

TO: New Mexico State Land Office

FROM: New Energy Economy

**Re: Proposed Amendments to the Oil and Gas Financial Assurance Rule, 19.2.100.23
NMAC**

DATED: May 26, 2026

Via electronic mail: Felicia.L.Orth@gmail.com and INFO@nmslo.gov.

New Energy Economy (“NEE”) and WildEarth Guardians (“Guardians”) on behalf of more than 182,658 members and supporters combined, submit the following comments with respect to the New Mexico State Land Office’s (NMSLO) draft bonding rule (amending 19.2.100.23 NMAC) which seeks to increase minimum financial assurance requirements for oil and gas leases and makes other improvements to the existing rule. At the outset NEE and Guardians express gratitude to the NMSLO for promulgating these long overdue changes. They are essential to protecting the health and welfare of New Mexicans. NEE and Guardians explain why this rule change is necessary and further propose an additional amendment, together with the reasons supporting its adoption.

I. NEW MEXICO’S ORPHAN WELL CRISIS

1. There is an ongoing orphan well crisis in the State that has caused the State and its taxpayers to bear millions of dollars in well plugging and remediation costs.
2. New Mexico faces an environmental and economic crisis created by the oil and gas industry’s conscious plan to evade its legal obligation to clean up after itself.

3. Current estimates suggest that 90% of America’s oil and gas wells are no longer producing or barely producing any oil. They have been stripped dry, and a small number of wells now produce a majority of America’s oil supply.¹

4. “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[.] ... 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.”²

5. Tens of thousands of active oil and gas wells in New Mexico are producing merely a trickle a day – some as low as a single barrel of oil.³ In fact, as of 2022, New Mexico

¹ Mark Olalde, *The Rising Cost of the Oil Industry’s Slow Death*, ProPublica (Feb. 22, 2024), <https://www.propublica.org/article/the-rising-cost-of-the-oil-industrys-slow-death>.

² New Mexico Legislative Finance Committee Policy Spotlight *Policy Spotlight: Orphaned Wells*, at 20. (June 24, 2025). https://www.nmlegis.gov/Entity/LFC/Documents/Program_Evaluation_Reports/LFC%20Policy%20Spotlight%20-%20Orphaned%20Wells%20-%20Final.pdf

³ Marissa DeLang et. al., *Marginal Wells 101: What are they, where are they, and why do we need to assess them?*, RMI (Apr. 23, 2025), <https://rmi.org/marginal-wells-101-what-are-they-where-are-they-andwhy-do-we-need-to-assess-them/>; see also N.M. Energy, Minerals and

had some of the highest concentrations of low-producing stripper wells in the country.⁴ In Lea County, 67.44% of the active wells were stripper wells (8,885 stripper wells).⁵

6. Of New Mexico's 138,864 total wells, only 56,733 are currently producing, leaving a significant number inactive.⁶ 41% of wells are producing.⁷

7. When oil and gas wells have "no future beneficial use," New Mexico regulations require the operator to plug the wells, remediate any environmental damage, and restore the surface to its original condition. Environmental obligations to plug and abandon, remediate, and reclaim wells are called asset retirement obligations ("AROs").

8. An "orphaned well" refers to an abandoned oil or gas well where no responsible party exists to discharge AROs at the end of its useful life cycle, due either to the operator's bankruptcy or inability to be located, leaving the public with the financial burden.

Natural Resources Dep't, Oil Conservation Division Statistics, *Stripper and Marginal Wells (Gas)* (Oct. 12, 2021), <https://www.emnrd.nm.gov/ocd/ocd-data/statistics/>; N.M. Energy, Minerals and Natural Resources Dep't, Oil Conservation Division Statistics, *Stripper and Marginal Wells (Oil)* (Oct. 12, 2021), <https://www.emnrd.nm.gov/ocd/ocd-data/statistics/>.

⁴ Adrian Hedden, *New Mexico's oil counties lead nation in low-producing, high-polluting wells, report says*, Las Cruces Sun News (Aug. 13, 2022), <https://www.lcsun-news.com/story/news/2022/08/13/new-mexico-oil-counties-lead-nation-in-low-producing-wells-report-says/65399982007>.

