NEW MEXICO STATE LAND OFFICE

STATE OF NEW MEXICO
COMMISSIONER OF PUBLIC LANDS

IN THE MATTER OF PROPOSED
AMENDMENT TO 19.2.100.23 NMAC

MAY 26, 2026

NEW MEXICO OIL AND GAS ASSOCIATION

NEW MEXICO OIL & GAS ASSOCIATION
PUBLIC COMMENTS

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May 26, 2026

Via Electronic Mail

Mr. Sunalei Stewart,
Deputy Commissioner
New Mexico State Land Office
310 Old Santa Fe Trail,
Santa Fe NM 87501
INFO@nmslo.gov

Re: State Land Office Proposed Amendments to 19.2.100.23 NMAC

Dear Deputy Commissioner,

Our client, the New Mexico Oil and Gas Association ("NMOGA"), hereby comments on New Mexico State Land Office's ("SLO") proposed revisions to Rule 19.2.100.23 NMAC, Surety to Protect Surface Purchaser and Lessee – Waivers ("Rule"). The Permian Basin Petroleum Association adopts and endorses these comments, as well.

NMOGA agrees that the current Rule contains unlawful provisions and should be revised to comply with law.[1] NMOGA appreciates the opportunity it was afforded to meet with SLO staff to discuss these issues and also appreciates and recognizes the modifications SLO made to its final proposed rule based on NMOGA's previous comments and feedback. However, SLO's proposed revisions exacerbate, rather than cure, the Rule's illegalities.

Specifically,

- SLO acknowledges its "authority over lessees and leases for the exploration, development and production of oil and natural gas on trust lands is found in [NMSA 1978], Sections 19-10-1 *et seq.*" 19.2.100.3 NMAC.

- Of those, NMSA 1978, § 19-10-26 is the sole statutory authority for SLO requiring lessees or operators to post financial assurance of any kind.[2]

- Section 19-10-26 is quite narrow—it applies solely to oil and gas leases that embrace a severed surface estate where the surface estate was sold prior to issuance of the oil and gas

[1] In addition to these legal comments, NMOGA submits the comments of Andrea Felix, NMOGA's Vice President of Regulatory Affairs, which are incorporated herein and attached as **NMOGA Exhibit B**.

[2] NMSA 1978, § 19-10-27 extends Section 19-10-26's requirements to leases encompassing surface estates sold on deferred payment plans.

lease. *Id.* (authorizing bonding for leases encompassing "[s]tate lands sold heretofore, or which may be sold hereafter . . . under contract containing a reservation to the state of the minerals therein contained . . .").

- SLO's limited bonding authority is reflected in each statutory oil and gas lease form, each confirming that the sale of the surface estate must have occurred prior to the execution of the oil or gas lease for which bonding is sought. *See* NMSA 1978, §§ 19-10-4.1, 19-10-4.2, 19-10-4.3 (authorizing bonding for oil and gas leases that embrace a surface estate severed "prior to the date of this lease").

- Reading the above authorities together, SLO may require bonding only for those oil and gas leases that encompass a surface estate that was sold prior to the execution of the lease.

- Further,

    - either the lessee or the operator may execute and file the bond, § 19-10-26;

    - the bond must be filed before drilling operations commence, §§ 19-10-4.1, -4.2, -4.3;

    - the bond must be in favor of the state of New Mexico and for the use and benefit of the purchaser of the severed surface estate; *see* § 19-10-26 (bond must be "in favor of the state of New Mexico for the use and benefit of the purchaser . . . his grantees or successors in interest");

    - the bond may only be used to cover specific, statutorily defined damages to the surface estate, *id.* (bond must be used "to secure the payment for such damages to the livestock range, water, crops or tangible improvements on such lands"); *see* also §§ 19-10-4.1, -4.2, -4.3 (same); and

    - the bond requirement may be waived by the surface estate purchaser, *id.* ("[N]o such bond shall be required if such purchaser shall waive the right to require such bond to be given in the manner provided by law.")

In sharp contrast to these legislative directives and limitations, the current Rule does not:

- limit the bond requirement to oil and gas leases that encompass surface estates sold prior to the execution of the lease, but instead applies to "any lease," including coal and geothermal leases, 19.2.100.23(A), (C);

- limit the bond requirement to oil and gas leases that contain express statutory terms requiring such bonding, *id.*;

- require a bond before drilling operations commence, but instead requires it before any prospecting activities commence, 19.2.100.23(A);

- limit the bond to the benefit of the surface estate purchaser, but instead extends it to the benefit of trust beneficiaries and surface lessees, *id.*;

- limit the use of the bond to payment for damage to the fee surface estate, but instead applies to any "damage to [ ] interests and tangible improvements," *id.*;

and

- provide the surface estate purchaser the unequivocal right to waive any bond requirement, 19.2.100.23(B).

The full extent of provisions contrary to law are stated in NMOGA's redlined proposed revisions to the current Rule, attached hereto as **NMOGA Exhibit A**. As you will see, these revisions limit the Rule's scope to only what is authorized under existing law; include suggested financial assurance options for multiple leases; and avoid double recovery issues by tying the Rule to the provisions of the New Mexico Surface Owner Protection Act.

SLO's proposed amendment to the Rule ("Proposed Rule") contains *additional* unlawful provisions. These unlawful provisions:

- abolish the operator's statutory right to file a bond and places that responsibility solely on the lessee, Proposed Rule ¶ (A)(1);

- require that the bond be in favor of the commissioner and SLO instead of the State of New Mexico, *id.*;

- allow use of the bond by the commissioner and SLO for damage to state trust lands and to ensure the lessee's compliance with lease obligations, *id.*;

- allow use of the bond to plug inactive wells, remediate spills and associated contamination, and damage to mineral resources and reservoirs, *id.*;

- tie the amount of the bond in certain situations to estimated plugging, remediation, and reclamation costs, Proposed Rule ¶ (B)(1), (2);

- set mandatory minimum financial assurance amounts while giving SLO unfettered authority to exceed such amounts, Proposed Rule ¶ (A);

- give SLO discretion to vary the bond amount based on factors such as efforts taken to plug wells, remediate releases, or address other conditions, Proposed Rule ¶ (B)(3);

- tie compliance deadlines to the conduct of third parties, Proposed Rule ¶ (B)(5);

- set arbitrary and capricious bond amounts and other limitations, Proposed Rule ¶¶ (A), (C), (E), (H), (I);

- set arbitrary and capricious reporting and notification requirements, Proposed Rule ¶¶ (B)(6), (D);

- set arbitrary and capricious alternative forms of financial assurance options, Proposed Rule ¶ (F);

- eliminate the surface estate purchaser's statutory right to waive bond requirements, Proposed Rule ¶ (G);

- provide that oil and gas leases may be cancelled for non-compliance with the Proposed Rule's bonding and reporting requirements, Proposed Rule ¶¶ (I)(2), (J);

- fail to require adequate notice to affected lessees and operators, Proposed Rule ¶¶ (B)(5), (D)(4), (E)(2), (I)(1), (2), (J), (L)(1); and

- apply retroactively, Proposed Rule (L).

Neither the current Rule, nor the Proposed Rule, comply with Section 19-10-26 or the terms of the statutory oil and gas lease forms.[3] In its Notice of Public Hearing, SLO has identified Article 13 of the New Mexico Constitution, as well as NMSA 1978, Sections 19-1-1 and 19-1-2, as the authority for the Proposed Rule. However, Article 13 of the New Mexico Constitution is not self-executing, and in any event, it must be read in conjunction with Article 24, § 1, which provides that oil and gas lease terms are prescribed by the Legislature. In addition, Section 19-10-26 addresses SLO's bonding authority specifically, and thus controls more general statutory provisions, such as § 19-1-1. *See, e.g., Throne v. Governing Body of Santa Fe*, 2026-NMCA-029, ¶ 29, fn. 4 ("The general/specific rule directs that a more specific statute prevails over a general statute.") Further, the New Mexico legislature has entrusted the responsibility to regulate the plugging of wells and related reclamation and remediation of affected lands to the New Mexico Oil Conservation Commission, not the SLO. And, of course, SLO may not unilaterally add terms to existing oil and gas leases. *See generally ConocoPhillips Co. v. Lyons*, 2013-NMSC-009, ¶ 23 (applying general contract law principles to statutory oil and gas leases); *see also Galaviz v. Berg*, 763 F.Supp. 2d 1170, 1174 (N.D. Cal. 2011) ("a contracting party may [not] unilaterally add or modify contractual provisions."); *Lyons*, 2013-NMSC-009, ¶ 2 ("Over the years, the Legislature has enacted several versions of the statutory oil and gas lease, and [a single operator may] have entered into 'hundreds' of oil and gas leases with the State.").

As discussed above, SLO's oil and gas bonding authority under Section 19-10-26 and statutorily prescribed lease forms (such as Sections 19-10-4.1, -4.2, and -4.3) is exceedingly narrow—it (1) is limited to leases executed after the surface estate has been sold (not merely leased), (2) allows SLO to seek financial assurance solely for the benefit of the surface estate

[3] While both versions of the Rule (current and Proposed) appear to borrow language from NMSA 1978, § 19-8-24, that Section is limited to mineral leases *other than oil and gas leases* and thus is not applicable. *See* NMSA 1978, § 19-8-14 (expressly excluding oil and gas leases).

purchaser, and (3) is limited to compensation for only defined damages to that estate. Both the current Rule and the Proposed Rule violate the limited scope of legislative authority.

There are good reasons for these scope limitations. Under the Enabling Act, "[a]ll lands, . . . before being offered, shall be appraised at their true value, and no sale . . . shall be made for a consideration less than the value so ascertained[.]" *Id.*, § 28. And, "[s]aid lands shall not be sold . . . except to the highest and best bidder at a public auction[.]" *Id.*, § 10. The clear intent of the Act is to maximize public lands' value and return. Section 19-10-26 serves this purpose by allowing SLO to obtain the best possible price for surface estates by providing guarantees to buyers that damages associated with future oil and gas operations will not diminish the value of the estate they are purchasing as a result of the State's subsequent issuance of an oil and gas lease. There is no such need where the surface estate is not for sale or where the purchase occurs after the lease is issued and is therefore acquired subject to an existing oil and gas lease.

More importantly, the Legislature has set up a separate, comprehensive framework addressing unplugged wells and reclamation and remediation on state lands, which framework includes bonding for these purposes. *See* Proposed Rule, ¶ A(1) (seeking financial assurance for "the failure to plug inactive wells located on the lease acreage, remediate spills and associated contamination, and reclaim surface disturbance[.]"). First, the Legislature has created the Oil and Gas Reclamation Fund to finance the plugging of abandoned wells and necessary reclamation and remediation. *See* NMSA 1978, § 70-2-38(A)(1) (authorizing expenditures for the "plugging of abandoned wells" and "the restoration and remediation" of affected lands). The Reclamation Fund has an independent, continuous, non-reverting revenue source—the oil and gas conservation tax (plus federal grants). *See* H.B. 80 (2026). The Legislature has chosen OCD as the agency to administer the Fund and has given it comprehensive bonding authority. *See* § 70-2-38(A)(1); *see also* NMSA 1978, § 70-2-14(A) (making financial assurance "a condition precedent to drilling or producing [an oil or gas] well"). The OCD's authority comes with a commensurate enforcement process—OCD has statutory power to order wells properly plugged and lands reclaimed and/or remediated, *see, e.g.*, §§ 70-2-14(B) and 70-2-12(B), and if its orders are not complied with, the operator's bond is forfeited, the attorney general is required to collect the forfeiture "without delay," and the funds are deposited in the Reclamation Fund. *See* § 70-2-14(B), (C), (D). If the funds so recovered are insufficient, the Legislature has given OCD authority to dip into the Reclamation Fund and bring suit against the operator to recover the additional expenses. *See* § 70-2-14(E).

Given this context, the Legislature's decision to limit SLO's oil and gas bonding authority was patently deliberate. To avoid overlap with the OCD framework, Section 19-10-26 and the statutory lease form (presently, Sections 19-10-4.1, -4.2, and -4.3) are all limited to damages to livestock, range, water, crops, or tangible improvements. Relatedly, the OCD explicitly recognizes that Section 70-2-14 bond funds may not be used "to secure payment for damages to livestock, range, crops or tangible improvements[.]" 19.15.8.9(B) NMAC. As designed and set out by the Legislature, the OCD and SLO's authorities are not overlapping.

Under the Proposed Rule, OCD and SLO would possess dueling authority to claim bond funds for environmental cleanup on state trust lands, giving rise to issues of double recovery (among other issues). If SLO recovers such funds first, the money is required to be deposited either (i) in each respective beneficiary's permanent fund, which would render 100% of the money

unavailable for actual cleanup, *see* Enabling Act, §§ 10, 28, or (ii) 99% into the State Lands Maintenance Fund, and only 1% into the State Trust Lands Restoration and Remediation Fund, rendering 99% of the funds unavailable for actual cleanup, *see* NMSA 1978, § 19-1-11.[4] *See also* 19-1-2 (requiring SLO to "receive all moneys due to the state derived from any state lands and credit said moneys so received to the separate funds created for the respective purposes"); 19.2.23.8 NMAC(A)(1) (providing that funds from the State Trust Lands Restoration and Remediation Funds may be used for "surface damage remediation and restoration"). Yet, the Legislature has already determined that *100%* of such recovery should go to actual plugging, reclamation, and remediation (*i.e.*, OCD) instead.[5]

Article 13 of the New Mexico Constitution does not give SLO authority to circumvent the Legislature's chosen framework. Presumably, SLO is relying on Section 2's statement giving the Commissioner of Public Lands "the direction, control, care and disposition of all public lands[.]" N.M. Const. art. XIII, § 2. However, this broad provision is not self-executing. *See State ex rel. Noble v. Fiorina*, 1960-NMSc-107, ¶ 4 (a constitutional provision is not self-executing where it "merely indicates a principle without laying down rules having force of law."); *see also Bounds v. State*, 2011-NMCA-011, ¶ 37 (constitutional provisions that declare principles or policies requiring legislation to give them effect are not self-executing). Instead, the New Mexico Supreme Court has held the SLO's dominion over public lands is not "absolute," and it may not exceed the specific statutory authorities the Legislature has given it. *See State ex rel. Del Curto v. Dist. Court of Fourth Judicial Dist.*, 1947-NMSC-032, ¶ 33 ("The Commissioner of Public Lands is merely an agent of the state with such powers, and only such, as have been conferred upon him by the Constitution *and laws of the state* as limited by the Enabling Act.") (emphasis added); *id.*, ¶ 34 ("The fact is the Commissioner of Public Lands has only such authority as has been granted to him by the Constitution *and state laws*, as limited by the Enabling Act.") (emphasis added). *See also generally* NMSA 1978, Chapter 19 (setting out detailed provisions governing SLO's powers and duties).

In the context of oil- and gas-related bonding, that statutory authority is limited to Section 19-10-26. Section 19-1-1 confirms this limitation, *see id.* (stating SLO "shall have the management, care, custody, control and disposition [of public lands] *in accordance with the provisions of this chapter*") (emphasis added), whereas Section 19-1-2 merely grants a concurrent authority to promulgate *lawful* rules and regulations, *id. See also* NMSA 1978, § 19-1-23 (providing any such "rules and regulations shall not be in conflict with this or any other law now in force"); NMSA 1978, 19-10-30 (authorizing SLO "to adopt such uniform and reasonable rules and regulations . . . as [they] may deem necessary to carry into effect the terms and provisions of [§§] 19-10-11 [and] 19-10-26 to 19-10-30 [ ] and *not inconsistent herewith*.") (emphasis added).

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[4] The State Trust Lands Restoration and Remediation Fund is capped at $5,000,000. *See* § 19-1-11(B). Once that amount is reached, any additional eligible funds received by SLO under the Revised Rule would have to be redistributed to the various beneficiaries instead of used for environmental purposes. *Id.*

[5] Once funds are deposited into the State Trust Lands Restoration and Remediation Fund, any expenditure therefrom would require legislative appropriation. *See* § 19-1-11(B). The Revised Rule's proposed approach is not only unlawful, but also impractical.

Further, Section 2 of Article 13 must be read in conjunction with Section 1 of Article 24, which provides that the terms of oil and gas leases are to be set by the Legislature. *See* N.M. Const., art. XXIV, § 1 ("Leases . . . may be made . . . containing such terms and provisions[] as may be provided by act of the legislature"); *see also State ex rel. King v. Lyons*, 2011-NMSC-004, ¶ 100, fn. 6 (Section 1 "reserves unto the Legislature the authority to specify the terms and conditions of leases and contracts reserving a royalty to the State from minerals[.]"). Again, in accordance with Section 19-10-26, each statutory lease form limits SLO's bonding authority to leases encompassing previously severed surface estates for the benefit of the purchasers and to cover certain damages to said surface estates. *See* §§ 19-10-4.1, -4.2, and 4.3. SLO lacks authority to amend these terms by way of the Proposed Rule.

Similarly, there is no statutory authority for the Proposed Rule's reporting requirements or that such reports be submitted under penalty of perjury. *See* Proposed Rule, ¶ (D). The Legislature granted SLO authority to require reports "within reasonable bounds" respecting the "administration" of mineral leases, *see* NMSA 1978, § 19-8-25,[6] and leases of geothermal resources, *see* NMSA 1978, § 19-13-22,[7] but *not* oil and gas leases. Instead, SLO's authority to require reporting in this context is very limited: it must require "with each and every royalty payment, a correct statement showing the amount of oil or gas produced and saved since the last report and the market value thereof," NMSA 1978, § 19-10-11, and it may require "a full, accurate and complete log . . . of any and all wells drilled by lessee on the lands[,]" *id.* As with bonding, the statutory lease forms contain terms corresponding to this limited reporting authority,[8] and state that such reports must be verified. *See* §§ 19-10-4.1(3), -4.2(3), -4.3 (4) (providing that royalty payments must be made monthly and lessee must "submit to lessor annually upon forms furnished by lessor, verified reports showing lessee's operations for the preceding year"); *see also* §§ 19-10-4.3(9), -4.2(9), -4.3(10) (providing the lessee must "keep a complete and accurate log of each well drilled and to furnish a copy thereof, verified by some person having actual knowledge of the facts, to the lessor . . .").[9]

By contrast, the Legislature has provided OCD specific, extensive authority to require reporting. *See* NMSA 1978, § 70-2-12(A)(6) (giving OCD explicit authority to require "the making

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[6] "[A]t the request of the commissioner the lessee shall furnish such reports . . . within reasonable bounds as he may deem to be necessary to the proper administration of the lands under lease."

[7] "[A]t the request of the commissioner, the holder of the lease shall furnish such reports . . . within reasonable bounds as he may deem to be necessary for the proper administration of the state lands under lease."

[8] The current statutory form leases provide that lessees must comply with future regulations "affecting the premises and operations thereon . . . pertaining to public health and welfare[.]" §§ 19-10-4.1(17), -4.2(16), -4.3(14). In addition to being unlawful, the Proposed Rule's reporting requirements do not meet this test for incorporation into leases.

[9] Two other statutes authorize SLO to require information be provided under oath, neither of which is applicable in the context of the Proposed Rule – NMSA 1978, § 19-7-1 (requiring applications to lease or purchase state lands "be made under oath"), and NMSA 1978, § 19-10-14 (requiring applicants for oil and gas leases to file appraisals "made under oath by one or more disinterested persons").

of reports and for the checking of the accuracy of the . . . reports"); § 70-2-12(B)(3) (giving OCD specific rulemaking authority "to require reports showing locations of all oil or gas wells and for the filing of . . . reports"). Yet OCD is not given authority to require such reports be verified or otherwise made under oath. The Legislature was circumspect in granting these agencies the power to invoke the State's criminal justice system. *See* NMSA 1978, § 30-25-1 (defining perjury and declaring it to be a fourth degree felony). SLO may not circumvent the Legislature's judgment by way of its limited rulemaking authority and seek to create criminal liability where the Legislature has not done so itself.

Lastly, there is no statutory authority for the Proposed Rule's provisions allowing for the cancellation of leases. *See* Proposed Rule ¶¶ (I)(2), (J). SLO has statutory power to cancel an oil and gas lease only where a lessee fails to comply with the lease's terms, and only after an opportunity to cure. *See* NMSA 1978, § 19-10-20. Because the Proposed Rule's provisions are not authorized by the Legislature, and there are no corresponding terms in the statutory form leases or other outstanding leases, SLO lacks authority to cancel any oil and gas leases under the Proposed Rule.

For the foregoing reasons, NMOGA respectfully requests that SLO not adopt the Proposed Rule and adopt NMOGA's proposed revisions to the current Rule.

Very truly yours,

Olga Serafimova

Olga M. Serafimova
Of Counsel
Holland & Hart LLP

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NMOGA EXHIBIT A

Key:
NMOGA Proposes to Retain from Existing Rule
NMOGA Proposed Language
~~NMOGA Proposes to Strike~~

19.2.100.23 ~~I~~SURETY TO PROTECT SURFACE PURCHASER ~~AND LESSEE WAIVERS:~~

A. This Rule implements NMSA 1978, Section 19-10-26 and, therefore, applies only to state oil and gas leases that embrace lands included in any deed or outstanding contract of purchase issued pursuant to a sale made of the surface of such lands ("Surface Estate") prior to the date of such lease and containing a reservation to the state of the minerals contained in such lands and only if the state oil and gas lease contains an express term requiring financial assurance for damage to such Surface Estate as described in Paragraph B below ("Covered Leases").

~~A.~~B. Before any oil and gas lessee or operator (defined as any third party conducting exploratory or development operations authorized by the lessee within the authority granted to the lessee under the provisions of NMSA 1978, § 19-10-13) ~~shall~~ commences drilling ~~development or~~ operations on lands encompassing a Surface Estate as described in Paragraph A~~, 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 for~~, in~~ an amount ~~to be fixed by the commissioner but~~ not less than one hundred twenty ~~ten~~ thousand dollars ($120,000), as described in Paragraph C below, in favor of the state of New Mexico for the benefit of the Surface Estate ~~appropriate trust beneficiary and the state's contract~~ ~~p~~urchasers~~,~~ ~~his or her grantees or successors in interest ("Purchaser")~~ ~~patentees and surface lessees,~~ to secure payment for damage to the livestock, range, water, crops or tangible improvements on such Surface Estate as may be suffered by the Purchaser by reason of the development, use and occupation of the lands by the lessee or operator~~ 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~~. A Purchaser may waive these bond or surety requirements with respect to any Surface Estate by filing with the commissioner a waiver duly executed and acknowledged by said Purchaser.

~~B.~~C. A bond or other surety in the minimum amount of one hundred twenty ~~ten~~ thousand dollars ($120,000) for each Covered Lease ~~lease~~ shall be deemed sufficient unless and until the commissioner determines, or one or more surface lessees or P~~p~~urchasers show the commissioner, that such an amount is not adequate in a given case. Provided, however, that if a lessee or operator holds more than one Covered Lease~~ oil and gas lease~~, a blanket bond or other surety in the amounts authorized by this Rule ~~of twenty thousand dollars ($20,000)~~ will be acceptable unless and until the commissioner determines, or one or more ~~surface lessees or p~~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.~~ Determinations of inadequate amounts shall be made in all cases during a show-cause proceeding pursuant to 19.2.15 NMAC where the affected lessee or operator shall be afforded due notice and opportunity to be heard and to present evidence and the Commissioner's determination shall be appealable as provided by law.

(1) A lessee or operator may submit a single instrument to cover multiple Covered Leases, according to the following schedule:

(a) Between 10 and 19 Covered Leases: $104,000 per lease;
(b) Between 20 and 49 Covered Leases: $88,000 per lease;
(c) Between 50 and 99 Covered Leases: $72,000 per lease;
(d) Between 100 and 249 Covered Leases: $56,000 per lease; or
(e) 250 or more Covered Leases: $48,000 per lease; provided, however, that the total financial assurance required of any lessee or operator shall not exceed $14,000,000.

~~C.~~D. The bond or other surety required by this Rule shall be available for the benefit of the Purchaser only in the event that, pursuant to a judgment, all of the bond, letter of credit, cash or certificate of deposit required by NMSA 1978, Section 70-12-6 has been exhausted first to pay the Purchaser as provided in the Surface Owner Protection Act.~~ 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,~~

Key:
NMOGA Proposes to Retain from Existing Rule
NMOGA Proposed Language
~~NMOGA Proposes to Strike~~

~~including the payment of royalties when due and compliance with all established mining plans and reclamation requirements.]~~

E. Notwithstanding any provision under this Rule that may be to the contrary, the obligations and covenants contained in each applicable oil and gas lease shall govern and control to the extent there is a conflict with this Rule.

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

NMOGA EXHIBIT B

STATEMENT OF ANDREA FELIX
ON BEHALF OF
NEW MEXICO OIL AND GAS ASSOCIATION

I. INTRODUCTION AND BACKGROUND

My name is Andrea Felix. My business address is 123 West Booth Street, Santa Fe, New Mexico 87505. I am employed as Vice President of Regulatory Affairs for the New Mexico Oil & Gas Association ("NMOGA"), an oil and gas trade association with over 180 member companies. I have over 20 years of oil and gas experience, all in the State of New Mexico, and am also a Certified Right of Way Agent. My curriculum vitae is included as **Attachment 1** with this testimony.

I have extensive experience in the oil and gas industry. Before being nominated to my executive position with NMOGA, I served as Director of Regulatory Affairs for EOG Resources, Inc. In this capacity, I had many roles and responsibilities, including but not limited to developing and implementing the company's environmental and regulatory compliance programs for both onshore and offshore activities at the local, state, tribal, and federal levels. I also interpreted regulations and guided development programs and internal disciplines to ensure compliance and drafted environmental assessments and regulatory reports. I also managed and coordinated activities internally and externally to achieve all regulatory, siting, and environmental requirements and approvals needed to achieve project completion. Prior to my tenure at EOG, I served as Regulatory Manager for Enduring Resources, Inc.; Regulatory Manager for WPX Energy, Inc.; and Land Representative for Williams Four Corners.

Unless modified, the proposed regulation will have significant consequences for New Mexico's oil and gas industry and the regulatory framework under which it operates.[1]

II. PURPOSE OF STATEMENT

The purpose of my statement is to provide general and specific comments on the State Land Office's proposed rule (the "Proposed Rule") from an industry point of view on behalf of NMOGA and its industry members, as well as the Permian Basin Petroleum Association, which adopts and endorses NMOGA's comments and the attached legal comments from Holland & Hart LLP. NMOGA requested feedback from its member companies and their own internal subject matter experts on the proposed new rule. I have reviewed and am familiar with the proposed new rule under **19.2.100.23 NMAC**. My statement builds on the expert insight provided through NMOGA's internal subject matter experts and feedback from its member companies.

III. NMOGA'S POSITION ON PROPOSED RULE MODIFICATION

NMOGA has engaged with the State Land Office in this rulemaking process, meeting with State Land Office leadership and staff over a period of months, participating in listening sessions and workshops across the state, and submitting numerous rounds of informal comments and a proposed alternative rule at the beginning of 2026. NMOGA and its members appreciate the engagement and process they have been afforded by the Commissioner and State Land Office leadership and staff through the informal review period.

While several of NMOGA's comments and concerns were considered and addressed, either partially or wholly, within the final Proposed Rule that was published in the New Mexico Register on April 7, 2026, numerous fundamental issues remain unresolved. NMOGA has been

[1] NMOGA reserves the right to comment on any proposals later filed in this rulemaking by the New Mexico State Land Office, or any other commenter, party, or intervenor.

and remains committed to engaging in good-faith, constructive dialogue with the State Land Office over the scope and structure of the Proposed Rule from the written comment deadline and beyond. However, because key legal foundational issues were not resolved or permitted to be addressed at the outset of this process, NMOGA has no choice but to raise them here in its formal written comments.

The Proposed Rule exceeds the Commissioner's authority and conflicts with the express provisions of governing state oil and gas leases, and should be rejected. The Proposed Rule should be revised to align with the narrow bonding authorized by NMSA 1978, Section 19-10-26 and in certain state oil and gas leases. NMOGA submits with its comments proposed modifications to the rule, attached as **NMOGA Exhibit A**, that align with Section 19-10-26 and avoid conflicting with governing statutory lease provisions. NMOGA supports the adoption of a bonding rule that complies with all constitutional and statutory requirements. NMOGA also supports promulgating fair and reasonable rules that are protective of the state's trust resources for current and future generations. But any rule adopted by the Commissioner, the State Land Office, or any other state agency must be authorized under the existing constitutional and statutory framework. The Proposed Rule does not meet that basic legal standard. Accordingly, NMOGA urges the Commissioner not to adopt the Proposed Rule but to instead adopt NMOGA's revision of the existing rule.

NMOGA incorporates and adopts the comments provided by its legal counsel, Holland & Hart LLP, that are incorporated herein and provides the following additional comments with respect to each provision of the Proposed Rule. The Permian Basin Petroleum Association adopts and endorses NMOGA's comments and the attached legal comments from Holland & Hart LLP, as well. Subject to its right to challenge this rule on all available grounds and without waiving

any legal right or remedy, and to the extent NMOGA's legal position is rejected by the Commissioner, NMOGA provides the following comments for consideration by the Commissioner.

A. Existing Rule - 19.2.100.23 Surety to Protect Surface Purchaser and Lessee – Waivers

As reflected in the attached legal comments, NMOGA agrees that the current version of Rule 19.2.100.23 NMAC contains unlawful provisions that conflict with statute and the existing statutory lease form and should be revised to comply with law. **NMOGA Exhibit A** is a proposed revision of the existing Rule 19.2.100.23 NMAC that (1) brings it into compliance with Section 19-10-26 and expressly incorporates the factual conditions and limitations of that statutory provision into the rule; (2) includes authority for non-lessee operators to provide a bond or financial assurance covering their drilling operations on applicable state oil and gas leases; (3) updates the value of a single-lease bond to $120,000 and includes a tiered bulk financial assurance option to cover multiple applicable leases up to a cap of $14 million; (4) coordinates application of the rule and its bonding requirements with the later-adopted New Mexico Surface Owners Protection Act, NMSA 1978, Section 70-12-1 et seq.; and (5) includes an express provision confirming that "the obligations and covenants in each applicable oil and gas lease shall govern and control to the extent there is a conflict[.]"

For the reasons outlined in these comments and the attached legal comments, NMOGA urges the Commissioner to reject the Proposed Rule, which exceeds the authority granted to the Commissioner, and instead adopt NMOGA's proposed revision of the existing Rule.

B. Proposed Rule – 19.2.100.23

1. 19.2.100.23.A Minimum financial assurance requirements.

The minimum financial assurance proposed under the rule for each state oil and gas lease is set at an amount to be not less than $150,000; however, no factual basis is provided to justify that figure. State oil and gas leases are of varying sizes—ranging from 40 acres to hundreds of acres with a wide range of existing oil and gas facilities and activities. Under the Proposed Rule, no matter the size of the lease, its environmental or operational condition, or the number of existing wells or facilities, if any, all leases are required to be covered by a minimum financial assurance of at least $150,000. That amount and the rule's one-size-fits-all approach is not justified by any evidentiary or factual backing provided in advance by the Commissioner in support of the Proposed Rule. It also fails to account for the wide range of lease sizes and existing lease operations, if any, resulting in an unfair application of the Proposed Rule with respect to smaller leases with fewer or no facilities and a correspondingly lower plugging liability and environmental risk.

For example, the Proposed Rule provides for no distinction in the required financial assurance for a 40-acre lease with a single dry gas well, a tank, and a separator compared to a 640-acre lease undergoing a secondary water flood with several dozen producing and injecting wells on five-spot patterns and multiple tank batteries. On their face, these two hypothetical leases present vastly different risk profiles in terms of potential liability for plugging and abandonment, as well as for surface reclamation and remediation. But the Proposed Rule treats both leases the same for purposes of calculating financial assurance relating to plugging and environmental risk. This contradicts the Commissioner's own research on this issue. *See generally*, "An Analysis of the Adequacy of Financial Assurance Requirements for Oil and Gas Infrastructure Located on State Trust and Private Lands in New Mexico," April 30, 2021, The Center for Applied Research, Inc., attached as **Attachment 2**. That research shows a number of

factors contribute to the amount of potential financial and environmental liability from lease to lease, including the number of wells, the type of wells, their age, depth, and other variables. *Id.* While that research demonstrates there is a wide range of factors and costs associated with plugging wells and reclaiming oil and gas operations, it does not evaluate or assess the actual risk that operators or lessees will in the future fail to meet their lease or regulatory obligations on state trust lands to do that work themselves, thus requiring reliance on financial assurance to pay for the work. The Center for Applied Research report and the research and analyses it relies on simply calculates, based on estimates, the potential liability to decommission, reclaim, and remediate all oil and gas operations on state trust lands across the state. The analysis presents a total estimated liability value without assessing how likely it is any of those sites will be orphaned. As discussed below, operators have historically plugged 95% of all wells in New Mexico. And, according to the State Land Office, since 2020 state lessees have plugged more than 840 abandoned oil and gas wells on state lands," accounting for at least $84 million in plugging and cleanup costs in the last five years alone. The Commissioner provides no analysis on the level of risk to state trust lands based on existing or anticipated operations and lessee and operator compliance to justify its proposed bonding rule.

This provision also sets $150,000 as the <u>minimum</u> financial assurance required, and purports to give the Commissioner unlimited discretion to fix a higher amount for any reason while providing no guidance, limitations, or factors the Commissioner is required to consider in fixing a higher amount. As written, the Commissioner is unconstrained, including by what considerations may be incorporated into that decision—*e.g.*, issues or factors unrelated to the lease itself may be considered—or what level of financial assurance may be required for any

given lease. Without any factual basis justifying such broad and unbound discretion, the Proposed Rule is unreasonable and arbitrary.

a. The Proposed Rule Exceeds Authority and Conflicts with Existing Comprehensive Oil and Gas Bonding Framework.

As detailed in NMOGA's legal comments, the Proposed Rule is also disconnected from the Commissioner's statutory authority that controls bonding and financial assurance, which is constrained by, among other things, Section 19-10-26, and the specific provisions of each oil and gas lease governing the relationship between lessees and the State of New Mexico. For example, the Proposed Rule provides that the required financial assurance will be "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." Proposed 19.2.100.23.A(1) NMAC. The Proposed Rule also purports to expand the limited authority granted under Section 19-10-26, and incorporated in only certain state oil and gas leases, to authorize bonding to cover "[d]amage to state lands," which 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." Proposed 19.2.100.23.A(1) NMAC.

In contrast, as set out in NMOGA's attached legal comments, Section 19-10-26 and the governing statutory lease provisions limit the Commissioner's authority to require financial assurance or bonding only in circumstances where the surface estate has been severed through a purchase agreement prior to issuance of an oil and gas lease. *See also*, NMSA 1978, § 19-10.4.1 at ¶ 9, -4.2 at ¶ 9, -4.3 ¶ 10. Specifically, the proposed bonding rule conflicts with both the

Commissioner's governing statute and state oil and gas lease provisions, which limit bonding "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." *See* NMSA 1978, § 19-10.4.1 at ¶ 9, -4.2 at ¶ 9, -4.3 ¶ 10.

Because the Commissioner's bonding authority is limited to a defined and narrow factual circumstance—where the surface estate was sold and the oil and gas minerals reserved to the state before an oil and gas lease was issued—the current effort to promulgate a comprehensive financial assurance rule for all state oil and gas leases not only exceeds the Commissioner's legal authority but is also duplicative of the existing comprehensive bonding requirements authorized under the New Mexico Oil and Gas Act and administered by the New Mexico Oil Conservation Division (the "Division"). The Division's financial assurance rules already comprehensively regulate bonding and financial assurance requirements applicable to all oil and gas wells on state leases. In other words, every existing well and every future well on a state oil and gas lease are already subject to the Oil and Gas Act bonding requirements that cover everything from plugging and abandonment to remediation, reclamation, and abatement. For example, the current Division cash bond form provides that:

> 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.[2]

[2] https://www.emnrd.nm.gov/ocd/wp-content/uploads/sites/6/Cash-Bond-12-14-2022.pdf.

The rules governing the state's comprehensive financial assurance framework for oil and gas development are currently going through a separate rulemaking process[3] before the New Mexico Oil Conservation Commission (the "Commission" or "OCC") that is expected to substantially increase the bonding requirements for all wells operated on state lands, especially higher-risk, low-producing wells and higher-risk well portfolios with a greater share of inactive wells. *See* OCC Case No. 24683, Applicants' Exs. 89-90. The Commissioner and State Land Office were active parties in that rulemaking. *See* OCC Case No. 24683, Commissioner of Public Lands and New Mexico State Land Office's Post-Hearing Statement, filed April 3, 2025, available at https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafe/cf/20260406/24683_04_06_2026_12_31_30.pdf.

The Proposed Rule's bonding requirements will create an unnecessary, burdensome, and duplicative financial assurance framework, unauthorized by the Legislature and in conflict with governing oil and gas leases, that will result in a costly and redundant financial assurance scheme with disproportionate economic impacts on smaller lessees and oil and gas operators. Because the Legislature has already established a comprehensive financial assurance framework applicable to oil and gas drilling and operations, the Proposed Rule is duplicative and unreasonably burdensome and should not be adopted.

b. Right to Contest Financial Assurance Amounts.

While the Proposed Rule allows the Commissioner to set financial assurance for a single lease at any level above $150,000 for apparently any reason, no provision is made for lessees to challenge a financial assurance determination by the Commissioner in the event they disagree

[3] New Mexico Oil Commission Case No. 24683.

with the Commissioner's determination. To ensure fairness and lessee's due process rights are protected, for instances when the Commissioner seeks to impose a higher baseline financial assurance amount, the rule should require the Commissioner to issue a show cause order under 19.2.15 NMAC for why a lessee's financial assurance should not be set at a higher amount than the presumptive amount. The evidentiary burden should be on the Commissioner to justify the basis for an increase in the applicable financial assurance, the demonstration should be required to be on the record and before a hearing officer, and any final determination must be subject to the right of appeal.

c. Proposed Bonding Creates Multiple Redundant Layers of Excessive Bonding.

