaged in conversation with the applicants?
Q. I can repeat that. So at the outset here today, did Mr. Cloutier state that you would reply to OCC criticism that IPANM hasn't engaged with applicants?
A. Yes. I believe we talked about that.
Q. Okay. Do you know who made that criticism?
MR. CLOUTIER: Criticizing the Commission? I said that before the OCC -- I meant to say that IPANM had been criticized before this Commission. And if I misspoke, that is my sincere apology. Because I have not heard any criticism from the

Commission. And if anybody deserves the wrath for my misstatement, it's me, not Mr. Winchester.
But I wish to be excruciatingly clear, there has been criticism in these proceedings, but it has not come from any of the three commissioners.
COMMISSIONER BLOOM: Okay. Thank you, Mr. Cloutier. And I may have misheard, too, so the record would certainly clear that up.
BY COMMISSIONER BLOOM:
Q. I think if anything, I expressed frustrations, and I think it was that NMOGA's witnesses made recommendations that weren't backed with implementable solutions or there was no redline for at least some of them, and that witnesses did not provide, in some cases, data or evidence to back their recommendations. Does that sound right to you?
A. I think the question is whether or not financial assurance works. And I think what we are saying is that, based on the history and base that we know who predominantly are the bad actors, the only outcome going down this particular road is going to be punishing good actors, and we're not going to be able to collect on the bad actors.
It's, I think, the foundation of what we are representing, you know, from my IPANM's

EXHIBIT 10

perspective.

Q. Okay. Thank you for clarifying your position. Yeah, just in general, and I won't speak for the other commissioners, but I've been through a number of rulemakings, and I think sometimes we're put in an uncomfortable position to have to draft new material from things like a loose recommendation, without suggested language, and perhaps more importantly, without the data or other material to back up those provisions. Does that make sense?

A. Correct. And I will say that the discussions since the beginning of this rulemaking have been clear from the Commission to focus on some of those potential changes or recommendations. And I think we're very much open to that discussion, which gets us into more specifics.

That being said, if there is agreement, I still think that fundamentally, you know, IPANM reserves some serious questions about the entire process. Does that make sense?

Q. Yeah, absolutely. Thank you. And just lastly, my position at least is that parties don't have to engage prior to coming here. I mean, there might be times when that makes things easier for us if there's some commonalities that you've found. I

understand that sometimes it makes sense for parties to talk, but not always. Ultimately, that's up to you. Is that clear?

A. It's up to the applicant. It's up to whoever is submitting the rulemaking under those rules. But certainly, given the extensive potential impacts of this rule, you know, coming out with essentially something that's this drastic, it's probably better, I don't know, to talk about paradigm shifts to the rule itself before we even present a proposal that is just, you know, devastating to our members.

COMMISSIONER BLOOM: Okay. I certainly understand that as your position as well.

Mr. Winchester, thank you for your time. No further questions.

THE WITNESS: Thank you.

HEARING OFFICER ORTH: Thank you. Chair Chang, do you have questions?

EXAMINATION

BY CHAIR CHANG:

Q. Forgive me. I think I just missed this. But were you saying that -- you had said something about members needing to put up cash instead of bonds; is that correct? Or something --

A. Yes, sir. I think, you know, when the surety market is not there, the requirement is a cash bond, to my understanding. So, yeah, $150,000 per well marginal.

Q. And I can certainly understand how that would be an alarming or at least a concerning change for your members?

We explored the rule there that said insurance was also available as an option. Have members considered or explored what insurance policies may look like?

A. I can't speak for the members directly, but I know that that is an avenue that anecdotally is something that some are considering or looking into if it's permissible.

I also do think there is confusion whether or not the bond in this case is essentially insurance. I think there is a difference, but I think the members would agree with that. I'm sorry if I created more confusion in answering that question.

Q. No, that's okay. Well, I certainly understand that there is some concern about whether or not the surety market and/or the insurance market will be robust enough to facilitate the type of bonding that we're asking for here. And I certainly

understand that if you had to put this amount of financial insurance up in cash up front, that that would be a recognizable burden?

But presuming that the financial markets, whether through insurance policies or whether through bonds, come up with a way to service this market that will now exist if the rules are adopted, typically the cost to bond and/or the cost to insure the premiums are only a fraction, right, of the overall cost?

And so this is where I'm struggling a little bit. Because if you're telling me that an operator can't afford the fractional premiums, isn't that operator also by definition then going to struggle to find the cash to actually plug the well when the well is ready to be plugged?

A. I think, Mr. Commissioner, the -- and, again, I'm not an operator, so I can't speak for them. I think the financials based on cash flow for companies vary. And I don't know if some of those are based off of future returns. I don't know if some of that money otherwise would be used in operations as opposed to be hanging out there. You know, that's -- I think therein lies the question.

Q. So let me explore a different idea, and this

is going to be less -- sort of more directed at something hopefully the attorneys can address at some point. But I wanted to sort of use this format to try to get a thought out there?

It seems to me that there has been a lot of discussion around who -- you know, whether there are good actors or bad actors. And I wanted to explore whether or not there are perfectly good faith operators, who, for misfortunes outside of their control, whether it's a serious personal health crisis, whether it's something else -- aren't there good operators who, with absolutely good faith intention, who end up, for some misfortune outside of their control, being unable to plug a well, whether it's through -- let me just start with, isn't that a possibility, that there are good actors out there who intended to do the right thing, but for reasons outside of their control just simply couldn't?

A. Again, speaking on behalf of the members, I don't know the scenarios that are out there that impact all of this. And I'm not trying to in any way be disrespectful or not answer the question. I just -- I can't speak again when it comes to that.

Q. Sure. And I'm going to just raise a hypothetical that you probably won't be able to

answer, but hopefully we'll get the attorneys to think a little bit about how to address some of at least where I'm coming from?

I certainly don't think that the intent of any of this bonding is to punish anybody, but to protect from misfortunes that can happen to both good and bad actors. We've talked a little bit earlier in the proceedings around drivers, how regardless of how careful or not, or skillful a driver is, the state requires everybody to bond to protect against -- or not bond, but insure, against liabilities and risks, regardless of how -- I mean, I don't think the state is making any sort of judgment that drivers are driving in either good or bad faith.

And similarly, in my capacity, and you're welcome to take this as a hypothetical, so I'm not introducing facts, not in evidence here. But in my experience as the director of the Mining and Minerals Division, I knew of an operator who, I'm sure, there's absolutely no reason for me to believe that he didn't intend to do the absolute right thing of reclaiming his mine, but the man had a heart attack, and so left the state with no choice but to go after a bond as a way to reclaim that mine. Not because he was -- I'm sure not because he was a bad

actor, but because life happens to all of us.

So, you know, I'm not even going to ask you to answer -- well, you're more than welcome to comment back. But I just want to leave that as a thought that hopefully attorneys can address. I certainly don't want the -- or I think it's -- from my perspective, I don't know that the good actor/bad actor helps me in making this decision. Because I do think -- because it seems like what is important here is how do we protect from risk that sometimes befalls all of us even when we're doing absolutely all the all the best. Right?

And so all I'm asking here to try to form this into the form of a question is, isn't it plausible that there are perfectly good actors acting in perfectly good faith, but who, in the oil and gas context, but for some misfortune outside of their control, end up being unable to plug a well?

A. Mr. Commissioner, thank you. I appreciate that insight. The only response I will say is that as we move forward, as IPANM moves forward, I think some of the witnesses will get further into the role that the reclamation fund pays -- plays in this, both pays and plays in this. And I think that that's something just to draw attention to. And it's a piece of this,

whether we want to acknowledge that or not.

CHAIR CHANG: No, fair enough, fair enough. That's okay. Thank you, sir. Very, very valid point. That's all I have.

HEARING OFFICER ORTH: All right. Thank you, Chair Chang.

Any reason not to excuse Mr. Winchester?

MR. CLOUTIER: No, Madam Hearing Officer.

HEARING OFFICER ORTH: Thank you, Mr. Winchester.

THE WITNESS: Thank you all.

MR. CLOUTIER: Madam Hearing Officer, Ms. Tripp will handle the examination, but IPANM calls Kyle Armstrong next. We've set aside 30 minutes for his direct. I believe he'll have some surrebuttal that will probably take us right up to the lunch hour.

HEARING OFFICER ORTH: Terrific. Thank you.

Would you spell your first and last name, please.

THE WITNESS: Yes. Kyle Armstrong, K-Y-L-E, A-R-M-S-T-R-O-N-G.

UNIDENTIFIED FEMALE: Do you swear on affirm to tell the truth?

THE WITNESS: I do.

EXHIBIT 10

HEARING OFFICER ORTH: Thank you.

Go ahead, Ms. Tripp.

MS. TRIPP? All right. Thank you, Madam Hearing Officer.

KYLE ARMSTRONG,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. TRIPP:

Q. Mr. Armstrong, can you hear me okay?

A. Yes, I can.

Q. Okay. Great. And we have a couple slides that we've prepared to kind of guide your direct testimony here. So I'll share those this for the COMMISSION'S benefit?

But can you introduce yourself to the Commission in terms of your education, your employment experience.

A. Sure. I'm the president and CEO of Armstrong Energy Corporation, based in Roswell, New Mexico. It's a small, primarily family-owned company. I hold a JD. I practiced law for a very brief period of time, but decided that was not the direction I wanted to continue in my life. So I certainly can't speak as a legal expert or should not be relied on for that.

I have been in the industry, exposed to it my entire life; been with Armstrong Energy directly for about 12 years. I took over as president and CEO in 2020. I've held various functions within the industry. I'm the past president of IPANM. I'm on the board of directors for NMOGA. I served on Governor Lujan Grisham's energy transition team, as well as very briefly on the State Land Office energy advisory council.

And over the last six years, I think I have been a participant in every single negotiation rulemaking task force, however you want to phrase it, up until this one. So I've had some experience with these.

Q. Thank you. And can you tell us a little bit more about Armstrong Energy?

A. Sure. As I said, we're a small, independent operator, primarily family-owned, based in Roswell. All of our employees, geologists, engineers, pumpers, are based in or around Roswell.

We operate currently about 70 wells. And principally, those have been in southeast New Mexico. We have operated in Texas for brief periods of time in the past.

Q. And then in addition to operating wells,

does Armstrong Energy have any experience in plugging wells?

A. Yes, we do.

Q. Can you expand on that a little bit?

A. Certainly. So we have, in the last -- trying to find a number here real quick. In the past six years, we've plugged and abandoned about 16 wells, and in the last two years, we've plugged four wells. And I believe the cost of those four wells was approximately $120,000 each, inclusive of remediation costs.

Q. So you mentioned Armstrong is a small operator. If you had to describe sort of your business model or how you've grown or acquired wells, what process do you all follow?

A. Certainly. So I guess I should establish the company was founded by my father in 1976, and we have operated wells Since approximately 1981. So we have quite a bit of experience.

We currently employ about 23 full-time employees, a handful of part-time employees. We engage with service companies throughout southeast New Mexico, primarily local; some of the larger national companies as well. But we primarily utilize local law firms, local CPAs, local tech folks. So we

are pretty ingrained within our communities.

In terms of what we do, historically, we have drilled vertical wells. We have drilled and operated a waterflood. About seven, eight years ago, we acquired a couple of packages of wells from much larger operators and undertook various operations to maximize the productivity of those wells, in addition to drilling some new wells there.

We hold interest in about 350 non-op well, which is certainly another big part of our business. And in the last 18, 24 months, we have been actively pursuing opportunities outside of New Mexico. We're participating in a non-op fashion in Louisiana, Texas, Kansas, Oklahoma, are looking for prospects that we can drill and/or operate outside of New Mexico.

Q. And so the wells that you acquired in packages, do those typically come from larger operators?

A. Typically. An operator will put a package of wells up for either a private sale or on various online auction houses. And we have successfully bid on at least two of those packages, two larger packages in the last seven years. That was a major component of our business for several years.

EXHIBIT 10

Q. And are those wells that are in the package, are they typically -- are they large producers, or would you consider them marginal, under the definitions of these rules? Why would you want to take on those packages?

A. Sure. Typically, it's a mix of both productive wells and others that are, however you want to define it, say lower-producing wells. And we typically look at these for the upside potential in them. Certainly the cash flow and production from the larger-producing wells are what allow us to sustain it.

The smaller wells is where the opportunity lies, so it's going to be the smaller producers. We've re-completed a number of wells and dramatically increased production. We are able to typically operate them more efficiently. So that's sort of where the meat on the bone of those particular transactions are, is taking existing wells and improving upon them in some form or fashion.

Q. And you referenced earlier that you've been involved in many different iterations of rulemaking or legislation between the state and the oil and gas industry. Specific to the proposed rules of this proceeding, have you reviewed those?

A. I have.

Q. Okay. And do you have any concerns with them on behalf of Armstrong Energy or from your own personal experience?

A. Well, I have many concerns; if I can say, four primary ones. First being, I don't see this as being the vehicle for accomplishing the most good with the least amount of harm.

More specifically, if I could point to three different things, the definitions of beneficial use do not capture or would leave out wells that we operate that are productive and economic.

The definition of marginal wells under this, again, requires greater flexibility. We have wells that we have not been able to produce for a variety of reasons that would cause a well to be marginal. And I would say I object to the thought that these are high risk in general.

As I said, we've operated for about 44 years. We've never orphaned a well. So the marginal wells that I hold now, I don't think under any logical or reasonable approach should be considered high risk.

And the third and my primary concern is with the threshold that would require full bonding or single well bonds for the entirety of our portfolio.

Q. And so what are some of the -- if these rules were adopted, increasing financial assurance for marginal wells or potentially for an entire portfolio for an operator, what effect do you foresee?

A. Well, first, and with regard to individual bonds, we currently bond through a surety company. We've had a long-standing relationship, and we pay a premium on those bonds every year.

I actually, just this morning, had inquired of our company what the effect or what the cost of putting these new bonds into place would be. And if I focus solely on just the marginal well component of it, we calculate that to be about an additional $1.5 million.

And their response was, certainly, there will be additional collateral required. And I would imagine, just from a business standpoint, given that it exposes them to additional risk, to say nothing of the cost of, perhaps, changing the price of these bonds every year, that transactional cost of them will be higher, and that will certainly be passed along to us.