⁵ Environmental Defense Fund, *U.S. low-producing oil and gas wells and the people affected by their pollution* (July 18, 2022), <https://www.edf.org/low-producing-wells-map>.

⁶ See *New Mexico Oil & Gas Activity*, Mineral Answers, <https://www.mineralanswers.com/new-mexico> (last visited May 20, 2026).

⁷ *Id.*

9. A report by the U.S. Geological Survey identified 117,672 **documented** orphaned oil and gas wells nationwide, but the U.S. Environmental Protection Agency estimates that there are 2.7 million abandoned oil wells and 600,000 abandoned gas wells nationwide.⁸

10. At the heart of this crisis is the systematic, fraudulent scheme employed by major operators to sell their no-longer-productive wells to smaller operators to avoid requirements that operators plug oil wells and remediate the surrounding land once the wells become non-productive.⁹

11. Oil and gas operators have devised a “playbook” – a series of financial maneuvers that allow them to profit from the production of their wells during their useful lives while escaping their creditor obligations under New Mexico law.¹⁰

12. According to the Energy Minerals Natural Resources Department’s (EMNRD) Annual Report 2024 reported statewide average plugging costs of \$164,000, plus minimum per well remediation and reclamation costs of \$50,000, for an average total decommissioning costs of \$214,000 per well.¹¹

⁸ U.S. Dep’t of the Interior, *Department of the Interior Bipartisan Infrastructure Law 40601 Report to Congress, Orphaned Well Program – Annual Report* (Nov. 2022), <https://www.doi.gov/sites/default/files/fy22-ecrp-congressional-report.pdf>.

⁹ New Energy Economy, *Closing the Playbook: How to Stop Oil & Gas Companies from Avoiding Their Obligations to New Mexicans Before It’s Too Late*, May 2026.

¹⁰ *Id.*

¹¹ N.M. Energy, Minerals, and Natural Resources Dep’t, *Annual Report 2024*, at 58-59.

13. However, these costs varied widely, reaching up to \$778,000 for a single well in 2024.¹² In Lea County plugging costs averaged \$211,008 per well in FY 2024.¹³ Remediation and reclamation costs are “more variable and can cover a wide range from \$50,000 to restore the surface around a plugged well to several million dollars for the cleanup of large tank batteries with extensive contamination.”¹⁴

14. Including the minimum per-well remediation and reclamation cost of \$50,000, the estimated minimum total decommissioning cost per well in Lea County in 2024 was \$261,008.¹⁵

15. A 2021 study commissioned by the State Land Office found a gap of about \$8.1 billion between bonds collected and likely plugging and remediation costs.¹⁶ In 2024, Pro Publica and Capital & Main conducted calculations based on Oil and Conservation Division’s documents, filed with the Department of the Interior, and estimated the bonding gap to be \$11.8 billion.¹⁷ A Vertex Resources Services report, also commissioned by the State Land Office,

¹² New Mexico Legislative Finance Committee Policy Spotlight *Policy Spotlight: Orphaned Wells*, at 13. (June 24, 2025).

¹³ N.M. Energy, Minerals, and Natural Resources Dep’t, *Oil and Gas Reclamation Report for Fiscal Year 2024* (July 1, 2025).

¹⁴ N.M. Energy, Minerals, and Natural Resources Dep’t, *Annual Report 2024*, at 58-59.

¹⁵ Oil and Gas Reclamation Report for Fiscal Year 2024, *supra* n.12.

¹⁶ 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,” <https://www.nmstatelands.org/wp-content/uploads/2021/05/NM-Assurance-Assessment-May-FINAL.pdf>

¹⁷ Mark Olalde and Nick Bowlin, “Oil Industry Profits Don’t Pay for Cleanup,” High Country News (26 February 2024). <<https://www.hcn.org/articles/oil-industry-profits-dont-pay-for-cleanup/>>

found that the total cost of decommissioning all upstream infrastructure would be over \$22 billion.¹⁸ Even at the low end of these estimates, if the playbook is allowed to continue, each New Mexico taxpayer could end up paying \$6,431 to clean up oil and gas operators' messes, and that liability will only continue to rise as more wells are orphaned.¹⁹

16. If there are extenuating circumstances for an old and contaminated site then the cost of AROs could exceed the per well liability value by hundreds of thousands of dollars, if not millions of dollars.