Considering the Proposed Rule on its own, it requires a minimum of $150,000 in financial assurance for a single lease—no matter the acreage included in the lease—but the actual amount of financial assurance required could be substantially more, subject solely to the Commissioner's unconstrained discretion. *See* Proposed 19.2.100.23A.(1) (providing a minimum financial assurance amount, but no maximum, and allowing the amount to be fixed by the Commissioner). For operators with multiple leases, the Proposed Rule would allow, but not require, the Commissioner to accept a single bond or financial assurance instrument for multiple oil and gas leases under a schedule ranging from $150,000 per lease for between 2 to 9 leases, to $100,000 per lease for 50 or more leases. *See* Proposed 19.2.100.23.C(1) NMAC.

That means a lessee with 200 state oil and gas leases could be required to submit a bond or other financial assurance totaling anywhere from $30 million at $150,000 per lease to $20 million dollars if the Commissioner authorizes a single instrument for bulk financial assurance under the proposed schedule—without respect to the size of the leases, how many wells or other facilities are located on the leases, whether the leases include state surface or are mineral-only

estates, or other factors affecting the risk a lessee will not fulfill its lease obligations or comply with existing rules and regulations governing the plugging and abandonment of wells and reclamation and remediation of the surface. The proposed financial assurance framework creates a substantial financial obligation that is disconnected from any factual basis for risk justifying the required financial assurance amounts and fails to take into consideration the effect of the existing comprehensive financial assurance framework already in place under the Oil and Gas Act.

If that same lessee, in addition to having 200 state oil and gas leases, also operates 1,000 wells in New Mexico that are subject to the OCC's pending financial assurance rule with 500 wells that qualify as "low-producing wells" (*i.e.*, a well that has produced fewer than 1,000 barrels of oil equivalent for less than 180 days within a consecutive 12-month period), that operator will have to obtain $75,250,000 in financial assurance under just the OCC's proposed rule, without taking into consideration the Proposed Rule. *See* OCC Case No. 24683, Applicants' Ex. 90, **Attachment 3**. (Proposed 19.15.8.9 NMAC). If only 20% of that same operator's wells are deemed to be inactive, which include wells in approved temporary abandonment status, that same operator would be required to instead obtain $150,000,000 in financial assurance under the OCC's pending rule—again without taking into consideration the Proposed Rule. *See id.* (Proposed 19.15.8.9 NMAC).

In combination with the pending OCC financial assurance rule, the Proposed Rule will layer multiple excessive, unnecessary and unlawful bonding requirements on top of the OCC's already existing comprehensive financial assurance framework designed to cover the exact same liabilities from oil and gas drilling and development. Considering the impact of the Proposed Rule on top of the OCC's pending rule, the same lessee in the prior example with 200 state oil and gas leases and 1,000 operating wells would have to obtain a total of anywhere from

$95,250,000 in financial assurance to $180,000,000 in financial assurance, depending on whether 20% of the operator's wells are inactive wells under the OCC rule and if the Commissioner authorizes a single financial instrument for bulk financial assurance under the Commissioner's proposed schedule in 19.2.100.23.C(1) NMAC. If this same lessee holds enough state leases to reach the Commissioner's proposed financial assurance cap of $40 million, it would be subject to a total financial assurance liability of anywhere from $115,250,000 to $190,000,000 in conjunction with the OCC's proposed financial assurance rule. The Commissioner's redundant financial assurance rule will result in astronomical financial assurance requirements that are simply not justified by any factual record—that is especially true when the Commissioner has presented no evidence in support of this Proposed Rule for consideration in advance of this rulemaking.

d. Redundant and Excessive Bonding for Communitization Agreements.

The Commissioner's proposed bonding rule is problematic for its redundancy in other ways, too. Many wells drilled and producing on state oil and gas leases are subject to state Communitization Agreements, establishing allocation of state royalty between multiple state leases that may be within or part of a single Division-designated spacing unit. Communitization Agreements may include two or more state leases. In the simplest case, if a single horizontal well spacing unit is producing from two state oil and gas leases under a single Communitization Agreement, that well will be bonded by the comprehensive OCD bond, as well as the Commissioner's proposed bonding for each of the leases included within the Communitization Agreement, resulting in essentially three different bonds covering a single well in a single Communitization Agreement. That is unnecessarily redundant and excessive and is unjustified. More involved cases present similar results.

e. Proposed Rule ignores Section 19-10-26 provision that non-lessee operators can provide bonds, violating the statute and creating inequities.

Because the Proposed Rule ignores the requirement of Section 19-10-26 to allow operators, as well as lessees, to provide financial assurance, the Proposed Rule violates the express provisions of statute and creates additional inequities and problems for lessees attempting to cure alleged bond performance defects. Section 19-10-13 expressly permits the assignment of partial lease rights. Many, if not most, state oil and gas leases have non-lessee operators operating on state leases pursuant to the authority granted under that Section. In some situations, by operation of law lessees may have little or no control over how a non-lessee operator operates on the lease. This creates substantial inequities and problems where lessees are being held accountable for operations over which they have no authority or control under the Proposed Rule.

For example, a small operator is lessee of a state oil and gas lease but has retained only shallow operating rights and operates a single shallow well on the lease. In this example, a second operator who is not the state lessee owns the deep operating rights and subsequently drills and operates numerous deep horizontal wells pursuant to the authority granted under Section 19-10-13. Because the Proposed Rule contradicts the express provision in Section 19-10-26 that an operator, as well as a lessee, may provide a bond, only the lessee with the shallow operating rights can post a bond under the Proposed Rule, and it must cover all potential operating, reclamation, and remediation issues on the lease—most of which are out of the lessee's control. This requirement not only puts unreasonable financial burdens and liabilities on the lessee who obtains no benefit from the more extensive, deeper production, but also fails to recognize the reality of activity on state oil and gas leases.

The Legislature expressly considered this circumstance when it adopted both Sections 19-10-13 and 19-10-26 by determining that a bond may be provided by either the lessee or an operator authorized to develop the lease under 19-10-13. As provided for in Section 19-10-26, the Commissioner can easily accept a bond that is specific to the operations in the deeper formations. Instead, the Proposed Rule ignores Section 19-10-26, forcing the lessee to provide a bond that covers all lease operations—even when the lessee has no authority or control over some of those operations. The Proposed Rule should be amended to comply with Section 19-10-26 to allow operators, authorized under Section 19-10-13, the ability to provide bonds, as well as the lessee. Doing so will resolve many of the conflicts and inequities that come about under the Proposed Rule.

f. Regulation of "damage to mineral resources and reservoirs" conflicts with OCC and OCD authority under the Oil and Gas Act.

The proposal to have bonding cover "damage to state land," where "damage" is defined to include "damage to mineral resources and reservoirs," is not authorized under the law and conflicts with the authority of the OCC and Division. Under the Oil and Gas Act, the OCC and Division have concurrent jurisdiction to prevent waste and protect correlative rights. NMSA 1978, § 70-2-6(B). The Commissioner has broad authority to oversee "the management, care, custody, control and disposition" of state trust lands (NMSA 1978, Section 19-1-1), but does not have authority to determine waste, prevent waste, protect correlative rights, or unilaterally determine when, or if, mineral resources or reservoirs are damaged. That authority falls within the jurisdiction and powers of the OCC and Division. *See, e.g.*, NMSA § 70-2-6 (granting OCC and the Division "jurisdiction, authority and control of and over all persons, matters or things necessary or proper to enforce effectively the provisions of this act or any other law of this state relating to the conservation of oil or gas and the prevention of waste of potash as a result of oil or

gas operations."); *see also* NMSA 1978, § 70-2-12(B) (granting power and authority to oversee drilling and operation of wells to prevent injury to leases and properties).

More fundamentally, the Proposed Rule provides no notice to those potentially affected. For instance, it does not define or explain what "damage to mineral resources and reservoirs" is, how such damage is to be determined or how liability is to be affixed among numerous potential responsible parties, and whether it would be subject to strict liability, a prudent operator standard, or some other standard.

g. Lack of Bonding Markets

The revised rule could have significant unintended and likely undesirable consequences on lessees, operators, and New Mexico's oil and gas financial assurance and bond markets. On top of the rule pending with the OCC, the Proposed Rule would represent a sudden and dramatic increase in surety requirements across the industry in the state. 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 surety market is already limited in its appetite and capacity for oil and gas risk. The proposal in combination with the pending rule at the OCC will result in excessive bonding and there is no factual support showing that the financial assurance markets can actually accommodate the bonding levels the Commissioner is proposing, especially in combination with the pending OCC rule.

NMOGA expert witnesses testified in the OCC proceeding that it will be difficult, if not impossible, for many operators to secure such high volumes of bonds—individual and/or blanket—in today's surety market. *See* Direct Testimony of Douglas Emerick, OCC Case No. 24683, **Attachment 4**; Rebuttal Testimony of Douglas Emerick, OCC Case No. 24683, **Attachment 5**. 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 because of the new compliance costs and risk of default that wells with existing surety coverage will be exposed to under the Proposed Rule. *See* **Attachments 4-5**. The presumption that there will be unlimited access to private bonding markets is detached from reality and risks pushing responsible operators out of the market.

NMOGA recognizes that the Proposed Rule provides alternatives to a surety bond, such as an irrevocable letter of credit or a cash deposit. While providing lessees and operators flexibility for providing financial assurance—which is good—these alternatives do not alleviate the economic hardship created by the Proposed Rule because they require 100% of the costs associated with the financial assurance would be tied up in the letter of credit, cash deposit or other similar instrument. While expressly including such options in the rule is appreciated, it is probable that with the required bonding level for multiple leases, such alternatives will be beyond the means of many small- and medium-sized lessees and operators. Further, the more working capital that is tied up to meet bonding requirements, the less working capital lessees and

operators will have available for other expenses that go towards ensuring proper and clean operations.

NMOGA addressed these same financial assurance and bond market issues in its testimony at the OCC's rulemaking incorporates that testimony here in support of its comments. *See* **Attachments 4-5**.

h. The Proposed Rule is premature when OCC's Proposed Rule remains pending.

In addition to being unauthorized by law, the Commissioners' Proposed Rule is also premature. As noted in a report recently issued by the New Mexico Legislative Finance Committee ("LFC"), titled "Policy Spotlight: Orphaned Wells," dated June 24, 2025, attached as **Attachment 6** ("LFC Report"), the OCC is undertaking a rulemaking process to implement the LFC's key recommendations to address funding shortfalls to address plugging and abandoning orphaned wells and remediating and reclaiming well sites. *Id.* at 32.

At a minimum, the Commissioner should allow for the OCC rulemaking process to be finalized to understand what the updated comprehensive framework is for financial assurance governing wells on state trust lands before proceeding with this rulemaking. Rather than wait to see what the final OCC rule covers, however, the Commissioner is rushing to propose a rule that—in addition to conflicting with constitutional authority and statutory limits—will also conflict with the OCC's pending comprehensive financial assurance rule on the same wells and acreage, creating a confusing and redundant mix of financial assurance requirements on lessees and operators across the state.

i. Oil and Gas Reclamation Fund is Sufficient to Address Plugging and Reclamation on All State Trust Lands.

To the extent the Proposed Rule is intended to serve as a supplement or backstop in the event the Oil and Gas Act's required financial assurance falls short of what is necessary to

adequately plug a state well and remediate and reclaim the surface, the Legislature recently adopted into law, and the Governor signed, House Bill 80 ("HB 80"). HB 80 amends the Oil and Gas Reclamation Fund ("Rec. Fund" or "Fund"), established in accordance with NMSA 1978, Section 70-2-37 ("Rec. Fund Statute"), to make it a non-reverting fund in the State Treasury, and amends the operator Conservation Tax distribution formula under NMSA 1978, Section 7-1-6.21, to direct those revenues—generated by every operator producing oil and gas in New Mexico—to the Fund on an accelerated and substantially increased schedule: 50% beginning July 1, 2027; 75% beginning July 1, 2028; 100% beginning July 1, 2029 through June 30, 2037; and 50% beginning July 1, 2037. HB 80 directs the Conservation Tax revenues to the Fund on an accelerated schedule, resulting in dedicated industry funding sufficient to substantially address potential orphan well and reclamation and remediation liability on state lands to the extent the Oil Conservation Commission's revised financial assurance framework is insufficient.[4] The new $1.23 billion in funding dedicated by the Rec. Fund Statute is industry-funded and was enacted to respond to the precise problem this rulemaking was designed to address.[5]

According to the LFC Report, that level of funding for the Rec. Fund is more than sufficient to cover the liability for what are currently identified as potentially orphaned wells on state and fee lands—projected to cost between $200 million and $700 million—and nearly sufficient to cover the entire future liability, currently estimated at about $1.6 billion. *See* **Attachment 6** at 1 (LFC). That is without even taking into consideration available OCC bonding amounts and operator or lessee directed plugging and remediation. As the LFC Report confirms, operators have historically plugged 95% of all wells in New Mexico. *Id.* The Rec. Fund and/or

[4] General Fund Consensus Revenue Estimate, December 2025, pp. 20–21.
[5] N.M. Dep't of Finance & Admin., Fund Balance Projection (FY2026), p. 104 (reporting Rec. Fund balance of $72.2 million as of July 2025).

OCC's financial assurance have been used to plug only about 5% of the state's wells. *Id.* And, according to the State Land Office, since 2020 state lessees have plugged more than 840 abandoned oil and gas wells on state lands," accounting for at least $84 million in plugging and cleanup costs in the last five years alone. *See* **Attachment 6** at 4. At those rates of plugging, the Rec. Fund—which is funded entirely by industry—will be more than adequate to address any well plugging and remediation work on state oil and gas leases that is not addressed by responsible operators. The Proposed Rule does not take these facts into account.

Nor is there any reason to believe state oil and gas leases are in a more vulnerable position if the Commissioner does not have independent bonding requirements in place separate from the comprehensive scheme already authorized under the Oil and Gas Act. As noted above, since the State Land Office instituted its Accountability and Enforcement program in 2020, the Commissioner "has compelled companies to plug over 840 abandoned oil and gas wells on state lands," accounting for at least $84 million in plugging and cleanup costs in the last five years alone. *See* **Attachment 7** at 4. In contrast, the Division has plugged about 1,000 wells since 2002 mostly using proceeds from the Rec. Fund. **Attachment 6** at 9. Without the Proposed Rule, the State Land Office has caused the plugging and remediation of nearly as many wells in a little more than five years as the Division has over more than two decades.

j. Summary of Comments on 19.2.100.23.A

As outlined in NMOGA's legal comments, the proposed language in this provision exceeds the Commissioner's authority and conflicts with the express provisions of the governing state leases and should be rejected. The Proposed Rule should be revised to align with only what is authorized by Section 19-10-26 and should expressly acknowledge that the obligations and covenants contained in each applicable oil and gas lease govern and control to the extent there is

a conflict, as provided for in NMOGA's proposed modification of the existing regulation that governs financial assurance on state oil and gas leases. *See* NMOGA Exhibit A.

2. 19.2.100.23.B Heightened financial assurance requirements.

This proposed provision grants the Commissioner discretion to require—on top of the minimum financial assurance required under proposed 19.2.100.23.A NMAC—"an additional financial assurance in an amount to be fixed by the Commissioner" up to the estimated amount to plug inactive wells on the lease and reclaim and remediate the site if the lease has (1) any inactive well wells; (2) wells that have produced less than 250 barrels of oil equivalent in the last year; or (3) if there is a release on the lease that has not been completely remediated as required by the State Land Office regulations "within the latter of one year of occurrence or discovery, or one year from the effective date of this rule." *See* Proposed 19.2.100.23.B(1)(a), (b), (c).

That means, not only does the Proposed Rule proposes a minimum per-lease financial assurance requirement (the maximum value limited only by the Commissioner's discretion) that is duplicative of the comprehensive bonding required under the Oil and Gas Act, but it also proposes an additional per-well financial assurance requirement that provides yet a third layer of redundant financial assurance for inactive and lower-producing wells and any spills that, according solely to the Commissioner, have not been completely remediated. The Commissioner has provided no facts or evidence to justify imposing this third layer of financial assurance that specifically targets the same categories of higher-risk wells that OCC's pending comprehensive financial assurance targets. *See* Proposed 19.15.8.9.

Under the OCC's pending financial assurance rule, low-producing wells (wells that have produced fewer than 1,000 barrels of oil equivalent for less than 180 days within a consecutive 12-month period) will be subject to $150,000 per well financial assurance requirement. *See* Proposed 19.15.8.9.D NMAC. Operators with 20% or more of their wells in inactive, approved

temporarily abandoned, or expired temporarily abandoned status will be subject to a $150,000 per well financial assurance requirement for each well registered to the operator. *See* Proposed 19.15.8.9.E NMAC. And each inactive well and well in approved temporarily abandoned status also will be subject to a $150,000 per-well financial assurance requirement. *See* Proposed 19.15.8.9.F NMAC. In other words, the OCC's pending financial assurance rule more than addresses through its comprehensive financial assurance requirements the high-risk wells the Proposed Rule also seeks to target in the "heightened financial assurance requirement," which would be "an additional financial assurance" on top of a $150,000 per lease minimum financial assurance requirement that can be fixed at an unlimited amount based on the Commissioner's sole discretion. This multi-layered bonding requirement is entirely redundant and duplicative of the OCC's comprehensive system already in place and not justified by any factual or reasoned support.

Potentially more troublesome than the lack of a factual basis supporting the need or basis for imposing this third layer of redundant financial assurance, is the potential impact this provision will have on waste and correlative rights, which are matters under the authority and jurisdiction of the OCC. *See* NMSA 1978, §70-2-11. By imposing second and third layers of financial assurance on top of OCC's already-comprehensive scheme, the Proposed Rule will impose additional economic burdens on lower-producing wells that may render some wells uneconomic for many lessees/operators notwithstanding their ability to produce economic volumes in commercial quantities. Rather than pay a third layer of redundant financial assurance, a lessee/operator—especially smaller, less financially resilient lessees—may opt to plug and abandon such wells to avoid having to pay the additional economic burden of another per-well financial assurance requirement from the Commissioner if the additional costs do not justify

continued operations or, worse, walk away from their obligations or be forced to file for bankruptcy. It is also likely that some smaller, less financially resilient lessees may choose to default on their obligations due to the increasing economic burdens of the rule, increasing the risk that wells will be orphaned. That means currently producing wells—which may be otherwise economic to operate—could be shut in and plugged (or abandoned) before the lessee/operator would have otherwise elected to shut in and plug it, leaving unrecovered economic reserves in the reservoir. For circumstances where it is cost prohibitive or even economically wasteful to attempt to redrill a well after plugging, those remaining unproduced reserves likely would be forever lost, resulting in waste and impairing correlative rights.

a. The proposed definition of "inactive well" should align with OCD's revised definition under Proposed Rule 19.15.2.7.(I).

The Commissioner proposes to use a definition of "inactive well" in this provision that is misaligned with OCD's proposed rule 19.15.2.7(I)(4), which provides that an inactive well is "a well that has had no production or injection for 12 consecutive months or is not being used for beneficial purposes including such as production, injection or monitoring and that is not being drilled, completed, repaired or worked over." (Emphasis added). The Proposed Rule should adopt a definition of "inactive well" that mirrors the OCC's final definition or expressly incorporates the definition to reflect future regulatory updates to avoid conflict, confusion and differing standards between two agencies attempting to regulate identical conduct.

b. The proposed exception under 19.2.100.23.B(1)(a)(i) addressing approved temporary abandonment status wells is not supported by any factual or reasoned basis and conflicts with OCC's pending rule and the state's mandate to prevent waste.

The Commissioner proposes to exclude from the heightened financial assurance requirement wells that are in approved temporary abandonment status with the OCD for a period of five years or less, unless the lessee or well operator has more than 10% of its wells on state

trust lands in approved temporary abandonment status. Under the OCC's pending rulemaking, however, operators can apply for extensions of temporary abandonment status beyond five years as long as they are able to meet certain requirements, including "a plan of development for the well that includes documentation that the plan is technically feasible and financially viable." *See* Proposed 19.15.25.13 NMAC. In other words, the Proposed Rule would disproportionately impact operators whose portfolios happen to include wells that the OCD approved for temporary abandonment status for more than five years and operators with a higher percentage of wells in approved temporary abandonment status. The Proposed Rule provides no reasoned or factual justification for this disparate treatment of wells that comply with all OCD requirements or why 10% is the triggering threshold. As industry witnesses testified at the OCC rulemaking hearing, having the option to put wells into approved temporary abandonment status with the proper showing is important for long-term operational flexibility and developing enhanced oil recovery projects. *See generally*, Oxy's Direct Testimony and Rebuttal Testimony, Case No. 24683, **Attachments 8 & 9**, respectively. Such projects tend to be very sensitive to economics. Placing added economic burdens on wells necessary for enhanced oil recovery projects by adding additional layers of duplicative financial assurance will likely prevent operators from pursuing at least some enhanced oil recovery projects and/or will limit their ability to make full use of their well inventories for such projects.

Rather than pay a third layer of redundant financial assurance to maintain a well in approved temporary abandonment status, a lessee/operator may opt to plug and abandon such wells to avoid having to pay the additional economic burden of another per-well financial assurance requirement from the Commissioner. That means wells that are good candidates for enhanced oil recovery could be instead plugged as a consequence of the Proposed Rule,

foreclosing possible use in future enhanced oil recovery projects and putting at risk the ultimate recovery of economic reserves.

The Commissioner should revise this provision to except from heightened financial assurance any well that is in approved temporary abandonment status, no matter how many such wells the operator operates or how long that well has been in approved temporary abandonment status by the agency with jurisdiction over such determinations. Failure to do so would be contrary to the state's goal, and the statutory mandate, to prevent waste and protect correlative rights and would conflict with the OCC's pending rule.

c. The proposed heightened financial assurance requirement under 19.2.100.23.B(1)(b) for wells producing less than 250 barrels of oil equivalent in a year is not supported by any factual or reasoned basis and conflicts with OCC's pending rule and the state's requirement to prevent waste.

The Proposed Rule sets an arbitrary and unsupported threshold of 250 barrels of oil equivalent as a trigger for requiring an additional layer of financial assurance; however, the Commissioner provides no data or evidence or reasoned analysis in support of this approach. Neither does the Commissioner identify the legal basis for treating lower producing wells disparately.

This provision is also duplicative of OCC's comprehensive bonding framework and its pending rule that defines and targets low-producing wells (wells that have produced fewer than 1,000 barrels of oil equivalent for less than 180 days within a consecutive 12-month period) that will be subject to a $150,000 per well financial assurance requirement (*see* Proposed 19.15.8.9.D NMAC).

OCC's proposed rule targets a much larger range of low-producing wells (wells producing up to 1,000 barrels of oil equivalent for less than 180 days within a consecutive 12-month period) with a $150,000 single-well financial assurance requirement than this provision of

the Proposed Rule does (wells producing less than 250 barrels of oil equivalent across 12-month period) for additional heightened financial assurance. In other words, the wells the Commissioner is proposing will trigger an additional layer of financial assurance are already going to be subject to a $150,000 single-well financial assurance requirement under the OCC's pending rule. In fact, OCC's proposed $150,000 single-well financial assurance requirement will target a much larger group of wells than the proposal will target. To the extent the Commissioner retains this proposed redundant heightened financial assurance trigger for lower-producing wells, the Commissioner should consider aligning this provision with the OCC's proposed rule to minimize duplication of financial assurance requirements.

The OCC's proposed rule identifies wells that have not produced at least 90 barrels of oil equivalent in a 12-month period as being subject to a rebuttable presumption that such wells are not capable of beneficial use. *See* Proposed 19.15.25.9. To reduce the impact of adding multiple layers of financial assurance on lessees and operators and to narrow the Proposed Rule's impact to only the riskiest wells, the language of this provision should be modified to apply to wells that have not produced at least 90 barrels of oil equivalent in a 12-month period instead of 250 barrels equivalent within the same time period. Failure to do so will impose additional and duplicative economic burdens on wells that remain capable of producing economic volumes, which could lead to lessees and operators prematurely plugging such wells causing waste and impairing correlative rights.

d. The proposed heightened financial assurance requirement under 19.2.100.23.B(1)(c) that includes releases not reported to the OCD is duplicative of the existing financial assurance framework, vague and ambiguous, and should be limited only to liquid "major releases," as defined by OCD.

First, as with the other elements of the Proposed Rule, this provision is duplicative and redundant of existing financial assurance requirements and the reclamation and remediation

framework in place under the Oil and Gas Act and the Oil and Gas Reclamation Fund and should be rejected.

Second, the Proposed Rule does not define "release," and it is not defined under the Commissioner's existing rules. Without a clear definition, this provision is ambiguous, could mean almost anything could be sufficient to trigger additional financial assurance, and fails to give a lessee or operator notice of potentially violative conduct. Under the OCD's regulations, "major releases" and "minor releases" are prohibited. *See* 19.15.29.7 NMAC. A "major release" is defined as:

> **(1)** an unauthorized release of a volume, excluding gases, of 25 barrels or more;
> **(2)** an unauthorized release of a volume that:
> **(a)** results in a fire or is the result of a fire;
> **(b)** may with reasonable probability reach a watercourse;
> **(c)** may with reasonable probability endanger public health; or
> **(d)** substantially damages property or the environment;
> **(3)** an unauthorized release of gases exceeding 500 MCF; or
> **(4)** a release of a volume that may with reasonable probability be detrimental to fresh water.

19.15.29.7(A) NMAC. A "minor release" is defined as "an unauthorized release, which is not a major release and is a volume greater than five barrels but less than 25 barrels; or for gases, greater than 50 MCF but less than 500 MCF." 19.15.29.7(B) NMAC.

To the extent the Commissioner retains this provision, it should be limited to a <u>liquid</u> release that is a "major release," as defined by the OCD.

Finally, the provision provides that "releases" must be "remediated pursuant to state land office rules and requirements"; however, the State Land Office rules address only reclamation. *See* 19.2.100.66 NMAC and 19.2.100.67 NMAC. Remediation of non-domestic oil field waste is governed by the OCC and OCD under the Oil and Gas Act. *See* NMSA 1978, Section 70-2-12(B)(21) & (22); *see also* 19.15.26 NMAC. In addition, OCC, <u>not</u> the State Land Office, is a

constituent agency of the Water Quality Control Commission. NMSA 1978, § 74-6-2(E). Only the OCC and OCD have authority to regulate and enforce WQCC regulations and remediation with respect to oil and gas operations. NMSA 1978, § 70-2-12(B)21 & (22).

e. The proposed 19.2.100.23.B(2) NMAC provides for a potential fourth layer of additional financial assurance that is not supported by any facts or reasoned basis, is overly vague, and does not account for instances where lessees have corrected past issues.

Under this provision, the Commissioner would be able to use a look-back period of 10 years to trigger a fourth layer of additional financial assurance if (1) the Commissioner or another agency has claimed the financial assurance to address the lessee's alleged "compliance deficiencies" related to any operations in New Mexico; (2) the Commissioner has filed suit against the lessee for failing to remedy "damage" to state trust land caused by oil and gas operations on any lease held by the lessee; and (3) the lessee is allegedly "out of compliance" with an agreed compliance order, stipulated final order, or other final order of the OCD or another agency that pertains to lessee's oil and gas operations in New Mexico.

This proposed provision raises several concerns. First, the proposed look-back period of 10 years is excessively long. No factual or reasoned basis is provided to justify such a long period. It should be shortened to five years, which is a more reasonable look-back period for oil and gas operations. Second, it gives the Commissioner discretion to impose this fourth additional layer of financial assurance on the basis of mere allegations without any requirement that the triggering conditions be substantiated through actual findings in a court or through an administrative hearing process. Third, it incorporates the concept of "damage" to state trust land, which presumably includes the "damage to mineral resources and reservoirs" referenced in proposed 19.2.100.23.A(1) NMAC; however, that concept is ambiguous and intrudes on the jurisdiction and authority of the OCC and OCD, as discussed above.

To the extent the Commissioner retains this provision in the final rule, it should be limited to a five-year look-back period and limited to instances where there was a final administrative forfeiture on financial assurance to a state or federal agency, a final administrative determination that the lessee is out of compliance with an adjudicated order or settlement agreement, or a final judicial determination on the merits that lessee failed to remedy "damage" to state trust land caused by oil and gas operations on any lease held by the lessee.

f. The proposed 19.2.100.23.B(3) NMAC should be revised to include an opportunity for lessees or operators to submit information to refute or rebut the reasons given for imposing heightened financial assurance, authorize deferment up to an additional 180 days, and provide that the Commissioner must issue a show cause order under 19.2.15 NMAC whenever the Commissioner seeks to impose heightened financial assurance.

NMOGA appreciates the Commissioner's incorporation of this provision giving lessees the opportunity to demonstrate their diligence to address issues raised by the Commissioner justifying imposition of additional financial assurance under the Proposed Rule. However, the provision should expressly include the opportunity for lessees and operators to also provide information and documentation that refutes or rebuts the Commissioner's stated basis for imposing additional financial assurance. As drafted, the provision presumes the bases for imposing heightened financial assurance are valid when they may not be; thus lessees and operators should be given the opportunity to provide a response.

NMOGA appreciates the Commissioner increasing the timeframe for an initial deferment of the heightened financial assurance from 90 days up to 180 days in this proposed provision. The same timeframe should be authorized for an additional deferment, where the facts and circumstances justify it. Depending on the complexity of the issues and claims—and number of leases involved—the lessee/operator and Commissioner may reasonably require up to an

additional 180 days to work through the documentation and materials. The process should not be arbitrarily foreshortened by imposing a limitation on an extended deferment to only 90 days.

Finally, whenever the Commissioner seeks to impose heightened financial assurance on a lessee, the Commissioner should be required to do so through a show cause order under 19.2.15 NMAC. The evidentiary burden should be on the Commissioner to justify the basis for an increase in the applicable financial assurance, the demonstration should be required to be on the record and before a hearing officer, and any final determination must be subject to the right of appeal.

g. The proposed 19.2.100.23.B(4) NMAC should be stricken as redundant, should provide clear limits on the factors and financial assurance that may be imposed, and provide that the Commissioner must issue a show cause order under 19.2.15 NMAC whenever the Commissioner seeks to impose heightened financial assurance.

Under this open-ended, catch-all provision, the Proposed Rule proposes to authorize the Commissioner to impose an additional fifth layer of financial assurance "on an individual basis" and "based on the commissioners' 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."

First, five layers of financial assurance is unreasonable and not justified by any factual support offered by the Commissioner in advance of the hearing.

Second, this provision provides no limits or constraints on what level of financial assurance, "in addition" to the heightened assurance imposed under 19.2.100.23(B)(1) and (2), is authorized under this provision. If the Commissioner is already authorized to impose financial assurance beyond the estimated costs to plug all wells on each lease and remediate and reclaim all sites and facilities (19.2.100.23.B(1) and (2) provide for financial assurance up to the estimated costs to plug all wells and remediate and reclaim each lease, but 19.2.100.23.A

provides only a floor for financial assurance with no limit), it is unclear what purpose this additional financial assurance would serve or what additional risks, liability, or value it would protest against. In addition to its punitive appearance, this provision is a further redundant imposition of excessive economic burdens in the Proposed Rule and should be stricken.

Third, it is unclear what "other factors pertinent to lessee's oil and gas operations in New Mexico" might include, how those might be assessed and incorporated into a determination, and what opportunity lessees and operators will have to correct any misinformation. As drafted, this provision is too broad and provides no guidance on how the listed factors can be considered, what might trigger application of heightened financial assurance, or how they relate to the concerns sought to be addressed in the rule. The factors considered should be defined and concrete—not open-ended and vague—and limited to known factors that increase the risk wells and un-remediated sites may be abandoned. Lessees currently have no way of anticipating what might be considered by the Commissioner as a factor justifying an increase in financial assurance and so cannot be reasonably expected to manage their lease operations in a manner to avoid excessive and redundant financial assurance requirements under this provision.

In addition, because the Proposed Rule provides no concrete limitation on the Commissioner's discretion, the rule, as drafted, may be abused by the current and future Commissioners seeking to gain leverage over lessees or compel them to undertake actions or accept financial or legal obligations they are not lawfully required to accept in unrelated matters. It is imperative that the rule provide clear and concrete limits on the Commissioner's discretion to prevent abuse of authority.

As to assessments related to "the environmental condition or compliance status of the lease premises or other state leases held by the lessee, or significant changes in compliance costs

factors," determinations under this provision should be based on final administrative or judicial findings and determinations, not mere allegations, perceptions or presumptions. The provision also should clearly state and define the thresholds which could trigger heightened financial assurance to ensure fair and equitable application and to alert lessees and operators of the standards they will be expected to meet.

In addition, and as with many of the provisions in this rule, whenever the Commissioner seeks to impose heightened financial assurance on a lessee, the Commissioner should be required to do so through a show cause order under 19.2.15 NMAC. The evidentiary burden should be on the Commissioner to justify the basis for an increase in the applicable financial assurance, the demonstration should be required to be on the record and before a hearing officer, and any final determination must be subject to the right of appeal.

h. The proposed 19.2.100.23.B(5) NMAC should include a requirement that the Commissioner must issue a show cause order under 19.2.15 NMAC whenever the Commissioner seeks to impose heightened financial assurance, and should provide additional time to update financial assurance depending on the number of leases at issue and risk factors.

This notice provision should be modified to require the Commissioner to impose heightened financial assurance only through a show cause order under 19.2.15 NMAC. The evidentiary burden should be on the Commissioner to justify the basis for an increase in the applicable financial assurance, the demonstration should be required to be on the record and before a hearing officer, and any final determination must be subject to the right of appeal.

As to the timeframe to update financial assurance, additional time beyond 90 days should be provided when heightened financial assurance is applicable to multiple leases. The provision should be modified to allow for a phased-in approach that takes into consideration the risk associated with each lease and the additional economic burdens on the lessee/operator to allow the highest-risk leases to be addressed first, but in a process and timeline that mitigates

substantial economic impacts to the lessee/operator. Express provision should also be made, and additional time granted, where the lessee/operator can demonstrate it is unable to obtain a surety due to market constraints or other factors that are not within the lessee/operator's control.

i. The proposed 19.2.100.23.B(6) NMAC is overly broad and open-ended and should be revised to be limited to requiring lessee/operator to provide an estimate of plugging and decommissioning costs on wells and facilities they operate.

As drafted, this provision is unreasonably open-ended and provides no guidance to either the Commissioner or lessee/operator on what additional reporting might be required or how the requirement relates to the heightened bonding imposed. In addition, the requirement to report on "Asset Retirement Obligations" is unreasonably burdensome. Asset Retirement Obligations are a reporting obligation under a separate set of federal regulations and requirements not overseen by the State Land Office and generally reported on in the aggregate and, therefore, cannot be easily broken down on a lease basis.[6] Moreover, the lessee may not have the information necessary to report on wells and facilities that it does not operate on the lease. The rule should be revised to provide that the Commissioner may require the lessee/operator to provide an estimate of the plugging and decommissioning costs only with respect to wells and facilities that it operates. Finally, because such information is sometimes maintained as trade secret information, the State Land Office needs to expressly allow for and implement a procedure to preserve the confidentiality of such information marked as trade secret from public disclosure, as required under state law.

[6] Oil and gas companies operating in New Mexico are subject to a layered federal regulatory framework for reporting asset retirement obligations, including the Financial Accounting Standards Board's (FASB) Accounting Standards Codification (ASC) 410-20; the Securities and Exchange Commission's (SEC) Regulation S-X and related staff guidance, which impose additional disclosure obligations on publicly traded companies; and the Federal Energy Regulatory Commission's (FERC) Order No. 631 and associated Uniform Systems of Accounts, which apply to jurisdictional pipelines and utilities.

3. 19.2.100.23.C Bulk Financial assurance requirements.

While NMOGA appreciates the Commissioner's effort to potentially mitigate the economic burden of the Proposed Rule by including the potential for bulk financial assurance under a single instrument, the proposed framework nevertheless imposes unreasonable economic burdens that are not justified within the context of the existing comprehensive financial assurance framework already in place that governs oil and gas operations on all state leases.

Many lessees hold more than 50 state leases and several hold more than 200 state leases. Under the Proposed Rule, lessees with more than 50 state oil and gas leases would be required to obtain financial assurance at a rate of $100,000 per lease with a cap of $40 million, excluding any leases subject to a heightened financial assurance requirement. Instead, NMOGA proposes a bulk financial assurance framework that includes more tiered levels at lower values with a cap of $14 million, as follows:

> Lessee or operator may submit a single instrument to cover multiple Covered Leases, according to the following schedule:
>
> (a) Between 10 and 19 Covered Leases: $104,000 per lease;
> (b) Between 20 and 49 Covered Leases: $88,000 per lease;
> (c) Between 50 and 99 Covered Leases: $72,000 per lease;
> (d) Between 100 and 249 Covered Leases: $56,000 per lease; or
> (e) 250 or more Covered Leases: $48,000 per lease; provided, however, that the total financial assurance required of any lessee or operator shall not exceed $14,000,000.

A more reasoned approach for bulk financial assurance, which more closely tracks risk, is to assess an additional $10,000 for each additional lease covered, plus $10,000 multiplied by the number of unplugged wells with a surface location on the lease, with a cap of $14 million. By way of example, if a lessee/operator had 10 leases with a total of 20 unplugged wells, the financial assurance required would be $440,000, assuming the first lease had a financial assurance requirement of $150,000.

In addition, the proposed provision gives the Commissioner unfettered discretion over whether to allow any given lessee/operator access to bulk financial assurance under a single instrument, without requiring the Commissioner provide a rationale or basis for denying an operator/lessee this option. The provision should specify the reasons lessees/operators can be denied the option of using bulk financial coverage. And if the Commissioner denies a request for bulk financial assurance, the Proposed Rule should require the Commissioner to provide written notice summarizing the reasons and bases for the denial with a statement that the lessee has the right to challenge the determination under 19.2.15 NMAC.

The provision also should provide and make clear that leases developed as part of a Communitization Agreement or unit, but that do not have a well, surface facilities, or other surface disturbances, should be excluded from the bulk financial assurance calculation.

a. The proposed 19.2.100.23.C(2) should be revised to strike the exclusion of leases subject to heightened financial assurance from coverage under the bulk financial assurance provision.