Q. And when you say "additional collateral," how would Armstrong fulfill that? Is that obtaining a letter of credit? Is it designating property during a

lien-over?

A. As it currently stands, we don't actually have to provide collateral on the basis of our balance sheet. But we are told if we have to put this into place -- and again, that solely pertains to the marginal wells, not the entirety of our portfolio -- we would be required to do that. We have not had discussions as to how that would look. I imagine it would probably involve cash to a certain degree.

Q. So if you have to take on an additional 1.5 million in bonding just for your marginal wells, not for your entire portfolio, have you looked at what kind of effect that might have on those marginal wells in terms of how you're going to operate them, or whether it makes economic sense to continue operating them?

A. Well, certainly in certain cases it would no longer make sense to operate them. You know, every additional cost that's placed on it, a low-volume well, makes it uneconomic that much quicker.

So we would certainly have to look at those wells to determine which ones we could continue to do economically, which ones -- particularly if they're put at risk of exceeding that threshold, we would need to plug, thereby creating waste, thereby

taking away some of our revenue stream, taking away revenue streams from the State of New Mexico, from private mineral owners, from our working interest partners who are in this well, who we owe certain contractual obligations to.

Q. And then, have you had a chance to think about if Armstrong Energy were to exceed that 15 percent threshold, what kind of impact you would have?

A. Substantial. This is the part of this that I really am unclear as to the intent or how they think it's going to, candidly, protect against orphaning wells.

You know, in my case, we operate roughly 66 oil and gas wells, a handful of disposal and injection wells. So if I had to go get single-well bonds for all those -- and under my current reading of this, we would exceed the 15 percent threshold -- I essentially need to have bonding of getting close to $12 million inclusive of other existing bonds.

We pay currently about 3 percent of the face value of a bond, so we're going from under a hundred thousand dollars into the hundreds of thousands of dollars. And as I indicated previously, it seems likely to me if they're going to have to take

on that much risk, they're going to charge me more for it. So we could be looking into the 500-, 600,000, perhaps more. There's really no way of knowing, which is a concern.

However, the bigger -- there are two things at play there. One is the premiums, the bond, which, if we had to, we could fund that. The bigger issue is, what collateral is going to be required. If we're looking at $12 million in bonds, do we have to provide 25 percent, 50 percent?

We would have to take a very long, hard look at what we operate, what our opportunities are to divest some of those wells, which I think once this is in place would be nonexistent. And we have to look at where else we're going to operate. There is a certain threshold where I can no longer justify operating within New Mexico. If this isn't it, it's pretty dang close to it.

Q. And so, you know, that at least 360,000, maybe up to 600-, 700,000 in premium, that's an annual cost for the life of those wells, as long as Armstrong is the operator; is that right?

A. That is my understanding of. There appears to not be some clarity within the rule as to when a bond can be released, what takes us out of the

threshold. What is the timing for that.

If I perhaps re-complete a well that would take me out of the marginal status or above 15 percent, do I have to operate that well for an initial 180 days, 360 days before I can apply to have it removed? And during that time, do I have to maintain that fully bonded level at quite an extensive cost?

You know, putting down that amount of cash for an operator of our size, candidly, it will cost jobs. There's no question in my mind about that, unfortunately. And I think most of my employees are concerned and aware that that could be the case.

Q. And so your concern is that even if you improve production for those marginal wells, there's really no guarantee under the rules that that bond comes back; is that right?

A. As I understand, and from listening to a little bit of the prior testimony, these are irrevocable bonds from the standpoint of it sets certain obligations that they shall not be released until -- and I don't have the exact language in front of me, but until they have essentially been P&A'd and fully reclaimed. That's a process that can take months and in certain cases, from a reclamation

standpoint, years.

At what point will they then release that bond is not clear to me. Certainly there's going to have to be some interaction between the OCD and the surety companies. And if we're at a point now where the OCD is having to oversee hundreds if not thousands of additional bonds -- and I've been told that they are understaffed on a number of levels, and I think that is generally understood -- good luck with being able to process those requests in a timely manner.

We're talking about setting it to annual increases. I assume the OCD will have to then undertake every year an attempt to determine if everyone is in compliance. So, it seems to me it creates a huge bureaucratic headache from the OCD's standpoint. There are much more efficient, less harmful ways of going about this.

Q. And just to be clear, aside from the hundreds of thousands in premiums that's out of pocket, you're never going to see any of that back, does an operator have access to the sums that are secured by the bond when it comes time to actually plug the well?

A. If we're having to put up cash as collateral, then no.

EXHIBIT 10

Q. I think you mentioned earlier about how you're interpreting marginal wells. And your direct testimony certainly, you described some concern with the days requirement which may constrain production. Could you expand on that?

A. Certainly. You know, we have had a number of wells -- we operate in areas that are not typically considered core basin, and so the infrastructure, the gas takeaway infrastructure areas in those locations, is limited. Typically, we have maybe one midstream company that will provide gas takeaway.

And so we've had instances where the midstream company has informed us that they cannot take our gas for a period of time; that can range from a few days into I believe we had one well, it was about 117 days out of 180 that we were not able to produce. And these are wells that are otherwise capable of production, meeting the minimum production threshold. So there is certainly not flexibility to address that in the rules as they are currently written.

Q. In terms of these gathering systems, is it just one component or is it a series of equipment, and any disruption in the functioning of that equipment could affect the ability to process gas?

A. I'm sorry. Just to clarify, you're talking about on the midstream side, not on my operational side.

Q. Yes?

A. There are any number of reasons why a midstream company might curtail production from a given operator or given area.

Plants have to regularly go down for maintenance. Pipelines are in need of repair. It sometimes happens that two midstream companies contract to take one gas to the other and sometimes those contracts fall apart or are not renewed, and so that particular gas company may have to find a new location to go with the gas.

Q. And so your concern as an operator is that those are circumstances that are completely outside your control, which could have potentially devastating effects on the financial assurance that's required for the wells that are affected?

A. Absolutely.

Q. Do you have some other concerns regarding the effects of the proposed rule and some of the market-based decisions that operators make?

A. Sure. So, again, going back to this threshold, we, over a period of time, built the

company, made additional hires on the basis of these acquisitions.

If I am somebody who is below that 15 to 30 percent threshold, and I want to go acquire wells from a larger operator, who is not going to put in place the time, capital that we do, because it's simply not something that's within their area of interest for whatever reason at that moment, if I look at a package of wells that includes, and inevitably does include, marginal wells, and that's going to take me over that threshold where I have to fully bond every single well, there's not a chance I'm going to do that.

I have to pay the money up front to purchase the wells. I need the money to go and work them over. And now, if I'm having to put up potentially millions of dollars in order to bond those, it's not going to happen.

And so what will eventually occur is because those are not wells that that operator -- by definition, they're trying to sell them -- they're not particularly interested in, they're not going to take the activities, the uphole re-completions that we do, it will create waste. And again, that is the detriment of the state.

Q. And can you explain a little bit more why you think it'll create waste? I guess the problem is that there's nowhere for these marginal wells to go after the rules imposed; is that right?

A. That's correct. Again, many wells may not uphole potential that it is not worth their engineering or geology time to look at, just to meet their investment thresholds. It may not be an area of interest to them, so they're not going to go and complete those.

And if we have severely cut down on the companies like mine that could otherwise acquire those packages, the only logical conclusion is that they are going to be plugged, and very few of them, if any, are re-completed.

Q. Are there other purposes or uses for vertical wells that you think this rule would adversely affect?

A. Certainly. We were approached by one company, and I'm not a practicing as a lawyer, and I certainly could not explain the engineering of this, but one company that was interested in utilizing a wellbore to use gravity, weights and gravity to generate energy renewables, I would understand it. If we're not able to produce that well, and we have to

EXHIBIT 10

put bonding into place, that is a cost to me every year to not be able to utilize that wellbore until such time as the regulatory environment will allow for it, the technology. All those sorts of things would prevent us from doing that.

You know, carbon capture is certainly another thing that's been discussed recently. And utilizing an existing wellbore for that purpose is certainly much less potentially harmful to the environment than drilling a new well. So there are multiple different reasons. We have utilized existing wellbores for SWD or injection purposes. To put those in place tends to take a fair bit of time from a permitting standpoint, from an evaluation standpoint. And, candidly, there are times where it's not needed yet that we wouldn't pursue putting in an injection well at that particular moment.

Q. And so it sounds like -- and we've heard in other parts of this proceeding about the timing and the way operators manage their wells. Would there be a reason, so in addition to preventing waste, when it's advantageous for a well to be idle rather than immediately temporary abandoned or plugged, especially considering your recent experiences with market prices for gas?

A. Sure. Absolutely. Now, one, it's a need to get regulatory certainty on how some of these wellbores could be used. But to your question about -- I think goes more to development of full potential and whether or not -- why an operator would not go in and immediately do that.

Just by way of example, I have a gas well which is not a large -- it does not produce a large volume of gas. We've identified uphole an interval that we think could be productive for gas. But as one of my geologists would say, it's a hole and it is dark down there.

It's not as simple as going in and saying we're in a complete uphole. There's never a guarantee that that's going to work, so I'll have to go spend -- it might be anywhere from 50,000 to a quarter million dollars to re-complete uphole. There's always the potential that something could, candidly, go wrong, and we lose that wellbore entirely.

And then the third part of that that you got to is commodity prices. I don't think any prudent -- it's sort of common sense. I think a prudent or reasonable businessman is not going to say, "I want to go get this additional production. I'm

making a little bit of money, maybe it's not right now, but I want to put additional capital at risk to get this additional production and not receive what I view as a reasonable price for it."

And, in fact, we have run into situations where there's such a glut of gas, we're having to pay to have gas taken away. So under those circumstances, why would I possibly consider going uphole until it is necessary?

And again, if I go uphole, it doesn't work, it's likely that well is going to be plugged and we've created waste in the form of those downhole reserves that we have abandoned.

Q. And so you talked a little bit about reasonable prudent operator, and you mentioned earlier that Armstrong owns some non-operating interests, so do the proposed rules create a conflict for an operator who has a responsibility to other working interest owners?

A. Absolutely. So as the operator, we are responsible for fully funding the cost of bonding a well or a blanket bond. And we have, in our case, working interest owners and most -- close to all our wells, but most of our wells -- and, in fact, we typically own anywhere from 25 to 40 percent, we own

100 percent in a few. Those costs, those bonding costs, are not passed along to the working interest owners.

What costs we can pass along are defined by JOAs, joint operating agreements, contractual obligations between the operator and the working interest owners that have been in place for, in some cases, decades.

So we're not -- even though we would not be fully responsible for the cost of plugging, those costs get posted on to the working interest owners. The cost of -- and the collateral that would be required falls solely on Armstrong as the operator.

You know, the other issue I see there, again, going back to this certain threshold, if I have working interest owners in a well that produces, let's say, 200 barrels a day and by no means considered high risk or marginal, but because other wells -- a sufficient number of wells are marginal to put me over that threshold, and I now have to put a "150,000 bond on that particular well, I'm just eating that cost.

And there seems to be no reason to impose that entirely on me. It seems that -- and, again, this is the issue with the well. It, in fact, puts another 85 percent of wells at risk of being

EXHIBIT 10

orphaned, and I'm one of those working interest owners that, well, it's created waste, it's going to put them in a position where they have lost their economic benefit, and I could imagine a situation where it would make us potentially liable to those working interest owners. It's a problem I don't see a solution to in this.

Q. And so it sounds like from your perspective as an operator, not only would the proposed rules increase waste, but they'd also potentially put more wells at risk of being orphaned with that 15 percent threshold?

A. And, again, I struggle to figure out -- if the intent is to do the most good with the least amount of harm, this does not fit within that box. Because if you had an operator -- I'm not going to speak as to myself. But an operator that had 100 wells, 15 of which were marginal, and they therefore have to bond the additional, 85 wells, it seems to me, if the concern is -- they're going to have to put a lot more capital. If the concern is they don't have the ability to financially plug those 15 wells, pretty good chance they're not going to have the financial ability to provide collateral on those additional 85.

So instead of minimizing the amount of

risk and amount of harm, we've expanded it. It's going in the complete opposite direction, in my view. The only logical reason I can see this is to try and force operators to plug wells so that they get below that 15 percent. So, in fact, it's an incentive to create waste, not to lower risk.

MS. TRIPP: Okay. Thank you, Mr. Armstrong.

This concludes the portion of Mr. Armstrong's direct testimony. I'll be moving to some surrebuttal.

BY MS. TRIPP:

Q. And so, Mr. Armstrong, another witness in this matter, Mr. Purvis, at page 41, lines 4 through 14, he argued -- you had opined, you'd offer some testimony in your direct about uphole development, and I think we covered that just now?

But Mr. Purvis argues that increasing financial assurance works in the opposite direction to encourage uphole development, but setting aside the frequency of the scenarios and the relative cost in competition. And this was in reference to your explanation that there are wells and there are good reasons why a well might remain idle.

And since then, you've gone back and you've looked at those marginal wells that you were

concerned about, and this is represented on this slide before you. Can you explain a little bit about the circumstances for these wells? And I'll go to the next slide for you.

A. Certainly. So the Hoover 27 Number 1 was a part of a group of wells called the Hoover wells that has some good producers in it, and it has some smaller volume producers among it.

One of those wells, the Hoover 27 Number 1, was shut in for a period of time because we didn't have a gas connection that we could utilize. So that wound up being used for those purposes.

If you go back to the prior slide for just a moment. The Chaparral 14 Fed Com Number 1 was the well I indicated had uphole potential.

I believe Mr. Purvis, in his testimony stated, if I can read from it please, that this suggested policy works in just the opposite direction and has motivations to develop more promptly and thus serves the purposes of the OCD.

My understanding is one of the purposes of the OCD is to prevent waste, which I hope I've pretty well established this would have the opposite effect.

So I don't think it would be the purpose

of the OCD to force an operator to go uphole and not get the full economic benefit of those of that uphole potential. And there's several of these wells I think I could point to that, for a variety of reasons, are still economic, that we don't produce every single day.