17. The environmental impact is equally severe. Orphaned and abandoned wells leak methane – a greenhouse gas over 80 times more potent than carbon dioxide – exacerbating climate change.²⁰ They also emit benzene and other toxic volatile organic compounds linked to cancer, neurological damage, and respiratory illnesses.²¹ These pollutants contaminate New

¹⁸ Vertex Resources Services, Inc. for the NM State Land Office. New Mexico Oil and Gas Liability Assessment, March 2021. <<https://www.documentcloud.org/documents/20783566-final-slo-research-march2021>>

¹⁹ This calculation is based on the U.S. Internal Revenue Service's ("IRS") data, showing that 1,253,975 individual tax returns were filed in New Mexico in fiscal year ("FY") 2024.

²⁰ Stuart N. Riddick et al., *Methane emissions from abandoned oil and gas wells in Colorado*, Energy Inst., Col. St. U. (Feb. 29, 2024), <https://www.sciencedirect.com/science/article/abs/pii/S004896972401129X?via%3Dihub>; Mary Kang et. al., *Environmental risks and opportunities of orphaned oil and gas wells in the United States*, 18 Env't Rsch. Letters 7 (June 20, 2023), <https://iopscience.iop.org/article/10.1088/1748-9326/acdae7>; Daniel J. Mallinson et al., *The Scourge of Orphaned and Abandoned Wells: Leveraging Public-Private-Citizen Collaboration to Solve a Big Problem*, Pub. Works Mgmt. & Pol'y (July 1, 2022), <https://journals.sagepub.com/doi/10.1177/1087724X221112958>.

²¹ Ahmed Alsubaih et al., *Environmental Impacts of Orphaned and Abandoned Wells: Methane Emissions, and Implications for Carbon Storage*, Hildebrand Dep't of Petro. & Geosystems Eng'g, U. of Tex. (Dec. 11, 2024), <https://www.mdpi.com/2076-3417/14/24/11518>; Dominic C. DiGuilo et al., *Chemical Characterization of Natural Gas Leaking from Abandoned Oil and Gas Wells in Western Pennsylvania*, ACS Omega (May 19, 2023), <https://pubs.acs.org/doi/full/10.1021/acsomega.3c00676>.

Mexico’s land, air, and groundwater aquifers, on which 78% of state residents rely for drinking water.²² In many communities, especially indigenous and rural areas, these abandoned wells create dangerous public health hazards, depress property values, and erode the local tax base, leaving behind impoverished municipalities burdened with environmental degradation and economic stagnation.

II. ASSET RETIREMENT OBLIGATIONS

18. As soon as the drill bit pierces the land, an Asset Retirement Obligation (“ARO”) is created. This requirement to plug and abandon, remediate, and reclaim each and every oil and gas well at the end of its lifecycle creates an ARO – a legal obligation and financial liability associated with the retirement of each well that oil and gas companies must properly recognize and account for in their financial statements, including the fair value of the future retirement costs. AROs are a certain and definite debt owed to ARO creditors – here, the State of New Mexico and the owners of land burdened by the wells.

19. Under the New Mexico Oil and Gas Act, oil and gas operators are required to “furnish financial assurance in the form of an irrevocable letter of credit or a cash or surety bond” to the OCD running to the benefit of the State that guarantees the ability of a well owner to satisfy its AROs. N.M. Stat. §70-2-14(A).

20. This financial assurance requires “that the well be plugged and abandoned.” *Id.*; N.M. Admin. Code §19.15.8.9(A).

²² N.M. Env. Dep’t, *Water Resources & Management*, <https://www.env.nm.gov/water/> (last visited May 20, 2026).

21. However, the regulatory scheme for financial assurances have proven to be *woefully* short of the actual AROs to plug and abandon wells. N.M. Admin. Code § 19.2.100.23.

22. New Mexico currently faces a multibillion-dollar shortfall between the money oil and gas companies have set aside to plug wells and the actual cost of doing so.²³

23. The proposed amendments by the NMSLO begin to address the “bonding gap” between the surety bonds posted to cover New Mexico’s wells, and the predicted *actual* costs for plugging and abandoning, remediating, and reclaiming the land.