The Proposed Rule authorizes the Commissioner to impose heightened financial assurance for such a wide range of potential issues that there are effectively no constraints limiting what the Commissioner can require. Because the provision excludes leases that are subject to heightened financial assurance from coverage under bulk financial assurance, bulk financial assurance may not be an option for many lessees/operators. The Commissioner should revise the rule to ensure that bulk financial assurance is generally available to all lessees/operators, including leases subject to heightened financial assurance.

b. The proposed 19.2.100.23.C(4) should be revised to limit the financial assurance cap to $14 million, including leases subject to heightened financial assurance.

The Commissioner proposes setting a cap for financial assurance at $40 million. While NMOGA appreciates the Commissioner's recognition that a cap on financial assurance is

warranted, such a high value for cap is not justified within the context of the existing comprehensive financial assurance framework governing oil and gas operations under the Oil and Gas Act and the Oil and Gas Reclamation Fund. The cap should be limited to no more than $14 million, which takes into consideration the existing comprehensive financial assurance framework and the fact that the vast majority of wells plugged in the state are plugged by operators and lessees, not by agencies using financial assurance. *See, e.g.*, **Attachment 7** (stating that since 2020, the State Land Office "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.").

Setting the financial assurance cap at $40 million—a huge sum, especially when considered in conjunction with the OCC's pending financial assurance rule—will impose a substantial burden across all operator-lessees in New Mexico. For many smaller operators it will impose an existential crisis, causing many to withdraw from state lands or leave New Mexico entirely, but will also impose an unreasonable and unjustified economic burden on the largest, most-capitalized lessees in the state. While the largest, most-capitalized lessees may currently be in position to bear the economic burden of this redundant financial assurance requirement, it creates a massive disincentive to continuing to do business in New Mexico on state trust lands and unreasonably burdens the very lessees who are generally most compliant with state and federal oil and gas regulations and requirements. The largest, most-capitalized lessees have plugged the majority of the more than 840 wells referenced in the Commissioner's April 8, 2026 press release.

For the same reasons outlined above, the provision excluding leases that are subject to heightened financial assurance from the financial assurance cap means that any applicable cap may not apply to many leases due to the broad discretion the Commissioner has to impose

heightened financial assurance. The Commissioner should revise the rule to ensure that a cap limiting the amount of financial assurance a single lessee/operator is required to obtain is generally available to lessees/operators, including leases subject to heightened financial assurance.

4. 19.2.100.23.D Reporting and notification requirements.

As outlined in NMOGA's legal comments, the proposed reporting and notification requirements under this provision are legally invalid and not authorized under any statute. They should be struck in their entirety.

NMOGA supports the overall goal of ensuring sufficient financial assurance and visibility into potential remediation and reclamation liabilities; however, that objective can be achieved through streamlined, risk-based reporting requirements that avoid duplicating existing regulatory reporting, reduce administrative burdens, and better support the State Land Office's duty to administer trust lands.

As drafted, the proposed reporting requirements impose a substantial and unjustified administrative burden on lessees and operators and appear to be proposed as an expedient means to potentially cancel state oil and gas leases for failing to fully or properly comply with this onerous and burdensome reporting requirement. Much of the information requested is already readily available through the State Land Office's sister agency, the OCD. The State Land Office and OCD should coordinate to provide the State Land Office access to view the OCD's online database and files, which contain much of the requested information. It is not reasonable or fair to require lessees to separately report many of the specific details outlined in the Proposed Rule, when the State Land Office can coordinate with the OCD to obtain that information directly—without having to wait for annual reports, and without imposing duplicative reporting on the

lessee/operator. An example is the Proposed Rule's requirement to "list any hydrocarbon or produced water releases on lease premises, whether or not reported to the oil conservation division[.]" This provision would require lessees to report to a single drop of hydrocarbons or produced water and, if it inadvertently fails to do so, risk lease cancellation. Instead, the language should provide that copies of OCD release reports for reportable liquid releases also should be provided to the State Land Office. Moreover, much of the information requested—including information maintained by OCD—is generally publicly available and can be and already is being accessed by State Land Office personnel directly. It is unreasonable to require lessees to aggregate this information across their state lease portfolio and re-report it.

NMOGA members have undertaken an evaluation of the expected time and costs to implement the reporting aspect of the Proposed Rule. The Proposed Rule includes requirements that relate to and implicate responsibilities that span at least seven different subject-matter disciplines, including land management, production operations, facilities, environmental, legal, regulatory, and production reporting. A summary of the anticipated tasks that will be required to be performed in different departments for each lease for each subject-matter specialist associated with just the reporting provision of this Proposed Rule is outlined below:

- **Land**
  - D(1)(a)
    - Work with Production Operations to verify wells/inactive wells coming on and off list
    - Verify status of state land lease
  - D(2)
    - Verify whether entity owns record title to state lease and research parties who operate on the state lease
    - Prepare report

        - When changes in ownership or operatorship occur, ensure transfers of such interests are incorporated into report for every lease and well impacted by such transfer

- **Production Operations**
    - D(1)(a)
        - Verify inventory data on active and inactive wells
    - D(1)(b)
        - (Production operational equipment) Inventory and verify infrastructure and then update any changes which occur frequently to that infrastructure
- **Facilities**
    - D(1)(b)
        - (Facility equipment) Inventory and verify infrastructure and then update any changes which occur frequently to that infrastructure
- **Environmental**
    - D(1)(c)
        - For reportable spills, inventory and associate what lease information is associated and needs to be inventoried
        - For spills not required to be reported to OCD, create new internal process for identifying and remediating, then develop work plans to remediate these spills, submit work plans to ECO for approval, then initiate work plan
- **Legal**
    - D(1)(e)
        - Research and prepare inventory of any criminal or civil actions or judgments from any government agency to report
        - Summarize actions and information for report
    - D(1)(f)
        - Research and prepare inventory of civil litigation initiated by any third party concerning or arising out of oil and gas operations on state acreage
    - D(2)
        - When changes in ownership or operatorship occur, ensure transfers of such interest are incorporated into report for every lease and well impacted by such transfer
- **Regulatory**
    - D(1)(d)

        - Develop process to connect with remediation and decommissioning groups to associate costs of plugging and remediating with wells plugged during the year, and implement
    - D(1)(e)
        - Keep a running list of any NOVs received for any properties on state leases
- **Production Reporting**
    - D(1)(a) compliance
        - Pull internal data on every well with state production from OCD website and double report it to the SLO
        - Pull and associate the following information from public databases for each lease: operator, API, lease#, well name, and unit/communization agreement information

To conduct these tasks for all seven disciplines on a per lease basis NMOGA members estimate the time required to be at least five hours per lease per year.

In addition, to aggregate all information and reporting required, NMOGA members anticipate having to create at least one new full-time equivalent position to manage these tasks and the reporting and notice required. An equivalent land analyst position in the industry currently costs approximately $240,000, which includes salary and benefits. Allocating time and salary/benefits across for the foregoing tasks, taking into consideration this reporting provision alone, comes to nearly $1,500 cost in time and effort per lease, per year. For lessees with 200 leases that will be an additional $300,000 in costs per year incurred because of this rule.

Moreover, in many instances lessees are not the operators of wells and facilities on the lease, so requiring lessees to report on other operators' wells and facilities is not reasonable. Third-party operators have no obligation to provide lessees with the information requested. As Section 19-10-26 provides, the Commissioner should allow non-lessee operators to bond directly with the State Land Office and, to the extent any reporting or notifications are authorized under law, such non-lessee operators, not lessees, should report on operations and matters covered

under their subject bonds. The Commissioner's stated goal of gathering information and reporting on operations and activities on the lease could be achieved by simply allowing the party with the information to have the ability to bond and report directly.

The reporting requirements are so broad and ill-defined that much of the information requested and required to be reported—under penalty of perjury and under threat of lease cancellation for errors and omissions—will have little to no bearing on the Commissioner's role overseeing the care, management and disposition of state trust land. For example, the requirement to report and track "other fixed infrastructure on the lease acreage that is related to oil and gas lease operations," will have far-reaching and unintended consequences and will be exceedingly difficult for lessees to track and report—especially for non-lessee operations. Oil and gas infrastructure frequently changes and involves personnel who manage and oversee environmental and air permitting issues that currently have little to no engagement with State Land Office oversight. Given the burdens inherent in gathering, tracking, and reporting this information, it is unclear what benefit, identified harm, or policy goal the reporting requirement will serve that outweighs the substantial impact to lessees.

Similarly, the demand to aggregate and report on "any civil litigation not initiated by a governmental entity concerning or arising out of" operations on a state oil and gas lease will require lessees to pull and report on issues that have no bearing on the Commissioner's role overseeing the care, management, and disposition of state trust land. For example, lessees will be required to report on all civil litigation involving disputed claims over personal injury, quiet title, breach of contract, joint operating agreements, fee royalty or production payments unrelated to state royalty payments, among other civil litigation matters that have no connection to the rights,

obligations, or concerns of the Commissioner making the scope of this reporting requirement overly broad, unduly burdensome, and unnecessary.

As with the proposed bonding requirement overall, and the proposed $40 million cap, the reporting provision will impose a massive and unreasonable burden on all lessees in the state, but especially the largest and most-capitalized lessees who have the largest number of state leases and, consequently, the most reporting requirements to meet. Numerous lessees have upwards of 200 state oil and gas leases, and several have more than 500 leases. Rather than narrowly targeting the leases and lessees that have perhaps demonstrated past compliance issues or have raised concerns over lease management issues, this Proposed Rule, as drafted, uses a shotgun approach to hit all leases and lessees across the state without any consideration of the condition of the lease or past compliance of the lessee. That is unreasonable and not justified based on any facts or evidence presented by the Commissioner in support of this rule—especially where the Commissioner has not established a clear nexus between each proposed reporting requirement—and its ill-defined scope—and the Commissioner's statutory duties.

Equally concerning, where the State Land Office identifies any errors or omissions—even immaterial, inadvertent, unintentional mistakes—and a lessee fails to cure within 30 days—no matter the relevance, magnitude, or scope of the error or omission—the Proposed Rule purports to give the Commissioner authority to cancel the subject lease without requirement to first provide an evidentiary basis for doing so through a show cause order or other administrative process. At a minimum, where the Commissioner seeks to cancel any oil and gas lease for a reporting error or omission—which the Commissioner is clearly without authority to do, as referenced in its legal comments and discussed below—the Commissioner should be required to first establish a basis for doing so through a show cause order under 19.2.15 NMAC that

establishes some nexus between the error and/or omission, the lease terms, and impacts or injury to the state trust.

The proposed provision also provides no process for reporting. Is the requested information—which will be voluminous—to be submitted by email? To whom? Is it to be uploaded through a share file? It is not clear how the mechanics of the reporting are to be carried out or whether there is a process that will be in place if/when the rule is adopted and becomes effective. Similarly, given the breadth and depth of information required under the reporting provision, it is not clear how the State Land Office is going to manage the influx of information. With its limited personnel in place, how is the State Land Office going to staff review of the submitted materials? What process will be in place to protect trade secret information from public disclosure? With no process in place and no clear pathway to implement the reporting and notice provisions of the Proposed Rule, moving forward with this rulemaking is premature and ill-advised at this time.

Rather than require annual reporting, which would impose an unreasonable burden on lessees, the rule should be modified to provide for an initial report on the status of each lease on or before April 30 one year following the effective date of the rule, and by April 30 <u>every five years thereafter</u>.

In place of the burdensome and often duplicative reporting required in the Proposed Rule, reporting should be limited to the following:

(a) Well inventories on the lease as of December 31 of the previous year and the status of each well as of the reporting date

(b) Fixed infrastructure inventory related to oil and gas operations on the lease

(c) Known unresolved remediation projects and known reportable unresolved liquid releases

(d) Known unresolved inspection reports with outstanding correction actions, by reference to location (latitude/longitude).

But even with streamlined reporting, the reporting burden imposed on lessees with more than 50 leases will be substantial. Accordingly, NMOGA requests the Commissioner consider including a provision that for lessees with 50 or more leases, the lessee and Commissioner may reach agreement on a separate reporting schedule in lieu of the deadlines provided in the rule. Having a rolling or phased reporting schedule would ease the burden over the entire calendar year rather than all at once.

Finally, the proposed reporting and notification requirements—including requirements relating to reporting errors and omissions—are not "matters and things affecting the premises and operations" of oil and gas leases and, therefore, do not meet the statutory lease form test allowing these proposed requirements to be incorporated into oil and gas lease provisions.

a. The proposed 19.2.100.23.D(2) is vague and ambiguous and should be modified to provide clarity and regulatory certainty.

NMOGA appreciates the Commissioner's recognition that because operators are not obligated to provide lessees with information regarding their operations, facilities, or other matters, lessees should be required to provide only information on their operations "to the extent known"; however, this provision's requirement to perform "reasonable due diligence and inquiry of operator(s) on the lease," is vague and ambiguous. It is not clear what "reasonable due diligence" is or what it would require of a lessee. It therefore gives the lessee no objective standard against which to measure its "reasonableness." At most, and to provide the requisite standard, the provision should require lessees to submit requests to operators for the information required to be reported. As outlined above, the Commissioner should instead allow operators to bond directly with the State Land Office, as Section 19-10-26 provides, and, to the extent any

reporting or notifications are authorized under law, operators, not lessees, should report on operations and matters covered under their subject bonds.

b. The proposed 19.2.100.23.D(3) should be modified to state that the Commissioner shall prescribe a form and submission format for reporting.

To minimize potential conflict over the content of lessee reports and confusion over information reported, this provision should require the Commissioner to prescribe a form and submission format for lease reporting.

To the extent certifications are required as part of any report, the certification should be:

> I hereby certify that the information contained herein is true and complete to the best of my knowledge and belief.

As outlined in NMOGA's legal comments, the Commissioner has no authority to impose criminal liability for perjury where the Legislature has not created criminal liability itself.

c. The proposed 19.2.100.23.D(4) should be modified to provide additional time to amend and resubmit annual reports and a process and timeline to challenge an adverse determination.

Under this proposed provision, in the event of an error or omission, lessees are given 30 days from notification to amend and resubmit the report. The timeframe should be extended to provide up to 180 days to amend and resubmit reports. A 30-day window may not provide adequate time to identify, evaluate, and amend an error. Moreover, it is possible that multiple reports might have an error or omission and it may take the lessee substantial time to address each report for each lease.

This provision should be modified to provide that a determination that a report contains an error or omission requiring amendment may be challenged under 19.2.15 and the process and timelines to challenge it.

d. Commissioner's proposed 19.2.100.23.D(5) should be modified to provide 60 days to notify the state land office of any change of name or address for a surety or financial institution.

Under this proposed provision, lessees would have only 30 days to notify the state land office of "any change of name or change of address of a surety or financial institution" or when the 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." A more reasonable timeframe, to accommodate the necessary back-and-forth between surety and financial institutions and the State Land Office, is 60 days, particularly if more than one lease is involved. In addition, the language should be modified to make clear that the deadline to notify the state land office is calculated from the date the lessee actually receives notice of a name change or address change or notification of any change to or non-renewal of the financial assurance. If a lessee has numerous state leases with different sureties or financial institutions for different leases, additional time is justified to notify the State Land Office.

5. <u>19.2.100.23.E Periodic adjustment and review of financial assurance levels.</u>

a. The proposed 19.2.100.23.E(1) should provide that the financial assurance may be adjusted up or down based on the preceding year's change in CPI and the effective date should be adjusted to provide time to incorporate the changes into the existing financial assurance instruments.

As drafted, the Proposed Rule potentially provides a one-way ratchet up for lease bonding requirements based on CPI adjustments. But where the regulation provides that the CPI may be adjusted upward as economic conditions indicate, the regulation also should provide for downward adjustment in the event the opposite is true. The rule should therefore expressly provide that financial assurance may be adjusted up or down based on the CPI index.

The proposed provision provides that the effective date for the adjustment is "January 1 of the sixth year (the first day following each five-year review cycle)"; however, the Bureau of

Labor Statistics releases its annual summary around the middle of January, making compliance with that effective date difficult, if not impossible. *See* https://www.bls.gov/schedule/2026/home.htm. The effective date should be April 1 of the sixth year (the first day of the fourth month following each five-year review cycle) to provide time for lessees to obtain the updated CPI adjustment and coordinate changes with its sureties and financial institutions. As drafted, the rule is not workable.

b. The proposed 19.2.100.23.E(2) should be limited to certain timeframes and specific factors, with specific triggers authorizing adjustments to the financial assurance requirements for each lease, and provide that the Commissioner's determinations to adjust upwards the financial assurance should be implemented only after a show cause order under 19.2.15 NMAC.

As drafted, this proposed provision—as with the previous proposed financial assurance provisions—purports to grant the Commissioner nearly unlimited discretion to adjust lessee financial assurance at any time or frequency without constraint, and to apply any factor to make that determination without limit. Granting this level of discretion is unreasonable and unjustified. For example, under the proposed provision nothing prevents the Commissioner from evaluating and adjusting a lessee's financial assurance upwards by 5%, or more, every six months for as long as the lessee fails to plug a certain number of lease wells or to completely remediate legacy releases on the lease to the Commissioner's satisfaction. To protect due process, any adjustment of financial assurance by the Commissioner for any lease should be permitted only after hearing on a show cause order before a hearing officer under 19.2.15 NMAC. The evidentiary burden should be on the Commissioner to justify the basis for an increase in the applicable financial assurance, the demonstration should be required to be on the record and before a hearing officer, and any final determination must be subject to the right of appeal.

As to the specific factors considered, it is unclear how those might be limited, what might be included, how those might be assessed and incorporated into a determination, and what opportunity lessees and operators will have to correct any misinformation. As drafted, this provision is too broad and provides no guidance on how the listed factors can be considered, what might trigger application of heightened financial assurance, or how they relate to the concerns sought to be addressed in the rule. The factors considered should be defined and concrete—not open-ended and vague—and limited to known factors that increase the risk wells and sites may be abandoned. As to assessments related to "the environmental condition or compliance status of the lease premises or other state leases held by the lessee, or significant changes in compliance costs factors," determinations under this provision should be based on final administrative or judicial findings and determinations, not mere allegations, perceptions, or presumptions. The provision also should clearly state the thresholds that could trigger heightened financial assurance to ensure fair and equitable application and to alert lessees and operators of the standards they will be expected to meet.

As written, the Commissioner is unconstrained by what considerations may be incorporated into a determination to adjust financial assurance requirements—*e.g.*, issues or factors unrelated to the lease itself may be considered—or what level of financial assurance may be required for any given lease.

c. The proposed 19.2.100.23.E(3) conflicts with statute.

As outlined in NMOGA's attached legal comments, this provision conflicts with the express statutory provisions governing the comprehensive framework for oil and gas financial assurance requirements and the mechanisms for allocating funds and expenditures authorized by statute.

6. <u>19.2.100.23.F Forms of financial assurance.</u>

a. The proposed 19.2.100.23.F(1) must provide that where there is a conflict between the Commissioner's proposed form of surety and the controlling state oil and gas lease, the state oil and gas lease must control.

The Proposed Rule provides that a surety bond is required to be written on a form prescribed or approved by the Commissioner. The Commissioner has not provided any information in advance of the hearing explaining what diligence, if any, was done to ensure that the Commissioner's form adheres to surety industry custom and practice. It is thus conceivable that the Commissioner could prescribe a form unacceptable to surety bond providers, thus rendering lessee compliance impossible.

This provision should also expressly provide that where there is a conflict between the surety bond or other financial assurance instrument and the governing oil and gas lease, the obligations and covenants contained in the oil and gas lease control. Most, but not all, state oil and gas leases include provisions authorizing financial assurance. The oil and gas leases that do include provisions authorizing financial assurance limit the Commissioner's authority to requiring bonding only in circumstances where the surface estate has been severed through a purchase agreement prior to issuance of an oil and gas lease, only for the use and benefit of the purchaser, and only "to secure the payment for such damage to the livestock range, water, crops or tangible improvements." *See, e.g.*, NMSA 1978, § 19-10.4.1 at ¶ 9, -4.2 at ¶ 9, -4.3 ¶ 10; *see also* Section 19-10-26. Where existing leases do not include a provision authorizing financial assurance, the Commissioner has no authority to unilaterally amend the lease contract to impose it.

For the reasons outlined in the attached legal comments, the Proposed Rule must provide that where there is a conflict between the surety bond or other financial assurance instrument and the express provisions of the oil and gas lease itself, the oil and gas lease must control.

b. The proposed 19.2.100.23.F(3) should expressly include parent-company guarantees.

If this provision is going to be adopted, it should expressly include as an authorized form of financial assurance under a separate provision an option for a parent-company guaranty with an investment-grade rating or better.

c. The proposed 19.2.100.23.F(3) should expressly include third-party guarantees, escrow accounts, and dual-obligee bonds.

NMOGA appreciates the Commissioner's incorporation of this provision which provides an opportunity for approval of alternative forms of financial assurance. NMOGA recommends expressly including the following examples as the types of alternative financial assurance that would be considered and accepted by the Commissioner: (1) third-party guarantees; (2) escrow accounts; and (3) dual-obligee bonds. As modified, this provision would provide: "other alternative forms of financial assurance, including but not limited to, third-party guarantees, escrow accounts, and dual-obligee bonds, which may be considered on a case-by-case basis."

d. The proposed 19.2.100.23.F(3) should include a general provision confirming that all surety bonds and financial assurance instruments, including alternative forms of financial assurance, are subject to waiver by the purchaser of the surface estate.

As previously noted, the Commissioner's authority to impose any bonding or financial assurance requirements on oil and gas leases is limited by the language of the governing oil and gas lease and Section 19-10-26. Both the statutory form of lease and Section 19-10-26 authorize the purchaser of the surface estate overlying a state oil and gas lease to waive the requirement for a bond, surety, or financial assurance. Accordingly, the Proposed Rule should expressly recognize this right of waiver and incorporate it in the Proposed Rule.

7. 19.2.100.23.G Waivers.

As outlined in NMOGA's attached legal comments, this provision conflicts with the express statutory provisions governing the comprehensive framework for oil and gas financial assurance requirements authorized by statute. The Commissioner has no authority under existing state oil and gas leases or statutes to authorize waiver of any legally valid bond requirement. As drafted, the existing statutory lease form authorizes bonding only in the event the subject lease is going to be drilled on (and where the surface estate has been severed through a purchase agreement prior to issuance of an oil and gas lease). *See, e.g.*, NMSA 1978, § 19-10.4.1 at ¶ 9, -4.2 at ¶ 9, -4.3 ¶ 10; *see also* Section 19-10-26.

If there will be no surface operations on a state oil and gas lease, then there is no basis under the express terms of the lease itself, or statute, for the Commissioner to impose a bond on that lease and, correspondingly, a waiver does not come into play.

8. 19.2.100.23.H "Riders" limited.

[No comments]

9. 19.2.100.23.I Claims on financial assurance.

As outlined in NMOGA's attached legal comments, this proposed provision conflicts with the express statutory provisions governing the comprehensive framework for oil and gas financial assurance requirements and the mechanisms for allocating funds and expenditures authorized by statute. It should be stricken from the Proposed Rule.

Most, but not all, state oil and gas leases include provisions authorizing financial assurance. The oil and gas leases that do include provisions authorizing financial assurance limit the authority to requiring bonding only in circumstances where the surface estate has been severed through a purchase agreement prior to issuance of an oil and gas lease, only for the use

and benefit of the purchaser, and only "to secure the payment for such damage to the livestock range, water, crops or tangible improvements." *See, e.g.*, NMSA 1978, § 19-10.4.1 at ¶ 9, -4.2 at ¶ 9, -4.3 ¶ 10; *see also* Section 19-10-26.

Accordingly, claims on any legislatively authorized financial assurance under this framework should be initiated by the surface purchaser, not the Commissioner. Authorized bonds are for the benefit of the surface purchasers for payment of damage to the livestock range, water, crops or tangible improvements. The claims are the surface purchaser's to make, therefore, not the Commissioner's.

However, since passage of Section 19-10-26, the Legislature also enacted the New Mexico Surface Owners Protection Act, NMSA 1978, Section 70-12-1 through -10 ("SOPA"), which applies to "oil and gas operations affecting surface owners' land associated with exploration, drilling or production of oil and gas, through final reclamation of the affected surface." *See* § 70-12-2; *see also* § 70-12-3(A). It requires an oil and gas operator to compensate the surface owner for damages caused by oil and gas operations. It also applies to surface purchasers under Section 19-10-26.

As provided for in NMOGA's redlined proposed revisions to the current rule 19.2.100.23 NMAC, attached as Exhibit A, NMOGA proposes to avoid double recovery (and inconsistent standard) issues by tying the current rule to the provisions of SOPA. NMOGA proposes to make the bond or other surety required under 19.2.100.23 NMAC available for the benefit of the surface purchaser "only in the event that, pursuant to a judgment, all of the bond, letter of credit, cash or certificate of deposit required by NMSA 1978, Section 70-12-6 has been exhausted first to pay the [surface purchaser] as provided in the Surface Owner Protection Act." *See* Exhibit A, proposed 19.2.100.23.D NMAC.

Thus, after making a preliminary determination that a surface purchaser is able to make out a valid claim covered within the authorized bonding framework, *i.e.*, for damage to the livestock range, water, crops or tangible improvements, and after alleging all of the SOPA bond has been exhausted first, the Commissioner can then issue an order to show cause under Rule 19.2.15 NMAC for why the lessee's State Land Office bond should not be claimed to cover remaining damages protected under Section 19-10-26. The evidentiary burden should be on the Commissioner to justify the basis for an increase in the applicable financial assurance, the demonstration should be required to be on the record and before a hearing officer, and any final determination must be subject to the right of appeal. A lessee's bond should not be claimed unless and until there is final order following an administrative hearing under 19.2.15 NMAC.

a. The proposed 19.2.100.23.I(1) should require notice to the lessee and <u>any</u> operator operating on the lease premises.

As drafted, the Proposed Rule only requires written notice to the lessee of a claim made against a financial assurance instrument, and not any operators on the lease. The Proposed Rule should be modified to provide for written notice to all oil and gas operators on the lease in addition to the lessee of record.

Because Section 19-10-26 provides that operators, in addition to lessees, may provide bonds, this provision should be modified to provide that the Commissioner is required to provide written notice to <u>any guarantor</u> of a State Land Office bond on the lease in addition to all oil and gas operators.

Only leases that have express bonding requirements may be subject to lease cancellation for failure to provide a bond and only if the surface purchaser did not waive the bond requirement and only after all threshold legal requirements have been satisfied necessary to cancel a lease. To the extent the Commissioner proposes to cancel a lease for lack of a bond due

to having made a successful claim on an existing bond, the Proposed Rule should require the Commissioner to specify what is required to cure the alleged default and identify with specificity the steps the lessee/operator must take in the written notice and provide for extensions up to 90 days to perfect the requirements to cure the alleged default and/or identify and obtain a replacement bond or other financial surety.

a. The proposed 19.2.100.23.I(5) should specify what is meant by a lease that lacks adequate financial assurance.

It is unclear under this provision what is meant by a lease that that "lacks adequate financial assurance." The proposed provision provides no criteria, factors or other basis for regulated entities to understand what is being required by this rule or what constitutes "inadequate" financial assurance, other than the Commissioner's unlimited discretion. This broad, vague, and ill-defined provision creates regulatory uncertainty over what is required and how this provision will be enforced and applied.

While NMOGA appreciates the Commissioner's willingness to recognize the need to allow an operator of a well subject to a communitization agreement to post a bond or financial assurance in lieu of a lessee in certain circumstances, it is unreasonable to give the Commissioner discretion over whether to accept such financial assurance when Section 19-10-26 expressly authorizes that operators are authorized to submit bonds and financial assurance to the Commissioner. As drafted, the "discretion" provided to the Commissioner to allow non-lessee operators to submit a bond could be used to unfairly reward or punish non-lessee operators based on unrelated issues or factors. This could result in substantial prejudice to non-lessee operators who have invested millions of dollars to develop state oil and gas leases that are part of a communitization agreement that is subject to lease cancellation due to a lack of an "adequate" or "sufficient" bond, but are refused the opportunity to submit a bond themselves to keep the

communitization agreement, contributing leases, and their substantial investment alive. This is unreasonable and conflicts with the express provision of Section 19-10-26. This provision should be revised to provide that the Commissioner "shall" accept financial assurance posted by an operator of a well subject to a communitization agreement in lieu of a lessee. In so doing, the operator should be permitted to limit its guarantee to only those operations supporting and subject to the specified communitization agreement and it should not be extended to cover the entire lease where that operator has no interest.

Moreover, the Commissioner's recognition that it is appropriate to authorize bonding by non-lessee operators in this instance highlights the Commissioner's incongruous position on refusing to allow non-lessee operators to submit bonds generally, as Section 19-10-26 authorizes and discussed above in these comments. If the purpose of the Proposed Rule is to ensure sufficient bonding, then allowing non-lessee operators to separately submit bonds for their operations and facilities would further support the Commissioner's stated purpose and policy goals. The Commissioner can easily accept a bond that is specific to the non-lessee's operations, wells, and facilities and separately hold such non-lessee operators accountable to perform under their separate bonds. Doing so will resolve many of the conflicts and inequities that come about under the Proposed Rule.

In addition, non-lessee operators remain responsible and accountable for their separate operations, wells, and facilities under OCC/OCD jurisdiction and the comprehensive bonding framework already in place under the Oil and Gas Act. Allowing non-lessee operators to separately bond their own operations, wells, and facilities under the State Land Office rule does nothing to limit or conflict with the provisions of Section 19-10-13. The Legislature clearly considered this issue when it adopted both Sections 19-10-13 and 19-10-26 by providing that

either the lessee or an operator, authorized to develop the lease under 19-10-13, can provide a bond for a state lease.

10. 19.2.100.23.J Notifications.

[No comments]

11. 19.2.100.23.K Release of financial assurance.

As drafted the two bases for authorizing release of financial assurance are too restrictive and arbitrary. The proposed provision authorizes the release of financial assurance only if one of two events are satisfied—either (1) the lessee submits a substitute form of financial assurance approved by the Commissioner or the lessee no longer holds any state oil and gas lease or (2) there are no compliance or performance issues with respect to lessee's other state and oil gas leases.

That means if a lessee is assigning record title of one state oil and gas lease—and obtains Commissioner approval to assign the lease to another—but remains lessee of one or numerous other state oil and gas leases, the assignor-lessee, even after fully assigning the state oil and gas lease, must nevertheless continue to maintain financial assurance with the Commissioner covering the assigned lease. Besides making no sense, this is contrary to the express provisions of Section 19-10-13, which provides that "Upon approval by the commissioner of an assignment the assignor shall stand relieved from all obligations to the state with respect to the lands embraced in the assignment and the state shall likewise be relieved from all obligations to the assignor as to such tract or tracts, and thereupon the assignee shall succeed to all of the rights and privileges of the assignor with respect to such tracts and shall be held to have assumed all of the duties and obligations of the assignor to the state as to such tracts." The Commissioner has no basis to require a former lessee to maintain a bond, surety, or other financial assurance in place after completely and fully assigning the lease to another with the Commissioner's approval.

This provision should be modified to authorize the release of financial assurance if the lessee (or operator) 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.

The provision also should be modified to require the Commissioner to specify and document in writing each remaining outstanding issue, and all supporting facts, if the Commissioner declines to release a bond or financial assurance due to outstanding compliance or performance issues related to a lease so the lessee (or operator) can address and correct, without having to guess, any outstanding issues or challenge the determination under 19.2.15 NMAC.

12. 19.2.100.23.L Phase-in schedule.

As drafted, the Proposed Rule is applicable immediately to all new oil and gas leases and existing leases "for which no financial assurance acceptable to the commissioner has been filed (but which is required to be filed)[.]" Under this provision, the Commissioner seeks to impose this Proposed Rule, and all its new obligations and liabilities, retroactively to all prior-existing leases, which is not supported under the law. The Proposed Rule should be revised to apply only to new oil and gas leases issued after the effective date of the rule.

Also problematic is the uncertainty around what financial assurance may be "acceptable" to the Commissioner. As with many aspects of the Rule granting the Commissioner discretion, the rule provides no guidance for how that discretion can be employed, as drafted. As a result, it is unclear what is meant by financial assurance that is "acceptable" to the Commissioner. Under a proposed rule, there should be clear guidance so regulated entities can know in advance what is required of them to meet the standards being imposed. The proposed provision provides no criteria, factors, or other bases for regulated entities to understand what is being required by this rule or what constitutes "acceptable" financial assurance, other than the Commissioner's unlimited discretion, which can be applied and subsequently adjusted (without limit) after the

fact. This broad, vague, and ill-defined provision creates regulatory uncertainty over what is required and how the Proposed Rule, including the phase-in provision, will be enforced and applied.

In addition, the proposed phase-in provision should include a process requiring the Commissioner to identify existing leases with "acceptable" financial assurance and leases that do not have "acceptable" financial assurance. It should further require the Commissioner to provide written notification of its determination as to each lease that is deemed to have "acceptable" financial assurance. For leases that do not have "acceptable" financial assurance, the Commissioner should be required to file a show cause order under 19.2.15 NMAC for each lease the Commissioner believes requires additional financial assurance, setting out what level of financial assurance would be "acceptable" and the basis for it. The evidentiary burden should be on the Commissioner to justify why the existing financial assurance is not "acceptable," justification for the higher level, the demonstration should be required to be on the record and before a hearing officer, and any final determination must be subject to a right of appeal.

In the alternative, in the event the Commissioner rejects NMOGA's foregoing comments and concerns, and to minimize severe and unjustified adverse economic impacts on lessees and operators, the Proposed Rule's phase-in schedule should be modified to allow lessees with the greatest number of leases additional time to phase-in the proposed new bonding and reporting requirements. As drafted, the proposed phase-in schedule has the process and the burdens perfectly inverted, which makes no sense. It requires lessees holding 50 or more leases to bring their leases into "compliance" with the rule by December 1, 2026—within about six months of the rule becoming effective, according to the State Land Office's proposed schedule. In contrast, the rule provides "all other lessees" until May 1, 2027, to bring their leases into "compliance."

The timing for the proposed phase-in should be flipped so lessees with the greatest number of leases have at least one year from the effective date of the rule to obtain additional financial assurance and otherwise bring their leases into "compliance," and lessees with fewer leases less time.

In addition, it is not clear what "compliance" means in this context. By way of example, but not limitation, is "compliance" limited to having "adequate" or "acceptable" bonding or financial assurance in place? Does it extend to include other lease compliance issues more generally? The Proposed Rule should define and limit what "compliance" means in this context so the regulated entities can anticipate and understand what is required to comply with the rule.

As an alternative to the Proposed Rule language for this provision, NMOGA proposes that lessees with a single state oil and gas lease be given 90 days to bring their leases into compliance with the financial assurance and reporting and notification requirements of the rule. For a lessee or operator whose leases are covered under the bulk financial assurance provision under the Proposed Rule, lessees should have one year from the effective date to bring their leases into "compliance."

As to leases where a final administrative order issued under 19.2.15 NMAC establishing "heightened financial assurance," the phase-in should provide lessees/operators 90 days to obtain the required financial assurance, similar to the timeframe proposed under 19.2.100.23.B(5) NMAC, <u>after</u> receipt of notice from the Commissioner. As NMOGA proposed with respect to 19.2.100.23.B(5), NMOGA proposes this provision also includes an extension of up to an additional 90 days when there are multiple leases with heightened financial assurance.

Respectfully submitted,



Andrea Felix
Vice President of Regulatory Affairs
NEW MEXICO OIL AND GAS ASSOCIATION

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ATTACHMENT

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ATTACHMENT 1

Andrea Felix

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Vice President Regulatory Affairs with 20+ years of NM experience in oil and gas development navigating the regulatory, political, and tribal climate. Extensive background in planning, managing, and directing efforts relative to environmental permitting, compliance, policies, and programs by interpreting and applying local, state, tribal and federal regulatory statutes regarding principles and practices. Team player with excellent communication skills, high quality of work, driven and highly self-motivated. Strong negotiating skills and business acumen and able to work independently.

As a native New Mexican, it is important to me to see our industry continue to thrive in NM, with balancing environmental stewardship and stakeholder engagement to ensure transparency. I am motivated to do what it takes by investing my time and expertise to ensure my children and grandchildren come to know what a vast wealth of resources we have in our state and how we can see them developed the right way for all.

Experience

MARCH 2024- PRESENT

Vice President of Regulatory Affairs| New Mexico Oil and Gas Association (NMOGA) |Santa Fe, NM

Monitor and interpret regulatory changes: Stay abreast of new and evolving state and federal regulations, advising membership on potential risks, opportunities, and compliance strategies. Develop and implement regulatory strategies: Formulate comprehensive regulatory strategies aligned with the association's goals and members' interests. Lead advocacy efforts: Represent the association's interests before regulatory agencies and government bodies, participating in policy discussions, developing positions, and potentially providing testimony or comments on proposed rules. Build and maintain relationships: Foster strong relationships with regulatory agencies, policymakers, industry stakeholders, and member companies. Provide regulatory guidance and support: Offer expertise and guidance on regulatory matters to the NMOGA team and member companies. Coordinate cross-functional initiatives: Collaborate with other departments, such as government affairs, legal, community engagement, and communications, to ensure alignment on regulatory priorities and advocacy messaging. Collaboration: Participate in joint trade regulatory collaboration and foster a positive alignment on matters within NM and at the federal level. Regulatory rulemaking matters: Lead and oversee the association's active party status in NM rulemaking matters by securing member consensus on participating in rulemaking matters, securing outside legal representation, and coordinating to ensure alignment on witnesses, testimony, and the association’s rulemaking strategy. Coordinate NMOGA Joint Committee Meetings: Collaborate with state agency leaders, NMOGA committee chairs, and other departments within NMOGA to provide a quarterly meeting allowing information sharing between industry and state agency leaders.