For instance, the Ruth 20 Number 1 is another well that we attempted a re-completion on. It didn't particularly work, as is sometimes the case. We tried pumping it and found it was uneconomic based on the water production and some other factors.

We had it shut in for a period of time and found that it was building up pressure and would periodically flow on its own. So it's one that we don't produce every single day or even close to that, but it's a very low maintenance well. It produces produces oil. It is a state well so provides royalties to the state. But if I have to go and place those bonds on that and have that additional cost, there's a certain point where that's not going to be productive any longer.

Q. Thank you. And then I just wanted to make sure that when you mentioned about commodity prices or gas prices, I mean, to pay people to take away, does this graph sort of a capture the current situation or

circumstances in terms of gas prices, which were negative in 2024 for 109 days?

A. Sure. Certainly. We are a price taker, not a maker. We have little to no ability to influence the price that we receive for our products. And so, in the current environment, we, in many cases, receive pennies for each MCF of gas produced.

If not, in certain instances, we have had instances where you have had to pay to have the gas taken away to the tune of hundreds of thousands of dollars in a couple cases.

Q. And then I wanted to allow you one chance before we break for lunch. Mr. Purvis, pages 49 to 50, responded to your argument that the proposed rules is going to disrupt and affect transfers. And you touched on that a little bit. But one thing that he adds is that he calls these transfers of packages of wells from large operators to small operators to be high-risk transfers. And so do you have a response?

A. Well, I've got 44 years of history that indicates that's not the case. You know, I believe Mr. Purvis has also previously stated that these are the operators that will be missed the least.

That certainly is not the case within our communities. That's the sort of comment, frankly,

that can only be made by somebody that doesn't live here and is only looking at spreadsheets, that doesn't see the larger picture.

I find his comments, just thinking in terms of my employees, highly offensive, borderline reckless. It will create waste, it will cost jobs and to minimize the impact on those communities is beyond ridiculous. I apologize, but I can't put it any other way. It's something that angers me quite a bit.

MS. TRIPP: Well, thank you, Mr. Armstrong, for your time today and for being there in person.

That concludes Mr. Armstrong's direct and surrebuttal examination. I'll proffer the demonstrative slides for surrebuttal and Mr. Armstrong's direct testimony, for the record.

HEARING OFFICER ORTH: I'll paul for a moment in the event someone has an objection.

They're admitted.

(Admitted: IPANM Armstrong Direct, Surrebuttal Testimony and Demonstrative Slides.)

HEARING OFFICER ORTH: Thank you, Ms. Tripp.

Thank you, Mr. Armstrong.

We're going to break for lunch, return at 1:00, and we'll begin your questioning then.

(Lunch recess from 11:57 a.m. to. 1:00 p.m.)

HEARING OFFICER ORTH: Mr. Armstrong, would you join us again.

Ms. Fox or Mr. Tisdel.

MR. TISDEL: Yes, Madam Hearing Examiner. Just a few questions for us.

CROSS-EXAMINATION

BY MR. TISDEL:

Q. Good afternoon, Mr. Armstrong. My name is Kyle Tisdel. I'm an attorney with the Western Environmental Law Center, representing the applicants in this matter. Really just a few questions for you?

Do have your direct testimony with you; is that correct?

A. I do not.

Q. Okay. We can probably pull it up for you then. Really, the point of the questions is just to clarify some of the things that I heard in the summary of your testimony, and then some of the things in your written testimony as well?

And I know some of the well numbers are moving targets, right, so I recognize that. I'm not trying to pin you down on any exact number. I'm just trying to understand a little bit more about those

wells relative to just the testimony to try to understand what some of those thresholds are for purposes of the rule.

So I think you had a demonstrative slide in your testimony that identified 75 active wells, but I think I heard you say that you had 70 currently active; is that right?

A. That's correct. Going back and looking at it, it was fewer than the initial number that I had provided. And that's approximately 66 active producing wells and then a handful of injectors and SWDs.

Q. Oh, so 70 total wells, maybe 66 currently producing at some level?

A. Correct.

Q. Okay, great. And then your testimony as well, both your written testimony and then orally, you know, you talked about the marginal well status. And so, is it your understanding -- there's been some confusion from prior witnesses around what the actual threshold was for their testimony, what they were applying, right? I heard from you that you were available to hear some of that testimony, but maybe not all from prior witnesses, but there has been some confusion.

EXHIBIT 10

So I just want to understand, when you're speaking of marginal wells, are you speaking about the threshold as defined in the proposed rules?

A. That would be 1,000 BOE and 180 days of production.

Q. Yes?

A. And 180 days, yes.

Q. Okay. Wonderful. And then I think Ms. Fox is going to pull up a portion of your direct testimony. And this is specifically at the bottom of page 5 going into page 6, I believe. Yeah, and you can see that testimony there. Looks like actually the bottom of 6 going into the top of 7?

But that testimony essentially says that you have five currently wells in marginal status; is that correct? I think that five well count is on the top of Page 7.

A. That states seven wells on the Hoover at least produce into com battery. Five of those wells would be considered marginal as a result. Not five in total as to those Hoover wells.

Q. Okay. So five of the seven would be in marginal status; is that what I'm hearing your testimony to be?

A. I believe that to be the case. I think, as

you have indicated, there was some confusion around what was being calculated on what basis. Without being able to go back and look at each specific well as the number of days produced or volumes. I imagine some portion of that would still be considered five -- excuse me, still be considered marginal.

The five, I think at the point that was drafted, I understood the rule a little bit differently than has been discussed since.

Q. And then on the sort of first highlighted sentence there, discusses, I think, maybe a subset of those wells, right? Or maybe just the seven that you're talking about, subsequently, but those wells were shut in for 117 days out of the first 180 days of the year? Do you see that?

A. I do.

Q. Then you're aware that the day's threshold for marginal status is over the course of a full 12 months? And so this would represent half a year of production?

A. It is not clear to me if we're talking about a calendar year as to that 180-day production or if it's a constant look-back. That has not been clear to me from my reading of the rule.

So if what you're trying to get is we

produce the rest of that year, would we be able to -- over the 180 days, I think that perhaps could be true. But if it's a look-back, then we would not be in compliance. Actually, that would be -- I'm sorry. We would not reach -- we would not reach the 180 days.

Q. Okay. And you had stated you are paying surety currently on the wells that you have, correct?

A. Correct.

Q. And I think you discussed your premium right now on surety is at 3 percent?

A. That's correct.

Q. Okay. So if we took those five wells that you're defining as marginal here, assuming that each of those would need $150,000 single-well financial assurance, that would be $750,000. Does that sound right?

A. In my understanding of math, I think that would be the case, which is always questionable. But again, that five-well only pertains to that group of wells.

Q. All right. I also heard in your testimony that since 2019, you had plugged 16 wells; is that correct?

A. Yes, sir.

Q. Okay. And your average cost of plugging

those 16 wells was $120,000; is that correct?

A. That is the four wells that we have plugged over the last two years. And the onces prior to that, I couldn't speak to what the cost of those were. We didn't look that far back, because we thought the more current information was better. And that's the figure we're using for some wells that we're planning on plugging.

Q. Okay. And then for the 16 wells, just assuming that that $120,000 figure is roughly equivalent across for those four wells would apply to those 16, that would be about $1.9 million that you expended in plugging costs. Does that sound about right?

A. I'm not going to be able to do the mental math on that, but I assume you have and that's correct.

Q. I'm not going to get into a math contest with you, certainly, because I think I probably would lose that one. But I think my simple lawyer math suggests that that sounds about like the right average?

And then I also heard from your testimony, just relative to across your operations, is that you have several wells that are sort of higher

producing wells and that the higher production from those wells sort of sustains your operations; is that fair?

A. If I used the word "sustain," that's probably not the most accurate word to have used. I mean, they certainly create more of the revenues, more of the net revenues than do the marginal ones.

But yeah, many of the marginal, at such point that we can't make money on them, we tend to plug them. So the marginal wells that are still in production contribute to our bottom line.

Q. Okay. But is it a fair characterization to say that the higher-producing wells sort of carries the bulk of the water for the wells that are maybe more marginally producing or lower producing?

A. That's probably fair.

Q. Okay. And then so for the wells that you're plugging, I want to understand a little bit more how you are paying for those wells. Are you paying for those wells out of -- do you have a special fund that is set aside to pay for those plugging expenses?

A. No. We pay for plugging out of cash flows and existing cash on hand. But we have not designated funds for plugging purposes.

Q. Okay. And that's fairly typical across

industry, right?

A. As to my understanding, yes, others may handle it differently.

Q. And so the higher producing wells that you have a really meaningful impact on your ability to plug those wells, right?

A. They certainly contribute. Again, we try to maintain a good cash balance so that we can plug out as necessary or take advantage as those come up.

Or we do have a line of credit that we can utilize if the existing cash on hand was not sufficient. But over 44 years, that hasn't happened yet.

Q. That's great. And you wouldn't be able to -- if you only had a fleet of marginal or low-producing wells, you wouldn't be able to plug those wells in the absence of some of the higher producing wells that you have; is that fair to say?

MS. TRIPP: Objection. That's speculative. Madam Hearing Officer, that's going into the economics of an individual well analysis and pulling numbers out of the air.

HEARING OFFICER ORTH: Mr. Armstrong, if you can answer it without speculating, go ahead. Otherwise just say so.

A. I would say we've never been in a situation where we suddenly have to plug every single marginal well at the same time. And I'm generally unaware of situations where that's occurred with others. I'm sure there have been some.

But we would have sufficient cash flows to continue operations until such time as additional wells are required to be plugged.

HEARING OFFICER ORTH: Mr. Tisdel, five minutes.

MR. TISDEL: I actually don't think I have any further questions. Thank you, Madam Hearing Officer.

HEARING OFFICER ORTH: All right. Thank you, Mr. Tisdel.

Mr. Tremaine or Mr. Hall.

MR. TREMAINE: Mr. Tremaine. Thank you, Madam Hearing Officer.

CROSS-EXAMINATION

BY MR. TREMAINE:

Q. Good afternoon, Mr. Armstrong. We've been in passing in the past, but I'm Jesse Tremaine, OCD's legal director. I want to share screen here and ask you a couple questions.

I'm going to start out right on your

rebuttal slide Number 4. So there's 14 wells listed on this slide, right?

A. That's correct.

Q. And this is wells that you pulled that you felt would be, at some point in time in the year 2024, would have fallen into the marginal well category as defined, correct?

A. Potentially, yes.

Q. Potentially. Okay. So two of these wells were plugged sometime in 2024. Did I understand that right?

A. That is correct, the two Hilburn wells.

Q. Okay. Thank you for that. Down here it says, "Wells with less than 1,000 BOE during 2024." Did you use the and for the 180 days in generating this list of 14 wells?

A. There were a couple other slides I think indicated the 100 and -- so it would 180 days. I think it is possible that some of these produced in excess of 180 days.

Part of the challenge in identifying those is, and we followed up with the OCD last week to confirm this, we have been told, when we report production, if we have a well that produces a certain number of our barrels in a month, we report that as a

EXHIBIT 10

30-day production, not two days of production, not three days.

So I think that would certainly be a challenge, for me to go out and pull out which ones actually, in fact, produced at 180 days versus -- it's certainly not information that the OCD has requested till this point.

Q. Okay. So this refers to 2024. Is this based on production data for calendar year 2024 or New Mexico Fiscal Year 2024?

A. Calendar year.

Q. Calendar year. Okay. Did you prepare as an exhibit or provide the calendar year 2024 data that is the basis of this slide?

A. No. I had a one of our engineers compile this, so I don't believe I saw the raw data from it.

Q. So the record is not going to reflect that that data to double-check. But we have the Fiscal Year 2024 data, so I'm going to point you to that in a second?

But first, I want to ask you about applicant's Exhibit 1-A. This is page 15 out of 955. If you could just please read the definition of marginal well for the Division?

A. Certainly. Marginal well means an oil or

gas well that produces less than 180 days and less than 1,000 barrels of oil equivalent within a consecutive 12-month period.

Q. Okay. So, Mr. Armstrong, as you read that, that refers to oil and gas wells, correct?

A. Correct. The BOE would indicate that there's some conversion from gas to oil.

Q. Does that definition include injection wells?

A. It does not. As I read that now, no, it does not.

Q. Okay. And does that definition include saltwater disposal wells?

A. No, it does not.

Q. All right. So I'm going to refer you to page 32, and -- nope, sorry. It is page 39 of this same exhibit. And I just want to point out and confirm here, in the proposed definition under presumption and no beneficial use, would you agree with me that the 25.9A refers to production wells?

MS. TRIPP: Objection. Madam Hearing Officer. Mr. Armstrong has not offered direct testimony on the presumption of no beneficial use provision in the proposed rules.

MR. TREMAINE: I'm just asking him to walk

through and clarify the various sections. He's making a claim that there are 14 wells that fall under marginal definition, and pointing out a distinction in the rules. I'm not quizzing his legal knowledge.

HEARING OFFICER ORTH: All right. So, again, Mr. Armstrong, if you can answer the question.

A. Could you repeat the question?

Q. When you look at 25.9A here, does that section, as you read it, refer to production wells, oil and gas wells?

A. As I read it, yes.

Q. Okay. And 25.9B, does that refer to injection or saltwater disposal wells?

A. It does.

Q. Okay. So the previous section that we talked about, the definition of marginal wells does not include any definition -- does not include injection or saltwater disposal wells. But the presumption of no beneficial use does include a separate section related to injection or saltwater disposal wells, correct?

A. That is correct.

Q. Okay. Bear with me here. So, I'm going to go and look at -- OCD replaced Exhibit Number 16. And

this was distributed, so I'm opening it from the distribution e-mail here. I'm going to click enable editing so I can unlock it. And we're going to go to review?

MR. TREMAINE: And I'll make a proffer for the record that I shared the password with all the parties here.

BY MR. TREMAINE:

Q. So, I've unlocked the sheet, so now we can filter it. Okay? So, I'm going to do control all, and we're going to go up to the top so we can see these. And then I'm going to click on data, and I'm going to click on this button filter. So, I've done no Excel magic. This is lawyer Excel use, which is always questionable?