III. TRANSFER OF WELLS – INDUSTRY’S PLAYBOOK TO AVOID AROs

24. Oil and gas operators may change ownership of wells through sale, assignment by the court, or by changes in an operator agreement. N.M. Admin. Code §19.15.9.9(A).

25. A change of operator request does not release a former operator of its own financial assurance. N.M. Admin. Code §19.15.8.12(B). *See also Richard v. Marathon*, 2026-NMCA-004. That case confirms that industry actors cannot evade environmental remediation responsibilities via strategic lease assignments to undercapitalized entities. The NMSLO is acting within its mandate to prevent precisely the type of corporate evasion the Court warned against.

26. Financial solvency and an accurate valuation of assets versus liabilities are critical factors in assessing and affirming compliance with financial assurance obligations.

27. The record demonstrates that heightened financial assurance requirements are necessary because New Mexico faces a rapidly escalating orphaned well crisis with staggering

²³ New Mexico State Land Office, *Center for Applied Research: New Mexicans Could Get Stuck With Over \$8 Billion Bill for Oil and Gas Clean Up* (May 20, 2021), <https://www.nmstatelands.org/2021/05/20/center-for-applied-research-new-mexicans-could-get-stuck-with-over-8-billion-bill-for-oil-and-gas-clean-up/>.

public liabilities. The Legislative Finance Committee (“LFC”) found that New Mexico’s current and near-future liability for plugging, remediation, and reclamation ranges from approximately **\$700 million to \$1.6 billion**.²⁴ These extraordinary projected costs justify stronger bonding requirements to protect taxpayers, groundwater, and public health from the consequences of operator noncompliance and abandonment.

28. According to the LFC report, the overall average cost to plug a well is \$163,000.²⁵ **“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.”²⁶

29. The LFC report further establishes that existing financial assurance amounts are grossly inadequate to cover actual plugging and reclamation expenses. Although Section 70-2-14 NMSA 1978 requires financial assurance “sufficient to reasonably pay the cost of plugging,” the report explains that current “financial assurance posted by operators is typically insufficient to

²⁴ New Mexico Legislative Finance Committee Policy Spotlight *Policy Spotlight: Orphaned Wells*, at 1. (June 24, 2025).

²⁵ *Id.*, at 13.

²⁶ *Id.*, at 17.

cover the costs of plugging and remediating orphaned well sites.”²⁷ Heightened bonding is therefore necessary to align financial assurances with real-world cleanup costs.

30. These escalating costs demonstrate that outdated bonding levels no longer reflect the true financial risk posed by inactive and marginal wells; average per-foot plugging cost increased approximately 270 percent.²⁸

31. The LFC report additionally documents widespread operator noncompliance and a growing backlog of inactive wells likely to become orphaned. Approximately twenty-nine percent of operators in New Mexico are currently out of compliance with inactive well requirements under the Oil and Gas Act.²⁹ Finally, the LFC expressly recommends reforms requiring increased financial assurance for low-producing and inactive wells because such wells pose heightened orphaning risks. The report recommends requiring additional financial assurance for wells producing below specified thresholds and to authorize operator-specific financial assurance tied to estimated plugging and remediation costs. The report also recommends rules requiring individual well financial assurance for low-producing wells and expanded definitions of inactivity. These recommendations from the Legislature’s own fiscal experts confirm that heightened bonding assurances are necessary, reasonable, and essential to protect the public from mounting environmental and financial harm.³⁰

²⁷ *Id.*, at 31.

²⁸ *Id.*, at 13.

²⁹ *Id.*, at 19.

³⁰ *Id.*, at 1, 24, 31-33, 37-38, 40.

32. Finally, according to EMNRD, as of December 2023, “OCD is spending \$125,000 on average to plug each well, but costs have ranged from \$50,386 (low-end) to \$320,481 (high-end) just for plugging. Assessment, remediation and reclamation of a typical well pad with minor issues averages \$35,000 per site, but can easily **reach the millions if major remediation is required.**”³¹ (Emphasis supplied.)