JANUARY 2020-MARCH 2024

Director of Regulatory Affairs | EOG Resources, Inc. | Oklahoma City, OK

Developed and implemented the organization’s environmental compliance programs at a local, state, tribal and federal level both on and offshore. Managed and coordinated activities within the Company and with outside consultants to achieve all regulatory, siting, and environmental requirements and approvals needed to achieve project completion. Built and maintained relationships with state, federal and tribal regulatory agencies, partners,

contractors, consultants, and other stakeholders. Interpreted federal, state, local and tribal regulations and guided development programs and internal disciplines to ensure compliance with each. Draft and manage environmental assessments as well as regulatory reports and correspondence. Represented the company in matters involving federal, state, local and tribal agencies to manage environmental permitting, regulatory and compliance issues on behalf of the company. Manage staff by recruiting, training, and coaching employees, communicating job expectations and company goals. Managed tribal and community stakeholder outreach for both on and offshore development programs. Interfaced with regulatory agencies for permitting, compliance, enforcement actions and rulemaking. Managed all surface land related approvals and activities both off and onshore for execution of development programs.

MARCH 2018- JANUARY 2020

Regulatory Manager | Enduring Resources, Inc. | Farmington, NM

Developed and implemented the organization's environmental compliance programs at a local, state, tribal and federal. Managed and coordinated activities within the Company and with outside consultants to achieve all regulatory, siting, and environmental requirements and approvals needed to achieve project completion. Built and maintained relationships with state, federal and tribal regulatory agencies, partners, contractors, consultants, and other stakeholders. Interpreted federal, state, local and tribal regulations and guided development programs and internal disciplines to ensure compliance with each. Draft and manage environmental assessments as well as regulatory reports and correspondence. Represented the company in matters involving federal, state, local and tribal agencies to manage environmental permitting, regulatory and compliance issues on behalf of the company. Manage staff by recruiting, training, and coaching employees, communicating job expectations and company goals. Managed tribal and community stakeholder outreach for development programs. Interfaced with regulatory agencies for permitting, compliance, enforcement actions and rulemaking. Managed all surface land related approvals and activities for execution of development programs. Managed and executed the basins agency and stakeholder relations programs serving as the technical subject expert and primary contact. Managed all trade organizations and grass roots programs, public relations programs and served as the media point of contact.

SEPTEMBER 2013- MARCH 2018

Regulatory Manager | WPX Energy, Inc. | Aztec, NM

Developed and implemented the organization's environmental compliance programs at a local, state, tribal and federal. Managed and coordinated activities within the Company and with outside consultants to achieve all regulatory, siting, and environmental requirements and approvals needed to achieve project completion. Built and maintained relationships with state, federal and tribal regulatory agencies, partners, contractors, consultants, and other stakeholders. Interpreted federal, state, local and tribal regulations and guided development programs and internal disciplines to ensure compliance with each. Draft and manage environmental assessments as well as regulatory reports and correspondence. Represented the company in matters involving federal, state, local and tribal agencies to manage environmental permitting, regulatory and compliance issues on behalf of the company. Manage staff by recruiting, training, and coaching employees, communicating job expectations and company goals. Managed tribal and community stakeholder outreach for development programs. Interfaced with regulatory agencies for permitting, compliance, enforcement actions and rulemaking. Managed all surface land related approvals and activities for execution of development programs. Managed and executed the basins agency and stakeholder relations programs serving as the technical subject expert and primary contact. Managed all trade organizations and grass roots programs, public relations programs and served as the media point of contact.

JULY 2004- SEPTEMBER 2013

Land Representative | Williams Four Corners | Bloomfield, NM

Responsible for acquisitions and renewals of new and existing agreements, due diligence research, third party damage settlement, preparation, and execution of agreements, tracking and monitoring project costs. Responsible for coordinating weekly customer meetings to maintain an excellent customer relationship, liaison between the land department and Commercial marketing team as well as all federal, tribal, state and local agencies. Responsible for all environmental and permitting activities related to right of way approval for all surface related activities.

JANUARY 2001- JULY 2004
HR / Payroll & Consumer Awareness Director | Premier Distributing Company | Farmington, NM

Prepared weekly payroll, monthly forecasts and month end inventory and submitted it to Anheuser Busch headquarters. Responsible for all employment recruitment, new hire orientations, exit interviews, drug testing, employee training program and all related employment activities. Educated San Juan County stakeholders which included public officials, police officers, schools, and the public of the awareness of drug and alcohol abuse.

MAY 1997- JANUARY 2001
Operational Lead Teller | Wells Fargo Bank | Bloomfield, NM

Responsible for new teller training, scheduling, and orientation. Responsible for daily cash vault audits, daily teller cash audits and compliance with banking regulations. Responsible for excellent customer service.

Skills

Strong Management & Leadership Experience • Success with policy making and partnering • Team player • Excellent time management skills • Conflict management • Public speaking • Team player • Strong state, federal and local agency working relationships • Strong tribal relationships

Education

FEBRUARY 2011
Certified Right of Way Agent | International Right of Way Association | Gardena, CA

MAY 1998
High School Diploma | Bloomfield High School | Bloomfield, NM

Relevant Career Development Training

- **Anheuser Busch Talent Center**
    - Media & Public Relations Training
    - HR Training
    - Financial Training
- **National Historic Preservation Act section 106**
- **Endangered Species Act**

- **NEPA process**
- **Williams Midstream Employee Excellence Training**
    - DOT training
    - Six Sigma Yellow belt
    - Diversity
    - How to deal with difficult employees
    - Time management certification
- **Rocky Mountain Mineral Law Foundation**
    - The continuing Challenge of Multiple use
    - Energy and mineral development on Tribal Lands

References

1. Alex Campbell | Enduring Resources, Inc. | 303-929-8429
2. Patrick Padilla | EOG Resources, Inc. | 432-208-5172

ATTACHMENT

2

An Analysis of the Adequacy of Financial Assurance Requirements for Oil and Gas Infrastructure Located on State Trust and Private Lands in New Mexico

April 30, 2021

The Center For Applied Research, Inc.

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EXECUTIVE SUMMARY

During 2020, nearly 370 million barrels of crude oil and 2 trillion cubic feet of natural gas were produced from approximately 60,000 wells (NMOCD, 2021) and transported by an estimated 35,000 miles of oil and gas pipeline throughout New Mexico (USDOT PHMSA, 2019). New Mexico state regulatory entities have jurisdiction over this infrastructure wherever it is located on private lands or state trust lands, and it is the role of these entities to ensure proactive measures are taken to minimize potential public, environmental, and fiscal liability risks created by infrastructure that is not operated or abandoned in compliance with state requirements. To this end, state regulatory entities may impose financial assurance requirements on oil and gas operations to reduce the public's liability posed by noncompliant infrastructure. The goal of this research effort was to generate an objective, data-driven analysis of the adequacy of current financial assurance requirements imposed by state regulatory entities to offset the potential public liability posed by wells, pipelines, and other oil and gas infrastructure located on private lands and state trust lands throughout New Mexico.

As presented in this report, the Center finds that financial assurance requirements do not exist for much of the oil and gas infrastructure explored in this study, and in some cases where such requirements are imposed, operators may have multiple ways of minimizing or avoiding those requirements. Further, the Center finds most of the current applicable financial assurance requirements are regressive in design, which means the largest users of private and state trust lands often carry the lowest marginal amounts of financial assurance coverage.

Overall, the Center finds that existing financial assurance requirements applicable to all infrastructure types are not sufficient to fully offset estimated closure and clean-up costs. As summarized in the table below, this study finds the total cost of closure and clean-up of the oil and gas infrastructure currently located on state trust and private lands to be approximately $8.38 billion. Whereas the total financial assurance coverage for this infrastructure accessible to state regulatory entities for the purpose of closure and clean-up efforts is estimated to be approximately $201.42 million, resulting in a total financial assurance gap of approximately $8.18 billion.

	Estimated Closure and Clean-up Costs *(millions)*		**Estimated Financial Assurance** *(millions)*		**Estimated Financial Assurance Gap** *(millions)*	
Infrastructure	**State Trust**	**Private**	**State Trust**	**Private**	**State Trust**	**Private**
Wells*	$3,316.40	$2,275.33	$136.11	$37.07	($3,180.29)	($2,238.26)
Pipelines†	$980.73	$929.57	$0.24	$0.00	($980.49)	($929.57)
Other	$876.38	*no data*	$28.00	$0.00	($848.38)	*no data*
Total	**$5,173.51**	**$3,204.90**	**$164.35**	**$37.07**	**($5,009.16)**	**($3,167.83)**
	$8,378.41		**$201.42**		**($8,176.99)**	

Notes: All figures presented in this table are reported in millions of USD.

*Cost figures reported in this table include well plugging and downhole abandonment, surface facility decommissioning, and wellsite surface reclamation.

† Cost figures reported in this table exclude produced water, freshwater, and most gathering pipelines used by oil and gas operators. Costs reported in this table assume buried pipelines are abandoned in-place rather than fully removed.

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1 INTRODUCTION

1.1 REPORT PURPOSE AND OVERVIEW

A significant portion of the surface and subsurface estate in the oil and gas basins of New Mexico is under the purview of state regulatory entities. Hydrocarbon exploration and extraction activities on those lands are regulated by the New Mexico Oil Conservation Division (NMOCD), oil and gas transmission is regulated by the New Mexico Public Regulation Commission (NMPRC), and the New Mexico State Land Office (NMSLO) has additional regulatory authority over all oil and gas activities on state trust lands. Due to market volatility which is common to the petroleum industry and the considerable number of oil and gas operators with active wells, pipelines, and other oil and gas support infrastructure in New Mexico[1], it is not unusual for an operator to file for bankruptcy in the middle of operations, especially in the event of an economic downturn or slump in demand for petroleum.[2] In such cases, the cost of plugging and abandoning certain wells and/or decommissioning pipelines and well-support facilities and reclaiming surface lands may fall to the NMOCD or to the NMSLO. Furthermore, without timely remediation, inactive (i.e., non-producing) or unmanaged oil and gas wells and supporting infrastructure can pose considerable physical and environmental hazards (Alboiu & Walker, 2019). Improperly abandoned pipelines and unplugged or improperly plugged wells can release subsurface methane and unaddressed spills and leaks can contaminate surface and ground water (Boothroyd, et al., 2016).

Given these environmental and fiscal risks, it is of great importance to the New Mexican public and that proactive measures are taken to minimize the risk and liability of oil and gas operations on lands subject to state jurisdiction. As the designated administrators of oil and gas operations on these lands, it is the role of the NMOCD, the NMSLO, and other state regulatory entities to ensure that adequate financial assurance requirements are imposed on and met by operators seeking to utilize those lands.[3] To this end, the Center's primary goal in this study is to generate an objective, data-driven analysis of the adequacy of current financial assurance requirements imposed by state regulatory entities on wells, pipelines, and other oil and gas infrastructure located on state trust lands and private lands throughout New Mexico.[4]

1.2 BACKGROUND AND REGULATORY RESPONSIBILITIES

Table 1 summarizes the basic hierarchy of state regulatory responsibility for the oil and gas infrastructure that forms the subject of this analysis. Per state statutes, the NMOCD is responsible for regulation of the entire life cycle of oil and gas wells situated on private fee

[1] The oil and gas infrastructure types included in this analysis were selected based on data availability and conversations with NMSLO personnel. By including or omitting specific types of infrastructure from this analysis, the Center makes no representation of the importance of financial assurance requirements, or lack thereof, that may apply to that infrastructure.

[2] During the COVID-19 pandemic, demand trends for refined petroleum products were sharply altered, putting many oil and gas operators in a position where it was unprofitable to continue production in the short term. To provide some economic relief to oil and gas producers, pursuant to 19.2.100.71 NMAC, on March 4, 2020 the NMOCD issued an order allowing wells to be temporarily shut-in and remain inactive for a period not to exceed 36 months with a potential to extend the shut-in period for an additional 12 months (EMNRD, 2020). As of preparing this report, the long-term implications of the COVID-19 pandemic and its effect on the future of oil and gas production in New Mexico is unclear.

[3] See Section 4 of this report for a discussion of the specific statutory responsibilities of these regulatory entities.

[4] Similar studies have been prepared by the U.S. Government Accountability Office for oil and gas infrastructure located on federal and tribal lands and therefore subject to federal government regulation. The analysis presented herein is specific infrastructure that is subject to state regulation.

lands and state trust lands: permitting new wells, enforcing state statutes and rules during well operation, and ensuring abandoned wells are properly plugged and affected lands are responsibly restored. To fulfil its responsibilities, the NMOCD requires operators to provide financial assurance for the wells each operator owns on state trust and private fee lands. The NMOCD's financial assurance requirements are designed to provide a mechanism for enforcing operator compliance with state rules and regulations dictating the conditions for proper plugging and abandonment of wells.

The authority to regulate oil and gas pipelines in the state of New Mexico is granted to the NMPRC. However, in this role, the NMPRC is primarily focused on ensuring pipelines are operated in a safe and responsible manner. With that objective in mind, the Pipeline Safety Bureau of the NMPRC tasks itself with licensing new pipelines, conducting safety and compliance inspections on existing pipelines, and investigating intrastate[5] pipeline incidents and accidents.

The NMSLO is responsible for the management of all state trust lands in New Mexico which consist of over nine million surface acres and over thirteen million mineral acres. Because a significant portion of the land administered by the NMSLO is situated in active oil and gas regions, the NMSLO has adopted its own set of financial assurance requirements for oil and gas lessees and operators of wells, pipelines, and other oil and gas support infrastructure. All of the NMSLO's financial assurance requirements are in addition to those imposed by other regulatory entities that also may have some degree of regulatory authority over state trust lands.

Table 1 – Summary of responsibility of various New Mexico regulatory entities

	Wells		Pipelines*		Other Infrastructure†	
Regulatory Entity	**On State Trust**	**On Private Fee**	**On State Trust**	**On Private Fee**	**On State Trust**	**On Private Fee**
NMOCD	Yes	Yes	Yes	Yes	No	No
NMSLO	Yes	No	Yes	No	Yes	No
NMPRC	No	No	Yes	Yes	No	No

Notes: Cells containing "Yes" indicate the corresponding entity has some level of regulatory responsibility over that oil and gas asset. Other federal or state regulatory entities not listed here may have jurisdiction over certain aspects or functions of oil and gas facilities that are not pertinent to this analysis.

*While the NMOCD and NMPRC both have some regulatory authority over pipelines in New Mexico, neither entity currently imposes financial assurance requirements.

†Other Infrastructure, as referenced here and throughout this report, strictly refers to oil and gas infrastructure permitted by an NMSLO business lease. See Section 2.2 for further information.

1.3 SUMMARY OF FINDINGS

Based on the data available to the Center upon preparing this analysis and the assumptions presented in subsequent sections of this report, the Center's findings pertaining to the adequacy of the current financial assurance requirements for various oil and gas related infrastructure are summarized in Tables 2, 3, and 4. A detailed discussion of the analysis methodology and requisite assumptions utilized in developing these tables is provided in Section 3 and Section 4 and additional summary tables and cost calculations are provided in Section 5.

[5] Interstate pipelines and incidents related to those pipelines are managed by the Federal Energy Regulatory Commission.

As shown in Table 2, on average, applicable financial assurance requirements differ considerably depending on where a well is located (i.e., on state trust land or private fee land) and the primary use of that well (i.e., oil, gas, or saltwater disposal). Excluding saltwater disposal wells on state trust lands, the estimated gap between base plugging and downhole abandonment costs and financial assurance coverage averages to approximately $86,100 per well. If estimated wellsite decommissioning and surface reclamation costs are included in this calculation, the Center estimates the average financial assurance gap is approximately $182,600 per well (again excluding saltwater disposal wells on state trust lands).

Table 2 - Summary of per well financial assurance adequacy analysis findings for oil, gas, and SWD wells

	State Trust			Private Fee		
	Gas	**Oil**	**SWD**	**Gas**	**Oil**	**SWD**
Financial Assurance*	**$3,300**	**$3,500**	**$239,400**	**$2,300**	**$3,400**	**$8,600**
Closure & Clean-up Cost†	**$168,900**	**$218,400**	**$175,900**	**$151,800**	**$216,700**	**$178,300**
Plugging & Abandonment	$90,500	$93,100	$89,800	$84,100	$93,500	$90,500
Site Decommissioning	$6,300	$22,200	$3,200	$6,300	$22,200	$3,200
Surface Reclamation	$72,100	$103,100	$82,900	$61,400	$101,000	$84,600
Differences *(Assurance Gap)*						
Assurance - P&A Cost	($87,200)	($89,600)	$149,600	($81,800)	($90,100)	($81,900)
Assurance - Total Cost	($165,600)	($214,900)	$63,500	($149,500)	($213,300)	($169,700)

Notes: All figures presented in this table are reported at the "per well" level.

*The financial assurance estimates reported in this table were developed by the Center. See Section 4.1 for further information.

†Closure and clean-up costs reported in this table and elsewhere in this report are based on prior work completed by Vertex Resource Services, Ltd. See Section 3.1 for further information.

The current financial assurance requirements and the costs of closure for pipelines located on state trust and private fee lands in New Mexico are summarized in Table 3. As shown therein, the estimated average financial assurance coverage for pipelines on state trust lands is approximately $51 per mile, whereas the average decommissioning and surface reclamation cost is estimated to exceed $211,000 per mile. Based on the Center's research, currently there are no financial assurance requirements for pipelines located on private fee lands, therefore the financial assurance gap is equivalent to the total cost of decommissioning and reclamation.

Table 3 – Summary of per mile financial assurance adequacy analysis findings for oil and gas pipelines

	Surface Land Status	
	State Trust *($/mile)*	**Private Fee** *($/mile)*
Financial Assurance*	**$51**	**$0**
Decommissioning and Reclamation Costs†	**$211,000**	**$213,000**
Pipeline Decommissioning	$16,000	$16,000
Surface/Right-of-Way Reclamation	$195,000	$197,000
Difference (Assurance Gap)	**(210,949)**	**(213,000)**

Notes: All figures presented in this table are reported on a "per mile" basis in USD.

*The financial assurance estimates reported in this table were developed by the Center. See Section 4.2 for further information.

†Decommissioning and reclamation costs reported in this table are based on prior work completed by Vertex Resource Services, Ltd and assume such costs are consistent with standard industry requirements for pipeline abandonment. See Section 3.2 for further information and alternative removal scenarios.

The differences between current financial assurance requirements and the costs of closure for other oil and gas infrastructure located on state trust lands in New Mexico are summarized in Table 3. Note that this portion of the Center's analysis does not include similar infrastructure located on private fee lands because such data could not be located for use in this analysis. Of the other oil and gas facility types explored in this analysis, financial assurance requirements were only identified for rule 34 recycling and containment facilities and petroleum storage tanks. In both cases, the current level of financial assurance coverage required for these facilities is exceeded by the estimated facility decommissioning and surface reclamation cost.

Table 4 – Summary of per site financial assurance adequacy for other oil & gas infrastructure

	For Infrastructure on State Trust Lands		
Other O&G Facility Type	**Financial Assurance***	**Closure Cost†**	**Assurance Gap**
Compressor Station Sites	$0	$231,000	**($231,000)**
Electrical Power Related Sites	$0	$704,000	**($704,000)**
Freshwater Frac Ponds	$0	$335,000	**($335,000)**
Landing Strips/Airports	$0	$590,000	**($590,000)**
Maintenance and Metering Sites	$0	$147,000	**($147,000)**
Private Mobile Radio Tower Sites	$0	$277,000	**($277,000)**
Office Buildings/Maintenance Yards	$0	$609,000	**($609,000)**
Processing and Dehydration Facilities	$0	$618,000	**($618,000)**
Rule 34 Recycling Facilities	$1,000,000	$1,126,000	**($126,000)**
Storage Sites	$0	$778,000	**($778,000)**
Petroleum Storage Tanks	$54,545	$9,543,000	**($9,488,455)**
Transfer Sites	$0	$384,000	**($384,000)**
Telemetry Paging Sites	$0	$176,000	**($176,000)**
Truck Stops	$0	$795,000	**($795,000)**
Storage Facilities/Warehouses	$0	$579,000	**($579,000)**
Other O&G Related Sites	$0	$3,760,000	**($3,760,000)**

Notes: All figures presented in this table are reported on a "per site" basis in USD. Similar data for infrastructure located on private fee lands were not available for this analysis.

*The financial assurance estimates reported in this table were developed by the Center. The estimates presented in this table do not include additional financial assurance coverage that may be available from NMSLO-required mega-bonds held by the infrastructure owner. See Section 4.2 for further information.

†Decommissioning and reclamation costs reported in this table are based on prior work completed by Vertex Resource Services, Ltd. See Section 3.2 for further information and alternative removal scenarios.

1.4 DISCLAIMER AND NOTES ON REPORT USAGE

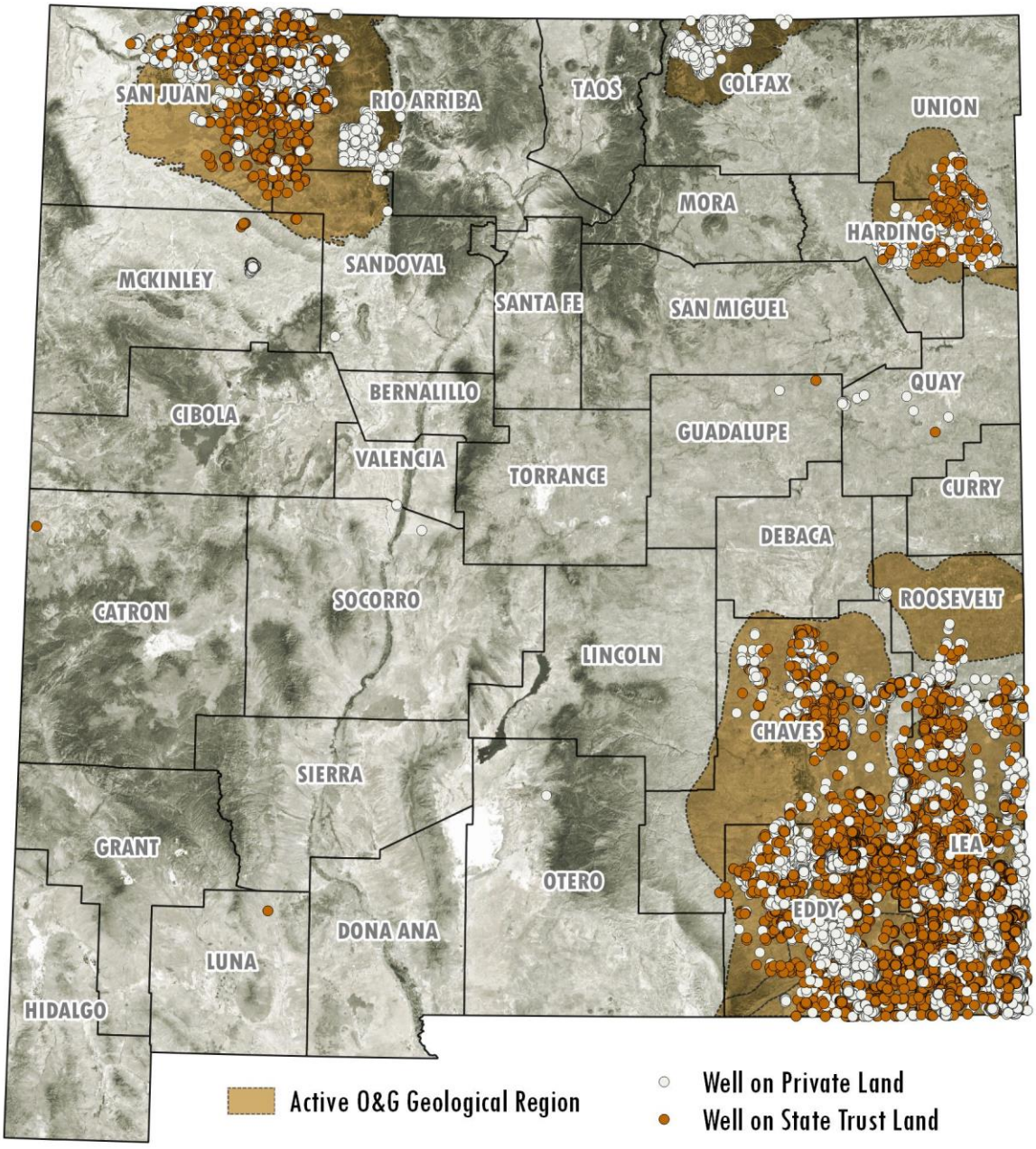
The analysis contained in this report and all related supplementary information are based upon the Center's best professional judgment and on sources of information purported to be reliable. However, no representation or warranty is made by the Center as to the accuracy or completeness of any third-party information used for this assessment. The analyses and conclusions presented in this report have been prepared by the Center on the basis of current knowledge and assumptions which are believed to be reasonable but may not be within the control of the Center. The assumptions used in preparing this report and all related supplemental and background information are inherently subject to significant uncertainties. If the assumptions used prove to be inaccurate, the conclusions expressed or inferred herein could be materially different from reality.

2 SCOPE OF ANALYSIS

2.1 OIL, GAS, AND SALTWATER DISPOSAL WELLS

The oil, gas, and saltwater disposal wells that form the basis and subject of this analysis are depicted geographically in Figure 1. This inventory of wells is representative of all active oil wells on state trust and private fee lands in New Mexico that are operated by entities permitted by the NMOCD. Where an "active well" in this context refers to any oil, gas, or saltwater disposal well located on state trust or private fee lands that has not been approved by the NMOCD for bond release. The inventory of active wells dataset, which was acquired directly from the NMOCD's online data storage directory found at (EMNRD - OCD, 2020), is

Figure 1 – Graphical representation of oil, gas, and saltwater disposal wells subject to analysis



publicly available and was current as of October 16, 2020 when the data was accessed and acquired for use in this analysis.[6]

A summary of the wells contained in the dataset as disaggregated by surface land status and various well attributes pertinent to this analysis is provided in Table 5. As shown therein, at the time this data was retrieved, there were 28,257 active wells on state trust and private fee lands throughout New Mexico being operated by 487 permitted operator entities. According to the NMOCD's records, approximately 57% of these wells were situated on state trust land, and the remaining 43% were situated on private fee land. Notably, nearly 87% of the subject wells are characterized as an oil or gas well (i.e., 57% and 30% respectively).

Table 5 – Summary of oil, gas, and saltwater disposal wells subject to analysis

	Surface Land Status		
	State Trust *(N= 16,174)*	**Private Fee** *(N= 12,083)*	**State and Fee** *(N= 28,257)*
Permitted Entities	**363**	**358**	**487**
Well Count by Well Type			
CO_2	201	536	737
Gas	3,867	4,585	8,452
Injection	1,474	736	2,210
Miscellaneous	57	27	84
Oil	10,235	5,922	16,157
Saltwater Disposal	340	277	617
Well Count by Well Status			
Active	13,949	10,338	24,287
Dry Hole	2	5	7
New	1,129	967	2,096
Plugged *(Not Released)**	619	437	1,056
Shut In	9	25	34
Temporary Abandonment	343	212	555
Temporary Abandonment *(Expired)*	107	87	194
Zone Plugged *(Permanent)*	7	9	16
Zone Plugged *(Temporary)*	8	3	11
Observation	1	0	1

Source: Data extracted from (NMOCD, 2020)
Notes: *Well Type* and *Well Status* are data attributes assigned by the NMOCD. Active wells within the original dataset characterized as never drilled, cancelled, or plugged (site released) have been omitted from this analysis.
*Wells classified by the NMOCD as "plugged (not released)" are assumed to have completed the plugging and abandonment process but still require surface decommissioning and reclamation.

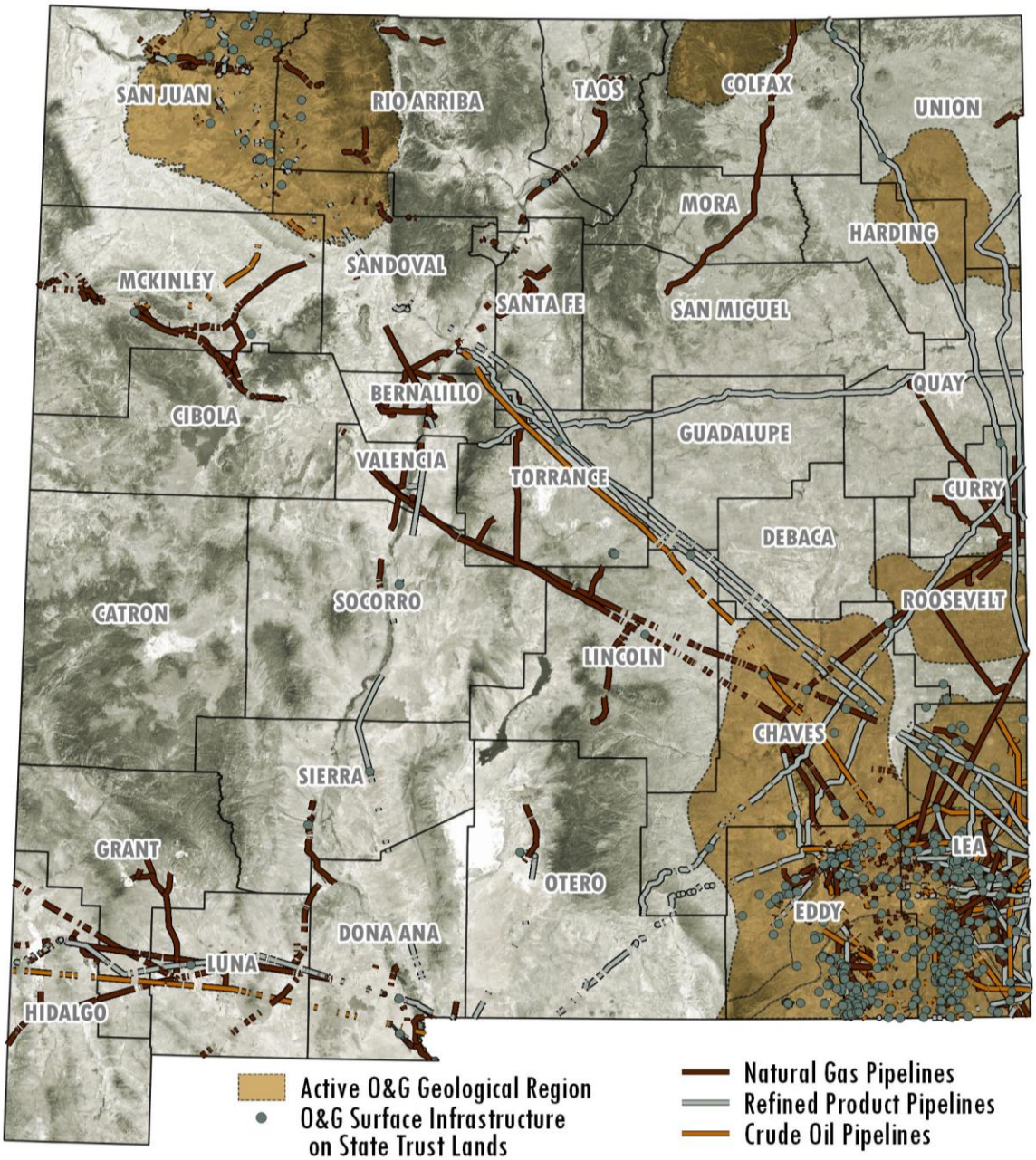
2.2 PIPELINES AND OTHER OIL & GAS INFRASTRUCTURE

As a secondary focus, this analysis also explores the closure liabilities and financial assurance requirements associated with midstream and oil and gas support infrastructure such as

[6] The Center is not aware of any significant changes to the wells comprising the wells inventory dataset since its acquisition from NMOCD in October 2020. However, the dataset is constantly evolving and undergoes regular updates to reflect changes in well status, the inclusion of new wells, and the exclusion of wells that have completed the plugging and abandonment process.

pipelines, compressor stations, and other off-lease, above-ground appurtenances that are outside of and may or may not be related to a specific wellsite. The infrastructure reviewed as part of this analysis is illustrated geographically in Figure 2. It is important to note that detailed source information about these facilities and their location is largely unavailable, and the infrastructure pictured in Figure 2 is representative of only a fraction of such infrastructure in New Mexico. Much of this infrastructure does not fall under the jurisdiction of a single state or federal regulatory entity, and as a result, the reporting and monitoring requirements are minimal or nonexistent. Within this category, considerably more information is available for infrastructure situated on state trust lands compared to private fee lands, but even within state trust lands, data is limited, especially in a format that is suitable for this analysis.

Figure 2 – Graphical representation of other oil and gas infrastructure subject to analysis



None of the New Mexico state regulatory entities maintain detailed geospatial data depicting the location, ownership, and use of pipelines throughout the state. As such, the most comprehensive dataset available for oil and gas pipelines in New Mexico is maintained by the Pipeline and Hazardous Materials Safety Administration (PHMSA). Unfortunately, the PHMSA dataset is highly restricted due to national security concerns and is only available in a raw format to government officials and pipeline operators.[7] The next best alternative is a for-purchase proprietary dataset maintained by S&P Global Platts (Platts). Though neither of the datasets maintained by PHMSA or Platts include produced water pipelines, smaller-diameter gathering lines, or above-ground temporary pipelines which are frequently used by oil and gas producers. Mileage information for the pipelines included in the Platts pipeline inventory dataset and situated on state trust or private fee lands is presented in Table 6.

Table 6 – Summary of pipelines and other oil and gas infrastructure subject to analysis

	Surface Land Status		
	State Trust	**Private Fee**	**State and Fee***
Known Operators†	**43**	**49**	**67**
Pipeline Miles by Known Operators			
Natural Gas Pipelines	2,399	2,325	4,724
Refined Product Pipelines	1,523	473	1,996
Crude Oil Pipelines	510	1,439	1,949
Pipeline Miles by Unknown Operators			
Natural Gas Pipelines	99	106	205
Refined Product Pipelines	109	27	135
Crude Oil Pipelines	0	0	0
Total Pipeline Miles in Inventory‡	**4,640**	**4,370**	**9,009**
Oil and Gas Surface Infrastructure Sites§			
Compressor Station Sites	135	*no data*	*no data*
Fresh Water Frac Ponds	80	*no data*	*no data*
Maintenance and Metering Sites	36	*no data*	*no data*
Processing and Dehydration Facilities	26	*no data*	*no data*
Rule 34 Recycling Facilities	25	*no data*	*no data*
Petroleum Storage Tanks	55	*no data*	*no data*
Other O&G Support Infrastructure¶	184	*no data*	*no data*

Source: (S&P Global Platts, 2020) and (Vertex Resources Services, Ltd., 2021)

*For comparison, PHMSA estimates there were approximately 35,045 miles of natural gas and hazardous liquids pipeline in New Mexico in 2019 (USDOT PHMSA, 2019).

†Within the pipeline inventory dataset many miles of pipeline cannot be tied to a specific operator.

‡These figures may differ from those presented in the Vertex Report because those in the Vertex Report are inclusive of pipelines located on federal and tribal lands.

§Data pertaining to oil and gas support and midstream infrastructure is only available through the NMSLO for state trust lands. Similar data is not available for infrastructure located on private fee lands.

¶A full list of these facilities as categorized by the NMSLO is provided in Table 12.

[7] The Pipeline and Hazardous Materials Safety Administration (PHMSA) operates under the U.S. Department of Transportation. Public access to pipeline location, type, and ownership information is limited to the PHMSA's National Pipeline Mapping System Public Map Viewer (PHMSA, 2020). Some aggregate data is available to the public, but not in the granular format that would be required for this analysis.

Table 6 also presents a summary of the midstream and oil and gas support infrastructure included in this analysis. As shown therein, data for these asset-types is only available for state trust lands. Furthermore, the figures presented in Table 6 are only inclusive of these assets to the extent they are not covered by an NMSLO oil and gas lease agreement or right-of-way agreement.[8] Though likely this is not a concern for this study because the decommissioning and reclamation costs for surface infrastructure covered by those agreements would be included in either the well-specific or pipeline-specific sections of this analysis.

3 COSTS OF RECLAMATION

To estimate the scope and cost of the well closure and clean-up process for the wells identified in Table 5 and the ancillary oil and gas-related infrastructure identified in Table 6, the Center relied on a recent analysis prepared by Vertex Resources Services, Ltd (Vertex Report).[9] The Vertex Report details the estimated liability for all oil and gas related assets situated on state trust lands and other lands (private, tribal, and federal) in New Mexico. The following report sections summarize the key cost parameters and assumptions utilized herein by the Center to analyze the adequacy of current financial assurance requirements in New Mexico and quantify the gap between those requirements and the costs of infrastructure closure and clean-up.

3.1 OIL, GAS, AND SALTWATER DISPOSAL WELLS

3.1.1 Well Plugging and Abandonment

The per well plugging and abandonment cost analysis findings presented in the Vertex Report and subsequently utilized by the Center in this analysis are summarized in Table 7. Vertex found that per well plugging and abandonment costs varied considerably depending on certain well-specific parameters and specifications such as geographical location, age, fluid (i.e., oil, gas, produced water), well bore depth, number of producing pools crossed, drilling profile direction, and the presence of downhole equipment. To allow for nuance among wells and increase the accuracy of cost estimates, Vertex created a series of well type classifications and prepared class-specific plugging and abandonment cost estimates.

Vertex also found that beyond the standard abandonment activities required for each well classification, many wells within the NMOCD's wells inventory would require additional abandonment activities to meet state regulatory standards for plugging and abandonment. These additional cost activities include running a cement bond log where necessary, perforating and squeezing the intermediate casing shoe if an intermediate casing string is present, and addressing low cement top issues. Within the Vertex Report, these costs are based on a sampling study to identify the frequency with which these additional costs would be incurred. The average of the high and low-cost scenarios presented in the Vertex Report are presented in Table 7 as adjusted to account for Vertex's frequency assumptions.

[8] Much of the midstream and well-support infrastructure present on state trust lands is covered by either an oil and gas extraction lease or right-of-way agreement. The sites included in Table 6 are only representative of those permitted by the NMSLO under a business lease.

[9] See Vertex Resources Services, Ltd. (2021). *New Mexico Oil and Gas Liability Assessment*. Sherwood Park, Alberta Canada: Vertex Resources Services, Ltd. Available upon request from Dhugal Hanton (DHanton@vertex.ca).