And I'm going to go in here and filter under the OGRID name Armstrong. Okay, so here, would you agree that we have one Armstrong Energy Corporation that pops up?

A. That's correct.

Q. Okay. All right. So, I'm going to go over to BOE, and we're going to do less than 1,000. And now we have 21 hits. But let's look at days in production. And I'm going to click everything here, clicking zero and 155s. The others are 304, 360, and

EXHIBIT 10

366. All right.

So, based on this, I get seven wells. And I want to walk through here, because now, on your slide 4, you have 14 wells. And you have them by well name. This sheet has wells by API. So, I'm not going to be able to do a direct comparison of which well is which well.

But I just wanted to confirm here that three of these wells are injection wells; is that accurate?

A. That's what it indicates here, yes.

Q. And two of these wells are saltwater disposal wells; is that accurate?

A. According to what it says here, yes.

Q. So, according to OCD's FY24 production data, Armstrong Energy has two wells that would fall within the marginal well definition. Would you agree?

A. Without going back and looking at -- I understand that there are certain thresholds under which saltwater disposal wells and injection wells can fall under that. If my understanding was correct, based on that Subparagraph B that you had me read. And perhaps I read that wrong.

Q. Well, that was the basis of my question, was that that section that we referred to was the

presumption of no beneficial use?

So, would you agree that under the marginal well definition, which is what is relevant to additional financial assurance, injection and saltwater disposal wells do not fall under the category?

A. If I were to give a more comfortable -- answer I'm confident, I would need to review that a little bit more in depth to make sure my analysis of it is correct.

Q. Okay?

A. I'm not -- I'd need to sit down and study it a little bit. I'm a slow learner.

Q. Okay. Well, we've already covered that part. So, let's assume that my filtering job here, very simplistic filtering job here, was right and we've got two wells that would fall in the marginal well category?

At $150,000, that would mean that Armstrong Energy Corporation had to provide financial assurance in the amount of $300,000 in excess of what you currently provide. Would you agree?

A. If that were correct.

Q. And do you agree that you would have, if the current rule was promulgated, until May 1st, 2028, to

either provide that financial assurance or otherwise plan for how you were going to manage or plug those wells?

A. I believe that's the case as it is currently written, yes.

Q. Okay. We walked through -- I did it the long way. I wanted to avoid any foundation concerns here?

Do you have any reason to dispute what we just walked through to determine how many marginal wells Armstrong Energy Corporation would have based on the Fiscal Year 2024 data from OCD permitting.

A. Again, that prior slide that was shown was analysis that was performed in house to look at those particular thresholds. Only looking at the API numbers, I couldn't tell you -- well, I could tell you what the injection of SWDs are. But the other two wells, I'd have to guess at what those are.

And, again, this comes back to a calendar year 2024. My understanding of reading the rule is in the prior 12 months. It does not say calendar. So some of those wells -- well, I take that back, because I was basing it off the 24 months.

My recollection as to the Hoover well is it was shut in for 117 days the first half of the

year. It was shut in a number of times after that for ongoing issues. I would have to look at that.

And again, as yours here shows it, as I indicated there are a couple of wells, the Salbar, the Chaparral, the Ruth 20 Number 1 are wells that don't produce 180 days a year. The Sundance, I believe, is another such well. But they are reported on a 30-day production because they do produce something within that month. So I'm not sure that this data captures that.

Q. Well, let's examine a little bit here for a minute?

UNIDENTIFIED FEMALE: You have four minutes, Mr. Tremaine.

MR. TREMAINE: I got it. Hopefully I'll be two.

BY MR. TREMAINE:

Q. Mr. Armstrong, do you agree that OCD's production data, which is exported in this sheet, is recorded to OCD by Armstrong Energy Corporation?

A. In the manner that the OCD has directed us to do it, yes.

Q. Okay. And using that data and filtering that data, we've just came up with two wells. So my question is, do you have any reason to dispute that

EXHIBIT 10

based off of this data, Armstrong Energy Corporation only has two wells that fall within the definition of marginal?

A. Yes. As indicated, there are certain wells that don't, in fact, produce 180 days per year. But there has to be clarity as to what timeframe we're reporting that as. And, again, yours falls under calendar here. And some of them don't, in fact, produce 180 days a year.

We report it according to how OCD has directed us, and we confirmed that again last week.

Q. We just went through this exercise. So if that was captured, if those wells were producing less than 180 days per year, but produced more than 1,000 BOE, they wouldn't be present on the filter that we just did, right?

A. That's correct.

Q. So I'm asking you about the definition of marginal well in its totality, and your response was that there are wells that produce less than 180 days. So are you saying that those wells also produce less than 1,000 BOE?

A. Yes, yes.

Q. Okay. But you're saying that's not reflected in the production data that was reported to

OCD?

A. I am saying we reported production in the manner which we were told to report it. Some of those wells do not, in fact, produce every day. So they would fall under the 1,000 BOE threshold and the 180-day threshold, to the best of my knowledge.

MR. TREMAINE: No further questions. Thank you.

HEARING OFFICER ORTH: Thank you, Mr. Tremaine.

Mr. Moore, do you have questions for Mr. Armstrong? Oh, Mr. Biernoff, it appears.

MR. BIERNOFF: Yes. Good afternoon, Madam Hearing Officer. I'm in for Mr. Moore. I do have some questions. Thank you for calling on me.

CROSS-EXAMINATION

BY MR. BIERNOFF:

Q. Good afternoon, Mr. Armstrong?

A. Good afternoon.

Q. You mentioned in your direct testimony that since 2019, you've plugged four wells at an average cost of 120,000 per well; is that right?

A. No. And I apologize if I was not clear. We have plugged I believe it was 16 wells since 2019. Not having my piece of paper in front of me, I

couldn't tell you it was 14 or 16. We have plugged four wells in the last two years at an average cost of $120,000.

I do not have the data on those prior wells. We didn't consider it to be applicable given cost structures have changed.

Q. Okay. Well, let me ask you about that. Cost structures have changed in what way, since those early days, 2019 or so?

A. Well, cost in general, I think, as we all know, have gone up, and that includes within the oil field. The state has applied new plugging parameters which require additional plugs and cement to be placed into a wellbore.

So where previously we might be able to plug a well in, and I'm just going to throw general numbers out there, two or three days, because of these new intervals, we are required to wait for cement to set before we can go up to the next interval, place a plug and set it. So additional rig days, additional cement, number of different factors.

Q. Okay. So you've described costs going up. So let's focus on the four wells that you've plugged in the last few years. I think you said just now average cost of 120,000 per well; is that right?

A. That's correct.

Q. Okay. Do you remember the approximate actual cost of each of the four jobs?

A. I do not. I don't know that there were any major outliers than that; I don't believe so. To the best of my recollection, I don't remember any large reclamation costs associated with those wells. There may have been, but does not come to mind.

Q. Okay. So each one of the four wells was around 120,000?

A. Well, they average $120,000, give or take. I could not tell you how much precisely.

Q. Okay. You don't remember the range approximately?

A. I do not. I will say, to the best my recollection, most of those were deep wells, so we were not dealing with shallow wells that may have been dramatically less from a plugging standpoint.

Q. Okay. And that was actually my next question. I was going to ask you if you remembered approximately how deep those four wells were or the range of depth?

A. I would say, on average, 9- to 12,000 feet, which within the vertical well world is fairly deep.

Q. Okay. And did you testify, did I hear this

EXHIBIT 10

right, that you have a non-operated interest in around 150 wells?

A. No. I apologize. I was not speaking very clear. It's roughly 350 wells, and those interests vary in size.

Q. Okay. And for those wells in which you have those 350 or so wells where you have a non-operated interest, are you responsible for paying the OCD bonds?

A. No.

Q. It's the operator who does that?

A. Who pays is determined by a joint operating agreement, which may go back some period of time. My understanding of the wells that we're in, we would not be able to -- we're not able to charge that additional cost to the working interest owners.

At the time that those would have been set, there would have been essentially a blanket amount and we could charge for overhead, those sorts of costs. Well, one of those costs would have been bonding. That cost of bonding would increase significantly.

But under the JOA, that amount that we can charge does not -- it wasn't tied to a changing number, a variable number, if that's making sense.

Q. I think so. And so for the 70 or so wells that Armstrong Energy operates, per your testimony, any other interest holders like, like non-operated working interest owners? They're not paying you or contributing to you for bond costs, are they?

A. No, they're not. Other than what is kind of defined as a dollar figure within our JOAs, they do not contribute on top of that.

Q. Okay. And I think you mentioned, Mr. Armstrong, that your cost estimate, the 120,00 cost estimate for the most recent four wells, that that also includes remediation and reclamation costs; is that right?

A. That's my understanding, yes.

Q. Okay. And is it fair to characterize Armstrong as a good operator?

A. I would certainly hope so. We try to meet our obligations and we try and operate in the, first of all, safest way possible. We try to be good stewards of the land that we are allowed to access. So yes, I would say we are a good operator. Not perfect, but...

Q. Okay. Fair enough. And I'm certainly not aware of any active compliance violations against Armstrong at the moment. Are you?

A. I am not. Or if any are still open, they should have been closed out some time ago, by which I mean they may have not been entered into the system correctly. But we have no ongoing issues that I am aware of, no.

Q. Okay. Yeah, me neither. Would it be fair to say, Mr. Armstrong --

A. As to our own wells, might be the important clarification there.

Q. It's a good one, especially now. So thank you for explaining that further?

Do other operators who do have spills at their well sites and who do have open compliance incidents and who do have violations and who are not as good of operators as Armstrong is, would those operators have higher reclamation and remediation costs on average?

A. I don't know that I could say on average. Again, we try to be thorough on what we do. So frankly, our costs may, in fact, be a little bit higher than others. But I certainly would recognize that there's the potential for that, yes.

Q. Okay. So I think you said that the four wells that Armstrong plugged in the last few years were all -- those sites were all pretty clean, right?

A. To the best of my recollection, there was no major remediation costs. I mean, there is always some cleanup that needs to be done. Obviously, the caliche pad has to be picked up, has to be reseeded. But nothing that I would consider a major cost that would have significantly inflated the cost of that $120,000.

Q. Okay. And so if a different operator, not Armstrong, whose site did have a bunch of spills and did have significant remediation to do, you expect the cost of that work to be higher, right?

A. I certainly think that is possible.

Q. Okay?

A. There are operators who, for instance, own their own equipment that may be able to remediate or plug at a lower cost basis, even if the extent of the reclamation is larger. But I'll certainly concede that it could be higher.

MR. BIERNOFF: All right. Okay. Well, thank you so much, Mr. Armstrong.

Madam Hearing Officer, I'll pass the witness.

HEARING OFFICER ORTH: Thank you, Mr. Biernoff.

I don't believe we have Ms. Nanasi.

Mr. Maxwell, do you have questions of

EXHIBIT 10

Mr. Armstrong?
MR. MAXWELL: No questions. Thank you.
HEARING OFFICER ORTH: Thank you.
Mr. Rankin?
MR. RANKIN: No questions.
HEARING OFFICER ORTH: Okay. Let's see. EOG is monitoring.
Mr. Suazo.
MR. SUAZO: Yes, Madam Hearing Officer, just a few questions.

CROSS-EXAMINATION

BY MR. SUAZO:

Q. Mr. Armstrong, good afternoon?
A. Good afternoon.
Q. I have to admit most of my motivation for asking you questions is because I'm not sure when I'm going to have the chance to cross-examine another fellow Georgetown Hoya, so that's part of it?
A. There seems to be a microphone malfunction at this moment, so we'll see.
Q. But the other part of the motivation is that I think, you know, some of your testimony was enlightening, at least to me, in terms of understanding how these proposed rules will operate where the rubber meets the road, or I guess where the

proposed rule meets the operator, shall we say.
In your testimony, you said that Armstrong has been operating for, I think, 44 years, correct?
A. Company was founded in 1977, and I believe the first well we drilled was in 1981. So it had non-operated interests prior to that.
Q. And you said that in that time, you have never orphaned a well; is that right?
A. That is my understanding. No such incident where we had orphaned a well, don't think that's the case.
Q. And despite not ever having orphaned a well, if these bonding rules and thresholds for marginal wells are passed, that would increase your costs, correct?
A. That is correct.
Q. And those costs would be ongoing annual costs?
A. They would be. Operationally, in terms of operational cash flows, it would represent a premium on those bonds, whatever that premium winds up being, in addition to the collateral that we would have to put up and otherwise not be able to access.
Q. And have you heard throughout this

proceeding the applicant's reference to an LFC report?
A. Yes, I have.
Q. Okay. And have you heard them discuss what they've dub as the "orphan well problem" facing the State of New Mexico?
A. Yes, I have.
Q. Okay. And so, with respect to that problem and these increased costs, these increased costs that you would incur, that Armstrong Energy would incur, would have absolutely no effect on the orphan well problem on a going-forward basis, correct?
A. Yes, that would be the case, as I understand it.
Q. And so, the only way that these increase in bonding amounts would have an effect on orphan wells was it would be if Armstrong itself orphaned a well in the future and did not fulfill its obligations; is that right?
A. That would be my understanding, yes.
Q. And is it your understanding that this orphan well problem is primarily as the result of legacy wells?
A. I would imagine that's accurate to say, is that the vast majority are older, legacy wells. There may be some that are newer, that were drilled and, for

whatever reason, not plugged. But I'd imagine that's a smaller portion.
MR. SUAZO: Okay. No further questions. Madam Hearing Officer.
HEARING OFFICER ORTH: All right. Thank you, Mr. Suazo.
Ms. Tripp, do you have any redirect?
MS. TRIPP: Yes, Madam Hearing Officer. But very, very briefly.

REDIRECT EXAMINATION

BY MS. TRIPP:

Q. So, Mr. Armstrong, I want to give you the chance -- access to the OCD database. This is the OCD permitting website. And hopefully I'm sharing -- what you see is a website?
A. Yes, I can see that.
Q. And it's really tiny, but I have to go to expanded well search results. So these are all of Armstrong's plugged site released wells. That was the filter I used to get here?
But I just wanted to get this on the record because you mentioned, you know, it was your memory that these were deep wells, the last four wells that you plugged with $120,000 average cost, all in, including reclamation.