IV. SUBSTANTIAL ENVIRONMENTAL AND PUBLIC HEALTH RISKS

33. Abandoned wells have been shown to leak volatile organic compounds (“VOCs”), as well as benzene and other compounds that damage the human nervous, immune, and respiratory systems.³²

34. In air concentrations near abandoned wells, benzene, in particular, was found more than 250,000 times higher than the established safety threshold for human health.³³

35. The other VOCs leaked by abandoned wells include the precursors for ozone, another cause of severe respiratory, cardiovascular, nervous, immune, and respiratory diseases.

36. Additionally, when gas leaks from an abandoned well, it carries cancer causing chemicals used in drilling and fracking (*i.e.*, methane, benzene, heptane, hexane, and

³¹

https://assets.nationbuilder.com/nmoga/pages/2294/attachments/original/1770510192/RHMC_120123_Item_2_EMNRD_OCD_-_Orphan_Well_Financial_Assurance.pdf?1770510192, at slide 3 of 12.

³² See Gregg P. Macey et al., *Air Concentrations of Volatile Compounds Near Oil and Gas Production: A Community-Based Exploratory Study*, 13 ENVTL. HEALTH 1, 8-10 (2014); Liza Gross, *Abandoned Oil and Gas Wells Emit Carcinogens and Other Harmful Pollutants, Groundbreaking Study Shows*, Inside Climate News (June 6, 2023), <https://insideclimatenews.org/news/06062023/abandoned-oil-gas-wells-health/>.

³³ *Id.*

cyclohexane). These same chemicals have been found to leak directly from unplugged well heads, even if the gas and oil itself is contained.³⁴

37. The majority of these wells also leak methane, which is a known and major contributor to climate change. Recent research indicates that methane emissions from unplugged wells in certain regions exceed the national average by a factor of **70**.³⁵ Across the nation, an average unplugged well emits over 100kg of methane each year, as compared to an average plugged well which emits less than 1kg of methane per year.³⁶

38. Among Americans aged 30 years or older, 761 Americans per million people die every year for every 10 metric tons of methane emitted.³⁷

39. These same orphaned wells also leak hydrogen sulfide, which turns the surrounding air toxic and makes it painful to breathe.³⁸

³⁴ See Dominic C. DiGiulio, et al., *Chemical Characterization of Natural Gas Leaking from Abandoned Oil and Gas Wells in Western Pennsylvania*, (2023) https://pubs.acs.org/doi/pdf/10.1021/acsomega.3c00676?ref=article_openPDF

³⁵ *Methane Emissions from Abandoned Oil and Gas Wells in Colorado*, *supra* n.10.

³⁶ U.S. Environmental Protection Agency, *Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2018*, at 3-102 (2020), <https://www.epa.gov/sites/production/files/2020-04/documents/us-ghg-inventory-2020-main-text.pdf>.

³⁷ United Nations Environment Programme, *Global Methane Assessment: Benefits and Costs of Mitigating Methane Emissions*, at 167 (2021), https://www.ccacoalition.org/sites/default/files/resources/2021_Global-Methane_Assessment_full_0.pdf.

³⁸ <https://www.tdi.texas.gov/tips/safety/hydrogen-sulfide.html>; <https://welldonefoundation.org/orphaned-oil-and-gas-wells-are-dangerous-to-our-water-and-air-supplies/>; <https://storymaps.arcgis.com/stories/4f32737b4eac430fbe0b91cb1016a2f3>

40. Beyond methane and other air emissions, these orphan wells threaten groundwater resources and cause surface land degradation.³⁹

41. In New Mexico, 78% of residents rely on groundwater aquifers for their drinking water, and remain especially vulnerable to the deadly seepage from these corroded and abandoned wells.⁴⁰

42. Orphan wells are also more likely to be the location of well blow-outs, where a well spews toxic gas and chemicals into the air and the surrounding environment.⁴¹

43. As abandoned wells proliferate and corrupt the surrounding environment with toxic pollutants like benzene and VOCs, property values in the surrounding areas plummet and the tax base shrinks. A study from the University of Pittsburgh found that the existence of orphan wells depressed building development by 50% and harmed the local tax base.⁴² The

³⁹ *Water Resources & Management*, *supra* n.12; Joshua Woda et. al., *A geospatial analysis of water-quality threats from orphan wells in principal and secondary aquifers of the United States*, 976 *Science of the Total Env't* 179246 (May 10, 2025), <https://www.sciencedirect.com/science/article/pii/S0048969725008824>.