Table 7 – Estimated well plugging and abandonment costs

			Well Counts*		Estimated P&A Costs Per Well		
Well Class†	**Measured Depth *(ft)***	**Producing Pools**	**State Trust**	**Private Fee**	**Base Cost‡**	**Additional Cost§**	**Total Cost**
1	<5k	1 zone	1,680	2,798	$50,400	$26,600	$77,000
2	<5k	2 zones	616	332	$59,900	$26,600	$86,500
3	5k – 10k	1 zone	1,093	1,060	$57,000	$26,600	$83,600
4	5k – 10k	2 zones	683	805	$66,500	$26,600	$93,100
5	>10k	1 zone	1,536	709	$70,400	$26,600	$97,000
6	>10k	2 zones	1,310	773	$79,800	$26,600	$106,400
7	<5k	1 zone	3,669	2,089	$64,300	$26,600	$90,900
8	<5k	2 zones	252	192	$73,800	$26,600	$100,400
9	5k – 10k	1 zone	1,359	421	$71,000	$26,600	$97,600
10	5k – 10k	2 zones	1,455	1,609	$82,000	$26,600	$108,600
11	>10k	1 zone	928	458	$84,300	$26,600	$110,900
12	>10k	2 zones	966	391	$93,800	$26,600	$120,400
13	Plugged	n/a	627	446	n/a	n/a	n/a
			16,174	**12,083**			

Source: (Vertex Resources Services, Ltd., 2021) and (NMOCD, 2020)

*The well counts presented in this table exclude wells located on federal and tribal lands in New Mexico and therefore may differ from the total well counts presented in the Vertex Report.

†Well classification categories were developed within the Vertex Report based on well-specific parameters: location, fluid, profile direction, status, age, and depth. Definitions can be found in the Vertex Report.

‡Base costs include the standard abandonment activities required for each well classification. Activities and time required were determined on based on Vertex's historical experience and actual invoiced expense data obtained from the NMSLO.

§Sample average costs are reported here. These costs include running a cement bond log, perforating and squeezing the intermediate casing shoe, and addressing low cement top issues.

Based on Vertex's assumptions, plugging and abandonment costs range between $77,000 and $120,400 per well. These figures translate to approximately $11.69 and $13.48 per foot of well depth plugged. As a simple basis for comparison, for FY2020, the Railroad Commission of Texas calculated the average cost of plugging and abandonment within the Permian Basin area of Texas (i.e., Texas Oil and Gas Division Districts 8A and 8) to be between $12.16 and $17.88 per foot respectively, or approximately $15.02 per foot on average within the two Districts (Railroad Commission of Texas, 2020). For further comparison, the Vertex Report also presents a summary of six recently abandoned vertical wells on New Mexico State Trust Lands. The cost of plugging and abandonment among these six wells averaged to $11.44 per foot of well depth plugged (Vertex Resources Services, Ltd., 2021).

3.1.2 Wellsite Facility Decommissioning and Reclamation

In addition to the costs of well plugging and abandonment, the Vertex Report also provides cost estimates for wellpad surface facility decommissioning and reclamation. While the NMOCD's (in contrast to the NMSLO's) financial assurance requirements are not necessarily intended to cover such costs in the event of improper abandonment by a permitted operator, such costs typically would be incurred by the operator if the well were to be abandoned in accordance with state regulations and are therefore informative to this analysis. As with the plugging and abandonment cost analysis, Vertex developed a series of well categories based on various well-type parameters to allow for variation in decommissioning and reclamation

costs. For the wells subject to this analysis, the average surface facility decommissioning costs are presented in Table 8. Broadly, in developing these cost estimates, Vertex assumes facility decommissioning includes removal of all above-ground facilities, equipment, and appurtenances; disconnection and removal of the wellhead; cutting and capping the well below grade; disconnection and isolation of flowlines; and removal of piles and concrete pads.

Table 8 – Estimated wellsite surface facility decommissioning costs

				Well Counts*		
Purpose	**Flow Type**	**Storage**	**Flowline**	**State Trust**	**Private Fee**	**Cost/Site**
Oil	Flowing	No	Yes	3,086	1,439	$13,363
Oil	Pumping	No	Yes	4,088	2,462	$20,319
Oil	Pumping	Yes	No	4,088	2,462	$27,523
Gas	Flowing	No	Yes	3,157	4,293	$5,500
Gas	Flowing	Yes	No	351	477	$12,157
Gas	Pumping	No	Yes	227	118	$6,418
Gas	Pumping	Yes	No	227	118	$12,769
SWD	n/a	No	Yes	324	268	$3,226
				15,547	**11,637**	

Source: (Vertex Resources Services, Ltd., 2021) and (NMOCD, 2020)

*Well counts exclude wells classified as plugged (not released) or "empty" within the wells database. The well counts presented in this table exclude wells located on federal and tribal lands in New Mexico and therefore may differ from the total well counts presented in the Vertex Report.

For the wells subject to this analysis, the average surface reclamation costs are presented in Table 9. Note that these costs are exclusive of and in addition to the plugging and abandonment costs presented in Table 7 and the surface decommissioning costs presented in Table 8. In developing these cost estimates, Vertex assumes surface reclamation efforts would include environmental testing and assessment; removal of fencing; removal of contaminated soils; remediation of compacted soils; site regrading and contouring for erosion control; and seeding and revegetation. As reflected in Table 9, the per well costs of surface reclamation efforts are expected to differ considerably depending on the age of the well and the oil and gas region within which it is located.

Table 9 – Estimated wellsite surface reclamation costs

			Well Counts*		
Purpose	**O&G Basin**	**Spud Year**	**State Trust**	**Private Fee**	**Cost/Site**
Oil	San Juan	< 2012	120	178	$53,894
Oil	San Juan	≥ 2012	46	2	$164,305
Gas	San Juan	< 2012	1,461	2,005	$53,866
Gas	San Juan	≥ 2012	18	20	$39,762
SWD	San Juan	Any	16	16	$136,568
Oil	Permian	< 2012	9,088	5,517	$99,705
Oil	Permian	≥ 2012	2,510	982	$116,900
Gas	Permian	< 2012	2,216	1,437	$78,545
Gas	Permian	≥ 2012	173	263	$195,698
SWD	Permian	Any	324	249	$80,199
Oil	Other	< 2012	195	5	$28,676
Oil	Other	≥ 2012	1	1	$33,974

Purpose	O&G Basin	Spud Year	Well Counts*		Cost/Site
			State Trust	Private Fee	
Gas	Other	< 2012	1	1,318	$29,733
Gas	Other	≥ 2012	5	78	$29,712
SWD	Other	Any	0	12	$105,994
			16,174	**12,083**	

Source: (Vertex Resources Services, Ltd., 2021) and (NMOCD, 2020)

*The well counts presented in this table exclude wells located on federal and tribal lands in New Mexico and therefore may differ from the total well counts presented in the Vertex Report.

3.1.3 Summary of Well Closure and Clean-Up Costs

The per well plugging and abandonment, surface decommissioning, and surface reclamation cost figures identified above are presented in aggregate in Table 10 and multiplied by the number of wells included in this analysis (see Table 9). As shown therein, based on the cost assumptions presented in the Vertex Report, the estimated average per well cost of closure and clean-up efforts for wells located on state trust and private fee lands in New Mexico ranges between approximately $152,000 and $218,000. Multiplying the estimated per well figures by the number of wells subject to this analysis produces an estimated total closure and clean-up cost of approximately $3.316 billion for wells on state trust lands and an additional $2.275 billion for wells on private fee lands — or approximately $5.591 billion in total.

Table 10 – Summary of estimated total well closure and clean-up costs

	State Trust			Private Fee		
	Gas *(N= 4,068)*	**Oil** *(N= 11,766)*	**SWD** *(N= 340)*	**Gas** *(N= 5,121)*	**Oil** *(N= 6,685)*	**SWD** *(N= 277)*
Estimated Costs Per Well *(USD)*						
Base P&A	$64,614	$67,681	$64,504	$58,140	$68,267	$64,850
Additional P&A*	$25,856	$25,417	$25,305	$25,959	$25,276	$25,692
Surface Decommissioning	$6,290	$22,155	$3,226	$6,290	$22,155	$3,226
Surface Reclamation	$72,092	$103,147	$82,852	$61,441	$100,968	$84,572
Estimated Cost/Well Total	**$168,852**	**$218,401**	**$175,886**	**$151,829**	**$216,666**	**$178,340**
Estimated Total Costs *(millions of USD)*						
Base P&A	$262.85	$796.34	$21.93	$297.73	$456.37	$17.96
Additional P&A*	$105.18	$299.06	$8.60	$132.93	$168.97	$7.12
Surface Decommissioning	$25.59	$260.68	$1.10	$32.21	$148.11	$0.89
Surface Reclamation	$293.27	$1,213.63	$28.17	$314.64	$674.97	$23.43
Estimated Total Cost	**$686.89**	**$2,569.71**	**$59.80**	**$777.52**	**$1,448.41**	**$49.40**
	$3,316.40 million			**$2,275.33 million**		
	$5,591.73 million					

Notes: All figures presented in the upper half of this table are reported on a "per well" basis in USD. Figures presented in the lower half of this table are reported as total costs in millions of USD.

*The estimated costs of running a cement bond log, perforating and squeezing the intermediate casing shoe, and addressing low cement top issues where applicable. See Table 7 for additional detail.

3.2 PIPELINES AND OTHER OIL & GAS INFRASTRUCTURE

3.2.1 Pipeline Decommissioning and Right-of-Way Reclamation

The pipeline decommissioning and surface reclamation costs used by the Center in this

analysis are presented in Table 11. In congruence with the Vertex Report, these costs are estimated under two separate scenarios as briefly defined below.

Standard Decommissioning and Reclamation Scenario. In this scenario, it is assumed that all pipelines included in the analysis are decommissioned in a manner that is consistent with current industry standards: cleaning and purging all hydrocarbons from the line with air or other inert fluid; removal and disposal of flammable fluids; cutting and capping pipe ends below grade; removal of above-ground appurtenances; and disconnection of cathodic protection systems. Pipeline rights-of-way are then reclaimed in a manner that is consistent with Vertex's assumptions regarding wellsite surface reclamation, that is, surface reclamation efforts would include environmental testing and assessment; removal of fencing and markers; removal of contaminated soils; remediation of compacted soils; site regrading and contouring for erosion control; and seeding and revegetation.

Full Removal and Reclamation Scenario. In this scenario, all pipelines included in the analysis are completely removed after abandonment. That is, all buried pipelines are pulled or excavated prior to segmentation and disposal and all surface pipelines are also segmented prior to disposal. Vertex assumes the cost of full removal of buried pipelines is analogous to the cost of constructing a new pipeline. Pipeline right-of-way reclamation effort assumptions under this scenario are the same as those identified in the alternative scenario.

Table 11 – Estimated pipeline decommissioning and right-of-way reclamation costs

		Pipeline Miles*		Cost/Mile†		
Pipeline Diameter	Type	State Trust	Private Fee	Surface Reclamation	Standard Decom. Scenario	Full Removal Scenario
Under 8"	Buried	525	555	$180,626	$5,430	$100,000
10" to 16"	Buried	426	637	$180,626	$10,010	$544,000
18" to 24"	Buried	1,287	561	$180,626	$16,275	$1,620,000
Over 24"	Buried	1,016	1,157	$180,626	$27,455	$2,880,000
Under 8"	Surface	525	555	$229,916	$6,455	$6,455
10" to 16"	Surface	426	637	$229,916	$11,935	$11,935
18" to 24"	Surface	322	140	$229,916	$19,725	$19,725
Over 24"	Surface	113	129	$229,916	$32,055	$32,055
		4,640	**4,370**			

Source: (Vertex Resources Services, Ltd., 2021)

*These figures may differ from those presented in the Vertex Report because they exclude pipelines located on federal and tribal lands.

†As indicated in the Vertex Report, all pipeline decommissioning and reclamation costs prepared by Vertex and reiterated in this report should be considered Class 5 estimates, meaning they were prepared based on very limited information and consequently have significant accuracy ranges, i.e., +50%/-30%.

3.2.2 Other Oil and Gas Infrastructure Decommissioning and Reclamation

The Center also relied on Vertex's estimated costs of facility decommissioning and surface reclamation for well-support and other oil and gas related infrastructure on state trust lands.[10]

[10] As discussed in Section 2.2, similar data pertaining to other oil and gas support infrastructure is only available from the NMSLO for state trust lands. Similar data is not available for infrastructure located on private fee lands.

These costs, as applied to the infrastructure subject to this analysis, are presented in Table 12. In estimating these costs, Vertex assumes facility decommissioning would include removal of all surface facilities, foundations and pilings, and movable equipment. After completion of facility decommissioning efforts, sites would be reclaimed to return to the affected land to pre-development condition, i.e., efforts would include environmental testing and assessment, removal of fencing; removal of contaminated soils, remediation of compacted soils, site regrading and contouring for erosion control, and seeding and revegetation.

It should be noted that because detailed site-specific equipment inventories were not available to Vertex, and because facility specifications and land encumbrances vary from site to site, the cost estimates presented in the Vertex Report and reiterated here are based on Vertex's estimated per acre costs developed for well sites, i.e., $9,222 per acre for facility decommissioning and $52,758 per acre for surface reclamation. The validity or accuracy of these assumptions was not explored by the Center in preparing the analysis presented herein.

Table 12 – Estimated decommissioning and reclamation costs for other oil and gas infrastructure

			Cost/Site*	
Facility/Site Description	**Site Count†**	**Average Site Size** *(acres)*	**Facility Decom.**	**Surface Reclamation**
Compressor Station Sites	135	3.73	$34,000	$197,000
Electrical Power Related Sites	29	11.35	$105,000	$599,000
Fresh Water Frac Ponds	80	5.39	$50,000	$285,000
Landing Strips/Airports	1	9.52	$88,000	$502,000
Maintenance and Metering Sites	36	2.36	$22,000	$125,000
Private Mobile Radio Tower Sites	11	4.47	$41,000	$236,000
Office Buildings/Maintenance Yards	5	9.83	$91,000	$518,000
Processing and Dehydration Facilities	26	9.97	$92,000	$526,000
Rule 34 Recycling Facilities	25	18.16	$168,000	$958,000
Storage Sites	44	12.54	$116,000	$662,000
Petroleum Storage Tanks	55	153.96	$1,420,000	$8,123,000
Transfer Sites	2	6.20	$57,000	$327,000
Telemetry Paging Sites	23	2.84	$26,000	$150,000
Truck Stops	20	12.84	$118,000	$677,000
Storage Facilities/Warehouses	7	9.34	$86,000	$493,000
Other O&G Related Sites‡	42	60.67	$559,000	$3,201,000

Source: (Vertex Resources Services, Ltd., 2021)

*Facility decommissioning and surface reclamation cost estimates presented in this table are based on Vertex's cost estimates for wellpad decommissioning and surface reclamation on a per acre basis, and are considered Class 5 estimates (i.e., +50%/-30%). For infrastructure and sites listed in this table, Vertex estimates facility decommissioning and surface reclamation costs at $9,222/acre and $52,758/acre, respectively.

†These figures are only inclusive of such sites as they exist on state trust lands. Similar data is not available for private fee lands.

‡This category is used by the NMSLO as a catch-all and is inclusive of all facilities categorized as such by the NMSLO.

3.2.3 Summary of Pipeline and Other Oil and Gas Infrastructure Costs

Table 13 presents the product of the per mile and per site surface reclamation and facility decommissioning costs identified in Sections 3.2.1 and the 3.2.2 as applied to the estimated

pipeline miles on state trust and private fee lands and the other oil and gas support facility site counts on state trust lands. As shown therein, based on the cost assumptions presented in the Vertex Report, the estimated total cost of decommissioning all pipelines and reclaiming all pipeline rights-of-way on state trust and private fee lands in a manner that is consistent with current industry standards is approximately $1.91 billion. Alternatively, if all pipelines were required to be completely removed and properly disposed of, the costs of pipeline decommissioning and right-of-way reclamation are estimated to exceed $11.74 billion. Additionally, the total estimated cost of removal and reclamation of other oil and gas related facilities located on state trust lands is estimated at $876.38 million.

Table 13 – Estimated cost of other oil and gas infrastructure decommissioning and surface reclamation

	Surface Land Status		
	State Trust *(millions)*	**Private Fee** *(millions)*	**State and Fee** *(millions)*
Estimated Pipeline Costs*			
Standard Decommissioning Scenario			
Surface Reclamation	$906.33	$861.23	$1,767.56
Pipeline Decommissioning	$74.40	$68.34	$142.74
Total Scenario Cost	**$980.73**	**$929.57**	**$1,910.30**
Full Removal Scenario			
Surface Reclamation	$906.33	$861.23	$1,767.56
Pipeline Decommissioning	$5,314.38	$4,660.45	$9,974.83
Total Scenario Cost	**$6,220.71**	**$5,521.68**	**$11,742.39**
Estimated Other Infrastructure Costs			
Compressor Station Sites	$31.19	*no data*	*no data*
Electrical Power Related Sites	$20.42	*no data*	*no data*
Fresh Water Frac Ponds	$26.80	*no data*	*no data*
Landing Strips/Airports	$0.59	*no data*	*no data*
Maintenance and Metering Sites	$5.29	*no data*	*no data*
Private Mobile Radio Tower Sites	$3.05	*no data*	*no data*
Office Buildings/Maintenance Yards	$3.05	*no data*	*no data*
Processing and Dehydration Facilities	$16.07	*no data*	*no data*
Rule 34 Recycling Facilities	$28.15	*no data*	*no data*
Storage Sites	$34.23	*no data*	*no data*
Petroleum Storage Tanks	$524.87	*no data*	*no data*
Transfer Sites	$0.77	*no data*	*no data*
Telemetry Paging Sites	$4.05	*no data*	*no data*
Truck Stops	$15.90	*no data*	*no data*
Storage Facilities/Warehouses	$4.05	*no data*	*no data*
Other O&G Related Sites	$157.92	*no data*	*no data*
Total Other Infrastructure Cost	**$876.38**		

Note: All cost estimates presented in this table are reported in millions of USD and considered Class 5 estimates (i.e., +50%/-30%).

*The total cost figures shown here are based on the pipeline mileages and costs/mile presented in Table 11 of this report and therefore may differ from the total cost estimates presented in the Vertex Report.

4 FINANCIAL ASSURANCE OBLIGATIONS

4.1 OIL, GAS, AND SALTWATER DISPOSAL WELLS

In New Mexico, oil and gas extraction activities on state trust and private fee lands are regulated by the New Mexico Oil Conservation Division (NMOCD) of the New Mexico Energy, Minerals, and Natural Resources Department. As part of the NMOCD's regulatory authority provided under the New Mexico Oil and Gas Act (N.M. Stat. § 70-2-1-38), the NMOCD is responsible for establishing financial assurance requirements for oil, gas, and saltwater disposal wells operated on state trust and private fee lands. For oil and gas leases on state trust lands, additional authority in this context has been granted to the NMSLO. Given these overlapping administrative responsibilities, the financial assurance obligations faced by well operators differ depending on the underlying status of the land occupied by the well: private fee land or state trust land.

4.1.1 NMOCD Financial Assurance Requirements for Oil, Gas, and Saltwater Disposal Wells

The NMOCD is responsible for the regulation of the entire life cycle of oil, gas, and saltwater disposal wells situated on private fee lands and state trust lands: permitting new wells, enforcing state oil and gas statutes and rules during well operation, and ensuring abandoned wells are properly plugged and affected lands are responsibly restored. As part of this directive, pursuant to 19.15.8 NMAC, the NMOCD requires permitted oil and gas entities to provide financial assurance in an amount determined by the number of active and inactive wells the permitted entity operates on state trust and private fee lands. The NMOCD's financial assurance requirements are designed to provide a mechanism for enforcing operator compliance with state rules and regulations dictating the conditions for proper plugging and abandonment of wells pursuant to 19.15.25 NMAC. Per the relevant statutes, the NMOCD's required financial assurance is specifically intended to fund well plugging and abandonment and land restoration efforts in the event of non-compliance by the permitted entity. Financial assurance provided by well operators is not intended to secure payment for third parties (landowners or lessees) whose livestock, crops, range, or improvements may be damaged by well operators at any point during the life cycle of the well.

Permitted entities can fulfill the NMOCD's financial assurance requirements with one of three financial instruments: 1) an irrevocable letter of credit, 2) a plugging insurance policy or surety bond issued by a reputable corporate surety, or 3) a cash bond deposited in an account held in trust for the NMOCD at a federally insured financial institution within the State of New Mexico.

As previously alluded to, financial assurance requirements differ for active and inactive wells under the purview of the NMOCD. All permitted entities operating wells on state trust and private fee lands in New Mexico are required to carry financial assurance in a manner that is consistent with the left half of Table 14, however, if one or more of that entity's wells assumes the definition of an inactive well[11], the NMOCD requires the permitted entity to carry

[11] Per 19.15.8 NMAC, an inactive well is defined as a well that has been in a temporarily abandoned status (i.e., non-producing) for more than two years. Wells that do not meet this default criterion but for which an operator is still seeking approval for temporary abandonment from NMOCD will also be treated as inactive wells.

additional financial assurance commensurate with the rate structure shown in the right half of Table 14. It is worth emphasizing that the NMOCD requires operator-specific financial assurance as opposed to well-specific financial assurance. Therefore, the effective financial assurance coverage for individual wells on state trust and private fee lands within New Mexico can vary considerably. That is, as the number of wells a permitted entity operates increases, the per well financial assurance coverage decreases. This regressive financial assurance requirement structure applies to both active wells and inactive wells permitted by the NMOCD, however, by design the marginal effect is much lower for inactive wells both because the coverage requirements are higher and because most permitted entities have comparatively few inactive wells.

Table 14 – Summary of NMOCD's financial assurance requirements for active and inactive wells

NMOCD Requirement for All Wells		NMOCD Additional Requirement for Inactive Wells	
Permitted Wells	**Requirement**	**Permitted Wells**	**Requirement**
1-10 wells*	$50,000	1-5 wells*	$150,000
11-50 wells	$75,000	6-10 wells	$300,000
51-100 wells	$125,000	11-25 wells	$500,000
100+ wells	$250,000	25+ wells	$1,000,000

Source: 19.15.8 NMAC

*Permitted entities may alternatively provide financial assurance for a single well in the amount of $25,000 plus $2/ft projected or actual depth of the well. This formula applies to both single active and single inactive wells.

4.1.2 NMSLO Financial Assurance Requirements for Oil, Gas, and Saltwater Disposal Wells

The NMSLO is responsible for the management of all state trust lands in New Mexico which consist of over nine million surface acres and over thirteen million mineral acres. The NMSLO's mission is to provide a sustainable revenue stream to New Mexico schools and public institutions through the leasing and rental of state trust lands, and as the designated administrator and steward of these lands, it is the responsibility of the NMSLO to ensure that land uses by private enterprises are done in a manner that does not undermine the land's future viability as a revenue-generating asset. Since a significant portion of the land administered by the NMSLO is situated in active oil and gas regions, the NMSLO has adopted its own set of financial assurance requirements for oil and gas lessees pursuant to the authority granted under 19.2.100 NMAC.[12]

As previously noted, the NMLSO's financial assurance requirements are in addition to those of the NMOCD as outlined above in Section 4.1.1. However, one important distinction between the NMSLO's requirements and those of the NMOCD is that the NMSLO's requirements are lease-specific rather than operator-specific or well-specific. This is an important distinction because multiple NMOCD-permitted entities may be authorized by the NMSLO to develop and operate multiple wells on the same state trust land oil and gas lease. In such cases, financial assurance requirements for a given lease may, in effect, cover multiple NMOCD-permitted entities and/or multiple wells.

[12] 19.2.100 NMAC is specific to oil and gas leases on state trust lands, financial assurance requirements for saltwater disposal well site easements permitted on state trust lands are covered under a separate statute, i.e., 19.2.11 NMAC.

The financial assurance requirements and associated bonding instruments utilized by the NMSLO are summarized in Table 15. As shown therein, the NMSLO's current coverage requirements are considerably lower than those of the NMOCD, though it is important to reiterate that the NMSLO's requirements are in addition to the NMOCD's requirements. This is because the intended purpose of the NMSLO's financial assurance requirements is also somewhat different than that of the NMOCD. While the NMOCD's primary focus is to ensure wells are properly plugged and its secondary focus is to ensure lands affected by well construction, operation, and abandonment are properly restored, the NMSLO's primary focus is to ensure that the NMSLO and its lessees holding grazing permits or patent to the affected lands are compensated for damages caused by oil and gas lessees.[13] Though conceivably, in the event of default or improper performance or abandonment of a well by an NMOCD-permitted operator, funds made accessible by the NMSLO's financial assurance requirements likely would be utilized for the same purpose, i.e., well plugging and abandonment and restoration of the surface lands.

Table 15 – Summary of NMSLO's financial assurance requirements for oil and gas leases

NMSLO Requirement for Oil, Gas, and SWD Leases		
Bond Type	**Coverage**	**Requirement**
Single lease	1 lease *(no well limit)*	$10,000
Multi-lease blanket	2 or more leases *(no well limit)*	$20,000
Mega-bond	All leases and/or right-of-way easements	$25,000
SWD damage & performance	1 SWD easement *(damage to surface lessees)*	$10,000
SWD reclamation*	1 SWD easement *(restoration of surface/subsurface)*	$250,000
Cross-lease wellpads†	1 wellpad with a cross-lease wellbore	$50,000

Note: This table was assembled using various bond forms and rules documents available to the public on the NMSLO's website at the time of preparing this analysis.

*The purpose of the SWD reclamation bond is somewhat different than the purpose of the other NMSLO bond types (see Footnote 13)

†Cross-lease wellpads are covered by NMSLO business leases rather than oil and gas leases.

As illustrated in Table 15, the NMSLO's financial assurance requirement structure is also regressive in design, i.e., as the number of leases a permitted entity holds and the concomitant number of wells that lessee operates increases, the per well financial assurance coverage decreases. Arguably, compared to NMOCD's financial assurance requirement structure, the NMSLO's is even more regressive since the change in the marginal coverage requirement is not tied to the number of wells a permitted entity operates. Obviously, this statement does not apply to saltwater disposal leases where bond coverage only extends to a single easement and therefore to a finite number of wells that is fixed by engineering constraints.

4.1.3 Analysis of Financial Assurance Carried by Well Operators

All NMOCD financial assurance coverage data used in this analysis was extracted from the publicly accessible Electronic Permitting and Payment System maintained by the NMOCD

[13] This statement is true with exception of the NMSLO's surety reclamation bond for saltwater disposal easements. Financial assurance requirements under this bond type are exclusive of damages caused by the permitted lessee to any surface lessee of the affected lands or to livestock, range, water, crops, tangible improvements, or surface improvements. Rather, this bond type is intended ensure compliance with all performance requirements of the saltwater disposal well and leased area, as well as the proper removal of improvements and equipment, remediation, reclamation, and restoration of the affected lands.

(NMOCD, 2020). This online repository contains queryable data and profile information for all active permitted entities and wells within the State of New Mexico, including details about the financial assurance coverage held by those permitted entities. Though it should be mentioned, some sampling and inference techniques were required due to the sheer volume of data and the limitations of the system's report production capabilities.

The first step in analyzing the adequacy of the NMOCD's and the NMSLO's current financial assurance requirements for active wells was to determine how the requirements and the supporting data available to the Center translated to the active wells on state trust and private fee lands in New Mexico. Where an active well in this context refers to any oil, gas, injection, or saltwater disposal well located on state trust or private fee lands that has not been approved by the NMOCD for bond release. That is, the well has been plugged and the wellsite facilities have been decommissioned and the wellsite grounds have been fully reclaimed per state standards and requirements. By this definition, a well need not be actively producing to be considered an active well.

Estimated Well-Specific Coverage Required by NMOCD

Estimating the level of financial assurance coverage on the individual wells included in this analysis is complicated by the fact that both the NMOCD's and the NMSLO's requirements can create circumstances where any given number of wells may be covered by a single financial assurance instrument. Or, alternatively, an individual well may be covered by multiple financial assurance instruments, which occurs when an NMOCD-permitted entity holds a single well bond, a blanket bond, and/or an inactive well bond. To contend with this complexity, the Center assumes herein that the total level of financial assurance applicable to an NMOCD-permitted entity could be applied to any or all the wells operated by that entity. This process is described formulaically by Equation (1).

$$(1) \qquad well\ coverage_{ij} = \frac{1}{n_j}\left(single\ well_j + multi\ well_j + inactive\ well_j\right)$$

Where the well-specific financial assurance coverage for well *i* operated by permitted entity *j* is calculated as the sum of all NMOCD financial assurance instruments applicable to permitted entity *j* divided by the total number of wells *n* operated by permitted entity *j*.

Table 16 presents a summary of the results of Equation (1) as applied to the wells dataset presented in Section 2.1. The table also contains various summary statistics that help demonstrate how the NMOCD's financial assurance coverage requirements translate to the active wells that are the subject of this analysis.

The NMOCD's Electronic Permitting and Payment System is not capable of generating full-population financial assurance reports queryable by permitted entity, therefore individual permitted entities were sampled to attain robust coverage profiles for permitted entities within each well-count cohort presented in Table 16. The sample rates for each well-count cohort adhere to an escalating scale to minimize the magnitude of total sampling error. For example, permitted entities responsible for 100+ wells were fully sampled (i.e., 100%) whereas permitted entities responsible for only 1 well were sampled at a lower rate (i.e., 27%).

Table 16 – Summary of estimated financial assurance coverage required by NMOCD

OCD Financial Assurance for Permitted Entities				Sampling		Wells Covered	
Permitted Wells	Min Required*	Mean Per Entity†	Mean Per Well	Entities	Sample Rate	Mean	Max
1 Well‡	$25k+$2/ft	$40,482	$40,482	113	27%	1	1
2-10 Wells	$50,000	$60,412	$6,041	181	28%	5	10
11-50 Wells	$75,000	$102,205	$2,044	111	31%	25	50
51-100 Wells	$125,000	$168,232	$1,734	26	54%	71	97
100+ Wells	$250,000	$254,021	$120	47	100%	452	2,119

*As outlined in 19.15.8 NMAC.

†For purposes of illustration, these figures exclude additional financial assurance coverage held by the permitted entity for inactive wells.

‡ If a permitted entity only operates 1 well, the financial assurance requirement for that entity is either $50,000 or $25,000 plus $2/ft projected or actual depth of the well. Within the dataset, many permitted entities opt for a $50,000 blanket coverage option even if the depth-based formula would result in a lower requirement.

As shown in Table 16, on average, NMOCD-permitted entities carry financial assurance at a level that exceeds the minimum requirement for the number of wells they operate. This is true even if additional financial assurance carried by permitted entities for inactive wells is excluded from the calculations. The reason for this outcome is that many permitted entities carry a blanket bond that is based on their well-count in addition to one or more single well bonds for certain wells (typically those situated on private fee lands). Despite the averages shown in Table 16, it should be noted that many NMOCD-permitted entities have not demonstrated adequate financial assurance coverage and have been found in violation of their financial assurance obligations by the NMOCD.[14]

Estimated Well-Specific Coverage Required by NMSLO

To estimate additional well-specific financial assurance coverage for wells situated on state trust lands and therefore subject to NMSLO financial assurance requirements, the Center utilized a bond coverage dataset provided by the NMSLO for use in this analysis. The dataset provides a mechanism to link specific financial assurance instruments held by state trust land oil and gas lessees to all operators that are covered by the instrument. These operators can then be linked to specific wells in the wells dataset using NMOCD-assigned Oil and Gas Reporting ID (OGRID) codes.[15] Here again, certain assumptions about well-specific coverage are required due to the limitations of the data format. Specifically, this analysis assumes all wells on state trust lands linked to a specific permitted entity benefit from all financial instruments linked to that entity. This assumption is necessary because state trust land oil and gas leases and concomitant wells may be covered by multiple bonds, i.e., single lease and multi-lease or mega-bonds.

Table 17 presents various summary statistics to illustrate how the NMSLO's financial assurance coverage requirements manifest at the individual well and operator levels. As shown therein, permitted entities with 1 well or 2-10 wells tend to carry more financial assurance

[14] From the records provided in the Electronic Permitting and Payment System, the NMOCD does seem to be aware of and is taking action on these non-compliance issues.

[15] All NMOCD-permitted entities are assigned a unique OGRID which is used by the NMOCD to link permitted entities to wells and other assets. The NMSLO uses this same identification code in its own databases and records.

coverage than is technically necessary per NMSLO requirements, and by design, coverage on the wells operated by those entities is highest among wells on state trust lands. However, as discussed in Section 4.1.2, the regressive design of the NMLSO's financial assurance requirement structure means that permitted entities responsible for the operation and maintenance of higher well counts on state trust lands carry considerably lower coverage per well. For example, those entities operating more than 100 wells on state trust lands on average carry approximately $127 per well in assurance coverage, which is only about 1% of the coverage carried by entities with only 1 well on state trust lands.

Table 17 - Summary of estimated financial assurance coverage required by NMSLO

NMSLO Financial Assurance for Permitted Entities				# of Wells Covered	
Wells Operated	**Mean Per Entity***	**Mean Per Well†**	**Entities**	**Mean**	**Max**
1 Well†	$13,203	$13,203	64	1	1
2-10 Wells	$20,152	$5,595	132	4	10
11-50 Wells	$25,000	$1,247	81	24	50
51-100 Wells	$24,688	$386	16	67	100
100+ Wells	$26,892	$127	37	329	1,136
SWD Easement	$645,738	$246,558	122	1	4

* This statistic is complicated by the fact that the NMSLO allows multiple operators to be covered by a single bond and some operators choose to carry multiple bonds.

† Within this study it is assumed each SWD on state trust land is covered by a $10,000 performance bond and a $250,000 reclamation bond unless it is clear from the NMOCD's records that multiple SWD wells operated by the permitted entity are located within the same state trust land oil and gas lease.

Estimated Total Financial Assurance Carried by Well Operators

The well-specific and entity-specific average financial assurance coverage figures presented above were calculated from the Center's analysis of the actual wells inventory dataset presented in Section 2.1. An overview of the aggregate and average per well financial assurance coverage for those wells on state trust and private fee lands is presented in Table 18 by well type and underlying land status.

Table 18 – Estimated total financial assurance coverage on subject wells

	Financial Assurance *(State Trust)*			Financial Assurance *(Private Fee)*		
	Gas *(N = 4,068)*	**Oil** *(N = 11,766)*	**SWD** *(N = 340)*	**Gas** *(N = 5,121)*	**Oil** *(N = 6,685)*	**SWD** *(N = 277)*
Total Coverage	*(millions)*	*(millions)*	*(millions)*	*(millions)*	*(millions)*	*(millions)*
NMSLO required	$1.88	$5.01	$78.78	$0.00	$0.00	$0.00
NMOCD required	$11.43	$36.39	$2.63	$11.75	$22.94	$2.38
Total	**$13.31**	**$41.39**	**$81.41**	**$11.75**	**$22.94**	**$2.38**
Coverage/Well	*(USD)*	*(USD)*	*(USD)*	*(USD)*	*(USD)*	*(USD)*
NMSLO required	$461	$426	$231,706	$0	$0	$0
NMOCD required	$2,810	$3,092	$7,738	$2,295	$3,432	$8,592
Total Per Well	**$3,272**	**$3,518**	**$239,443**	**$2,295**	**$3,432**	**$8,592**

Based on the assumptions and data sources presented here in Section 4.1, the Center estimates the amount of financial assurance held by NMOCD-permitted entities operating active wells

on state trust and private fee lands in New Mexico to be approximately $173.18 million, which translates to an overall average coverage (weighted by well type) of approximately $6,129 per well.

4.2 PIPELINES AND OTHER OIL & GAS INFRASTRUCTURE

As with oil and gas wells throughout New Mexico, there is overlapping authority in the regulation of pipeline and other oil and gas infrastructure on private lands and state trust lands. As previously noted, regulatory authority of over this infrastructure at a level and context that is relevant to this analysis is limited to one or more of four regulatory entities: the NMOCD, the NMSLO, NMED, and/or the NMPRC.

4.2.1 Financial Assurance Requirements for Pipelines

In New Mexico, the authority to regulate oil and gas pipelines is granted to the NMPRC in a manner that is consistent with 18.60.2 NMAC.[16] However, in this role, the NMPRC is primarily focused on ensuring pipelines are operated in a safe and responsible manner. With that objective in mind, the Pipeline Safety Bureau of the NMPRC tasks itself with licensing new pipelines, conducting safety and compliance inspections on existing pipelines, and investigating intrastate pipeline incidents and accidents. The NMPRC does have the authority to impose fees on pipeline operators per 18.60.3 NMAC, but as currently structured, these fees are intended to cover the costs of staffing and training for the NMPRC's Pipeline Safety Bureau (NMPRC, 2020). The NMPRC also requires pipeline operators to carry insurance coverage in the event of a pipeline incident or accident, but it does not require operators to provide financial assurance for performance or reclamation purposes.

A summary of the NMSLO's financial assurance obligations for pipeline operators with rights-of-way across state trust lands is presented in Table 19. Again, neither the NMPRC nor the NMOCD currently have similar requirements that would apply to pipeline operators on either state trust or private fee lands.

Table 19 – Summary of NMSLO's financial assurance requirements for pipelines

NMSLO Financial Assurance Requirements for Pipelines		
Bond Type	**Coverage**	**Requirement**
Mega-bond*	All leases and/or right-of-way easements	$25,000
ROW damage bond (single)	1 easement damage bond	$500
ROW damage bond (blanket)	2 or more easement damage bond	$2,500
Produced water bond (single)†	1 easement reclamation bond	$25,000
Produced water bond (blanket)†	2 or more easement reclamation bond	$250,000

*As previously discussed, mega-bonds effectively provide holders coverage on all rights-of-way and oil and gas wells they operate on state trust lands.

†Produced water and freshwater pipelines are not included in the Platts pipeline dataset used to establish the pipeline inventory subject to this analysis, therefore, the bond coverage held by produced water and freshwater pipeline operators is necessarily omitted from this analysis.

[16] Recently there has been an attempt to transfer authority and regulatory responsibilities for pipelines in New Mexico from the NMPRC to the NMOCD. New Mexico State Senate Bill 409 was drafted for this purpose and was brought before the Senate Rules Committee in early March 2021. It is now expected that the bill will not be voted on until 2022.