EXHIBIT 10

And you can see that the measured depth and vertical depth for those last four wells are all greater than $11,000; is that right?

A. That would be my understanding, yes, based on what I see here, yes.

Q. Okay. All right. So, deep wells, plugged at -- you know, it's a fraction of the cost, including reclamation work, here on that exhibit?

So the last thing I want to do is to kind of put us all in your shoes, as an operator. Because what we're missing, I think, is the practicality of how this rule will work.

So with respect to that group of Hoover wells that was shut in for 117 days out of the first 180 days of the year. So there you are in June 2025. You're looking at five wells and they've only had the opportunity to produce two months, 60 days. And you only have -- at that point, you would have another 180 days to make up the difference. Is that right?

A. Yes. That'd be my understanding.

Q. Okay. And those wells were shut in because there was a problem with the gathering system; is that also right?

A. That is generally correct. There may be instances where a well gets shut in for a workover.

We perform routine maintenance on them, things of that nature. But the pipeline shut-in certainly was a major factor on those.

Q. Okay. So with five wells and the potential that you'd have to bond them at $150,000 each, being $750,000, is there any way that you, as an operator, sitting there on day 181 of the year, with another 184 days to go, will know when that pipeline system is going to be available?

A. No. We get told when we have to shut them in and we're told when we can open them back up again. But we typically don't receive much -- the information we receive tends to come through the oil field gossip network more than any verifiable information from those midstream companies.

Q. Understood. So as an operator who's trying to manage your wells and trying to plan, the fact that there could be a $750,000 price tag is a very real impact on your operations?

HEARING OFFICER ORTH: Ms. Tripp, would you stop leading him, please.

A. I'm not sure that I have a question to answer now then.

Q. Okay. Let me re-ask that?

So from your position as an operator,

you can't predict whether you will be able to produce a well necessarily for 180 days out of a remaining 180 days in a year?

A. That's correct. So from a budgeting standpoint, that does create some challenges.

MS. TRIPP: Okay. All right. Thank you for walking through that exercise with me. I don't have any further questions for you, but the Commission may have some.

HEARING OFFICER ORTH: Thank you, Ms. --

MS. TRIPP: But I believe I already submitted -- I'm sorry, Madam Hearing Officer. If not, I'm submitting Mr. Armstrong's direct testimony and his sort of rebuttal demonstratives. I think I did.

HEARING OFFICER ORTH: I believe you did that.

MS. TRIPP: All right. Commissioner Armstrong, do you have questions of Mr. Armstrong?

EXAMINATION

BY COMMISSIONER AMPOMAH:

Q. Hello, Mr. Armstrong. William Ampomah, professor from the New Mexico Tech. Thank you for your testimony today.

So my first question to you, there was

discussion with Mr. Tremaine about the days, the production number of days, for a particular well.

Can you tell the Commission how the current production base are documented per OCD's instructions?

A. If I'm understanding the question correctly, how are we calculating the number of days we are reporting.

Q. The number of days that a well is active or produced, you know, as reported to OCD?

A. In consultation with the individual that handles our reporting, I inquired as to how we report a well that may not produce 30 days a month, why is it showing us 30 days a month.

She indicated that's how she has been told and trains with the OCD to do it. She followed up last week to inquire if that was still the case, or if we had been doing it incorrectly, and we were told no. If it produces within that 30-day period, report it as 30 days.

MR. TREMAINE: Objection. So, Commissioner Ampomah, to clarify, I'm not objecting to your question. It's a good question. I am objecting to the foundation.

So, Mr. Armstrong -- so, okay, hearsay

comes into these hearings. But Mr. Armstrong is testifying that he heard from somebody who works for him, who talked to somebody at OCD, who told them a particular thing. This is not in the record anywhere else, and I'm getting chatted concerns as to whether this is accurate or not.

So, I think this is something that we can try and proffer and answer and something that, if true, would need to be clarified in the future. Right? But I have significant concerns with basing the record on what is based on Mr. Armstrong's testimony here, like three layers of hearsay. Like, we are well down the path on the post office game here, and I've seen this play out before. I'm not going to provide any further commentary on that.

But I have some significant concerns with that. So, I would proffer that we would -- I will follow up on this and we can try to provide some answer to the Commission.

COMMISSIONER AMPOMAH: Yeah, but you know why I'm asking that, right? Because the deputy director talked about we need to be more concerned and then provide more clarity as to how the days will be documented.

So based on what you are saying, I'm

like, then there's a huge uncertainty associated with the number of days.

MR. TREMAINE: Without testifying on behalf of my client, I don't think I can answer that any further. But I do feel that the record reflects an inconsistency among the opponents to the rule.

We've heard in other testimony and rebuttal testimony that operators inaccurately represent that. No one else has said OCD is telling us to report 30 days for every month in which there's production. This is deeply a concerning representation.

COMMISSIONER AMPOMAH: Thank you for clarifying, because it was a concern based on the testimony. So I will not ask any further questions on that. So I'll move on. Thank you.

BY COMMISSIONER AMPOMAH:

Q. Yeah, so, Mr. Armstrong, you've talked about the impact that these rules would have on small pretests, especially you highlighted the 15 percent threshold that has been imposed if this current rule was going to be passed. Are you with me on that one?

A. That's correct, based on how I am calculating the 180 days, yes.

Q. Yeah. So there has been a lot of

discussions, and from where I sit, I want to see some compromise here. So there has been a lot of discussions where there is a little bit of agreement on 30 days threshold -- 30 percent threshold instead of the 50 percent. Would that be something that would be more appealing to prudent operators?

A. It would certainly be a move in the right direction. I could certainly see situations where that would be problematic.

I believe, as I testified this morning, you know, some of the packages that we have acquired inevitably include a good number of what we consider marginal wells that might take us over to 30 percent. So that would, therefore, prevent us from acquiring that package, reworking those wells if we decided the economics did not work because the additional bonding level or the amount of cash we would have to put up instead. But 30 percent would be an improvement.

It still seems to me that applying that single-well bond to the remaining 70 percent will have -- I will speak for myself, but I can see scenarios in which that additional 70 percent is put at risk, which seems to me the opposite of what we're trying to do. In protecting against the most high-risk wells, we're now making productive wells

potentially at risk.

Q. So there has been a little bit of discussion where Commissioner Bloom was suggesting, based on the discussion about providing some exceptions to the definition of the marginal wells as pertaining to the bond, the 150,000. So some of the exceptions are some of the things that you've listed here?

Did you listen to that discussion?

A. I don't recall, if I heard that specific discussion. I am aware of creating -- some discussion around creating exemptions for some of the issues that I discussed regarding midstream takeaway capacity. I'm aware those discussions have gone on, yes.

Q. So would you be in a position to provide some of these to the Commission for our consideration?

A. Some exemptions.

Q. Yeah?

A. Beyond the ones that I've heard, midstream wells that are part of an enhanced oil recovery project, those certainly make sense to me and seem to be fair. That would prevent additional waste and allow us to maximize the production we can get out of those wells.

COMMISSIONER AMPOMAH: Thank you, sir, for your time. I do not have any further questions.

EXHIBIT 10

HEARING OFFICER ORTH: Thank you.

Commissioner Bloom, do you have questions.

COMMISSIONER BLOOM: Yes. Thank you, Madam Hearing Officer.

EXAMINATION

BY COMMISSIONER BLOOM:

Q. Mr. Armstrong, thank you for your time today. Just back to what Dr. Ampomah mentioned, regarding the issue of midstream shut-ins. So, Mr. Armstrong, your concern is that a well that would not otherwise be deemed marginal could become marginal if the midstream was shut in and pipelines were not accessible over a certain period of time. Did I get that right?

A. Yes. I believe that's true.

Q. And last week I offered an initial attempt to get around this. And I swear I had some better language this morning in my head when I woke up, and it's just gone now?

But currently we're defining -- the proposed definition of marginal well is, quote, marginal well means an oil or gas well that produced less than 180 days and less than 1,000 barrels of oil equivalent within a consecutive 12-month period, end

quote.

And what I might add to that would be the following. After it says within a consecutive 12-month period, not including in this period production days lost to midstream shutdowns. So I would hope that that would extend that period out for any period of midstream shutdown and take that out of the count. Would something like that be potentially helpful?

A. It certainly would be helpful. And I think it would be a reasonable accommodation for a situation where a well should not otherwise be considered marginal. It doesn't seem to me that that's what -- the problem we're trying to solve here.

COMMISSIONER BLOOM: Mr. Armstrong, thank you for your time. No further questions.

HEARING OFFICER ORTH: Thank you.

Chair Chang, do you have questions?

CHAIR CHANG: I do not. Thank you for your time. I appreciate it.

HEARING OFFICER ORTH: All right. Any reason not to excuse Mr. Armstrong? No.

Thank you very much, Mr. Armstrong.

MS. TRIPP: Madam Hearing Officer, IPANM's next witness is Mr. Gilstrap and he is on the

platform. He's a technical witness so we anticipate going about an hour for his direct and rebuttal.

HEARING OFFICER ORTH: All right. So perhaps, then, we should take a break before we hear from him. Let's come back at 2:00.

MS. TRIPP: Thank you.

(Recess held from 1:51 to 2:00 p.m.)

HEARING OFFICER ORTH: I believe Ms. Tripp is calling IPANM's next witness.

MS. TRIPP: Yes, Madam Hearing Officer. His name is Trevor Gilstrap. If Ms. Apodaca can give him camera and audio permission. All right.

HEARING OFFICER ORTH: All right. Thank you.

Mr. Gilstrap, if you'll unmute yourself. There you go. Spell your first and last name, please.

The WITNESS: Yes, ma'am. Trevor, T-R-E-V-O-R. Last name, Gilstrap. G-I-L-S-T-R-A-P, P as in Paul.

HEARING OFFICER ORTH: Thank you. Do swear or affirm to tell the truth?

The WITNESS: Yes, ma'am.

HEARING OFFICER ORTH: Thank you.

Go ahead, Ms. Tripp.

TREVOR Gilstrap,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. TRIPP:

Q. Good afternoon, Mr. Gilstrap. We have spoken before. I want to thank you for coming to testify today remotely. If you could introduce yourself to the Commission?

A. Yep. My name is Trevor Gilstrap. I'm currently a senior vice president and the national energy practice leader within Assured Partners. Assured Partners is an international insurance broker.

Q. And can you tell us a little bit more about your education and your experience?

A. Sure. I graduated with a Bachelor of Arts in Psychology. Started my career as a claims adjuster with Farmer's Insurance. Initially worked as a liability claims adjuster and then transitioned to Farmers as dedicated catastrophe team, where I handled large-scale natural disaster claims to insured autos and property holders. Have been with Assured Partners for about 15 years now.

Q. And what is it that you do with Assured Partners in the energy practice section?

EXHIBIT 10

A. So my team provides insurance brokerage for oil and gas companies with operations spread throughout all of the oil and gas-producing basins within the U.S. We are largely focused on domestic operations. We don't really touch much internationally.

Q. And so do you have experience in New Mexico, for example?

A. Yes, ma'am.

Q. And then surrounding states, Colorado or Texas, Oklahoma?

A. Correct.

Q. Okay. Thank you. And then we're here today on a proposed rulemaking which addresses financial assurance. Have you had a chance to review any of the statutes or regulations in New Mexico?

A. Some, yes.

Q. Okay. And so I'm going to share my screen here, which I forgot to do in the beginning. And so this statute which is 70-2-14, what is your understanding of the forms of financial assurance that are allowed?

A. That there's four of them: irrevocable letter of credit, cash bond, surety bonds, and a plugging insurance policy.

Q. Okay. Thank you. And so in terms of kind of your credentials and in your experience, how long have you been with Assured Partners and what kinds of clients do you work with?

A. Yeah, so we were acquired -- I've been on this side of insurance for close to 15 years now. We were -- gosh, when did we get acquired? Sorry, I wasn't ready for that. I think we got acquired in 2015-ish.

So we do property and casualty insurance for oil and gas service contractors, operators, non-operators throughout the U.S. Property and casualty being anything from their liabilities. So general liability control well to the bonding needs they have. The bonding needs vary for contractors and operators, but we're handling start to finish those property and casualty needs for domestic upstream oil and gas contractors and operators in the U.S.

Q. And so then with respect to the rules that are at issue here, the regulations, have you reviewed the proposed change by applicants to the financial assurance requirements in New Mexico?

A. Yes, ma'am.

Q. Okay. What's your understanding of the existing bonding?

A. Sorry. Were you scrolling or am I answering.

Q. Yeah, I'll let you answer. Go ahead?

A. Okay. That it's a blanket bond that's applicable to operators in the state.

Q. And that -- go ahead?

A. I didn't say anything. I'm sorry.

Q. Okay. And the blanket bond, is there another option for a single-well bond or a one-well plugging financial assurance?

A. Yes. So once you hit a certain threshold, then it can take over and you can take advantage of the blanket bond as a more cost-effective option, I guess, for your bonding needs.

Q. And your understanding of blanket bond is that it covers all wells; is that right?

A. Yes, ma'am.

Q. Okay. And so what are some of your concerns with the proposed rule change?

A. I have a lot. You know, having gone through this in Colorado, bonds are -- it's an incredibly hard market right now for bonds. These changes have the propensity to have substantial ramifications on, I think, operators that are currently active in the state.

Some of these proposed changes are going to lead to, as proposed, significant increases in the bond amounts, which is going to lead to really two meaningful changes. One, a pretty precipitous increase in the bond premiums that are being charged to these operators. So the annual premiums they're paying, to have the bond in place, this promise to pay.

And I also think that there's going to be some really big ramifications on the collateral tied to those bonds. The surety market is -- again, it's extremely hard. It has been for several years. We're seeing collateral on the rise. So oftentimes you're looking at collateral requirements that are anywhere from 50 to 100 percent of that bond amount. So not only do you have these increased premium charges taking place, you're also getting capex constrained with all the collateral that is also being tied up with those bonds.

Q. Okay. And I think in your direct, you provided a few hypotheticals in terms of what would be the effect of the proposed rule for an operator. Let me get there. So in this first scenario, you walk us through this.