⁴⁰ N.M. Env. Dep't, <https://www.env.nm.gov/water/>.

⁴¹ Carlos N. Ramos & Alejandra Martinez, “*Should we be worried?*”: *Another well blowout in West Texas has a town smelling of rotten eggs*, Texas Tribune (Oct. 10, 2024), <https://www.texastribune.org/2024/10/10/west-texas-well-blowout-oil-gas-railroad-commission/>; Vamshi Karanam et. al., *Investigation of Oil Well Blowouts Triggered by Wastewater Injection in the Permian Basin, USA*, *Geophysical Research Letters* (July 22, 2024), [https://agupubs.onlinelibrary.wiley.com/doi/full/10.1029/2024GL109435#:~:text=Abstract,of%20oil%20and%20gas%20production;9NEWS,Chevron releases cleanup efforts after oil well blowout in Weld County](https://agupubs.onlinelibrary.wiley.com/doi/full/10.1029/2024GL109435#:~:text=Abstract,of%20oil%20and%20gas%20production;9NEWS,Chevron%20releases%20cleanup%20efforts%20after%20oil%20well%20blowout%20in%20Weld%20County), YouTube (May 7, 2025) <https://www.youtube.com/watch?v=iyViDvCZ7t4>.

⁴² Max Harleman, Jeremy G. Weber, and Daniel Berkowitz. “Environmental hazards and local investment: a half-century of evidence from abandoned oil and gas wells.” *Journal of the Association of Environmental and Resource Economists* 9.4 (2022): 721-753.

halving of local property values was estimated to have cost one school district near orphaned wells at least \$1,000 per student in foregone property taxes. The opposite is also true, plugging wells and remediating and restoring land increases agricultural and residential property values.⁴³

44. Abandoned unplugged wells are also a significant risk to local economies. The final result is a blighted landscape and impoverished municipalities too broke to clean up the mess.⁴⁴

V. SPECIFIC ADDITIONS TO THE PROPOSED RULE AMENDMENTS NECESSARY TO PROTECT HUMAN HEALTH, THE ENVIRONMENT AND WATER RESOURCES

45. NEE and Guardians request to AMEND 19.2.100.23(A)(1) to add the following language:

46. **(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

⁴³ Daniel Raimi and Christina Cilento, “*Costs and Benefits of Decommissioning Orphaned Oil and Gas Wells: Evidence from Six States*,” Resources for the Future, Working Paper 26-07, at 20-21. (April 2026), https://media.rff.org/documents/WP_26-07.pdf

⁴⁴ Elliott Woods, *Thousands of Abandoned Oil and Gas Wells Pollute the Texas Landscape*, Capital & Main (April 29, 2024), <https://capitalandmain.com/thousands-of-abandoned-oil-and-gas-wells-pollute-the-texas-landscape>; *Texas Has Thousands of Abandoned Oil and Gas Wells. Who Is Responsible for Cleaning Them Up?*, Journal of Petroleum Technology (May 19, 2025), <https://jpt.spe.org/texas-has-thousands-of-abandoned-oil-and-gas-wells-who-is-responsible-for-cleaning-them-up>; Danielle Prokop, *New report: New Mexico on the hook for millions, if not billions, to plug oil and gas wells*, Source NM (June 26, 2025), <https://sourcenm.com/2025/06/26/new-report-new-mexico-on-the-hook-for-millions-if-not-billions-to-plug-oil-and-gas-wells/#:~:text=New%20report:%20New,further%20extraction%20from%20nearby%20wells.>

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 **from produced water, drilling muds, and other oilfield waste, whether or not classified as hazardous under federal or state law**, and reclaim surface disturbance and damage to mineral resources and reservoirs.

47. This clarification (in bold) should be added to ensure that bonds and other financial instruments cover saline, chemical, and radioactive contamination from exempt waste streams that nonetheless carry higher cleanup costs.

48. NEE and Guardians request to AMEND 19.2.100.23(B) to: change “may” to “shall” in the first sentence; ADD B (1) (c) (and make current (c) into (d)); and ADD B (1)(e):

“(c) a pattern of multiple major spills or releases of produced water, as defined by 19.15.29.7(A) NMAC, due to equipment failure, corrosion, blow outs, and human error; or”

“(e) improper storage, handling, treatment, or disposal of oil and gas waste, including but not limited to produced water, drilling muds, or tank bottoms, that may contaminate soil, surface water, or groundwater.”