As with oil and gas wells, the NMSLO has also leveraged its state trust land management responsibilities by adopting its own set of financial assurance requirements for pipelines pursuant to 19.2.10 NMAC. Though here again, it is important to point out the NMSLO's primary goal in imposing financial assurance requirements is to ensure that the NMSLO and its lessees holding grazing permits or patent to the affected lands are compensated for damages caused by pipeline operators due to the construction, operation, or abandonment of the pipeline. This statement is true for pipelines transmitting oil, gas, and refined petroleum products but not for produced water pipelines. The NMSLO's financial assurance requirements for produced water pipelines are instead intended to ensure compliance with all NMSLO requirements for proper removal of improvements and equipment, remediation, reclamation, and restoration of the affected lands.

4.2.2 Financial Assurance Requirements for Other Oil & Gas Infrastructure

Many of the oil and gas infrastructure types listed in Table 13 that are not located within a wellsite or a pipeline right-of-way are not subject to the regulatory oversight of the NMPRC or the NMOCD. As such, no financial assurance obligations are imposed on the owners or operators of this infrastructure except where these facilities are located on state trust lands and therefore subject to the jurisdiction of the NMSLO. Infrastructure that falls into this category and is located on state trust lands is typically permitted by the NMSLO through a business lease as defined under 19.2.9 NMAC. Per this statute, the NMSLO does have the authority to require the owner of the infrastructure to carry bond coverage in an amount adequate "to assure proper removal of the improvements from trust land and the restoration of trust land." However, in practice, the NMSLO typically does not impose financial assurance requirements on operators of most of the infrastructure listed in Table 13.[17]

Extant financial assurance obligations where applicable to the subject other oil and gas infrastructure types are presented in Table 20.[18]

Table 20 - Summary of financial assurance requirements for other oil and gas infrastructure

Infrastructure Type	Assurance Amount	Statute	Regulatory Entity
Rule 34 Recycling Facilities	$25,000 minimum*	19.15.34	NMOCD
Rule 34 Recycling Facilities	$1.00/bbl contained	19.2.9	NMSLO
Petroleum Storage Tanks	$500,000-$1,000,000†	20.5.117	NMED‡

*Per 19.15.34, permitted operators carrying financial assurance consistent with 19.15.8 NMAC (see Table 14) are not required by the NMOCD to provide additional assurance. Otherwise, operators are required to provide financial assurance in the greater amount of $25,000 or the estimated cost of facility closure.

†Per 20.5.117 NMAC operator financial responsibility requirements vary depending on the location, capacity, and number of storage tanks operated. Financial assurance coverage in the amounts shown here is only required if the operator cannot demonstrate an adequate tangible net worth or otherwise pass the financial test of self-insurance outlined under 20.5.117.1705 NMAC.

‡New Mexico Environment Department - Petroleum Storage Tank Bureau

[17] As indicated to the Center during telephone conversations with staff persons within the NMSLO's Commercial Resources Division. It should be noted that NMSLO business leases require lessees to carry commercial general liability insurance in the minimum amount of $200,000 for damage to or destruction of each legally described real property arising out of a single occurrence with an aggregate of $1,000,000. Additionally, NMSLO mega-bonds may also extend coverage to operators of other oil and gas infrastructure where applicable.

[18] Note that this table excludes oil and gas related surface waste management facilities used for the disposal of oil field waste. These facilities are required by the NMOCD per 19.15.36 NMAC to carry financial assurance coverage to ensure proper construction, operation, closure, and post closure. However, these facilities are outside the scope of this study.

As shown in Table 20, financial assurance requirements for this infrastructure are nuanced and pursuant to the relevant regulations, operators may have multiple ways of minimizing or avoiding these requirements. For instance, if a rule 34 recycling facility operator is also a well operator meeting the financial assurance obligations presented in Table 14, then additional coverage for rule 34 recycling facilities and associated containment ponds/tanks/pits is not required by the NMOCD.

4.2.3 Analysis of Financial Assurance Coverage for Pipelines and Other Oil & Gas Infrastructure

Estimated Per Pipeline Mile Financial Assurance Coverage Required by NMSLO

The Center's estimated per pipeline mile financial assurance coverage for pipelines situated on state trust lands, and therefore subject to NMSLO financial assurance requirements, are presented in Table 21. The table presents various summary statistics to illustrate how the NMSLO's financial assurance coverage requirements translate to per pipeline mile coverage and per operator coverage. As with the NMSLO's financial assurance requirement structure for wells, the requirement structure for pipelines is regressive in design. As the number of pipeline miles increases for a given operator, the per mile coverage on the pipelines owned by that operator decreases. As an example, the Center estimates that pipeline operators with more than 100 miles of pipeline crossing state trust land are expected to carry approximately $11 in financial assurance coverage per mile — compared to an average of $761 per mile coverage for operators with fewer than 5 miles of pipeline on state trust land.

Table 21 – Summary of estimated financial assurance coverage for pipelines

NMSLO Requirements for Pipeline Operators†			Operator Counts		Miles Covered	
Pipeline Miles	**Mean Per Entity**	**Mean Per Mile**	**Known**	**Unknown***	**Mean**	**Max**
Less than 5 miles	$2,141	$761	9	55	3.57	4.99
5 to 10 miles	$3,750	$493	8	0	6.59	7.86
10 to 25 miles	$5,000	$240	6	0	19.97	24.52
25 to 50 miles	$1,833	$48	3	0	37.29	50.21
50 to 100 miles	$1,500	$20	4	0	71.58	89.54
More than 100 miles	$2,154	$11	13	0	295.42	996.32

*Inventoried pipeline mileage associated with unknown operators is assumed to be owned by multiple operators consistent with the median number of pipeline miles operated by the known operators, i.e., approximately 2 miles per operator.

†Note that these figures are specific to operators of oil, gas, and refined products pipelines only and do not include financial assurance coverage that would be applicable to produced water or freshwater pipelines.

In developing the estimates presented in Table 21, several assumptions were necessary due to deficiencies in the underlying Platts pipeline inventory (see Section 3.2) and the absence of detailed, operator-specific financial assurance coverage data available for use in this analysis. A summary of key assumptions employed in this portion of the analysis is provided below:

- Each non-contiguous state trust land parcel is assumed to be a separate easement for the purposes of estimating the bond coverage required of pipeline operators included in the pipeline inventory.

- There are approximately 111 miles of pipeline within the Platts pipeline inventory that belong to unidentified operators. Where located on state trust lands, it is assumed that

this mileage is owned by multiple operators at a level that is consistent with the median number of pipeline miles operated by the known operators, i.e., approximately 2 miles per operator.

- Neither operator-specific nor pipeline-specific financial assurance coverage data was provided by the NMSLO for use in this analysis. It is therefore assumed that pipeline operators are profit maximizing and hold the minimum bond coverage required by the NMSLO. Mathematically, this means operators with pipelines encumbering fewer than five state trust land parcels are assumed to carry $500 in bond coverage per parcel. Operators encumbering more than five state trust land parcels are assumed to hold a blanket bond (i.e., carry $2,500 in total bond coverage).

- Pipeline operators that have been identified previously in this analysis as holders of an NMLSO mega-bond for one or more oil and gas leases on state trust lands are assumed to have no additional bond coverage for their oil and gas pipelines, however, it is also assumed herein that the entire $25,000 in bond coverage under the mega-bond could be applied to pipelines operated by the mega-bond holders.

Estimated Per Other Oil & Gas Site Financial Assurance Coverage Requirements

As shown in Table 22, of the other oil and gas infrastructure and facility types reviewed as part of this analysis, only petroleum storage tanks and rule 34 recycling facilities are expected to be covered by any level of financial assurance. On average, rule 34 recycling facilities are estimated to carry bond coverage of approximately $1,000,000 per site (as required by the NMSLO), but the NMOCD's requirements shown in Table 20 likely do not apply to the rule 34 recycling facilities subject to this analysis because the operators of these specific facilities meet the financial assurance requirements under 19.15.8 NMAC. It is also expected that the requirements of 20.5.117 NMAC do not apply to most of the petroleum storage tank facilities included in this analysis because the operators of those facilities would easily pass the financial test of self-insurance outlined in 20.5.117.1705 NMAC.

Table 22 – Summary of estimated financial assurance coverage for other O&G infrastructure

			Estimated Coverage	
Infrastructure Type	**Site Count***	**Operator Count**	**Mean Per Entity**	**Mean Per Site**
Compressor Station Sites	135	49	$0	$0
Electrical Power Related Sites	29	9	$0	$0
Freshwater Frac Ponds	80	21	$0	$0
Landing Strips/Airports	1	1	$0	$0
Maintenance and Metering Sites	36	26	$0	$0
Private Mobile Radio Tower Sites	11	11	$0	$0
Office Buildings/Maintenance Yards	5	5	$0	$0
Processing and Dehydration Facilities	26	20	$0	$0
Rule 34 Recycling Facilities†	25	10	$2,500,000	$1,000,000
Storage Sites	44	35	$0	$0
Petroleum Storage Tanks‡	55	21	$142,857	$54,545
Transfer Sites	2	2	$0	$0
Telemetry Paging Sites	23	16	$0	$0

Infrastructure Type	Site Count*	Operator Count	Estimated Coverage Mean Per Entity	Estimated Coverage Mean Per Site
Truck Stops	20	18	$0	$0
Storage Facilities/Warehouses	7	7	$0	$0
Other O&G Related Sites	42	30	$0	$0

*Infrastructure included in this table is limited to that permitted by an NMSLO business lease.

†These figures represent the NMSLO's estimated requirement. The estimated financial assurance coverage for these facilities as required by NMOCD is expected to be $0.00.

‡Per 20.5.117 NMAC, operators are only required to carry bond coverage if their demonstrated "tangible net worth" is less than $10-$20 million. Most of the operators of the subject storage tanks have estimated values exceeding $1 billion.

A summary of key assumptions employed in this portion of the analysis is provided below:

- Because all of the subject rule 34 recycling facility operators also operate 95 or more wells on private and state trust lands, those operators are assumed to meet the NMOCD's financial assurance requirements under 19.5.8 NMAC and therefore do not carry additional financial assurance that otherwise would be required per 19.15.34 NMAC.
- All of the subject rule 34 recycling facilities are assumed to contain one million barrels of fluid and therefore carry financial assurance coverage in the amount of $1,000,000 per facility to meet the NMSLO's requirements of $1.00/bbl contained.[19]
- All of the subject storage tank sites are assumed to contain on average at least 10,000 gallons (~238bbls) of petroleum per month and therefore meet the eligibility threshold for regulation by the NMED under 20.5.117 NMAC.
- All storage tanks subject to this analysis are assumed to be located at petroleum marketing facilities as defined under 20.5.101.7 NMAC.[20]

Estimated Total Financial Assurance Carried by Pipeline and Other Oil & Gas Infrastructure Operators

Table 23 presents the aggregate financial assurance coverage estimates produced by the per mile and per site estimates presented above as multiplied by the estimated pipeline miles and facility counts available for use in this analysis. Based on the assumptions and data sources presented here in Section 4.2, the Center estimates the total amount of financial assurance carried by pipeline operators is approximately $236,500 and any level of coverage is only carried by operators with pipelines crossing state trust lands. No financial assurance coverage requirements exist for pipeline operators on private fee lands in New Mexico. With respect to other oil and gas infrastructure located on state trust lands, the Center estimates the total amount of financial assurance coverage is approximately $28.0 million, the majority of which is tied to the NMSLO's requirements pertaining to rule 34 recycling and containments facilities. A smaller portion of this coverage is tied to petroleum storage tanks as required by the New Mexico Environment Department.

[19] This estimate of the average fluid containment of the subject rule 34 recycling facilities was provided by staff persons of the NMSLO's Commercial Resources Division, the Center did not attempt to corroborate these figures.

[20] Per N.M. Code R. § 20.5.101.7, "petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

Table 23 – Estimated total financial assurance coverage on pipelines and other oil & gas infrastructure

	Surface Land Status		
	State Trust *(millions)*	**Private Fee** *(millions*	**State and Fee** *(millions)*
Total Coverage on Pipelines	**$0.24**	**$0.00**	**$0.24**
Total Coverage on Other O&G Infrastructure	**$28.00**	**no data**	**no data**
Compressor Station Sites	$0.00	*no data*	*no data*
Electrical Power Related Sites	$0.00	*no data*	*no data*
Freshwater Frac Ponds	$0.00	*no data*	*no data*
Landing Strips/Airports	$0.00	*no data*	*no data*
Maintenance and Metering Sites	$0.00	*no data*	*no data*
Private Mobile Radio Tower Sites	$0.00	*no data*	*no data*
Office Buildings/Maintenance Yards	$0.00	*no data*	*no data*
Processing and Dehydration Facilities	$0.00	*no data*	*no data*
Rule 34 Recycling Facilities	$25.00	*no data*	*no data*
Storage Sites	$0.00	*no data*	*no data*
Petroleum Storage Tanks	$3.00	*no data*	*no data*
Transfer Sites	$0.00	*no data*	*no data*
Telemetry Paging Sites	$0.00	*no data*	*no data*
Truck Stops	$0.00	*no data*	*no data*
Storage Facilities/Warehouses	$0.00	*no data*	*no data*
Other O&G Related Sites	$0.00	*no data*	*no data*

Notes: All figures presented in this table are reported in millions of USD. The estimates presented in this table do not include additional financial assurance coverage that may be available from NMSLO-required mega-bonds.

5 FINDINGS AND CONCLUSIONS

Based on the data available to the Center upon preparing this analysis and the assumptions presented in the above sections of this report, the Center's findings pertaining to the adequacy of the current financial assurance requirements for the various oil and gas related infrastructure explored as part of this study are presented below.

As discussed in Section 4.1, the primary function of much of the financial assurance coverage on oil, gas, and saltwater disposal wells throughout New Mexico is to ensure that basic plugging and abandonment costs are covered in the event an operator fails to abandon a well in a manner that is consistent with state standards. Well equipment decommissioning and wellsite surface reclamation are secondary objectives. Given this priority structure, Table 24 presents the adequacy of current financial assurance requirements as compared to basic plugging and abandonment costs, and Table 25 presents these same requirements as compared to the total estimated costs of well closure and clean-up.

As shown in Tables 24 and 25, on average, the applicable financial assurance requirements differ considerably depending on where a well is located (i.e., on state trust land or private fee land) and the primary use of that well (i.e., oil, gas, or saltwater disposal). Of the wells included in this study, only saltwater disposal wells located on state trust lands carry financial assurance

coverage at a level that meets or exceeds the full liability of well closure and clean-up. Excluding saltwater disposal wells on state trust lands, the estimated gap between base plugging and downhole abandonment costs and financial assurance coverage averages to approximately $86,100 per well. If estimated wellsite decommissioning and surface reclamation costs are included in this exercise, the Center estimates that the average financial assurance gap is approximately $182,600 per well (again if saltwater disposal wells on state trust lands are excluded from the average calculations).

Table 24 – Summary of per well financial assurance adequacy findings for O&G wells (P&A cost gap)

Land Status	Well Type	Financial Assurance	P&A Costs*	Assurance Gap
State Trust	Gas	$3,300	$90,500	($87,200)
State Trust	Oil	$3,500	$93,100	($89,600)
State Trust	SWD	$239,400	$89,800	$149,600
Private Fee	Gas	$2,300	$84,100	($81,800)
Private Fee	Oil	$3,400	$93,500	($90,100)
Private Fee	SWD	$8,600	$90,500	($81,900)
Weighted Average		**$6,129**	**$91,124**	**($85,006)**

Notes: All figures presented in this table are reported on a "per well" basis.
*Cost figures reported in this table are specific to well plugging and downhole abandonment efforts and do not include surface facility decommissioning or wellsite surface reclamation.

Table 25 – Summary of per well financial assurance adequacy findings for O&G wells (total cost gap)

Land Status	Well Type	Financial Assurance	Total Costs*	Assurance Gap
State Trust	Gas	$3,300	$168,900	($165,600)
State Trust	Oil	$3,500	$218,400	($214,900)
State Trust	SWD	$239,400	$175,900	$63,500
Private Fee	Gas	$2,300	$151,800	($149,500)
Private Fee	Oil	$3,400	$216,700	($213,300)
Private Fee	SWD	$8,600	$178,300	($169,700)
Weighted Average		**$6,129**	**$197,897**	**($191,779)**

Notes: All figures presented in this table are reported on a "per well" basis.
*Cost figures reported in this table include well plugging and downhole abandonment, surface facility decommissioning, and wellsite surface reclamation.

The current financial assurance requirements and the costs of closure for pipelines located on state trust and private fee lands in New Mexico are summarized in Table 26. As shown therein, the estimated average financial assurance coverage for pipelines on state trust lands is approximately $51 per mile, whereas the average decommissioning and surface reclamation cost is estimated to exceed $211,000 per mile. Based on the Center's research, currently there are no financial assurance requirements for pipelines located on private fee lands, therefore the financial assurance gap is equivalent to the total cost of decommissioning and reclamation.

Table 26 - Summary of per pipeline mile financial assurance adequacy findings for O&G pipelines

Land Status	Financial Assurance	Costs*	Assurance Gap
Standard Decommissioning Scenario			
State Trust	$51	$211,000	($210,949)
Private Fee	$0	$213,000	($213,000)
Weighted Average	**$26**	**$212,000**	**($212,000)**

Land Status	Financial Assurance	Costs*	Assurance Gap
Full Removal Scenario			
State Trust	$51	$1,341,000	($1,340,949)
Private Fee	$0	$1,264,000	($1,264,000)
Weighted Average	**$26**	**$1,304,000**	**($1,304,000)**

Notes: All figures presented in this table are reported on a "per mile" basis.
*Costs reported here are representative of the average per mile pipeline decommissioning and right-of-way reclamation costs presented in Table 11 weighted by the number of pipeline miles reported in Table 11.

The differences between current financial assurance requirements and the costs of closure for other midstream and oil and gas support infrastructure located on state trust lands in New Mexico are summarized in Table 27. Note that this portion of the Center's analysis does not include similar infrastructure located on private fee lands because such data could not be located for use in this analysis. Of the other oil and gas infrastructure types explored in this analysis, financial assurance requirements were only identified for rule 34 recycling and containment facilities and petroleum storage tanks. In both cases, the current level of financial assurance coverage required for these facilities is exceeded by the estimated facility decommissioning and surface reclamation cost.

Table 27 – Summary of per site financial assurance adequacy findings for other O&G infrastructure

	For Infrastructure on State Trust Lands		
Other O&G Infrastructure Type	**Financial Assurance**	**Closure Cost**	**Assurance Gap**
Compressor Station Sites	$0	$231,000	**($231,000)**
Electrical Power Related Sites	$0	$704,000	**($704,000)**
Freshwater Frac Ponds	$0	$335,000	**($335,000)**
Landing Strips/Airports	$0	$590,000	**($590,000)**
Maintenance and Metering Sites	$0	$147,000	**($147,000)**
Private Mobile Radio Tower Sites	$0	$277,000	**($277,000)**
Office Buildings/Maintenance Yards	$0	$609,000	**($609,000)**
Processing and Dehydration Facilities	$0	$618,000	**($618,000)**
Rule 34 Recycling Facilities	$1,000,000	$1,126,000	**($126,000)**
Storage Sites	$0	$778,000	**($778,000)**
Petroleum Storage Tanks	$54,545	$9,543,000	**($9,488,455)**
Transfer Sites	$0	$384,000	**($384,000)**
Telemetry Paging Sites	$0	$176,000	**($176,000)**
Truck Stops	$0	$795,000	**($795,000)**
Storage Facilities/Warehouses	$0	$579,000	**($579,000)**
Other O&G Related Sites	$0	$3,760,000	**($3,760,000)**

Notes: All figures presented in this table are reported on a "per site" basis in USD. Similar data for infrastructure located on private fee lands was not available for this analysis. The estimates presented in this table do not include additional financial assurance coverage that may be available from NMSLO-required mega-bonds held by the infrastructure owner.

Overall, the Center finds that existing financial assurance requirements applicable to all infrastructure types are not sufficient to fully offset estimated closure and clean-up costs. As summarized in the Table 28, this study finds the total cost of closure and clean-up of the oil and gas infrastructure currently located on state trust and private lands to be approximately $8.38 billion. Whereas the total financial assurance coverage for this infrastructure accessible

to state regulatory entities for the purpose of closure and clean-up efforts is estimated to be approximately $201.42 million, resulting in a total financial assurance gap of approximately $8.18 billion.

Table 28 – Summary of total financial assurance adequacy findings

	Estimated Closure and Clean-up Costs *(millions)*		Estimated Financial Assurance *(millions)*		Estimated Financial Assurance Gap *(millions)*	
Infrastructure	**State Trust**	**Private**	**State Trust**	**Private**	**State Trust**	**Private**
Wells*	$3,316.40	$2,275.33	$136.11	$37.07	($3,180.29)	($2,238.26)
Pipelines†	$980.73	$929.57	$0.24	$0.00	($980.49)	($929.57)
Other	$876.38	*no data*	$28.00	$0.00	($848.38)	*no data*
Total	**$5,173.51**	**$3,204.90**	**$164.35**	**$37.07**	**($5,009.16)**	**($3,167.83)**
	$8,378.41		**$201.42**		**($8,176.99)**	

Notes: All figures presented in this table are reported in millions of USD.

*Cost figures reported in this table include well plugging and downhole abandonment, surface facility decommissioning, and wellsite surface reclamation.

† Cost figures reported in this table exclude produced water and freshwater pipelines used by oil and gas operators. Costs reported in this table assume buried pipelines are abandoned in-place rather than removed.

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ATTACHMENT

3

EXHIBIT 90

EXHIBIT 90-A

APPLICANTS' POST-HEARING PROPOSED AMENDMENTS TO 19.15.2 NMAC FINAL

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 2 GENERAL PROVISIONS FOR OIL AND GAS OPERATIONS

19.15.2.1 ISSUING AGENCY: Oil Conservation Commission.
[19.15.2.1 NMAC - Rp, 19.15.1.1 NMAC, 12/1/2008; A, 6/26/2018]

19.15.2.2 SCOPE: 19.15.2 NMAC applies to persons or entities engaged in oil and gas development and production within New Mexico and to 19.15.2 NMAC through 19.15.39 NMAC.
[19.15.2.2 NMAC - Rp, 19.15.1.2 NMAC, 12/1/2008]

19.15.2.3 STATUTORY AUTHORITY: 19.15.2 NMAC is adopted pursuant to the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978, which grants the oil conservation division jurisdiction and authority over all matters relating to the conservation of oil and gas, the prevention of waste of oil and gas and of potash because of oil and gas operations, the protection of correlative rights and the disposition of wastes resulting from oil and gas operations.
[19.15.2.3 NMAC - Rp, 19.15.1.3 NMAC, 12/1/2008; A, 6/26/2018]

19.15.2.4 DURATION: Permanent.
[19.15.2.4 NMAC - Rp, 19.15.1.4 NMAC, 12/1/2008]

19.15.2.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.2.5 NMAC - Rp, 19.15.1.5 NMAC, 12/1/2008]

19.15.2.6 OBJECTIVE: To set forth general provisions and definitions pertaining to the authority of the oil conservation division and the oil conservation commission pursuant to the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978.
[19.15.2.6 NMAC - Rp, 19.15.1.6 NMAC, 12/1/2008; A, 6/26/2018]

19.15.2.7 DEFINITIONS: These definitions apply to 19.15.2 NMAC through 19.15.39 NMAC.

A. Definitions beginning with the letter "A".

(1) **"Abate"** means to investigate, contain, remove or mitigate water pollution.

(2) **"Abatement"** means the investigation, containment, removal or other mitigation of water pollution.

(3) **"Abatement plan"** means a description of operational, monitoring, contingency and closure requirements and conditions for water pollution's prevention, investigation and abatement.

(4) **"Act" or "Oil and Gas Act"** means Chapter 70, Article 2 NMSA 1978, as it may be modified or amended.

(5) **"Adjoining spacing units"** mean those existing or prospective spacing units in the same pool that are touching at a point or line on the subject spacing unit.

(6) **"Adjusted allowable"** means the allowable production a well or proration unit receives after all adjustments are made.

(7) **"AFE"** means authorization for expenditure.

(8) **"Affected persons"** means the following persons owning interests in a spacing unit or other identified tract:

(a) the operator, as shown in division records, of a well on the tract, or, if the tract is included in a division-approved or federal unit, the designated unit operator;

(b) in the absence of an operator, or with respect to an application wherein the operator of the spacing unit or identified tract is the applicant, each working interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant files the application;

(c) as to any tract or interest therein that is not subject to an existing oil and gas lease, each mineral interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant filed the application; and

(d) if the United States or state of New Mexico owns the mineral estate in the spacing unit or identified tract or any part thereof, the BLM or state land office, as applicable; or

(e) if the mineral estate in the spacing unit or identified tract or any part thereof is tribal land, the BLM, the United States department of the interior, bureau of Indian affairs, and the relevant tribe.

(9) "Allocated pool" means a pool in which the total oil or gas production is restricted and is allocated to various wells in the pool in accordance with proration schedules.

(10) "Allowable production" means that number of barrels of oil or cubic feet of gas the division authorizes to be produced from an allocated pool.

(11) "APD" means application for permit to drill.

(12) "API" means the American petroleum institute.

(13) "Approved temporary abandonment," "temporary abandonment," or "temporarily abandoned status" means the status of a well that is inactive, has been approved in accordance with 19.15.25.13 NMAC and complies with 19.15.25.12 NMAC through 19.15.25.14 NMAC.

(14) "Aquifer" means a geological formation, group of formations or a part of a formation that can yield a significant amount of water to a well or spring.

(15) "ASTM" means ASTM International - an international standards developing organization that develops and publishes voluntary technical standards for a wide range of materials, products, systems and services.

B. Definitions beginning with the letter "B".

(1) "Back allowable" means the authorization for production of an underproduction resulting from pipeline proration.

(2) "Background" means, for purposes of ground water abatement plans only, the amount of ground water contaminants naturally occurring from undisturbed geologic sources or water contaminants occurring from a source other than the responsible person's facility. This definition does not prevent the director from requiring abatement of commingled plumes of pollution, does not prevent responsible persons from seeking contribution or other legal or equitable relief from other persons and does not preclude the director from exercising enforcement authority under any applicable statute, rule or common law.

(3) "Barrel" means 42 United States gallons measured at 60 degrees fahrenheit and atmospheric pressure at the sea level.

(4) "Barrel of oil" means 42 United States gallons of oil, after deductions for the full amount of basic sediment, water and other impurities present, ascertained by centrifugal or other recognized and customary test.

(5) "Barrel of oil equivalent" is determined by converting the volume of gas the well produced to barrels of oil by using a ratio of 6,000 cubic feet to one barrel of oil.

~~(5)~~**(6) "Below-grade tank"** means a vessel, excluding sumps and pressurized pipeline drip traps, where a portion of the tank's sidewalls is below the surrounding ground surface's elevation. Below-grade tank does not include an above ground storage tank that is located above or at the surrounding ground surface's elevation and is surrounded by berms.

(7) "Beneficial purposes" or **"beneficial use"** means an oil or gas well that is being used in a productive or beneficial manner including production, injection or monitoring.

~~(6)~~**(8) "Berm"** means an embankment or ridge constructed to prevent the movement of liquids, sludge, solids or other materials.

~~(7)~~**(9) "Biopile",** also known as biocell, bioheap, biomound or compost pile, means a pile of contaminated soils used to reduce concentrations of petroleum constituents in excavated soils through biodegradation. This technology involves heaping contaminated soils into piles or "cells" and stimulating aerobic microbial activity within the soils through the aeration or addition of minerals, nutrients and moisture.

~~(8)~~**(10) "BLM"** means the United States department of the interior, bureau of land management.

~~(9)~~**(11) "Bottom hole pressure"** means the gauge pressure in psi under conditions existing at or near the producing horizon.

~~(10)~~**(12) "Bradenhead gas well"** means a well producing gas through wellhead connections from a gas reservoir that has been successfully cased off from an underlying oil or gas reservoir.

~~(11)~~**(13) "BS&W"** means basic sediments and water.

~~(12)~~**(14) "BTEX"** means benzene, toluene, ethylbenzene and xylene.

C. Definitions beginning with the letter "C".

(1) "Carbon dioxide gas" means noncombustible gas composed chiefly of carbon dioxide occurring naturally in underground rocks.

(2) "Casinghead gas" means a gas or vapor or both gas and vapor indigenous to and produced from a pool the division classifies as an oil pool. This also includes gas-cap gas produced from such an oil pool.

(3) "Certified mail" or "certified mail, return receipt requested" means United States

Postal Service Certified Mail or equivalent service that provides tracking and signature receipt, including Federal Express, United Parcel Service, or similar courier services.

(4) **"Cm/sec"** means centimeters per second.

(5) **"CPD"** means central point delivery.

(6) **"Combination multiple completion"** means a multiple completion in which two or more common sources of supply are produced through a combination of two or more conventional diameter casing strings cemented in a common well bore, or a combination of small diameter and conventional diameter casing strings cemented in a common well bore, the conventional diameter strings of which might or might not be a conventional multiple completion.

(7) **"Commission"** means the oil conservation commission.

(8) **"Commission clerk"** means the division employee the director designates to provide staff support to the commission and accept filings in rulemaking or adjudicatory cases before the commission.

(9) **"Common purchaser for gas"** means a person now or hereafter engaged in purchasing from one or more producers gas produced from gas wells within each common source of supply from which it purchases.

(10) **"Common purchaser for oil"** means every person now engaged or hereafter engaging in the business of purchasing oil to be transported through pipelines.

(11) **"Common source of supply"**. See pool.

(12) **"Condensate"** means the liquid recovered at the surface that results from condensation due to reduced pressure or temperature of petroleum hydrocarbons existing in a gaseous phase in the reservoir.

(13) **"Contiguous"** means acreage joined by more than one common point, that is, the common boundary is at least one side of a governmental quarter-quarter section.

(14) **"Conventional completion"** means a well completion in which the production string of casing has an outside diameter exceeding 2.875 inches.

(15) **"Conventional multiple completion"** means a completion in which two or more common sources of supply are produced through one or more strings of tubing installed within a single casing string, with the production from each common source of supply completely segregated by means of packers.

(16) **"Correlative rights"** means the opportunity afforded, as far as it is practicable to do so, to the owner of each property in a pool to produce without waste the owner's just and equitable share of the oil or gas in the pool, being an amount, so far as can be practically determined, and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas under the property bears to the total recoverable oil or gas in the pool, and for the purpose to use the owner's just and equitable share of the reservoir energy.

(17) **"Cubic feet of gas or cubic foot of gas"** means that volume of gas contained in one cubic foot of space and computed at a base pressure of 10 ounces per square inch above the average barometric pressure of 14.4 psi (15.025 psi absolute), at a standard base temperature of 60 degrees fahrenheit.

D. **Definitions beginning with the letter "D"**.

(1) **"Deep pool"** means a common source of supply that is situated 5000 feet or more below the surface.

(2) **"Depth bracket allowable"** means the basic oil allowable the division assigns a pool and based on its depth, unit size or special pool orders, which, when multiplied by the market demand percentage factor in effect, determines the pool's top proration unit allowable.

(3) **"Director"** means the director of the New Mexico energy, minerals and natural resources department, oil conservation division.

(4) **"Division"** means the New Mexico energy, minerals and natural resources department, oil conservation division.

(5) **"Division clerk"** means the division employee the director designates to accept filings in adjudicatory cases before the division.

(6) **"Downstream facility"** means a facility associated with the transportation (including gathering) or processing of gas or oil (including a refinery, gas plant, compressor station or crude oil pump station); brine production; or the oil field service industry.

(7) **"DRO"** means diesel range organics.

E. **Definitions beginning with the letter "E"**.

(1) **"EC"** means electrical conductivity.

(2) **"Enhanced oil recovery project"** means the use or the expanded use of a process for the displacement of oil from an oil well or division-designated pool other than a primary recovery process, including but

not limited to the use of a pressure maintenance process; a water flooding process; an immiscible, miscible, chemical, thermal or biological process; or any other related process.

(3) **"EOR project"** means an enhanced oil recovery project.

(4) **"EPA"** means the United States environmental protection agency.

(5) **"Exempted aquifer"** means an aquifer that does not currently serve as a source of drinking water, and that cannot now and will not in the foreseeable future serve as a source of drinking water because:

(a) it is hydrocarbon producing;

(b) it is situated at a depth or location that makes the recovery of water for drinking water purposes economically or technologically impractical; or

(c) it is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption.

(6) **"Exempt waste"** means oil field waste exempted from regulation as hazardous waste pursuant to Subtitle C of RCRA and applicable regulations.

(7) **"Existing spacing unit"** means a spacing unit containing a producing well.

(8) **"Expired temporary abandonment"** or **"expired temporary abandonment status"** means the status of a well that is inactive and has been approved for temporary abandoned status in accordance with 19.15.25.13 NMAC, but that no longer complies with 19.15.25.12 NMAC through 19.15.25.14 NMAC.

F. **Definitions beginning with the letter "F"**.

(1) **"Facility"** means a structure, installation, operation, storage tank, transmission line, access road, motor vehicle, rolling stock or activity of any kind, whether stationary or mobile.

(2) **"Field"** means the general area that at least one pool underlies or appears to underlie; and also includes the underground reservoir or reservoirs containing oil or gas. The words field and pool mean the same thing when only one underground reservoir is involved; however, field unlike pool may relate to two or more pools.

(3) **"Fresh water"** to be protected includes the water in lakes and playas (regardless of quality, unless the water exceeds 10,000 mg/l TDS and it can be shown that degradation of the particular water body will not adversely affect hydrologically connected fresh ground water), the surface waters of streams regardless of the water quality within a given reach, and underground waters containing 10,000 mg/l or less of TDS except for which, after notice and hearing, it is found there is no present or reasonably foreseeable beneficial use that contamination of such waters would impair.

G. **Definitions beginning with the letter "G"**.

(1) **"Gas"**, also known as natural gas, means a combustible vapor composed chiefly of hydrocarbons occurring naturally in a pool the division has classified as a gas pool.

(2) **"Gas lift"** means a method of lifting liquid to the surface by injecting gas into a well from which oil production is obtained.

(3) **"Gas-oil ratio"** means the ratio of the casinghead gas produced in standard cubic feet to the number of barrels of oil concurrently produced during any stated period.

(4) **"Gas-oil ratio adjustment"** means the reduction in allowable of a high gas oil ratio unit to conform with the production permitted by the limiting gas-oil ratio for the particular pool during a particular proration period.

(5) **"Gas transportation facility"** means a pipeline in operation serving gas wells for the transportation of gas, or some other device or equipment in like operation where the gas produced from gas wells connected with the pipeline or other device or equipment can be transported or used for consumption.

(6) **"Gas well"** means a well producing gas from a gas pool, or a well with a gas-oil ratio exceeding 100,000 cubic feet of gas per barrel of oil producing from an oil pool.

(7) **"Geomembrane"** means an impermeable polymeric sheet material that is impervious to liquid and gas if it maintains its integrity and is used as an integral part of an engineered structure designed to limit the movement of liquid or gas in a system.

(8) **"Geotextile"** means a sheet material that is less impervious to liquid than a geomembrane but more resistant to penetration damage, and is used as part of an engineered structure or system to serve as a filter to prevent the movement of soil fines into a drainage system, to provide planar flow for drainage, to serve as a cushion to protect geomembranes or to provide structural support.

(9) **"GRO"** means gasoline range organics.

(10) **"Ground water"** means interstitial water that occurs in saturated earth material and can enter a well in sufficient amounts to be used as a water supply.

(11) **"Ground water sensitive area"** means an area the division specifically designates after evaluation of technical evidence where ground water exists that would likely exceed WQCC standards if

contaminants were introduced into the environment.

H. Definitions beginning with the letter "H".

(1) "Hardship gas well" means a gas well where underground waste occurs if the well is shut-in or curtailed below its minimum sustainable flow rate.

(2) "Hazard to public health" exists when water that is used or is reasonably expected to be used in the future as a human drinking water supply exceeds at the time and place of the use, one or more of the numerical standards of Subsection A of 20.6.2.3103 NMAC, or the naturally occurring concentrations, whichever is higher, or if a toxic pollutant as defined at Subsection WW of 20.6.2.7 NMAC affecting human health is present in the water. In determining whether a release would cause a hazard to public health to exist, the director investigates and considers the purification and dilution reasonably expected to occur from the time and place of release to the time and place of withdrawal for use as human drinking water.

(3) "Hazardous waste" means non-exempt waste that exceeds the minimum standards for waste hazardous by characteristics established in RCRA regulations, 40 CFR 261.21-261.24, or listed hazardous waste as defined in 40 CFR, part 261, subpart D, as amended.

(4) "HDPE" means high-density polyethylene.

(5) "High gas-oil ratio proration unit" means a unit with at least one producing oil well with a gas-oil ratio exceeding the limiting gas-oil ratio for the pool in which the unit is located.

(6) "H2S" means hydrogen sulfide.

I. Definitions beginning with the letter **"I"**.

(1) "Illegal gas" means gas produced from a gas well exceeding the division-determined allowable.

(2) "Illegal oil" means oil produced exceeding the allowable the division fixes.

(3) "Illegal product" means a product of illegal gas or illegal oil.

(4) "Inactive well" means a well that has had no production or injection for 12 consecutive months or is not being used for beneficial purposes including ~~such as~~ production, injection or monitoring and that is not being drilled, completed, repaired or worked over.

(5) "Injection well" means a well used for the injection of air, gas, water or other fluids into an underground stratum.

J. Definitions beginning with the letter "J". [RESERVED]

K. Definitions beginning with the letter "K". "Knowingly and willfully", for assessing civil penalties, means the voluntary or conscious performance of an act that is prohibited or the voluntary or conscious failure to perform an act or duty that is required. It does not include performances or failures to perform that are honest mistakes or merely inadvertent. It includes, but does not require, performances or failures to perform that result from a criminal or evil intent or from a specific intent to violate the law. The conduct's knowing and willful nature may be established by plain indifference to or reckless disregard of the requirements of statutes, rules, orders or permits. A consistent pattern or performance or failure to perform also may be sufficient to establish the conduct's knowing and willful nature, where such consistent pattern is neither the result of honest mistakes nor mere inadvertency. Conduct that is otherwise regarded as being knowing and willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.