A. Yeah, so you're looking at an operator that

EXHIBIT 10

has 150 wells that are above the 15 percent threshold and they need a $22.5 million bond.

So, again, typically we're seeing these increased collateral charges. So oftentimes it's going to be anywhere from 50 percent to 100 percent of that bond amount. Bond amount in this particular example being $22.5 million. So you take the conservative approach and you say that the surety is going to charge a 50 percent collateral, that's $11.2 million in funds that are tied up.

So either the operator is relinquishing those funds that are being held in the form of cash, or they're drawing down a revolver that they might have in place, which they'll get charged for that as well.

And then in addition to the collateral, the surety, the bond carrier is going to charge an annual premium. So the way that those annual premiums are calculated is it's based on a percentage of the total bond amount that is being put up.

So again, in this situation, if we're looking at a $22.5 million bond, typical bond ranges in terms of premium for P&A bonds is between two and a half and three and a half percent of that bond amount. So in this particular scenario, we're looking at a

collateral of probably north of $11.2 million, with annual premiums on top of that ranging between 562,500 to 787,500.

Q. And I think you just testified earlier, but those premium ranges, those aren't set in stone. It's up to the surety to determine them and so they could certainly increase?

A. That is correct.

Q. And in your opinion, could the effect of these rules drive premium rates up?

A. Yeah, 100 percent. You know, this is a larger exposure for bond underwriters. I think we'll probably get into this a bit later on, but bond, it's not a transference of risk. All it is is a promise to pay.

So as you're asking sureties to increase the promise that they're making, they are more exposed. They're not taking on that risk; they're simply promising to pay it in the event that bond is called upon.

So yes, I think that we could see a fluctuation in these rates, either through uncomfortability within underwriters or a lack of capacity within the existing markets. So yes, they're subject to change.

Q. Okay. And in your direct testimony, you provided a second scenario, which is just sort of a larger scale than an operator with 1,000 wells if they were required to single-well bond?

Can you just explain, is it the same math or would you change it?

A. Yeah, same math. You're still looking at a 50 percent collateral. And honestly, you know, sometimes we'll see that the larger amount being required to bond sometimes leads to even higher collateral. Because, again, it's a larger amount that is being exposed.

So I would anticipate that, again, it's an absolute minimum of 50 percent collateral that you're going to see in a scenario like this, with, again, the premiums likely being the two and a half to three and a half percent range. Although, given the amount, it is certainly possible that that rate range is subject to change.

Q. And when a surety company requires collateral, are you familiar with how an operator or a company satisfies that? Is it typically through a letter of credit or is it a deposit of cash?

A. Yeah, it's either of the two. So typically, most sureties will provide the option for cash.

Oftentimes when you do, they'll allow you to put those into an investable fund so it can at least grow slightly. But that cash is still tied up.

Or it is a letter of credit that is going to -- or drawing down revolver with your banker, whomever your lender is. But they are tying up funds.

I have not come across a surety that's willing to take into account collateral, say, on wells. They're looking for the cash to offset that collateral.

Q. So an operator couldn't rely on their portfolio or their assets as wells, necessarily, to satisfy any of those collateral requirements?

A. To the best of my knowledge that is correct and. I will give you one little asterisk there. Some underwriters will look at and take into account third-party well-reserve reports when evaluating the financial comfortability that they have with any given operator. But no they will not use that to offset collateral in the traditional surety market.

Q. So that third-party reserve report, maybe it could be considered in setting of premium rates, but it's not going to be available to demonstrate collateral?

A. Correct.

EXHIBIT 10

Q. Okay. And I'm sorry to jump around, but I neglected to ask you this when we were looking at this statute. One of the forms provided for in the statute is a well-specific plugging insurance policy, pursuant to the provision of the section -- I'm going to scroll a little bit because at Part F, our statute goes into some details?

Are you familiar with well-plugging insurance policies?

A. Yeah. So, several years ago, a company called OneNexus was created with, really, an intent to provide an alternate and more effective solution to the traditional means of complying with P&A bonding requirements.

OneNexus was able to successfully develop an insurance product that's able to comply with the plugging requirements mandated by regulators, but that also allows the operator to transfer some of that cost of those plugging and abandonment expenses to an insurance provider.

It's got a very similar arrangement to a traditional surety bond. OneNexus uses what they call an asset retirement agreement, ARA. As there's a three-party agreement between the operator -- if you were on a bond, that would be you as the principal,

OneNexus, who would be kind of deemed the guarantor, and the regulator, going to a traditional bond, you'd label the obligee.

Payments under that asset retirement agreement are managed by OneNexus' Oklahoma captive corp. It's a protected sale captive insurance company that's regulated by the Oklahoma Insurance Department, OID. And each asset retirement agreement is backed by a CLIP, contractual liability insurance policy, that's issued by the captive with funds that are legally ring-fenced and reserved exclusively for decommissioning obligations.

The captive's financial capacity is underwritten by a global insurance carrier called Munich Re. Munich Re is providing capital support to underwrite up to 3 billion in gross decommissioning liabilities.

Part of the reason that this product is so similar to a bond itself is the CLIP. That contractual liability insurance policy provides the same non-cancelable insurance backing that is similarly present in surety bonds. So it is an uncancelable policy.

When a claim is made for plugging expense, those payments are made to the principal or

operator, with the regulator as beneficiary; thus ensuring that the funds are used as intended. Currently working with Colorado and OneNexus to incorporate this option for Colorado-based operators as well.

Actually, I think New Mexico might have met with OneNexus at one point in time. But I'm not sure if that's -- I'm not sure where that conversation went.

Q. All right. Thank you. So you're familiar with this OneNexus product. And did you mention that you're already in the process and working in Colorado?

A. Yes, ma'am. So ECMC is the group that oversees oil and gas in Colorado. We're working in partnership with ECMC and the attorney general's office to get formal approval here. We are, it seems like, very close to the finish line. We are awaiting the formal thumbs up from the AG's office, at which point in time we'll sit in a formal hearing with ECMC to see if we can get the final layer of approval to implement this here in the state.

Q. And will that implementation be available in Colorado for all operators or is it on kind of a one-by-one basis to each operator?

A. That is a great question. Our intent is to

make it available to all. If we can get the state ultimately comfortable with the product itself, which I wholeheartedly believe, if we can just continue spending time on this, they will be. It is just as broad as a bond, but it will actually transfer the risk. But our intent is certainly to make it available for all and not just to some.

Q. Okay. Thank you for diving into that?

And so we just talked about insurance, but I believe in your direct testimony you explain kind of at length that bonds are not insurance. So if you could just compare the two for us today.

A. Sure. So unlike an insurance policy, a bond is a financial guarantee rather than a risk transfer mechanism. So a bond represents a promise to pay. It's typically backed by either cash or an irrevocable letter of credit from the operator or by a contractual obligation from a third-party guarantor, like a surety.

In contrast, insurance involves the transfer of risk. So the policyholder pays a premium to an insurance carrier, which in turn issues a policy outlining the specific terms, conditions and coverage limits under which they'll indemnify the policyholder for covered losses, subject to any deductibles.

EXHIBIT 10

I guess the key distinction is that with insurance, the financial risk is transferred from the operator to the insurer.

With a bond, the risk remains with the operator. The surety only steps in if the operator fails to meet its obligations. And even then, the operator is ultimately responsible for reimbursing that surety.

Q. And so the insurance product, like OneNexus, there's actually a shifting of risk there, to where it would cover the entire plugging and reclamation liability for the well, rather than a set amount; is that right?

A. Yes and no. So yes, that is right. It is a transfer of risk. You are spot on with that.

I guess the delineation is that the insurance amount, the payable amount, is set by the operator. And typically how we envision this happening is it's in partnership between the operator and regulatory body. Right?

So if the regulatory agency says that -- and I'm going to make up a number -- you need to insure each of these wells for a penal sum of $10,000, the operator may choose to insure those wells at 10,000. They also, however, have the flexibility

to -- say the operator perceives their actual plugging costs are 150,000. They could insure each of those wells at 150,000, or 400,000, et cetera.

So you get the ability to dictate the amount in which you want to insure them for. If you want to meet regulator compliance and use that amount, you can. If you would like to buy a larger limit of insurance, you could also do that.

Q. Thank you for providing that clarification. You mentioned earlier -- so I know you're active in Colorado. Were you also involved in the Colorado rulemaking procedure that changed their financial assurance?

A. Yes, ma'am.

Q. Can you tell us a little bit about your experience and what you've seen in Colorado?

A. Yeah. I mean, it seems like it was a very similar situation. You know, a lot of discussions that were taking place.

I can tell you from my perspective, the reform in Colorado wasn't really successful. In fact, I think, if anything, it might have created some unintended consequences that should maybe serve as somewhat of a cautionary tale for New Mexico.

You know, ECMC touted its 2022 bonding

overhaul as the strongest in the nation. The reality is that the rules have increased financial pressure on operators without meaningfully reducing the orphan well problem. I think there's several key outcomes that sort of highlight the failure of that reform.

The new bonding requirements have contributed to operators becoming financially unable to comply. There is an example in Colorado, a group called KT Resources, a small operator here that failed to meet its financial assurance obligations. They received a couple dozen violation notices. As a result, 107 wells they had acquired in 2022 are now expected to be orphaned and transferred to the state for plugging and remediation.

Here, at least, the rules allow large operators to use blanket bonds and discretionary financial assurance plans, while small and midsize operators lack the production volumes to fund their own decommissioning, making them more vulnerable to insolvency and orphaning itself.

With more wells being orphaned or potentially orphaned, the financial burden is really shifting to the state and taxpayers.

Q. Okay. Thanks. And you mentioned earlier, and I think I skipped the slide, but that the surety

market is really difficult and that it might -- is it true that it may not be available to every operator?

A. Yeah. So we've touched on this a little bit. But most operators are required to post collateral to secure their bonds.

In my experience, the collateral requirements can be upwards of 50 to 100 percent of that bond amount that is being required. And it's largely dependent on the operator's financial strength and the size of the bond itself. Generally, the larger the bond, the higher the collateral requirement.

In addition to the collateral, sureties do charge an annual bond premium for issuing that bond. So again, in this sector, typical premiums range between two and a half and three and a half percent of the bond amount. That is an annual premium, so it is charged on an annual basis. And the combination of substantial collateral and recurring premium costs can significantly increase the overall operating costs.

So for your small to mid-size operators, absorbing these costs is often neither feasible nor sustainable, especially in your more capital-constrained environments.

EXHIBIT 10

Q. And so for an operator who's not either eligible or it just doesn't make financial sense to get a surety bond, what are the other forms that would be available to them?

A. Cash, letter of credit. And it's pretty minimal. Well, I guess now you also have the OneNexus, assuming that we could get a approval of them as an alternate to this.

Q. Okay. Thanks. So to summarize, it would be the surety bond, a cash bond, a letter of credit, or possibly a well-plugging insurance policy. Is that the four that you're thinking of?

A. Yes, ma'am.

Q. And our statute provides for all four of those?

A. Yes, ma'am.

Q. So you ran through your direct pretty fast here. I do want to give you the chance -- you submitted some rebuttal testimony in this rulemaking. And I know maybe we're beating this over the head, but does a bond insulate or ensure the state in any form?

A. No. I would say that it does not insulate or insure the state at all. A bond is a financial guarantee. It's not a risk transfer mechanism. It does not shift financial liability or financial

responsibility away from the operator.

Instead, it ensures that if the operator fails to meet its obligations, such as plugging and abandoning a well, the state has a mechanism to recover those costs, either through the bond's collateral or by pursuing the surety.

However, the recovery is not automatic or comprehensive. The state often engages in a claims process, which can be time-consuming and uncertain.

In contrast, insurance is designed to transfer risk from the insured to the insurer. When a covered loss occurs, the insurer is contractually obligated to pay, subject to the policy terms.

Bonds don't offer that kind of protection. They are contingent liabilities, not indemnity instruments. So while a bond may provide some financial recourse, it does not insulate or insure the state against the full cost or risk of nonperformance.

I think the distinction is critical when evaluating the effectiveness of bonding requirements as a tool for environmental protection and financial assurance.

Q. Another argument that's made is that a surety market is just like any other market, you know,

just like the car insurance market, and so obviously it will respond. If there's a demand, they'll make that product available?

Do you have a response to that position?

A. I think it's an unequivocal no. The surety market operates very differently from the traditional insurance market, and especially something like auto insurance.

Surety's don't pool risk in the same way that insurers do. They underwrite each bond largely based on the financial strength and credit worthiness of a particular operator. So this means that access to bonding is selective and constrained, especially for your small and mid-size operators or those with limited liquidity.

Unlike car insurance, which is broadly available and priced on actuarial risk models, surety bonds often require significant collateral; again, sometimes up to 100 percent of the bond amount, and they're subject to strict underwriting criteria. If an operator doesn't meet those criteria, they could be denied bonding altogether, regardless of their operational track record.

Additionally, the surety market is capacity driven. If regulatory changes dramatically

increase the demand for bonding, as we've seen in Colorado, sureties may not have the appetite or bandwidth to respond quickly or at scale. That can lead to market bottlenecks, delayed approvals, and even operators being forced out of compliance due to lack of access.

Q. I had one more question. Just in terms of the practical effects, the way a bond works, even if there's financial assurance posted for a well, when it comes time to plug that well, is that money available?

A. No. And actually, will you -- will you just repeat that again, because I want to make sure that I answer directly what you're asking.

Q. Yes. Okay. So, if an operator posts a bond, a single-well bond for a well, and that operator is then ready to plug that well, can the operator access that, the sums that are --

A. Yeah.

Q. -- for the financial assurance?

A. Thank you. Yeah, absolutely not. So, again, there's no transference of risk. This is singularly a promise to pay. So the surety is saying that in the event, operator defaults, these funds are being held in reserve for that scenario.

However, as Armstrong, or whomever it

EXHIBIT 10

is, goes to plug any of their given wells, they're using existing capital for those costs. They do not have the ability to access the penal sum being guaranteed by the surety, any of the collateral that's being used to guarantee that. It is a totally separate bucket that is drawn upon.

Q. And so if the state is the beneficiary under the bond or arrangement, can the beneficiary access those funds if the well is orphaned and it falls to them?