See Exhibit A, attached and incorporated herein.

49. Changing “may” to “shall” in the first sentence ensures consistent application of objective triggers. The word “may” invites inconsistent enforcement and creates a loophole that future administrators can exploit.

50. While the proposed Heightened Financial Assurance Requirements under 19.2.100.23(B) represent an important improvement over New Mexico’s historically inadequate bonding framework, the rule still lacks sufficient specificity regarding produced water spills and releases, despite overwhelming evidence that such spills are routine, foreseeable, and extraordinarily damaging. The record demonstrates that produced water is not an isolated waste stream, but the most frequently spilled liquid material associated with oil and gas operations in

New Mexico. Moreover, a pattern of toxic waste-related spills or releases by an operator should trigger bonding up to 100 percent of estimated remediation costs.

51. The scale of the problem is staggering. In 2025 alone, operators reported 38,153 spills statewide—an average of 104 spills per day. Liquid spills occurred every six to seven hours, resulting in more than 9.4 million gallons of liquid waste released into the environment. More than 3.5 million gallons were permanently “lost” into soil, groundwater, waterways, and ecosystems.⁴⁵

52. Produced water presents uniquely severe risks because it contains radioactive materials, heavy metals, hydrocarbons, volatile organic compounds, carcinogens, and undisclosed chemicals, including PFAS “forever chemicals.” A WildEarth Guardians report further explains that 86% of chemicals found in produced water lack sufficient toxicity data to complete a risk assessment, meaning the full scope of health and environmental harms remains unknown.⁴⁶

53. The evidence demonstrates that these spills are not rare accidents. The most common causes of liquid spills in 2025 were equipment failure, corrosion, human error, overflow, and high line pressure.⁴⁷ These are predictable operational failures inherent to aging infrastructure and high-volume extraction activities, not unforeseeable acts of nature.⁴⁸

⁴⁵ The 2025 New Mexico Spill Report: Land, Air & Water Pollution from Oil & Gas, WildEarth Guardians, at 6 and 16. (Fe. 2026), <https://pdf.wildearthguardians.org/site/DocServer/WildEarth-Guardians-annual-spill-report-2025.pdf>.

⁴⁶ *Id.*, at 17.

⁴⁷ *Id.*, at 6-10, 14, 18- 21.

⁴⁸ *Id.*

54. The largest release reported in 2025 involved the collapse of a produced water recycling pit wall on federal land in Lea County, releasing approximately 1.54 million gallons of produced water into the surrounding environment. Notably, the facility reportedly had leak-detection systems and engineering controls intended to prevent overtopping, yet catastrophic failure still occurred.⁴⁹

55. Another major spill involved more than 169,000 gallons of produced water released from a corroded pipeline in Lea County. The spill remained under remediation months later. Similarly, an EOG Resources produced water overflow contaminated state trust lands with more than 143,000 gallons permanently lost into the environment. These incidents illustrate that produced water spills are pervasive across pipelines, pits, reuse facilities, and storage systems.⁵⁰

56. The harms to New Mexicans are profound. The WildEarth Guardians report explains that spills contaminate land, groundwater, waterways, wildlife habitat, flora, fauna, and public lands held in trust for New Mexicans. Fifteen waterways were contaminated in 2025 alone, with repeat offenders responsible for multiple contamination events. Federal and state public lands bore the majority of documented liquid spill impacts.⁵¹

57. The WildEarth Guardians report further demonstrates that cleanup is often incomplete or impossible. Operators may seek alternative abatement standards when remediation is deemed “technically infeasible” or an “unreasonable burden,” allowing contamination to

⁴⁹ *Id.* at 14-15.

⁵⁰ *Id.* at 6, 8, 10-13.