L. Definitions beginning with the letter "L".

(1) "Limiting gas-oil ratio" means the gas-oil ratio the division assigns to a particular oil pool to limit the volumes of casinghead gas that may be produced from the various oil producing units within that particular pool.

(2) "Liner" means a continuous, low-permeability layer constructed of natural or human-made materials that restricts the migration of liquid oil field wastes, gases or leachate.

(3) "LLDPE" means linear low-density polyethylene.

(4) "Load oil" means oil or liquid hydrocarbon that has been used in remedial operation in an oil or gas well.

(5) "Log" means a systematic detailed and correct record of formations encountered in drilling a well.

(6) **"Low producing 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.

M. Definitions beginning with the letter "M".

(1) **"Marginal unit"** means a proration unit that is incapable of producing top proration unit allowable for the pool in which it is located.

(2) **"Market demand percentage factor"** means that percentage factor of one hundred percent or less as the division determines at an oil allowable hearing, which, when multiplied by the depth bracket allowable applicable to each pool, determines that pool's top proration unit allowable.

(3) **"MCF"** means 1000 cubic feet.

(4) **"MCFD"** means 1000 cubic feet per day.

(5) **"MCFGPD"** means 1000 cubic feet of gas per day.

(6) **"Measured depth"** means the total length of the well bore.

(7) **"Mg/l"** means milligrams per liter.

(8) **"Mg/kg"** means milligrams per kilogram.

(9) **"Mineral estate"** is the most complete ownership of oil and gas recognized in law and includes the mineral interests and the royalty interests.

(10) **"Mineral interest owner"** means a working interest owner, or an owner of a right to explore for and develop oil and gas that is not subject to an existing oil and gas lease.

(11) **"Minimum allowable"** means the minimum amount of production from an oil or gas well that may be advisable from time to time to the end that production will repay reasonable lifting cost and thus prevent premature abandonment and resulting waste.

(12)——"Miscellaneous hydrocarbons" means tank bottoms occurring at pipeline stations; oil storage terminals or refineries; pipeline break oil; catchings collected in traps, drips or scrubbers by gasoline plant operators in the plants or in the gathering lines serving the plants; the catchings collected in private, community or commercial salt water disposal systems; or other liquid hydrocarbon that is not lease crude or condensate.

N. Definitions beginning with the letter "N".

(1) **"Non-aqueous phase liquid"** means an interstitial body of liquid oil, petroleum product, petrochemical or organic solvent, including an emulsion containing such material.

(2) **"Non-exempt waste"** means oil field waste not exempted from regulation as hazardous waste pursuant to Subtitle C of RCRA and applicable regulations.

(3) **"Non-hazardous waste"** means non-exempt oil field waste that is not hazardous waste.

(4) **"Non-marginal unit"** means a proration unit that can produce the top proration unit allowable for the pool in which it is located, and to which the division assigns a top proration unit allowable.

(5) **"NORM"** means the naturally occurring radioactive materials regulated by 20.3.14 NMAC.

O. Definitions beginning with the letter "O".

(1) **"Official gas-oil ratio test"** means the periodic gas-oil ratio test the operator performs pursuant to division order by the method and in the manner the division prescribes.

(2) **"Oil"** means petroleum hydrocarbon produced from a well in the liquid phase and that existed in a liquid phase in the reservoir. This definition includes crude oil or crude petroleum oil.

(3) **"Oil field waste"** means non-domestic waste resulting from the exploration, development, production or storage of oil or gas pursuant to Paragraph (21) of Subsection B of Section 70-2-12 NMSA 1978 and the oil field service industry, the transportation of crude oil or natural gas, the treatment of natural gas or the refinement of crude oil pursuant to Paragraph (22) of Subsection B of Section 70-2-12 NMSA 1978, including waste generated from oil field remediation or abatement activity regardless of the date of release. Oil field waste does not include waste not generally associated with oil and gas industry operations such as tires, appliances or ordinary garbage or refuse unless generated at a division-regulated facility, and does not include sewage, regardless of the source.

(4) **"Oil well"** means a well capable of producing oil and that is not a gas well as defined in Paragraph (6) of Subsection G of 19.15.2.7 NMAC.

(5) **"Operator"** means a person who, duly authorized, manages a lease's development or a producing property's operation, or who manages a facility's operation.

(6) **"Overproduction"** means the amount of oil or gas produced during a proration period exceeding the amount authorized on the proration schedule.

(7) **"Owner"** means the person who has the right to drill into and to produce from a pool, and to appropriate the production either for the person or for the person and another.

P. Definitions beginning with the letter "P".

(1) **"Penalized unit"** means a proration unit to which, because of an excessive gas-oil ratio,

the division assigns an allowable that is less than top proration unit allowable for the pool in which it is located and also less than the ability of the well or wells on the unit to produce.

(2) **"Person"** means an individual or entity including partnerships, corporations, associations, responsible business or association agents or officers, the state or a political subdivision of the state or an agency, department or instrumentality of the United States and of its officers, agents or employees.

(3) **"Pit"** means a surface or sub-surface impoundment, man-made or natural depression or diked area on the surface. Excluded from this definition are berms constructed around tanks or other facilities solely for safety, secondary containment and storm water or run-on control.

(4) **"Playa lake"** means a level or nearly level area that occupies the lowest part of a completely closed basin and that is covered with water at irregular intervals, forming a temporary lake.

(5) **"Pool"** means an underground reservoir containing a common accumulation of oil or gas. Each zone of a general structure, which zone is completely separated from other zones in the structure, is covered by the word pool as used in 19.15.2 NMAC through 19.15.39 NMAC. "Pool" is synonymous with "common source of supply" and with "common reservoir".

(6) **"Potential"** means a well's properly determined capacity to produce oil or gas under division-prescribed conditions.

(7) **"Ppm"** means parts per million by volume.

(8) **"PQL"** means practical quantitation limit.

(9) **"Pressure maintenance"** means the injection of gas or other fluid into a reservoir, either to maintain the reservoir's existing pressure or to retard the reservoir pressure's natural decline.

(10) **"Produced water"** means a fluid that is an incidental byproduct from drilling for or the production of oil and gas.

(11) **"Producer"** means the owner of a well or wells capable of producing oil or gas or both in paying quantities.

(12) **"Product"** means a commodity or thing made or manufactured from oil or gas, and derivatives of oil or gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, treated crude oil, fuel oil, residuum, gas oil, naphtha, distillate, gasoline, kerosene, benzene, wash oil, lubricating oil and blends or mixtures of oil or gas or a derivative thereof.

(13) **"Proration day"** consists of 24 consecutive hours that begin at 7:00 a.m. and end at 7:00 a.m. on the following day.

(14) **"Proration month"** means the calendar month that begins at 7:00 a.m. on the first day of the month and ends at 7:00 a.m. on the first day of the next succeeding month.

(15) **"Proration period"** means for oil the proration month and for gas the 12-month period that begins at 7:00 a.m. on January 1 of each year and ends at 7:00 a.m. on January 1 of the succeeding year or other period designated by general or special order of the division.

(16) **"Proration schedule"** means the division orders authorizing the production, purchase and transportation of oil, casinghead gas and gas from the various units of oil or of gas in allocated pools.

(17) **"Proration unit"** means the area in a pool that can be effectively and efficiently drained by one well as determined by the division or commission (see Subsection B of Section 70-2-17 NMSA 1978) as well as the area assigned to an individual well for the purposes of allocating allowable production pursuant to a prorationing order for the pool.

(18) **"Prospective spacing unit"** means a hypothetical spacing unit that does not yet have a producing well.

(19) **"PVC"** means poly vinyl chloride.

(20) **"Psi"** means pounds per square inch.

Q. **Definitions beginning with the letter "Q".** **[RESERVED]**

R. **Definitions beginning with the letter "R".**

(1) **"RCRA"** means the federal Resource Recovery and Conservation Act.

(2) **"Recomplete"** means the subsequent completion of a well in a different pool from the pool in which it was originally completed.

(3) **"Regulated NORM"** means NORM contained in oil-field soils, equipment, sludges or other materials related to oil-field operations or processes exceeding the radiation levels specified in 20.3.14.1403 NMAC.

(4) **"Release"** means breaks, leaks, spills, releases, fires or blowouts involving oil, produced water, condensate, drilling fluids, completion fluids or other chemical or contaminant or mixture thereof, including oil field wastes and gases to the environment.

(5) **"Remediation plan"** means a written description of a program to address unauthorized

releases. The plan may include appropriate information, including assessment data, health risk demonstrations and corrective action or actions. The plan may also include an alternative proposing no action beyond the spill report's submittal.

(6) **"Responsible person"** means the owner or operator who shall complete a division-approved corrective action for pollution from releases.

(7) **"Rules"** means the rules enacted pursuant to the Oil and Gas Act, 19.15.2 to 19.15.39 NMAC, as they may be modified or amended.

(8) **"Royalty interest owner"** means the owner of an interest in oil and gas that does not presently entitle the owner to explore, drill or otherwise develop those minerals, including lessors, royalty interest owners and overriding royalty interest owners. Royalty interests are non-cost bearing.

(9) **"Run-on"** means rainwater, leachate or other liquid that drains from other land onto any part of a division-approved facility.

S. **Definitions beginning with the letter "S"**.

(1) **"SAR"** means the sodium adsorption ratio.

(2) **"Secondary recovery"** means a method of recovering quantities of oil or gas from a reservoir which quantities would not be recoverable by ordinary primary depletion methods.

(3) **"Sediment oil"** means tank bottoms and other accumulations of liquid hydrocarbons on an oil and gas lease, which hydrocarbons are not merchantable through normal channels.

(4) **"Shallow pool"** means a pool that has a depth range from zero to 5000 feet.

(5) **"Shut-in"** means the status of a production well or an injection well that is temporarily closed, whether by closing a valve or disconnection or other physical means.

(6) **"Shut-in pressure"** means the gauge pressure noted at the wellhead when the well is completely shut-in, not to be confused with bottom hole pressure.

(7) **"Significant modification of an abatement plan"** means a change in the abatement technology used excluding design and operational parameters, or relocation of twenty-five percent or more of the compliance sampling stations, for a single medium, as designated pursuant to Subparagraph (d) of Paragraph (2) of Subsection D of 19.15.30.13 NMAC.

(8) **"Soil"** means earth, sediments or other unconsolidated accumulations of solid particles produced by the physical and chemical disintegration of rocks, and that may or may not contain organic matter.

(9) **"Spacing unit"** means the area allocated to a well under a well spacing order or rule. Under the Oil and Gas Act, Paragraph (10) of Subsection B of Section 70-2-12 NMSA 1978, the commission may fix spacing units without first creating proration units. See *Rutter & Wilbanks corp. v. oil conservation comm'n*, 87 NM 286 (1975). This is the area designated on form C-102.

(10) **"Subsurface water"** means ground water and water in the vadose zone that may become ground water or surface water in the reasonably foreseeable future or that vegetation may use.

(11) **"Surface waste management facility"** means a facility that receives oil field waste for collection, disposal, evaporation, remediation, reclamation, treatment or storage except:

(a) a facility that utilizes underground injection wells subject to division regulation pursuant to the federal Safe Drinking Water Act, and does not manage oil field wastes on the ground in pits, ponds, below-grade tanks or land application units;

(b) a facility permitted pursuant to the New Mexico environmental improvement board rules or WQCC rules;

(c) a temporary pit as defined in 19.15.17 NMAC;

(d) a below-grade tank or pit that receives oil field waste from a single well, permitted pursuant to 19.15.37 NMAC, regardless of the capacity or volume of oil field waste received;

(e) a facility located at an oil and gas production facility and used for temporary storage of oil field waste generated on-site from normal operations, if the facility does not pose a threat to fresh water, public health, safety or the environment;

(f) a remediation conducted in accordance with a division-approved abatement plan pursuant to 19.15.30 NMAC, a corrective action pursuant to 19.15.29 NMAC or a corrective action of a non-reportable release;

(g) a facility operating pursuant to a division emergency order;

(h) a site or facility where the operator is conducting emergency response operations to abate an immediate threat to fresh water, public health, safety or the environment or as the division has specifically directed or approved; or

(i) a facility that receives only exempt oil field waste, receives less than 50 barrels of liquid water per day (averaged over a 30-day period), has a capacity to hold 500 barrels of liquids or less and is permitted pursuant to 19.15.17 NMAC.

T. Definitions beginning with the letter "T".

(1) "Tank bottoms" means that accumulation of hydrocarbon material and other substances that settles naturally below oil in tanks and receptacles that are used in oil's handling and storing, and which accumulation contains more than two percent of BS&W; provided, however, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet to the tank.

(2) "TDS" means total dissolved solids.

~~**(3) "Temporary abandonment" or "temporarily abandoned status"** means the status of a well that is inactive.~~

~~(4)~~(3) "Top proration unit allowable for gas" means the maximum number of cubic feet of gas, for the proration period, the division allocates to a gas producing unit in an allocated gas pool.

~~(5)~~(4) "Top proration unit allowable for oil" means the maximum number of barrels for oil daily for each calendar month the division allocates on a proration unit basis in a pool to non-marginal units. The division shall determine the top proration unit allowable for a pool by multiplying the applicable depth bracket allowable by the market demand percentage factor in effect.

~~(6)~~(5) "TPH" means total petroleum hydrocarbons.

~~(7)~~(6) "Treating plant" means a plant constructed for wholly or partially or being used wholly or partially for reclaiming, treating, processing or in any manner making tank bottoms or other waste oil marketable.

~~(8)~~(7) "Tribal lands" means those lands for which the United States government has a trust responsibility to a native American tribe or a member of a native American tribe. This includes reservations, pueblo land grants, tribal trust lands and individual trust allotments.

~~(9)~~(8) "Tribal leases" means those leases of minerals or interests in or rights to minerals for which the United States government has a trust responsibility to a native American tribe or a member of a native American tribe.

~~(10)~~(9) "Tribal minerals" means those minerals for which the United States government has a trust responsibility to a native American tribe or a member of a native American tribe.

~~(11)~~(10) "True vertical depth" means the difference in elevation between the ground level at the surface location of the well and the deepest point in the well bore.

~~(12)~~(11) "Tubingless completion" means a well completion in which the production string of casing has an outside diameter of 2.875 inches or less.

~~(13)~~(12) "Tubingless multiple completion" means completion in which two or more common sources of supply are produced through an equal number of casing strings cemented in a common well bore, each such string of casing having an outside diameter of 2.875 inches or less, with the production from each common source of supply completely segregated by cement.

U. Definitions beginning with the letter "U".

(1) "Underground source of drinking water" means an aquifer that supplies water for human consumption or that contains ground water having a TDS concentration of 10,000 mg/l or less and that is not an exempted aquifer.

(2) "Underproduction" means the amount of oil or the amount of gas during a proration period by which a given proration unit failed to produce an amount equal to that the division authorizes in the proration schedule.

(3) "Unit of proration for gas" consists of such multiples of 40 acres as may be prescribed by division-issued special pool orders.

(4) "Unit of proration for oil" consists of one 40-acre tract or such multiples of 40-acre tracts as may be prescribed by division-issued special pool orders.

(5) "Unorthodox well location" means a location that does not conform to the spacing requirements division rules establish.

(6) "Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all a division-approved facility's structural components. Examples of unstable areas are areas of poor foundation conditions, areas susceptible to mass earth movements and karst terrain areas where karst topography is developed because of dissolution of limestone, dolomite or other soluble rock. Characteristic physiographic features of karst terrain include sinkholes, sinking streams, caves, large springs and blind valleys.

(7) "Upstream facility" means a facility or operation associated with the exploration, development, production or storage of oil or gas that is not a downstream facility.

V. Definitions beginning with the letter "V". "Vadose zone" means unsaturated earth material below the land surface and above ground water, or in between bodies of ground water.

W. Definitions beginning with the letter "W".

(1) **"Waste",** in addition to its ordinary meaning, includes:

(a) underground waste as those words are generally understood in the oil and gas business, and to embrace the inefficient, excessive or improper use or dissipation of the reservoir energy, including gas energy and water drive, of a pool, and the locating, spacing, drilling, equipping, operating or producing of a well or wells in a manner to reduce or tend to reduce the total quantity of oil or gas ultimately recovered from a pool, and the use of inefficient underground storage of gas;

(b) surface waste as those words are generally understood in the oil and gas business, and to embrace the unnecessary or excessive surface loss or destruction without beneficial use, however caused, of gas of any type or in any form, or oil, or a product thereof, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage or fire, especially such loss or destruction incident to or resulting from the manner of spacing, equipping, operating or producing a well or wells, or incident to or resulting from the use of inefficient storage or from the production of oil or gas, in excess of the reasonable market demand;

(c) oil production in this state in excess of the reasonable market demand for the oil; the excess production causes or results in waste that the Oil and Gas Act prohibits; reasonable market demand as used herein with respect to oil means the demand for the oil, for reasonable current requirements for current consumption and use within or outside of the state, together with the demand of amounts as are reasonably necessary for building up or maintaining reasonable storage reserves of oil or the products thereof, or both the oil and products;

(d) the non-ratable purchase or taking of oil in this state; the non-ratable taking and purchasing causes or results in waste, as defined in Subparagraphs (a), (b) and (c) of Paragraph (1) of Subsection W of 19.15.2.7 NMAC and causes waste by violating the Oil and Gas Act, Section 70-2-16 NMSA 1978;

(e) the production in this state of gas from a gas well or wells, or from a gas pool, in excess of the reasonable market demand from such source for gas of the type produced or in excess of the capacity of gas transportation facilities for such type of gas; the words "reasonable market demand", as used herein with respect to gas, shall be construed to mean the demand for gas for reasonable current requirements, for current consumption and for use within or outside the state, together with the demand for such amounts as are necessary for building up or maintaining reasonable storage reserves of gas or products thereof, or both the gas and products.

(2) **"Water"** means all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water.

(3) **"Water contaminant"** means a substance that could alter if released or spilled water's physical, chemical, biological or radiological qualities. Water contaminant does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954.

(4) **"Watercourse"** means a river, creek, arroyo, canyon, draw or wash or other channel having definite banks and bed with visible evidence of the occasional flow of water.

(5) **"Water pollution"** means introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or property use.

(6) **"Well blowout"** means a loss of control over and subsequent eruption of a drilling or workover well or the rupture of the casing, casinghead or wellhead of an oil or gas well or injection or disposal well, whether active or inactive, accompanied by the sudden emission of fluids, gaseous or liquid, from the well.

(7) **"Well bore"** means the interior surface of a cased or open hole through which drilling, production or injection operations are conducted.

(8) **"Wellhead protection area"** means the area within 200 horizontal feet of a private, domestic fresh water well or spring used by less than five households for domestic or stock watering purposes or within 1000 horizontal feet of any other fresh water well or spring. Wellhead protection areas does not include areas around water wells drilled after an existing oil or gas waste storage, treatment or disposal site was established.

(9) **"Wetlands"** means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico. This definition does not include constructed wetlands used for wastewater treatment purposes.

(10) **"Working interest owner"** means the owner of an operating interest under an oil and gas lease who has the exclusive right to exploit the oil and gas minerals. Working interests are cost bearing.

(11) **"WQCC"** means the New Mexico water quality control commission.

[19.15.2.7 NMAC - Rp, 19.15.1.7 NMAC, 12/1/2008; A, 3/31/2015; A, 6/30/2016; A, 6/26/2018; A, 1/15/2019; A, 10/13/2020; A, 8/23/2022]

19.15.2.8 GENERAL OPERATIONS/WASTE PROHIBITED:

A. The production or handling of oil or gas of any type or in any form or the handling of oil or gas products in a manner, under conditions or in an amount as to constitute or result in waste is prohibited.

B. Operators, contractors, drillers, carriers, gas distributors, service companies, pipe pulling and salvaging contractors, treating plant operators or other persons shall conduct their operations in or related to the drilling, equipping, operating, producing, plugging and abandonment of oil, gas, injection, disposal and storage wells or other facilities in a manner that prevents waste of oil and gas, the contamination of fresh waters and shall not wastefully utilize oil or gas or allow either to leak or escape from a natural reservoir or from wells, tanks, containers, pipe or other storage, conduit or operating equipment.

[19.15.2.8 NMAC - Rp, 19.15.1.13 NMAC, 12/1/2008]

19.15.2.9 ORDERS: The division or commission may issue orders, including division or commission special pool orders when required and the orders shall prevail against rules if in conflict with them.

[19.15.2.9 NMAC - Rp, 19.15.1.11 NMAC, 12/1/2008]

19.15.2.10 ONLINE APPLICATION AND SUBMITTALS:

A. The division shall establish online application and submittal procedures on the division's website for the electronic filing of all forms, applications and other written documents and information with the division.

B. All applications that require the payment of a fee, as provided in Section 70-2-39 NMSA 1978, shall include the fee payment with the application.

C. A person whose filing is made untimely due to a technical failure of the division's web-based online application process may request an extension of time. Technical failures not originating with the division's process, such as problems with the filer's equipment, software, or telecommunications facility will not constitute a basis for relief.

[19.15.2.10 NMAC - N, 8/23/2022]

19.15.2.11 EMERGENCY ORDERS AND RULES:

A. Notwithstanding other provisions of 19.15.2 NMAC through 19.15.39 NMAC, in the event the division or commission finds an emergency exists that requires an order's or rule's issuance without a hearing, the emergency rule or order shall have the same validity as if the division or commission held a hearing before the division or commission after due notice. The emergency rule or order shall remain in force no longer than 15 days from its effective date.

B. Notwithstanding other provisions of 19.15.2 NMAC through 19.15.39 NMAC, if the division or commission finds an emergency exists, the division or commission may conduct a hearing on an application within less than 30 days after party files an application and the director may set the notice period at the director's discretion.

[19.15.2.11 NMAC - Rp, 19.15.14.1225 NMAC, 12/1/2008]

19.15.2.12 FILING AND NOTIFICATION: All requirements in the rules:

A. to file a form or application with the division or commission, including documents required to be filed with district offices or the Santa Fe office, shall be accomplished by using the applicable online process on the division's website,

B. to otherwise notify, advise, contact, or report to the division, including to any unit of the division (such as a bureau or office) or any division official (such as the director or a bureau chief), may be accomplished by electronic mail or as otherwise provided on the division's website; the division shall provide contact instructions on the division's website, and

C. to file an original financial assurance instrument with the division as provided in 19.15.8 NMAC shall require delivery to the Santa Fe office unless otherwise directed by the division.

[19.15.2.12 NMAC - Rp, 19.15.15.1304 NMAC, 12/1/2008; 19.15.2.12 NMAC - Rp, 19.15.2.12 NMAC, 8/23/2022]

19.15.2.13 COMPUTATION OF TIME: In computing a period of time prescribed by the Oil and Gas Act, the rules or an order, the division and commission shall comply with the Uniform Statute and Rule Construction Act, Section 12-2A-7 NMSA 1978.

[19.15.2.13 NMAC - Rp, 19.15.14.1226 NMAC, 12/1/2008; A, 8/23/2022]

19.15.2.14 MEETINGS BY TELECONFERENCE: Pursuant to Section 10-15-1 NMSA 1978, commission members may participate in commission meetings and hearings by conference telephone or other

similar communications equipment when it is otherwise difficult or impossible for members to attend the meeting or hearing in person. Each member participating by conference telephone or other similar communications equipment shall be identified when speaking. Participants shall be able to hear each other at the same time. Members of the public hearing attending the meetings or hearing shall be able to hear commission members who speak during the meeting or hearing.
[19.15.2.14 NMAC - Rp, 19.15.1.20 NMAC, 12/1/2008]

19.15.2.15 AUTHORITY TO COOPERATE WITH OTHER AGENCIES: The division may from time to time enter into arrangements with state and federal governmental agencies, industry committees and individuals with respect to special projects, services and studies relating to oil and gas conservation and the associated protection of fresh waters.
[19.15.2.15 NMAC - Rp, 19.15.1.17 NMAC, 12/1/2008]

19.15.2.16 DUTIES AND AUTHORITY OF DIVISION PERSONNEL: Division personnel have the authority and duty to enforce division rules. Upon a showing by an operator that changes are necessary to avoid waste or protect public health or the environment, division personnel may allow minor deviations from approved field operational plans such as drilling and plugging plans. The operator shall file a Form C-103 as a notice of intention showing the change of plans within two business days of the approval.
[19.15.2.16 NMAC - Rp, 19.15.15.1303, 12/1/2008; A, 8/23/2022]

19.15.2.17 ORGANIZATIONAL UNITS: When necessary to assist in the administration of the Oil and Gas Act, the director may divide the state into districts or other organizational units as appropriate. Upon establishment of, or revisions to, such units, the director shall provide or amend a map on the division's website with the boundaries of the units. Contact information for the units, including any assigned personnel, shall be maintained on the division's website.
[19.15.2.17 NMAC - Rp, 19.15.15.1301 NMAC, 12/1/2008; 19.15.2.17 NMAC - Rp, 19.15.2.17 NMAC, 8/23/2022]

19.15.2.18 RENUMBERING OR REORGANIZATION OF RULES: When the commission approves reorganization or renumbering of division rules, either through amendment or repeal and replacement, persons with permits, orders or agreements that reference rules that have been reorganized or renumbered shall comply with the rules as reorganized or renumbered.
[19.15.2.18 NMAC - N, 12/1/2008]

HISTORY of 19.15.2 NMAC:

History of Repealed Material: 19.15.1 NMAC, General Provisions (filed 04/27/2001); 19.15.14 NMAC, Procedure (filed 09/16/2005); and 19.15.15 NMAC, Administration (filed 07/12/2004) all repealed 12/1/2008.

NMAC History:
Those applicable portions of 19.15.1 NMAC, General Provisions (Sections 1-7, 11, 13, 17, & 20) (filed 04/27/2001); 19.15.14 NMAC, Procedure (Sections 1225 and 1226) (filed 09/16/2005); and 19.15.15 NMAC, Administration (Sections 1301 and 1303) (filed 07/12/2004) were replaced by 19.15.2 NMAC, General Provisions for Oil and Gas Operations, effective 12/1/2008.

EXHIBIT 90-B

APPLICANTS' POST-HEARING PROPOSED AMENDMENTS TO 19.15.5 NMAC FINAL

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 5 ENFORCEMENT AND COMPLIANCE

19.15.5.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.5.1 NMAC - N, 12/1/2008]

19.15.5.2 SCOPE: 19.15.5 NMAC applies to persons engaged in oil and gas development and production within New Mexico.
[19.15.5.2 NMAC - N, 12/1/2008]

19.15.5.3 STATUTORY AUTHORITY: 19.15.5 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11, Section 70-2-12, Section 70-2-31 and Section 70-2-31.1 NMSA 1978.
[19.15.5.3 NMAC – N, 12/1/2008, A, 2/25/2020]

19.15.5.4 DURATION: Permanent.
[19.15.5.4 NMAC - N, 12/1/2008]

19.15.5.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.5.5 NMAC - N, 12/1/2008]

19.15.5.6 OBJECTIVE: To establish a process to ensure compliance with the Oil and Gas Act, division rules and division and commission orders.
[19.15.5.6 NMAC - N, 12/1/2008]

19.15.5.7 DEFINITIONS: [RESERVED]
[See 19.15.2.7 NMAC for definitions.]

19.15.5.8 ENFORCEMENT OF STATUTES AND RULES: The division is charged with the duty and obligation of enforcing the state's rules and statutes relating to the conservation of oil and gas, including the prevention of waste and the protection of correlative rights, and the protection of public health and the environment. An owner or operator shall obtain information pertaining to the regulation of oil and gas before beginning operations.
[19.15.5.8 NMAC - Rp, 19.15.1.12 NMAC, 12/1/2008, A, 2/25/2020]

19.15.5.9 COMPLIANCE:

A. An operator is in compliance with Subsection A of 19.15.5.9 NMAC if the operator:

(1) currently meets the financial assurance requirements of 19.15.8 NMAC;

(2) is not subject to a division or commission order, issued after notice and hearing, finding the operator to be in violation of an order requiring corrective action;

(3) does not have a penalty assessment that is unpaid more than 30 days after issuance of the order assessing the penalty; ~~and~~

(4) currently meets the requirements of 19.15.25.8 NMAC ~~has no more than the following number of wells out of compliance with 19.15.25.8 NMAC that are not~~ or is subject to an agreed compliance or final order setting a schedule for bringing the wells into compliance with 19.15.25.8 NMAC and imposing sanctions if the schedule is not met; and ~~:~~

~~**(a)** two wells or fifty percent of the wells the operator operates, whichever is less, if the operator operates 100 wells or less;~~

~~**(b)** five wells if the operator operates between 101 and 500 wells;~~

~~**(c)** seven wells if the operator operates between 501 and 1000 wells; and~~

~~**(d)** 10 wells if the operator operates more than 1000 wells.~~

(5) currently meets the requirements of 19.15.27.8.A to -D NMAC.

B. Inactive wells.

(1) The division shall make available on its website, and update daily, an "inactive well list" listing each well, by operator, that according to division records:

(a) shows no production or injection for past 14 ~~15~~ months or has had a final determination of no beneficial use under 19.15.25.9 NMAC;

(b) does not have its well bore plugged in accordance with 19.15.25.109 ~~9~~ NMAC through 19.15.25.1211 ~~11~~ NMAC;

(c) is not in approved temporary abandonment in accordance with 19.15.25.1312 ~~12~~ NMAC through 19.15.25.1514 ~~14~~ NMAC; and

(d) is not subject to an agreed compliance or final order setting a schedule for bringing the well into compliance with 19.15.25.8 NMAC.

(2) A well inactive for more than 14 ~~15~~ months creates a rebuttable presumption that the well is out of compliance with 19.15.25.8 NMAC.

C. Financial assurance. The division shall make available on its website and update weekly the status of operators' financial assurance that 19.15.8 NMAC requires, according to division records.

[19.15.5.9 NMAC - Rp, 19.15.1.40 NMAC, 12/1/2008; A, 11/30/2016, A, 2/25/2020]

19.15.5.10 ENFORCEMENT:

A. General. Whenever the division determines that a person violated or is violating the Oil and Gas Act or a provision of any rule, order, permit or authorization issued pursuant to the Oil and Gas Act, the division may seek a sanction by:

(1) issuing a temporary cessation order if it determines that the alleged violation is causing or will cause an imminent danger to public health or safety or a significant imminent environmental harm. The temporary cessation order shall remain in place until the earlier of when the division determines that the alleged violation is abated or 30 days, unless a hearing is held before the division and a new order is issued;

(2) issuing a notice of violation; or

(3) commencing a civil action in district court.

B. Sanctions. The division may seek one or more of the following sanctions:

(1) a civil penalty;

(2) modification, suspension, cancellation or termination of a permit or authorization;

(3) plugging and abandonment of a well;

(4) remediation and restoration of a well location and associated facilities, including the removal of surface and subsurface equipment and other materials;

(5) remediation and restoration of a location affected by a spill or release;

(6) forfeiture of financial assurance;

(7) shutting in a well or wells; and

(8) any other remedy authorized by law.

C. Notice of violation.

(1) A notice of violation issued by the division shall state with reasonable specificity:

(a) the identity of the alleged violator;

(b) the nature and factual and legal basis of the alleged violation, including the provision of the Oil and Gas Act or rule, order, permit or authorization allegedly violated;

(c) whether compliance is required immediately or within a specified time period;

(d) the sanction(s) available for the alleged violation, the sanction(s) proposed by the division, and a statement that the division will take into consideration the violators good faith efforts to comply with the applicable requirements;

(e) the availability of a process for informal review and resolution of the alleged violation, and the procedure to initiate the informal review process, including the contact information of the appropriate division employee;

(f) a statement that if the notice of violation is not informally resolved within 30 days of service, the division will hold a hearing, but that the hearing shall not prohibit the parties from negotiating and settling the notice of violation at any time; and

(g) the date of the hearing, which shall be no later than 90 days after the date of the notice of violation.

(2) The division shall serve the notice of violation on the alleged violator by certified mail, and may provide the notice of violation by electronic mail if possible.

(3) If during the informal review the division and the alleged violator agree to resolve the alleged violation, they shall incorporate their agreement into a stipulated final order signed by both parties. The stipulated final order shall state that the alleged violator admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives the alleged violator's right of review by the commission.

(4) If the division and the alleged violator fail to enter a stipulated final order within 30 days

of service, the division shall hold a hearing at the division's principal office.

D. Civil penalties. A civil penalty assessed by the division shall account for the seriousness of the violation, good faith efforts to comply with the applicable requirement, history of noncompliance under the Oil and Gas Act and other relevant factors. The civil penalty assessed by the division shall not exceed $2,500 per day of noncompliance for each alleged violation, unless the alleged violation presents a risk either to the health or safety of the public or of causing significant environmental harm, or unless the noncompliance continues beyond the time specified in the notice of violation or stipulated final order, whereupon the civil penalty may not exceed $10,000 per day of noncompliance for each alleged violation, provided that the civil penalty assessed by the division for an alleged violation shall not exceed $200,000.

E. Adjudicatory procedures. These adjudicatory procedures shall apply to hearings on temporary cessation orders and notices of violation before the division, and the provisions of 19.15.4 NMAC shall not apply.

(1) General provisions.

(a) Designation of parties. The parties shall be the division and the person served with a notice of violation or order, referred to herein as "respondent".

(b) Representation. Respondent may appear and participate in a hearing either pro se or through counsel, provided that a collective entity, including a corporation, partnership, unincorporated association, political subdivision or governmental agency shall appear only through counsel or a duly authorized officer or member.

(c) Rule applicability. In the absence of a specific provision in this section, the hearing examiner may apply the New Mexico rules of civil procedure and evidence.

(d) Computation of time. In computing any period of time under 19.15.5.10 NMAC the day of the event from which the designated period begins to run shall not be included, and the last day of the computed period shall be included, unless it is a Saturday, Sunday or legal state holiday, in which case the time is extended until the next day which is not a Saturday, Sunday or legal state holiday. Whenever a party must act within a prescribed period after service, and service is by first class mail only, three days is added to the prescribed period.

(e) Extensions of time. The hearing examiner may grant an extension of time to file a document or continue a hearing upon timely motion upon consent of the parties, or for good cause shown after consideration of prejudice to the other party and undue delay to the hearing.

(f) Filing of documents. A party shall file the original of each document and serve a copy on the other party, accompanied by a certificate of service identifying the method and address used to complete service.

(g) Service of documents. A party shall serve each document on the other party or its counsel, as applicable, by personal service or first class mail, or by electronic mail if the parties agree.

(h) Form of documents. Unless otherwise ordered, all documents, except exhibits, shall be on 8 1/2 x 11-inch white paper, shall contain the caption of the notice of violation or temporary cessation order on the first page and shall be signed by the party or its counsel, as applicable.

(2) Pre-hearing procedures.

(a) Docketing. At the expiration of the 30 day period for informal resolution of a notice of violation, when a party appeals a final order under Subsection E of 19.15.5.10 NMAC, or when the division gives notice that it intends to extend a temporary cessation order, the division shall docket the notice of violation or order for hearing, identify the factual basis for the alleged violation and proposed sanction(s), and serve a notice of docketing on respondent.

(b) Answer. No later than 10 days after service of the notice of docketing, respondent shall file an answer stating its objection, if any, and the factual and legal basis for such objection, to each alleged violation and proposed sanction in the notice of violation or order.

(c) Hearing examiner. The hearing examiner shall have the authority to take all measures necessary to conduct a fair, impartial and efficient adjudication of issues, and to maintain order and avoid undue delay, including the authority to conduct pre-hearing conferences and hearings, rule on procedural and evidentiary motions, govern the examination of witnesses and the admission of evidence, issue orders and prepare a recommended decision. After the division issues the notice of violation, the hearing examiner shall not discuss ex parte the merits of the proceeding with the division or the respondent.

(d) Pre-hearing conference. The hearing examiner may hold a pre-hearing conference to narrow the issues, eliminate or resolve preliminary matters and encourage settlement, and may issue a pre-hearing order on procedural and evidentiary matters, including a schedule for the filing of motions and testimony, stipulations regarding alleged violations and requested relief, including proposed civil penalties or

elements thereof, and any other matter necessary for the efficient conduct of the hearing.

(e) Pre-hearing statements. No later than seven calendar days before the hearing, a party who intends to present evidence at the hearing shall file and serve a statement that contains the following information:

(i) the name, address, employment and qualifications, including education and work history, of each witness;

(ii) a statement identifying the opinions and factual assertions supporting each witness' testimony;

(iii) the exhibits and other evidence to be presented by each witness; and

(iv) procedural matters that are to be resolved prior to the hearing.

(f) Enforcement. The hearing examiner may enforce the requirements of 19.15.5.10 NMAC by any appropriate means, including the exclusion of testimony, exhibits and other evidence.

(g) Motions.

(i) General. All motions, except motions made orally during the hearing, shall be in writing, specify the grounds for the motion, state the relief sought, indicate whether the motion is opposed or unopposed and be served on the other party.

(ii) Unopposed motions. An unopposed motion shall state that concurrence of the other party was obtained and shall be accompanied by a proposed order approved by the parties.

(iii) Opposed motions. An opposed motion shall state either that concurrence was sought and not obtained, or the reason that concurrence was not sought.

(iv) Response. No later than 10 days after service of an opposed motion, the opposing party may file a response. Failure to file a response shall be deemed a waiver of any objection to the granting of the motion.

(v) Reply. No later than 10 days after service of a response to an opposed motion, the moving party may file a reply.

(vi) Decision. The hearing examiner shall decide all motions without a hearing, unless otherwise ordered by the hearing examiner sua sponte or upon written request of a party.

(h) Shortening Deadlines. On the written request of the alleged violator showing good cause, the hearing examiner may shorten the deadlines specified in Paragraph (2) of Subsection E of 19.15.10 NMAC to conduct the hearing on the division's application for a temporary cessation order as expeditiously as possible. If the division opposes the request to shorten deadlines, the procedures for opposed motions set forth in Subparagraph (g) of Paragraph (2) of Subsection G of 19.15.5.10 NMAC shall not apply and the hearing examiner shall decide the request, with or without hearing, as quickly as practicable.

(3) Hearing procedures.