A. Yes. So in the event that a well is orphaned, the state does have the ability to go after the bucket of money that's available.

So in the case of a surety bond, the state must first declare the operator in default and then initiate a formal claims process with the surety. The process can involve documentation of non-compliance, negotiation or dispute resolution, legal proceedings if the surety contests the claim. It can take months, it can take years, during which the wells may remain unplugged.

For collateral-backed bonds or letters of credit, the state may still face delays due to bank processing timelines, legal review of drawdown rights. And, again, importantly, these funds are not available

for the operator to perform the work themselves.

So once the state steps in, the operator is typically out of the picture. The state must manage the plugging and remediation. Often it seems at a higher cost and with limited flexibility than what operators can perform on their own.

The financial assurance mechanism does not function like a liquid reserve. They're contingent, reactive tools, not proactive funding sources.

Q. Okay. And so one of the things that we've heard in this rulemaking proceeding is that these rules are intended to address risky wells and risky operators. Would increasing financial assurance levels accomplish that objective?

A. Not really. I mean, I think that just raising the financial assurance requirements doesn't automatically solve the problem of risky wells or risky operators. It's a blunt tool being used to address a nuanced issue.

Higher bonding doesn't prevent risk, it just prices it. It doesn't improve well integrity, it doesn't ensure better operational practices, and it doesn't guarantee the state will be made whole if something goes wrong. In fact, if the bonding

requirements are too aggressive, they can lead to more orphaning, not less, because operators who can't meet the new thresholds may walk or go under.

Q. And have you seen that occur in Colorado following the Colorado increase to financial assurance?

A. Yes.

Q. Okay. So, two of WELC's witnesses, Mr. Morgan and Mr. Peltz, both propose that those who benefit from the production of wells should pay for the decommissioning and the reclamation costs. Do you agree with that position?

A. I do. I think it makes sense -- I think it makes the most sense for operators who benefit from the entire life of the well to share in costs associated with the decommissioning. But I don't think the proposed rules accomplish this by limiting the additional financial assurance burden to low-producing wells.

On the other hand, from what I understand of it, is that the New Mexico oil and gas conservation tax would do that by carving out revenue over the entire production, productive life of that well.

Q. And I apologize for jumping around, but I

remember the question I needed to ask you?

So we've heard a lot of discussion about whether the bonds required by our statute, 70-2-14, are cancelable or whether they're conditioned on the plugging of the well. I'll share that statute again for you. Do you have an opinion as to whether surety can cancel or release a bond prior to a well-being plug?

A. Cannot.

MS. TRIPP: Okay. Thank you.

And so that concludes Mr. Gilstrap's direct and rebuttal testimony. We have some brief surrebuttal testimony to offer.

HEARING OFFICER ORTH: Thank you.

BY MS TRIPP:

Q. So, WELC's expert witness, Mr. Peter Morgan, at page 6, lines 3 through 15, and also at page 8, lines 5 through 11, he asserts that the surety market will respond to the demand that's created by these regulations?

Do you have the same opinion?

A. No. I think that the surety market is capacity driven. So a sudden surge in demand can very possibly not be met quickly or at scale.

I mean, we saw this in Colorado. It's

EXHIBIT 10

sent absolute ripples through the surety market, had people scrambling to figure out what they were going to do to secure that capacity. So, no.

Q. And then Mr. Peltz, which is Exhibit 82 at page 13, he provided this table, Exhibit 84. And the note 3 states that these premium rates are based on surety premiums from the Bureau of Ocean and Energy Management. Is that an accurate -- would you consider that an accurate source for estimating premium rates today in New Mexico?

A. No, I would not. I think that they are likely wildly skewed from what we would see for onshore wells. I believe that there was a more recent study that even showed those had increased to nearly $2 million. It's just a -- we're talking about apples and fruit flies, right? I mean, these are just two totally wildly different scenarios. So, no.

Q. Okay. Thank you. And finally, what we've heard a lot, Mr. Morgan, Exhibit 81, Page 26, lines 17 through page 27, line 1, that these proposed rules take a risk-based approach to address those wells at the greatest risk of orphaning using the surety company's analysis of risk?

Is that your understanding of how a surety evaluates an operator before offering a bond?

A. No. So, sureties, it's just not how they work. Because again, there's not a transference of risk. Underwriters, typically within the surety world, look to underwrite to a zero-loss scenario, and that is largely dependent on the cash liquidity and financial stability of that company. So, they're not deep diving into the operational wherewithal.

I suppose maybe if you have someone that is consistently showing up in newspaper headlines, that they could be referenced maybe as part of that underwriting process. But no, it is largely driven to underwrite to a zero-loss scenario that is almost exclusively driven by the underwriters comfortability with the financial wherewithal.

Q. Okay. And in this slide of your surrebuttal demonstrative, are you familiar with the master orphan well list that the oil conservation Division produced in this matter?

A. Somewhat.

Q. Somewhat. And then the Oil Conservation Division also produced what's labeled as Exhibit 29, which is a list of all the financial assurance that's on file with the state currently?

And so, is there anything you can explain to us about this slide in terms of whether a

surety evaluates risk?

A. Yeah. So it seems like a good example to emphasize the point that they don't. Eight out of the top ten on here who have orphaned wells in New Mexico were all able to attain surety bonds. So I think that that helps to, if anything, prove the point that that's not what they're in the business of reviewing for underwriting.

MS. TRIPP: Okay. The other attorneys will have questions for you as well as the Commission. But this concludes our surrebuttal testimony.

And I'll proffer Mr. Gilstrap's direct and rebuttal testimony and the demonstrative surrebuttal slides.

HEARING OFFICER ORTH: I'll pause for a moment in the event there are objections.

Okay. They're admitted. Thank you.

(Admitted: IPANM Gilstrap Direct and Rebuttal Testimony and Demonstrative and Surrebuttal Slides.)

HEARING OFFICER ORTH: Ms. Fox or Mr. Tisdel?

MS. FOX: No questions today. Thank you for your testimony.

HEARING OFFICER ORTH: Mr. Tremaine. Do you

have questions?

MR. TREMAINE: Thank you. Ms. Fox has thrown me a curve ball there.

CROSS-EXAMINATION

BY MR. TREMAINE:

Q. All right. Good afternoon, Mr. Gilstrap. My name is Jesse Terrain. I'm the legal director for the Oil Conservation Division. I just have a couple questions for you?

On your recent slide that you were going over with Ms. Tripp, you were talking about some of the operators on the mass orphan spreadsheet and indicating that the -- I believe you indicated that the existence or the fact that they were able to obtain financial assurance or sureties indicated that they were not assessed according to their relative risk. Is that a fair statement?

A. I believe that they weren't assessed based on their operational risk.

Q. Okay. And do you have any knowledge of when the operators on that list that you showed provided or acquired their respective financial assurance?

A. I do not. But I can elaborate on that some, if you'd like to just talk about generally what happens with the underwriting process for existing

EXHIBIT 10

bonds.

Q. Okay?

A. So typically when a bond is first in place, put in place, there is a robust review of the financial stability of that organization. And different sureties vary. Some of them review those financials on a quarterly basis to ensure continued financial wherewithal. Some of them do it on an annual basis. That can fluctuate largely based on commodity price.

So, for example, during COVID, we saw a much higher scrutiny over those bonds. Because we saw such a precipitous decrease in the commodity prices, underwriters, surety underwriters, were really getting more into the weeds of the finances of the companies that they were providing those bonds for.

So it really does vary. Sureties do have the ability to change collateral throughout the course of that bond as well, because these are un-cancelable. So, for example, a surety could put a bond in place, and I'll use Armstrong because I caught the tail end of Armstrong's presentation. If Armstrong has a bond in place right now that has a 50 percent collateral tied to them and for some reason, they had a slip in their financial

wherewithal, the surety company, upon review of those finances, either in a quarterly, semiannual or annual basis, would have the ability to increase the collateral they're requiring of Armstrong.

Q. Mr. Gilstrap, thank you for that. Do you have any personal knowledge of the terms or conditions of the financial assurance associated with any of those companies that you referenced?

A. Do not.

Q. Okay. A couple of questions here. You know, a lot of hay is being made in this hearing distinguishing sureties from insurance. And I think that my understanding is that the real primary distinction is that sureties don't shift risk?

In the event that OCD plugs and orphaned well, and OCD then calls the bond on that well, and the surety pays out the bond, the reason -- tell me if you agree with this. The reason you're saying that a financial assurance instrument does not shift risk is because, according to the agreement, the surety can go after the operator for that money.

A. Not can, but will.

Q. Will. Okay. What happens when, once you go after the operator, they don't have any money left?

A. So it's part of the reason that we see such

high collateral requirements from these sureties, is there's not a ton of recourse.

So the surety can certainly try and sue them for the assets that they have. They will certainly take the collateral that has been made on hand. But sureties underwrite to a zero-loss scenario.

So when a surety is sitting here evaluating whether or not they want to provide terms to any given operator, they're going to do so if they feel comfortable that in the event this operator did default, that they, surety, would be able to collect 100 percent of the funds being promised.

Does that answer your question.

Q. It does. Thank you. You testified to an increase in collateral, and this has come up a couple times in discussing Colorado and the increased proposed increase in FA. Mr. Gilstrap, why specifically have sureties increased their collateral or premium demands of operators in recent years?

A. So I think as penal sums continue to increase, so it is the exposure for the surety. Again, a surety is not a transfer of risk; it is simply a promise to pay. And sureties, like all other companies, are in the business of making money.

So as these exposures continue to increase, they look to offset their exposure as well, which is why we're continuing to see those rise.

Q. So, Mr. Gilstrap, I'm going to paraphrase. I understood that to be insurance speak for sureties have had to pay out bonds. So you're starting to charge more for bonds. Is that right?

A. I think it's twofold. Sureties like -- yes, sureties have paid bonds before. Absolutely. Companies have gone under, sureties have had to pay those bonds, as the intent of putting them in place.

But, again, they're not actually transferring risk. Their intent is to never have a paid and unclaimed balance of that amount paid. So as we continue to see rising penal requirements, penal sum requirements or bonding requirements throughout states, underwriters are looking to offset their exposure by requiring more collateral from companies to ensure that in the event of a default, they are not left out to dry.

Q. Okay. And in your understanding, observing this trend in the insurance and surety industry, those change in terms have resulted from sureties having to pay out on a significant number of surety instruments, correct?

EXHIBIT 10

A. Again, I think it's largely due to rising requirements in this space. But I think that there's a larger exposure for these surety companies.

Is the increase being driven singularly due to losses, I think is what you're asking. I don't think that's accurate. I think it's being driven due to a higher increase or exposure for losses due to rising increases to these bond amounts.

Q. I'm not asking you if it was singularly driven by losses. I'm asking you if losses are contributing to those changes of terms?

A. Very possible. Admittedly, I'm not a surety underwriter, so I don't know that I can answer that any better than I have. Sorry.

Q. I'll move on. Thank you?

Mr. Gilstrap, you made two statements that I want to follow up on at your direct and rebuttal today. First, you indicated that the terms or that sureties will look at the financial strength and credit worthiness of individual operators.

And then you made a statement that higher bonding doesn't address risk. It just prices it.

So am I understanding your testimony correctly that sureties will require more collateral

and/or higher premiums for operators who the surety deems have less financial strength or lower credit worthiness?

A. Will you, without repeating everything, just repeat that last question, the last sentence? I'm sorry.

Q. Would you agree that sureties require more collateral or higher premiums if they are looking at an operator that the surety deems has either less financial strength or lower credit worthiness?

A. Yes.

Q. Okay. Does it not stand to reason that an operator with less financial strength and lower credit worthiness represents a greater risk of orphaning their wells?

A. I'm not sure that I'm the right person to respond to that. You know, I'm just an insurance guy. I'm not an operator.

But my mind goes to companies that are operate stripper wells or some of those marginal wells. You know, I think that they've got much tighter financial constraints and cash flows, and I don't know that that necessarily makes them a greater risk.

If anything, I think that those folks

can be beneficial to the state. As you see some of the super majors looking to diverse some of those, from their perception, crummier your assets, I think it's great you have companies out there that that is largely their focus. And I don't know that just because their revenues are lesser than some of their peers that are drilling newer, bigger, better wells, I don't know that it makes them a worse risk in terms of their operational efficiencies.

Q. So in that hypothetical, a surety is looking at an operator that they deem has less financial strength and that's the reason why the surety is going to require either additional collateral or higher premiums. But you're stating that that does not mean those operators are higher risk? I just want to be clear?

A. Yeah, I don't think that just because they don't have the same sort of margins means that they're more exposed or at risk for going under.

But I think from the sureties perspective, it means that those folks, should they go under, holistically, have much less access to cash flows to pay out the penal sum that is being promised.

As such they're required to put up more collateral and/or potentially pay a higher premium,

because in the event they go under, they might not have the same sort of cash flow as one of their larger peers with those higher revenue efficiencies.

HEARING OFFICER ORTH: Five minutes, Mr. Tremaine.

MR. TREMAINE: I think I have one more.

BY MR. TREMAINE:

Q. Mr. Gilstrap, in your direct and in your rebuttal, you talk at some length about sureties, the process by which -- any given surety's reluctance to pay out or potentially their opposition to that. So on your rebuttal testimony, page 3, line 7, you state, "Under most commercial surety or indemnity agreements underlying a bond, the surety also retains the power to negotiate or settle calls on bonds, which all sureties enforce zealously?"

You then state that OCD is familiar with this dynamic, with over $700,000 in bonding by Cano Petro and having collected just over 161,000 four years later.

Mr. Gilstrap, are you implying that the bond payout related to the Cano Petro was a negotiated sum?

A. I admittedly don't know definitively. My assumption is yes, it was.

EXHIBIT 10

Q. Okay. If I told you it absolutely was not, would that cause you to alter your testimony at all?
A. Is that an opinion or is that fact that it was not a negotiated amount.
Q. I don't get to testify, but I'm telling you if you accepted the premise that that was not a negotiated amount, would that change your testimony?
A. In terms of surety carriers having the ability to negotiate those final payouts, no, it would not change the testimony.
Q. Have you looked into or been advised by any legal counsel as to the State of New Mexico's ability to negotiate --
A. I have not.
Q. -- bond payouts?
Okay. Thank you. And just to wrap, I just want to make sure it's quick for the record, so you don't have any personal knowledge of the Cano Petro bond forfeiture or any specific forfeitures that have been pursued by the Oil Conservation Division, correct?
A. That is correct.
MR. TREMAINE: Okay. Mr. Gilstrap, thank you very much for your time. I had no further questions.