⁵¹ *Id.* at 8, 16.

remain in place indefinitely. Thus, the public—and not the polluter—frequently bears the long-term environmental and financial consequences of these releases.⁵²

58. The same operators repeatedly appear among the top dischargers year after year, demonstrating that existing enforcement mechanisms have failed to deter chronic pollution. Public records show that only a small number of civil penalties have been issued despite tens of thousands of spills statewide. This persistent pattern of repeat violations strongly supports heightened financial assurance requirements tied specifically to produced water spills, releases, discharges and remediation failures.⁵³

59. The May 12, 2026 produced water pipeline blowout near Loving, New Mexico starkly illustrates the substantial risks posed by the oil and gas industry’s wastewater infrastructure⁵⁴ and the urgent need for heightened financial assurance requirements for operators with repeated spills and equipment failures. According to NGL, the operator’s own report filed with the Oil Conservation Division, a one-inch nipple on a six-inch high-pressure injection line failed while the line was pressurized to approximately 2,600 psi, causing produced water to erupt nearly 70 feet into the air and disperse across surrounding properties, buildings, and an irrigation drainage ditch. The spill migrated offsite and commingled with irrigation waters before emergency measures were implemented. The event was not merely an abstract operational incident—it directly impacted nearby residents, including Candie and Moses Rodriguez, who were forced to endure exposure to the dangerous conditions created by the blowout and the

⁵² *Id.* at 7, 21-23.

⁵³ *Id.* at 23-26.

⁵⁴ <https://www.newmexicopbs.org/productions/newmexicoinfocus/70-foot-wastewater-geyser-reflects-new-mexicos-latest-oilfield-challenge/>.

uncertainty associated with airborne contaminants and contaminated water showering them, their dogs, house, cars and yard. This incident demonstrates precisely why operators with repeated spills, releases, or equipment failures involving produced water should be subject to heightened bonding and financial assurance obligations sufficient to protect the public, ensure rapid remediation, and deter chronic noncompliance. [Penny Aucoin and Carl Dee George were victims of a similar produced water blowout by the company WPX in 2020.](#)

60. Accordingly, the proposed rule should be strengthened to expressly require increased financial assurance where an operator causes or fails to remediate produced water spills and discharges, repeatedly violates spill prohibitions, contaminates waterways or public lands, or demonstrates a pattern of equipment failure, corrosion, or operational noncompliance. Given the immense remediation costs, incomplete cleanup, and risk of long-term contamination, heightened financial assurances are necessary to ensure that operators—not taxpayers or future generations of New Mexicans—bear the financial burden of produced water pollution.

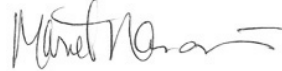
VI. CONCLUSION

In conclusion, NEE and Guardians thank the New Mexico State Land Office for advancing these long-overdue and critically necessary reforms to strengthen financial assurance requirements and protect state trust lands, water resources, and taxpayers from mounting oil and gas liabilities. The proposed rule is a significant and important step forward. However, the rule should expressly and unambiguously authorize heightened financial assurances for operators with repeated produced water spills, discharges, releases, improper waste management, and remediation failures. The record demonstrates that such events are not isolated accidents, but foreseeable and recurring operational failures capable of causing severe and potentially irreparable harm to New Mexico’s groundwater, public lands, waterways, wildlife, and

communities. Without explicit authority to impose increased financial assurances tied to chronic produced water pollution, the State risks leaving New Mexicans once again responsible for the enormous long-term costs of contamination, cleanup, and environmental degradation that should be borne by the operators who caused the harm.

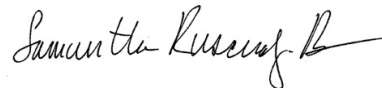
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NEE & GUARDIANS EXHIBIT A

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 **from produced water, drilling muds, and other oilfield waste, whether or not classified as hazardous under federal or state law**, 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.

NEE & GUARDIANS EXHIBIT A

B. Heightened financial assurance requirements.

(1) If a lease includes on its premises any of the following conditions, the commissioner ~~may~~ **shall** 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; that has received an approved shut-in from the commissioner;

(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 pattern of multiple major spills or releases of produced water, as defined by 19.15.29.7(A) NMAC, due to equipment failure, corrosion, blow outs, and human error; or

~~(e)~~ (d) 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; or

(e) improper storage, handling, treatment, or disposal of oil and gas waste, including but not limited to produced water, drilling muds, or tank bottoms, that may contaminate soil, surface water, or groundwater.

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