HEARING OFFICER ORTH: Thank you, Mr. Tremaine.
Mr. Moore, do you have questions of Mr. Gilstrap?
MR. BIERNOFF: Madam Hearing Officer, it's Ari Biernoff. No questions for Mr. Gilstrap.
HEARING OFFICER ORTH: Thank you.
Let's see, Mr. Nanasi I don't believe is with us.
Mr. Maxwell, do you have questions?
MR. MAXWELL: No questions. Thank you.
HEARING OFFICER ORTH: Thank you.
Mr. Rankin, any questions?
MR. RANKIN: None from me. Thank you.
HEARING OFFICER ORTH: All righty. EOG is monitoring. Mr. Suazo, any questions?
MR. SUAZO: Yes, Madam Hearing Officer. Just a couple of questions.

CROSS-EXAMINATION

BY MR. SUAZO:
Q. Good afternoon, Mr. Gilstrap?
A. Good afternoon.
Q. I want to ask you a couple of questions about this OneNexus insurance policy that you explained to the Commission. Is that the only

one-well plugging insurance policy on the market that you're aware of?
A. It is the only one that I am aware of, correct.
Q. And do you know what states it's available in?
A. I believe that it just was put in place in West Virginia. I believe I saw an article from the governor touting -- I think Diversified Energy just did a deal in West Virginia. I believe it is now available in California. And I believe that OneNexus is nearing the finish line of a product for Wyoming as well.
Admittedly, it's very possible they're in other states, but I do not know definitively.
Q. So then it's safe to say that that is not available as an option in New Mexico; is that correct?
A. I'm not sure that I agree with that. I don't know if it has been used in New Mexico, but based on the way that the rules are written, it looks as though New Mexico currently allows for an insurance product to meet the bonding obligations.
So without being an expert on the New Mexico laws, my perception is that it would be an acceptable product to meet the existing requirements

and/or proposed new requirements.
Q. Now, in these other states where you are sure that it is available, did that type of insurance policy have to obtain approval from whoever administers their insurance overstate?
A. I do not know the answer to that. I can tell you in Colorado, the answer is yes. And the reason being, it seems like one of the biggest differences, at least from my knowledge between how compliance with these requirements are written, is that Colorado's wording does not include an insurance policy as a viable alternative. Therefore, it's required approval from ECMC.
Q. So then in order for an insurance policy for the, the plugging of wells to be available in New Mexico, is it your understanding that it would have to be approved by, I guess, the New Mexico Superintendent of Insurance?
A. If it wasn't -- I guess I'm not sure how to answer that. As is, I don't believe so. Because based on at least the wording that I've seen, it seems to -- the rules seem to already allow for an insurance product to be utilized.
If the regulatory agency took the position that that wasn't the intended wording, then

EXHIBIT 10

I'm sure it would require additional clarification. But my assumption is it would be accepted.

MR. SUAZO: No further questions.

HEARING OFFICER ORTH: Thank you.

Ms. Tripp, do you have any redirect?

MS. TRIPP: No, I do not.

Thank you, Mr. Gilstrap. The commissioners may have questions for you.

HEARING OFFICER ORTH: All right. Commissioner Ampomah, do you have questions of Mr. Gilstrap?

COMMISSIONER AMPOMAH: Yes, I do.

EXAMINATION

BY COMMISSIONER AMPOMAH:

Q. So I'm looking at the numbers that you put up as part of your testimony discussing, let's say, scenario 1 and scenario 2. So with your scenario 1, you're looking at operators with 150 wells and also the 15 percent threshold needs. And they are required to pay, if the premium that you are providing here, let's say, 2.5 to 3.5, you know, to the high of about $787,500 a year?

I mean, so I'm just still thinking about for smaller -- for small operators, is there a way where we can have, let's say, financial assurance that

would test the states and also does not necessarily cripple these companies?

A. That's a great question. And honestly, I don't know that I'm in a position to help find a solution. I was brought in to comment on what was being proposed.

What I will say, Commissioner, is I do think that acceptance of a OneNexus product will help in this. It's at least a transference of risk. To be clear, though, the OneNexus, it comes with a premium as well, right? We're going to see similar premiums with an insurance product.

I guess the biggest difference is that you're essentially using those premiums to pre-fund future costs, which is a huge differentiator between an insurance product and a bond. Because those premiums that you're referencing, that 562,000 to 787,000, those are sunk unrecoverable costs that aren't going towards future plugging expenses.

I'm sorry, that probably wasn't as direct a response as you wanted.

Q. Yeah, so maybe this might be similar to that of the insurance that you are discussing. But don't you also believe that there could be a way where we can pass a minimum FA requirement for these wells, and

then also probably something in there like a cost per barrel basis to build up the cost to plug the wells, where OCD can have access to that amount?

So instead of a company, the small operator putting up $150,000 per well, but they can put up some and then also more or less charge on a per barrel basis to really build up the cost to that amount to plug the well, just in case that operator defaults. But if the operator plugs their well, then they have access back to their money. Can you comment on that?

A. I am very in favor of alternatives to just singularly increasing the financial assurance obligations. I think that the idea of some sort of pre-funding pool is fantastic. You know, again, haven't certainly seen anything, an outline, to be able to comment on it specifically. But yes, I love the idea of creative options outside of singularly just increasing financial assurance levels.

Q. So the pre-funded pool you just mentioned, has it been implemented in any other states?

A. I'd have to go through and look to tell you that. I'm not sure off the top of my head.

COMMISSIONER AMPOMAH: Thank you, sir, for your testimony. No further questions.

The WITNESS: Thank you.

HEARING OFFICER ORTH: Thank you.

Commissioner Bloom, do you have questions?

COMMISSIONER BLOOM: Thank you, Madam Hearing Officer. Yes.

EXAMINATION

BY COMMISSIONER BLOOM:

Q. Good afternoon, Mr. Gilstrap. Just a couple questions?

We've heard contradictory testimony during this hearing about whether bonds can be cancelled if a well were to leave this newly created marginal status. The OCD says yes. You said no, correct?

A. Yes, correct. Bonds are a non-cancellable product. The only time the bond is canceled is when they are released by the regulatory body or called upon.

Q. So, if a well were to be bonded because it was marginal and that it increases production, couldn't the state be obligee, then release that bond?

A. So the -- I guess the state could release a bond whenever they want to. My assumption is that in that particular situation, the state wouldn't release

EXHIBIT 10

the bond. If anything, they might change the amount of the bond.

So if there's a higher amount required for a marginal well, then there is a high-producing well, presumably it would be a stair step down in the bond requirement, but not a release thereof, because it's still a well that has a, at some point in time, end of life expected and will need to be reclaimed.

Q. Okay. Thank you. I mean, this is an essential matter here. Because one of the things that this proposed rulemaking would do is really push operators to either plug their wells or increase their production so that they don't have to be bonded, so they don't go into marginal status, so they come out of marginal status. And we have a disagreement among the parties as to whether bonds are cancellable or if there's a way to drop a bond on a well that was once marginal. I'm not quite sure how we're going to work this out. Anything else you can add?

A. I can say that plugging and abandonment bonds are non-cancelable. It's part of the reason that you see such high collateral and premium requirements tied to them in such scrutiny over the financial liquidity of that particular operator. Because once put in place, the surety cannot cancel

that bond. The only way they're getting off that bond si if released by the regulatory agency that's requiring the bond.

Q. Yes. Okay in response to your question from NMOGA, you mentioned Diversified Energy, which in some ways, I don't know if it's instructive or not, but that's a company that has 20,000 wells across, I'm thinking, like West Virginia, Kentucky, Pennsylvania, Ohio, that area, 20,000 wells and 2,600 of them are considered abandoned. I think originally they were going to plug -- P&A 580 of those over the next nine or ten years. And now they've agreed to do five times more, about 2,600 wells?

Any takeaways from that?

A. I think that the biggest takeaway I guess would be that regulators in the State of West Virginia resonated with the OneNexus product and found it as a viable tool to help insulate them and taxpayers from that exposure. And so they gave it a thumbs up and felt that -- and, again, this is opinion. You know, obviously I don't know definitively. But felt that it was a better tool to help insulate them from that exposure as opposed to traditional surety.

COMMISSIONER BLOOM: Okay. Mr. Gilstrap, thank you so much for your time. No further

questions.

The WITNESS: Thank you.

HEARING OFFICER ORTH: Thank you.

Chair Chang, do you have questions?

CHAIR CHANG: Sure. Just a couple.

EXAMINATION

BY CHAIR CHANG:

Q. Is it your understanding, Mr. Gilstrap, that sureties are a more common and preferred financial assurance instruments in the oil and gas context than insurance policies?

A. I would say common definitively. But I think that's largely driven by the fact that an insurance product to potentially displace the need for a bond hasn't existed until recently.

Q. I see. Okay. Because the follow-up question that I had was whether you could help me understand why insurance policies aren't as popular or may not be popular. But it sounds like it's just not been on the market for as long?

A. Yes.

CHAIR CHANG: That's all I have. Thank you.

HEARING OFFICER ORTH: All right. Thank you Mr. Chair.

Any reason not to excuse Mr. Gilstrap?

Thank you very much, Mr. Gilstrap, for your testimony.

The WITNESS: Thank you.

MS. TRIPP: Madam Hearing Officer, I believe Mr. Cloutier will be calling our next witness.

MR. CLOUTIER: IPANM calls Calder Ezzell to the stand. And for housekeeping purposes, Madam Hearing Officer, I think it's very likely that his direct, rebuttal and surrebuttal will take longer than the hour we have until public comments.

So if you want to flag for me where a decent stopping point is, I'll try and wrap up a topic before public comment.

HEARING OFFICER ORTH: Is it to disruptive to ask that you find a breaking point around 3:30, 3:40, somewhere in there?

MR. CLOUTIER: No. I'll look for one. Thank you.

HEARING OFFICER ORTH: Thank you.

Mr. Ezzell, would you spell your first and last name, please, for the transcript.

The WITNESS: Calder, C-A-L-D-E-R, E-Z-Z-E-L-L.

HEARING OFFICER ORTH: Thank you. And do swear or affirm to tell the truth?

EXHIBIT 10

The WITNESS: I do.
HEARING OFFICER ORTH: Thank you.
Go ahead, Mr. Cloutier.
CALDER EZZELL,
having first been duly sworn, testified as follows:
DIRECT EXAMINATION
BY MR. CLOUTIER:
Q. Would you please introduce yourself to the Commission?
A. My name is Calder Ezzell. I'm an attorney with the Hinkle Shanor firm in Roswell, New Mexico.
MR. CLOUTIER: Move to slide 2, please, Mr. Everhart.
BY MR. CLOUTIER:
Q. If you'd describe your legal background in a little more detail, please, Mr. Ezzell?
A. Well, I went to undergraduate and law school at Washington Valley University in Lexington, Virginia, graduated with my JD in 1977, and joined the Hinkle firm that summer, and have hung on this long.
I'm a transactional lawyer. I do title opinions, JOAs, farm-outs, contract negotiations. I did have an OCD practice years ago, but that was before the firm had a Santa Fe office, and once we opened a Santa Fe office, we transitioned that work up

here because it wasn't economical for them to pay me to drive to Santa Fe. And I miss it. I really liked my OCD practice.
Q. And all of the transactions that you described, those are oil and gas industry specific, Mr. Ezzell?
A. Yeah. You can throw in two or three solar contracts and things like that. I'm also a rancher, and I have lots of ranching friends that have need for free attorneys a lot.
Q. Yes sir?
A. I seem to remember an auto mechanic, too, one time. But that's true, we won't bring up firm management issues here in the Commission.
Q. Would you describe to the Commission your background in the oil and gas industry, in addition to what you've described in your legal career?
A. Well, I have been an individual non-op investor in oil and gas wells for over 40 years. As a result of one of those investments, actually a couple, an operator who was a friend of mine and a client got in over his head because he also had a trucking company and a drilling company and that didn't work out very well in the early '80s, and when he was forced into bankruptcy and resigned as operator of all

the wells his company had, I was in three of those wells and so I assumed operations at the company, called Polo Oil and Gas.
And I operated those wells, operated in air quotes. I didn't do any of the field work. All of the physical stuff was done by two of the former operator's employees. One was a geologist and one was his engineer. And so they took care of all the field stuff. And I got bonded and sent out the bills and paid the checks, wrote the checks, and kept those three little wells going until my friends, the geologist and engineer, got enough backing to where they could start their own company, and I turned the operations back over to them.
I take it back. I did get frisky once as an operator and tried a re-entry, which was an abysmal failure. I was advised never to name an oil well after your dog.
Q. Thank you, Mr. Ezzell. You submitted direct and rebuttal testimony to the Commission in these proceedings, correct?
A. Yes.
Q. Okay. Any changes or corrections? And if you could pull the mic a little closer to you. I don't mind you leaning back, but you're just a little

bit...
A. I am embarrassed to say that I have corrections. On my direct testimony, page 11, line 23, the first word "of" should be "or."
Page 13, line 21, out in the middle, the word "reservation" should be "resignation." I don't know how that happened.
Page 28, second word in line 18 should be "joint" account instead of "direct" account.
This one is a little more material, page 29, line 6, I am of the opinion that the operator can, the word "not" was omitted. So I am of the opinion that the operator cannot charge for that bond.
Page 30, line 10, second to the last word is "pass," and it should be "post." I can't imagine that painful it would be to pass a cash bond.
Page 54, line 15, the word "negotiating" should be "negotiated," past tense.
Page 57, Line 2, third the last word, "payor" should be "prior."
Now to the big one. In my rebuttal testimony, page 4, line 6, incorrectly quotes the statute by saying that the $50,000 bond amount was the maximum, when, in fact, it is the minimum. And I do not know -- so the words "not to exceed" should be