(a) General. The hearing examiner shall admit all evidence, unless he or she determines that the evidence is irrelevant, immaterial, unduly repetitious or otherwise unreliable or of little probative value. Evidence relating to settlement that would be excluded by the New Mexico rules of evidence is not admissible.

(b) Witness examination. Witnesses shall be examined orally and under oath or affirmation, provided that the parties may stipulate to the admission of the testimony of a witness, or part thereof. Parties shall have the right to cross-examine a witness, provided that the hearing examiner may limit cross-examination that is unduly repetitious, harassing or beyond the scope of the direct testimony.

(c) Exhibits. A party shall label each exhibit used during the hearing or offered into evidence with a designation identifying the party, the witness using or offering the exhibit and a serial number.

(d) Burden of persuasion. The division has the burden of going forward with the evidence and of proving by a preponderance of the evidence the facts relied upon to show the alleged violation occurred and that the proposed civil penalty is appropriate. Following the establishment of a prima facie case, respondent shall have the burden of going forward with any adverse evidence or defense to the allegations.

(4) Post-hearing procedures.

(a) Transcript. The hearing shall be transcribed verbatim. Respondent may order a copy of the transcript from the reporter at its own expense.

(b) Recommended decision. The hearing examiner shall prepare a recommended decision for review by the director.

(c) Final order. The director shall file a final order addressing the material issues of fact and law and may assess a sanction for each alleged violation, which shall be served on the division and the respondent.

F. Commission review. No later than 30 days after the director serves the final order, a party may file a notice of appeal with the commission and shall serve the notice of appeal on the other party. The commission shall schedule a hearing on the appeal and notify the parties of the date and time of the hearing. The commission shall conduct a de novo review, provided however, that the parties may stipulate to the issues to be heard and to the admission of all or part of the record before the division. The commission shall conduct the hearing in accordance with the adjudicatory procedures in Paragraph (1), Subparagraphs (c) through (g) of Paragraph (2), Paragraph (3) and Subparagraph (a) of Paragraph (4) of Subsection E of 19.15.5.10 NMAC.

G. Rehearings. A party may file an application for rehearing with the commission pursuant to Section 70-2-25 NMSA 1978.

H. Payment of civil penalty. Respondent shall pay the full amount of the civil penalty assessed in the final order (i) no later than 30 days after the director serves the final order, or (ii) if respondent files a notice of appeal to the commission or the district court pursuant to Section 70-2-25 NMSA 1978, no later than 30 days after the commission or the district court files a final order or the appeal is withdrawn.

I. Resolution after commencement of hearing. If the parties agree to resolve a notice of violation at any time after the commencement of a hearing, they shall file a stipulated final order signed by both parties. The stipulated final order shall state that respondent admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives respondent's right of review by the commission or the court, as applicable.

J. Publication. On or about October 1 of each year, the division shall publish a list identifying the temporary cessation orders and notices of violation issued during the preceding year, along with the civil penalty paid, if any.

K. Reservation. Nothing in 19.15.5.10 NMAC precludes the division from bringing any other action and seeking any relief allowed by the Oil and Gas Act.

[19.15.5.10 NMAC – Rp, 19.15.5.10 NMAC, 2/25/2020]

19.15.5.11 **ENFORCEABILITY OF PERMITS AND ADMINISTRATIVE ORDERS:** A person who conducts an activity pursuant to a permit, administrative order or other written authorization or approval from the division shall comply with every term, condition and provision of the permit, administrative order, authorization or approval.

[19.15.5.11 NMAC - Rp, 19.15.1.41 NMAC, 12/1/2008]

HISTORY of 19.15.5 NMAC:

History of Repealed Material: 19.15.1 NMAC, General Provisions (filed 04/27/2001) and 19.15.14 NMAC, Procedure (filed 09/16/2005) repealed 12/1/2008.

NMAC History:

Those applicable portions of 19.15.1 NMAC, General Provisions (Sections 12, 40 & 41) (filed 04/27/2001) and 19.15.14 NMAC, Procedure (Section 1227) (filed 09/16/2005), were replaced by 19.15.5 NMAC, Enforcement and Compliance, effective 12/1/2008.

EXHIBIT 90-C

APPLICANTS' POST-HEARING PROPOSED AMENDMENTS TO 19.15.8 NMAC FINAL

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 8 FINANCIAL ASSURANCE

19.15.8.1 ISSUING AGENCY: Oil Conservation Commission.
[19.15.8.1 NMAC - N, 12/1/2008; A, 1/15/2019]

19.15.8.2 SCOPE: 19.15.8 NMAC applies to persons engaged in oil and gas development and production within New Mexico.
[19.15.8.2 NMAC - N, 12/1/2008]

19.15.8.3 STATUTORY AUTHORITY: 19.15.8 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11, Section 70-2-12 and Section 70-2-14 NMSA 1978.
[19.15.8.3 NMAC - N, 12/1/2008; A, 1/15/2019]

19.15.8.4 DURATION: Permanent.
[19.15.8.4 NMAC - N, 12/1/2008]

19.15.8.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.8.5 NMAC - N, 12/1/2008]

19.15.8.6 OBJECTIVE: To establish financial assurance requirements for persons, firms, corporations or associations who have drilled or acquired, are drilling or propose to drill or acquire an oil, gas or injection or other service well to furnish financial assurance acceptable to the division.
[19.15.8.6 NMAC - N, 12/1/2008]

19.15.8.7 DEFINITIONS: [RESERVED]
[See 19.15.2.7 NMAC for definitions.]

19.15.8.8 GENERAL REQUIREMENTS FOR FINANCIAL ASSURANCE:

A. The operator shall file financial assurance documents with the division's Santa Fe office and obtain approvals and releases of financial assurance from that office.

B. Financial assurance documents shall be on forms prescribed by or otherwise acceptable to the division.

C. The division may require proof that the individual signing for an entity on a financial assurance document or an amendment to a financial assurance document has the authority to obligate that entity.

D. Any time an operator changes the corporate surety, financial institution or amount of financial assurance, the operator shall file updated financial assurance documents on forms prescribed by the division. Notwithstanding the foregoing, if an operator makes other changes to its financial assurance documents, the division may require the operator to file updated financial assurance documents on forms prescribed by the division.
[19.15.8.8 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 6/30/2015]

19.15.8.9 CATEGORIES AND AMOUNTS OF FINANCIAL ASSURANCE FOR WELL PLUGGING:

A. Applicability. An operator who has drilled or acquired operating authority under 19.15.9.9 NMAC, is drilling or proposes to drill or acquire operating authority under 19.15.9.9 NMAC of an oil, gas or injection or other service well within this state shall furnish a financial assurance acceptable to the division in accordance with 19.15.8.9 NMAC and in the form of an irrevocable letter of credit, plugging insurance policy or cash or surety bond running to the state of New Mexico conditioned that the well be plugged and abandoned and the location restored and remediated in compliance with commission rules, unless the well is covered by federally required financial assurance. The division shall not approve and the operator shall not proceed with any proposed drilling or acquisition of operating authority under 19.15.9.9 NMAC until the operator has furnished the required financial assurance. This Subsection A applies to Subsections B through H of this Section.

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.

C. Active wells. An operator shall provide financial assurance for wells that ~~are covered by~~

~~Subsection A of 19.15.8.9 NMAC and~~ are not subject to Subsections D and E of 19.15.8.9 NMAC in one of the following categories:

(1) a one well plugging financial assurance in the amount of $150,000 per well;~~$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;~~ or

(2) a blanket plugging financial assurance in the amount of $250,000 ~~following amounts~~ covering all the wells of the operator subject to Subsection C of 19.15.8.9 NMAC.~~:~~

~~**(a)** $50,000 for one to 10 wells;~~
~~**(b)** $75,000 for 11 to 50 wells;~~
~~**(c)** $125,000 for 51 to 100 wells; and~~
~~**(d)** $250,000 for more than 100 wells.~~

D. Low producing. Notwithstanding the provisions in Subsection C(2) in this Section:

(1) As of the [effective date of amendments] a transferee operator shall provide a one well plugging financial assurance of $150,000 for each low producing well prior to transfer.

(2) Beginning May 1, 2029, an operator shall provide a one well plugging financial assurance for each low producing well. Each operator with a low producing well or wells shall annually review the number of low producing wells registered to the operator and shall update the one well plugging financial assurance by May 1 of each year.

(3) An operator of a low producing well may request a variance to the one well plugging financial assurance requirement of $150,000 upon a demonstration satisfactory to the division that there is a physical impediment limiting the well's midstream take away capacity. A demonstration shall include a certification from the operator detailing the nature of the physical impediment, explaining why the physical impediment is outside the control of the operator, detailing the alternatives that were or are being explored to address the lack of take away capacity, and an estimated date when the lack of take away capacity will be corrected. The demonstration shall also include the notification from the midstream operator required pursuant to 19.15.28.8.D NMAC.

(4) An operator may furnish all necessary one well plugging financial assurance in the form of a single instrument.

E. Operators with 20 percent or more of wells in inactive, approved temporarily abandoned or expired temporarily abandoned status.

(1) Beginning May 1, 2029, an operator with 20 percent or more of their wells in inactive status, approved temporarily abandoned status or expired temporarily abandoned status, or a combination thereof, shall provide a one well plugging financial assurance in the amount of $150,000 for each well registered to the operator until the percentage of the operator's wells in such statuses is decreased below 20 percent. Each operator with wells in this financial assurance category shall annually review the number of wells in inactive status, approved temporarily abandoned status and expired temporarily abandoned status registered to the operator and shall update the one well plugging financial assurance by May 1 of each year.

(2) An operator may furnish all necessary one well plugging financial assurance in the form of a single instrument.

F.~~D.~~ Inactive wells and wells in approved and expired temporarily abandoned status. An operator shall provide financial assurance for wells that are inactive and wells in approved and expired temporarily abandoned status, ~~covered by Subsection A of 19.15.8.9 NMAC that have been in temporarily abandoned status for more than two years~~ or for which the operator is seeking approved temporary abandonment pursuant to 19.15.25.13 NMAC in one of the following categories:

(1) a one well plugging financial assurance in the amount of $150,000 per well; ~~$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;~~ or

(2) a blanket plugging financial assurance equal to an average of $150,000 per well covering all wells of the operator subject to Subsection F~~D~~ of 19.15.8.9 NMAC.~~:~~

~~**(e)** $150,000 for one to five wells;~~
~~**(f)** $300,000 for six to 10 wells;~~
~~**(g)** $500,000 for 11 to 25 wells; and~~
~~**(h)** $1,000,000 for more than 25 wells.~~

G.~~D.~~ Operators who have on file with the division a blanket plugging financial assurance that does not cover additional wells shall file additional one ~~single~~ well plugging ~~bond~~ financial assurance for any wells not covered by the existing blanket plugging financial assurance ~~bond~~ in an amount as determined by Section 19.15.8.9 NMAC, subject to any limitations in Section 70-2-14 NMSA 1978 or, in the alternative, may file a financial assurance in the form of a single instrument. ~~replacement blanket bond.~~

H. Beginning January 1, 2032, the division may adjust the financial assurance amounts provided by

Subsections C(1), D, E and F of this Section by multiplying the financial assurance as of January 1, 2031 by a fraction, the numerator of which is the consumer price index ending in September of the previous year and the denominator of which is the consumer price index ending September 2030; provided that any financial assurance shall not be adjusted below the minimum amounts required in Subsections C(1), D, E and F of this Section as a result of a decrease in the consumer producer price index. By November 1, 2031 and by November 1 of each successive year, the division shall post on its website the financial assurance requirements in Subsection A through E of this Section for the next year. As used in this subsection, "consumer price index" means the consumer price index, not seasonally adjusted, for all urban consumers, United States city average for all items, or its successor index, as published by the United States department of labor for a 12 month period ending September 30. The division may adjust the applicable financial assurance amounts in accordance with this Section but may not do so more frequently than three years from the date of the last adjustment.
[19.15.8.9 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 6/30/2015; A, 1/15/2019]

19.15.8.10 ADDITIONAL REQUIREMENTS FOR CASH AND SURETY BONDS:

A. Surety bonds shall be issued by a reputable corporate surety authorized by the office of the superintendent of insurance to do business in the state. The surety shall be listed on U.S. department of the treasury circular 570.

B. The operator shall deposit cash representing the full amount of the bond in an account in a federally-insured financial institution located within the state, such account to be held in trust for the division. Authorized representatives of the operator and the depository institution shall execute a document evidencing the cash bond's terms and conditions. The operator shall file the document with the division prior to the bond's effective date. If the operator's financial status or reliability is unknown to the director, the director may require the filing of a financial statement or such other information as may be necessary to evaluate the operator's ability to fulfill the bond's conditions. From time to time, any accrued interest over and above the bond's face amount may be paid to the operator.
[19.15.8.10 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 6/30/2015]

19.15.8.11 ADDITIONAL REQUIREMENTS FOR LETTERS OF CREDIT:

A. The division may accept irrevocable letters of credit issued by national or state-chartered banking associations.

B. Letters of credit shall be irrevocable for a term of not less than five years, unless the applicant shows good cause for a shorter time period.

C. 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.

D. The division may forfeit and collect a letter of credit if not replaced by an approved financial assurance at least 30 days before the expiration date.

E. Authorized representatives of the operator and the depository institution shall execute a document evidencing the letter of credit's terms and conditions.
[19.15.8.11 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 6/30/2015]

19.15.8.12 RELEASE OF FINANCIAL ASSURANCE:

A. 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 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.

B. Transfer of a property or a change of operator does not of itself release a financial assurance. The division shall not approve a request for change of operator for a well until the new operator has the required financial assurance in place and is otherwise in compliance with the requirements of 19.15.9.9 NMAC.
[19.15.8.12 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008]

19.15.8.13 FORFEITURE OF FINANCIAL ASSURANCE:

A. Upon the operator's failure to properly plug and abandon and restore and remediate the location of a well or wells a financial assurance covers, the division shall give notice to the operator and surety, if applicable, and hold a hearing as to whether the well or wells should be plugged and abandoned and the location restored and remediated in accordance with a division-approved plugging program. If it is determined at the hearing that the operator has failed to plug and abandon the well and restore and remediate the location as provided for in the financial assurance or division rules, the director shall issue an order directing the well to be plugged or abandoned and the location restored and remediated in a time certain. Such an order may also direct the forfeiture of the

financial assurance upon the failure or refusal of the operator, surety or other responsible party to properly plug and abandon the well and restore and remediate the location.

B. If the financial assurance's proceeds exceed the costs the division incurred plugging and abandoning the well and restoring and remediating the location the financial assurance covers, the division shall return the excess to the surety or the operator, as appropriate.

C. If the financial assurance's proceeds are not sufficient to cover all the costs the division incurred in plugging and abandoning the well and restoring and remediating the location, the division may seek indemnification from the operator as provided in Subsection E of Section 70-2-14 NMSA 1978.

D. The division shall deposit forfeitures and funds collected pursuant to a judgment in a suit for indemnification in the oil and gas reclamation fund.

[19.15.9.13 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008]

19.15.8.14 EFFECTIVE DATES.

A. 19.15.8 NMAC applies to wells drilled or acquired after December 15, 2005.

B. As to all other wells, 19.15.8 NMAC is effective January 1, 2008.

C. The 2018 amendments to 19.15.8.9 NMAC apply to applications for permits to drill, deepen or plug back and applications for approved temporary abandonment filed on or after January 15, 2019, and for all other wells on April 15, 2019.

[19.15.8.14 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 1/15/2019]

19.15.8.15 ADDITIONAL REQUIREMENTS FOR PLUGGING INSURANCE POLICIES:

A. The plugging insurance policy must be issued by a company authorized by the office of the superintendent of insurance to do business in New Mexico.

B. The policy shall name a specific well and name the state of New Mexico as the owner of the policy and contingent beneficiary.

C. The policy shall name a primary beneficiary who agrees to plug the specified wellbore.

D. The policy shall be fully prepaid and cannot be canceled or surrendered.

E. The policy shall continue in effect until the specified wellbore has been plugged.

F. The policy shall provide that benefits will be paid when, but not before, the specified wellbore has been plugged in accordance with division rules in effect at the time of plugging.

G. The policy shall provide benefits that are not less than an amount equal to the one-well financial assurance required by division rules. If, subsequent to an operator obtaining an insurance policy, the one-well financial assurance requirement applicable to the operator's well covered by said policy increases, either because the well is deepened or the division's rules are amended, the operator will meet the additional financial assurance requirement by complying with one of the requirements below.

(1) The operator's existing policy benefit equals or exceeds the revised requirement.

(2) The operator obtains and files with the division within 30 days an amendment increasing the policy benefit by the amount of the increase in the applicable financial assurance requirement.

19.15.8.16 The operator obtains financial assurance equal to the amount, if any, by which the revised requirement exceeds the policy benefit and files said financial assurance with the division within 30 days. [19.15.8.15 NMAC - N, 6/30/2015]

19.15.8.17 DUTY TO REPORT: Any operator who filed for bankruptcy shall provide notice to the division, in writing, through the processes provided for under the rules of the United States bankruptcy court. [19.15.8.16 NMAC - N, 6/30/2015]

HISTORY of 19.15.8 NMAC:

History of Repealed Material: 19.15.3 NMAC, Drilling (filed 10/29/2001) repealed 12/1/2008.

NMAC History:
That applicable portion of 19.15.3 NMAC, Drilling (Section 101) (filed 10/29/2001) was replaced by 19.15.8 NMAC, Financial Assurance, effective 12/1/2008.

EXHIBIT 90-D

APPLICANTS' POST-HEARING AMENDMENTS TO 19.15.9 NMAC
FINAL

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 9 WELL OPERATOR PROVISIONS

19.15.9.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.9.1 NMAC - N, 12/1/08]

19.15.9.2 SCOPE: 19.15.9 NMAC applies to persons or entities operating oil or gas wells within New Mexico.
[19.15.9.2 NMAC - N, 12/1/08]

19.15.9.3 STATUTORY AUTHORITY: 19.15.9 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12.
[19.15.9.3 NMAC - N, 12/1/08]

19.15.9.4 DURATION: Permanent.
[19.15.9.4 NMAC - N, 12/1/08]

19.15.9.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section. [19.15.9.5 NMAC - N, 12/1/08]

19.15.9.6 OBJECTIVE: To require an operator of a well or wells to register with the division prior to commencing operations and to require the reporting of a change of operator or a change of name to the division. [19.15.9.6 NMAC - N, 12/1/08]

19.15.9.7 DEFINITIONS:[RESERVED]
[See 19.15.2 NMAC for definitions.]
[19.15.9.7 NMAC - N, 12/1/08]

19.15.9.8 OPERATOR REGISTRATION:

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:

(1) an oil and gas registration identification (OGRID) number obtained from the division, the state land office or the taxation and revenue department;

(2) a current address of record to be used for notice and a current emergency contact name and telephone number for each district in which the operator operates wells; and

(3) the financial assurance 19.15.8 NMAC requires.

B. Prior to commencing operations, an operator shall provide to the division a certification by a representative designated by the operator that within the past ten years the new operator has not been subject to any final administrative forfeiture demand from any state or federal agency, has not forfeited financial assurance to any state or federal agency, and has not been out of compliance with adjudicated order or settlement agreement with a state or federal agency for any state or federal violation related to oil and gas laws or regulations in any domestic jurisdiction in which the new operator does business; a disclosure of any officer, director, partner in the new operator or person with an interest in the new operator exceeding 25 percent, who is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC; and a disclosure whether the new operator is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC.

~~B.~~**C.** The division may deny registration as an operator if:

(1) the applicant is not in compliance with Subsection A of 19.15.5.9 NMAC;

(2) the applicant within the past ten years has had a final administrative forfeiture demand from any state or federal agency, has forfeited financial assurance to any state or federal agency, or has been out of compliance with an adjudicated order or settlement agreement with a state or federal agency for any state or federal violation related to oil and gas laws or regulations in any domestic jurisdiction in which the applicant does business;

(~~2~~3) an officer, director, partner in the applicant or person with an interest in the applicant exceeding 25 percent, is or was within the past five years an officer, director, partner or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC;

(~~3~~4) the applicant is or was within the past five years an officer, director, partner or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC; or

(4~~5~~) the applicant is a corporation, ~~or~~ limited liability company, limited liability limited partnership, or limited partnership and is not registered or is not in good standing with the New Mexico secretary of state ~~public regulation commission~~ to do business in New Mexico.~~; or~~

~~**(5)** the applicant is a limited partnership and is not registered with the New Mexico secretary of state to do business in New Mexico.~~

~~C.~~D. An operator shall inform the division of its current address of record and emergency contact names and telephone numbers by submitting changes in writing to the division's financial assurance administrator in the division's Santa Fe office within 30 days of the change.

~~D.~~E. ~~The division may require an~~ A representative designated by the operator shall ~~or applicant to~~ certify compliance annually of ~~identify~~ its current and past officers, directors and partners and its current and past ownership interest in other operators consistent with 19.15.9.8.C(2) and (3) NMAC.

[19.15.9.8 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

19.15.9.9 CHANGE OF OPERATOR:

A. A change of operator occurs when the entity responsible for a well or a group of wells changes. A change of operator may result from a sale, assignment by a court, a change in operating agreement or other transaction. Under a change of operator, wells are moved from the OGRID number of the operator of record with the division to the new operator's OGRID number.

B. The operator of record with the division and the new operator shall apply for a change of operator by jointly filing a form C-145 using the division's web-based online application. If the operator of record with the division is unavailable, the new operator shall apply to the division for approval of change of operator without a joint application. The new operator shall make such application in writing and provide documentary evidence of the applicant's right to assume operations; a certification by a representative designated by the operator of the new operator that within the past ten years the new operator has not been subject to any final administrative forfeiture demand from any state or federal agency, has not forfeited financial assurance to any state or federal agency, and has not been out of compliance with an adjudicated order or settlement agreement with a state or federal agency for any state or federal violation related to oil and gas laws or regulations in any domestic jurisdiction in which the new operator does business; a plugging and abandonment plan; a disclosure of any officer, director, partner in the new operator or person with an interest in the new operator exceeding 25 percent, who is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC; and a disclosure whether the new operator is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC. The new operator shall not commence operations until the division approves the application for change of operator. The plugging and abandonment plan shall be certified by a representative designated by the new operator and shall demonstrate that the new operator has and will have the financial ability to meet the plugging and abandonment requirements of 19.15.25 NMAC for the well or wells to be transferred in light of all the 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 report, records of the operator's historical costs for decommissioning activities, estimate of the operator's decommissioning obligations, and history of inactive wells and returning wells to production.

C. The director of the director's designee may deny a change of operator if:

(1) the new operator is not in compliance with Subsection A of 19.15.5.9 NMAC; ~~or~~

~~**(2)** the new operator is acquiring wells, facilities or sites subject to a compliance order requiring remediation or abatement of contamination, or compliance with 19.15.25.8 NMAC, and the new operator has not entered into an agreed compliance order setting a schedule for compliance with the existing order.~~

(2) within the past ten years the new operator has had a final administrative forfeiture demand from any state or federal agency, has forfeited financial assurance to any state or federal agency, or has been out of compliance with an adjudicated order or settlement agreement with a state or federal agency for any state or

federal violation related to oil and gas laws or regulations in any domestic jurisdiction in which the new operator does business;

(3) any officer, director, partner in the new operator or person with an interest in the new operator exceeding 25 percent, who is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC;

(4) the new operator is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC;

(5) the applicant is a corporation, limited liability company, limited liability limited partnership, or limited partnership and is not registered or is not in good standing with the New Mexico secretary of state to do business in New Mexico; or

(6) the certification or disclosure requirements set forth in Subsection B of this Section disclose a substantial risk that the new operator would be unable to satisfy the plugging and abandonment requirements of 19.15.25 NMAC for the well or wells the new operator intends to take over.

D. In determining whether to grant or deny a change of operator when the new operator is not in compliance with Subsection A of 19.15.5.9 NMAC, the director or the director's designee shall consider such factors as whether the non-compliance with Subsection A of 19.15.5.9 NMAC is caused by the operator not meeting the financial assurance requirements of 19.15.8 NMAC, being subject to a division or commission order finding the operator to be in violation of an order requiring corrective action, having a penalty assessment that has been unpaid for more than 70 days since the issuance of the order assessing the penalty or having ~~more than the allowed number of~~ wells out of compliance with 19.15.25.8 NMAC. If the non-compliance is caused by the operator having ~~more than the allowed number of~~ wells not in compliance with 19.15.25.8 NMAC, the director or director's designee shall consider the number of wells not in compliance, the length of time the wells have been out of compliance and the operator's efforts to bring the wells into compliance.

E. No well, facility or site that is out of compliance with Subsection A of 19.15.5.9 NMAC, 19.15.29 NMAC, or 19.15.30 NMAC shall be transferred unless, prior to transfer, the current operator brings the associated well, facility or site into compliance or the new operator submits a schedule of compliance approved by the division.

[19.15.9.9 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

19.15.9.10 CHANGE OF NAME:

A. A change of operator name occurs when the name of the entity responsible for a well or wells changes but the entity does not change. For a change of name, the OGRID number remains the same, but division records are changed to reflect the new operator name.

B. An operator shall apply for a change of name by filing a form C-146 using the division's web-based online application and supplying documentary proof that the change is a name change and not a change of operator. If the operator is a corporation, limited liability company or limited partnership, the name must be registered with the public regulation commission or the New Mexico secretary of state, as applicable. The division shall not approve a change of name until the state land office and the taxation and revenue department have cleared the change of name on the OGRID.

[19.15.9.10 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

19.15.9.11 EXAMPLES OF CHANGE OF OPERATOR AND CHANGE OF NAME:

A. Mr. Smith, a sole proprietor, operates five wells under the name "Smith oil company". Mr. Smith changes the name of his company to "Smith production company". The name of the entity operating the wells has changed, but the entity has not changed. Mr. Smith should apply for a change of name.

B. Mr. Smith incorporates his business, changing from the sole proprietorship, "Smith production company", to a corporation: "Smith production company, inc.". The entity responsible for the wells has changed, and Mr. Smith and "Smith production company, inc." should apply for a change of operator.

C. Smith production company, inc., a New Mexico operator, merges with XYZ, inc., which does not operate in New Mexico. At the surviving entity's election, this transaction may be treated as a change of name from Smith production company, to XYZ, inc., maintaining the existing OGRID, or as a change of operator, with a new OGRID.

D. Two New Mexico operators, Smith production company, inc. and Jones production company, inc., merge. The surviving corporation is Jones production company, inc. A different entity now operates the

wells Smith production company, formerly operated, and the wells must be placed under that entity's OGRID. Jones production company, inc. and Smith production company, inc. should apply for a change of operator as to the wells Smith production company, inc. operated.
[19.15.9.11 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

HISTORY of 19.15.9 NMAC:

History of Repealed Material: 19.15.3 NMAC, Drilling (filed 10/29/2001) repealed 12/1/08.

NMAC History:
That applicable portion of 19.15.3 NMAC, Drilling (Section 100) (filed 11/30/2005) was replaced by 19.15.9 NMAC, Well Operator Provisions, effective 12/1/08.

EXHIBIT 90-E

APPLICANTS' POST-HEARING PROPOSED AMENDMENTS TO 19.15.25 NMAC FINAL

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 25 PLUGGING AND ABANDONMENT OF WELLS

19.15.25.1 ISSUING AGENCY: Oil Conservation Commission.
[19.15.25.1 NMAC - Rp, 19.15.4.1 NMAC, 12/1/2008; A, 1/15/2019]

19.15.25.2 SCOPE: 19.15.25 NMAC applies to persons that operate oil or gas wells within New Mexico.
[19.15.25.2 NMAC - Rp, 19.15.4.2 NMAC, 12/1/2008]

19.15.25.3 STATUTORY AUTHORITY: 19.15.25 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-12 NMSA 1978, which authorizes the division to require dry or abandoned wells to be plugged so as to confine oil, gas or water in the strata in which they are found and to prevent them from escaping into other strata.
[19.15.25.3 NMAC - Rp, 19.15.4.3 NMAC, 12/1/2008]

19.15.25.4 DURATION: Permanent.
[19.15.25.4 NMAC - Rp, 19.15.4.4 NMAC, 12/1/2008]

19.15.25.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of asection.
[19.15.25.5 NMAC - Rp, 19.15.4.5 NMAC, 12/1/2008]

19.15.25.6 OBJECTIVE: To establish requirements for properly abandoning and plugging wells drilled for oil or gas or service wells including seismic, core, exploration or injection wells or placing the wells in temporary abandonment in order to protect public health, fresh water and the environment.
[19.15.25.6 NMAC - Rp, 19.15.4.6 NMAC, 12/1/2008]

19.15.25.7 DEFINITIONS: [RESERVED]
[See 19.15.2.7 NMAC for definitions.]

19.15.25.8 WELLS TO BE PROPERLY ABANDONED:

A. The operator of wells drilled for oil or gas or services wells including seismic, core, exploration or injection wells, whether cased or uncased, shall plug the wells as Subsection B of 19.15.25.8 NMAC requires.

B. The operator shall either properly plug and abandon a well or apply to the division to place the well in approved temporary abandonment in accordance with 19.15.25 NMAC within ~~90~~ 60 days after:

(1) a 60 day period following suspension of drilling operations, except a well that has been drilled and properly cased but not completed for less than 18 months and a well that has been completed but has not produced for less than 18 months, unless the well is a dry hole;

(2) a determination that a well is no longer usable for beneficial purposes; or

(3) a period of one year in which a well has been continuously inactive.

[19.15.25.8 NMAC - Rp, 19.15.4.201 NMAC, 12/1/2008]

19.15.25.9 PRESUMPTIONS OF NO BENEFICIAL USE:

A. For oil and gas production wells, there is a rebuttable presumption that a well is not capable of beneficial use if, in a consecutive 12 month period, the well has not produced at least 90 barrels of oil equivalent.

B. For injection or salt water disposal wells, there is a rebuttable presumption that a well is not capable of beneficial use if, in a consecutive 12 month period, the well has not injected at least 100 barrels of fluid.

C. The rebuttable presumptions in this Section do not apply to wells that have been drilled but not completed for less than 18 months and wells that have been completed but have not produced for less than 18 months.

D. Within 30 calendar days after notice from the division that a well or wells are presumed to not being used for beneficial purposes, a well operator may submit an application for administrative review the division. The division shall issue a final determination based on the application, information available in division records, and any information requested by the division. An operator may file an application for hearing within 30 days of the division's final determination pursuant to 19.15.4 NMAC. Applications shall demonstrate beneficial use of a well or wells and the operator shall provide any information requested by the division. Such documentation may include:

(1) A demonstration that the well is reasonably projected to produce in an economically beneficial manner;

(2) A demonstration that the well has effectively produced or injected at least 90 days within the consecutive 12 month period and there is no downhole mechanical integrity problem;

(3) A demonstration that the operator maintains adequate capitalization or reasonably projected revenue sufficient to meet all reasonably anticipated plugging and environmental liabilities of the well or wells and associated production facilities, not inclusive of any financial assurance associated with the well or wells;

(4) A plugging and abandonment plan as described in 19.15.9.9.B NMAC; and

(5) Other relevant information requested by the division or provided by the operator or a regulatory agency.

E. This Subsection shall become effective 12 months after [the effective date of this rule], except that as to operators that the division determines are substantially out of compliance with 19.15.7.24 NMAC, 19.15.8.9 NMAC, or 19.15.25.8 NMAC, this Subsection shall become effective on [the effective date of this rule].

19.15.25.~~9~~10 NOTICE OF PLUGGING:

A. The operator shall file notice of intention to plug with the division on form C-103 prior to commencing plugging operations. The notice shall provide all the information 19.15.7.14 NMAC requires including operator and well identification and proposed procedures for plugging the well.

B. In addition, the operator shall provide a well bore diagram showing the proposed plugging procedure.

C. The operator shall notify the division 24 hours prior to commencing plugging operations. In the case of a newly drilled dry hole, the operator may obtain verbal approval from the appropriate district supervisor or the district supervisor's representative of the plugging method and time operations are to begin. The operator shall file written notice in accordance with 19.15.25.~~11~~12 NMAC with the division within 10 days after the district supervisor has given verbal approval.

[19.15.25.9 NMAC - Rp, 19.15.4.202 NMAC, 12/1/2008]

19.15.25.~~10~~11PLUGGING:

A. Before an operator abandons a well, the operator shall plug the well in a manner that permanently confines all oil, gas and water in the separate strata in which they are originally found. The operator may accomplish this by using mud-laden fluid, cement and plugs singly or in combination as approved by the division on the notice of intention to plug.

B. The operator shall mark the exact location of plugged and abandoned wells with a steel marker not less than four inches in diameter set in cement and extending at least four feet above mean ground level. The operator name, lease name and well number and location, including unit letter, section, township and range, shall be welded, stamped or otherwise permanently engraved into the marker's metal. A person shall not build permanent structures preventing access to the wellhead over a plugged and abandoned well without the division's written approval. A person shall not remove a plugged and abandonment marker without the division's written approval.

C. The operator may use below-ground plugged and abandonment markers only with the division's written approval when an above-ground marker would interfere with agricultural endeavors. The below-ground marker shall have a steel plate welded onto the abandoned well's surface or conductor pipe and shall be at least three feet below the ground surface and of sufficient size so that all the information 19.15.16.8 NMAC requires can be stenciled into the steel or welded onto the steel plate's surface. The division may require a re-survey of the well location.

D. As soon as practical, but no later than one year after the completion of plugging operations, the operator shall:

(1) level the location;

(2) remove deadmen and other junk; and

(3) take other measures necessary or required by the division to restore the location to a safe and clean condition.

E. The operator shall close all pits and below-grade tanks pursuant to 19.15.17 NMAC.

F. Upon completion of plugging and clean up restoration operations as required, the operator shall contact the appropriate division district office to arrange for an inspection of the well and location.

[19.15.25.10 NMAC - Rp, 19.15.4.202 NMAC, 12/1/2008]

19.15.25.~~11~~12 REPORTS FOR PLUGGING AND ABANDOMENT:

A. The operator shall file form C-105 as provided in 19.15.7.16 NMAC.

B. Within 30 days after completing required restoration work, the operator shall file with the division

a record of the work done on form C-103 as provided in 19.15.7.14 NMAC.

C. The division shall not approve the record of plugging or release a bond until the operator has filed necessary reports and the division has inspected and approved the location.

[19.15.25.11 NMAC - Rp, 19.15.4.202 NMAC, 12/1/2008]

19.15.25.~~12~~13 APPROVED TEMPORARY ABANDONMENT:

A. The division may place a well in approved temporary abandonment for a period of up to five years upon a demonstration from the operator that the well will be used for beneficial use within the approved period of temporary abandonment.

(1) The operator's demonstration shall include an explanation why the well should be placed in temporary abandonment, how the well will be put to beneficial use in the future including supporting technical data, a plan that describes the ultimate disposition of the well, and the time frame for that disposition.

(2) The operator shall provide any other information the division determines appropriate, including a current and complete well bore diagram; geological evidence; geophysical data; well casing information; waste removal and disposition; production engineering; geophysical logs, e.g., cement bond logs, caliper logs, and casing inspection logs; economic data; and health, safety, and environmental information.

(3) If the division denies a request, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

B. Prior to the expiration of an approved temporary abandonment, the operator shall return the well to beneficial use under a plan the division approves, permanently plug and abandon the well and restore and remediate the location, or apply for a new approval to temporarily abandon the well for a period of up to two years in accordance with 19.15.25.13.A NMAC and demonstrate the well's mechanical integrity in accordance with Sections 19.15.25.14 and -15 NMAC. A second term shall not exceed two additional years, upon which time the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

C. Extension.

(1) Prior to the expiration of a renewal of an approved temporary abandonment, the operator shall return the well to beneficial use under a plan the division approves, permanently plug and abandon the well and restore and remediate the location, or apply for an extension to continue to place the well in temporary abandonment for a period of up to five years.

(2) To obtain an extension, the operator shall apply to the division to extend temporary abandonment status. The division shall provide at least 30 days' notice of the application for extension on its website and to the division mailing list, and the operator shall provide at least 30 days' notice of the application for extension in a newspaper of general circulation. The operator, division, or any interested person may request a hearing on the application for extension before the division. Any such hearing shall be conducted pursuant to the procedures for adjudicatory proceedings in 19.15.4 NMAC, except that in any such adjudicatory proceeding any interested person may intervene under 19.15.4.11.A NMAC. If a hearing is not requested, the division shall proceed with processing the application for extension.

(a) To obtain an extension, the operator shall demonstrate to the division that the well has future beneficial use.

(b) The application for extension shall include:

(i) a plan of development for the well that includes documentation that the plan is technically feasible and financially viable;

(ii) a description of any work completed and in progress under ~~on~~ the plan of development;~~,~~

(iii) documentation demonstrating why the well was not brought back to beneficial use as had been proposed or plugged and abandoned during the prior period of temporary abandonment;

(iv) a plan that describes the ultimate disposition of the well including ~~;~~ the time frame for that disposition; and

(v) documentation demonstrating the well's casing and cementing meet the requirements Sections 19.15.25.14 and -15 NMAC and that monitoring procedures are in place to ensure such requirements will be met and maintained during the period of temporary abandonment.

(c) The operator shall provide any other relevant information requested by the division including engineering information, geological information, financial information, and applicable contracts that support the future beneficial use.

(4) An operator may reapply for an extension for periods of up to five years under the same terms and conditions as provided for in this Subsection. If the division denies a request for extension, the

operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

D. An operator is limited to placing the following numbers of wells in approved temporary abandonment:

~~**A.**~~**(1)** one well, if the operator operates between one and five wells; or

~~**B.**~~**(2)** one-third of all wells (rounded to the nearest whole number), if the operator operates more than five wells.

E. Implementation schedule for existing wells.

(1) Inactive wells (that are not in approved or expired temporary abandonment). Wells that have been inactive as of [effective date of amendments] for less than three years are eligible for temporary abandonment status in accordance with Subsection A of this Section. Wells that have been inactive for three or more years shall apply to the division to extend temporary abandonment status in accordance with Subsection B of this Section.

(2) Wells in approved temporary abandoned status. Any operator of a well in temporary abandoned status as of [effective date of amendments] shall apply to the division to extend temporary abandonment status in accordance with Subsection B of this Section prior to the date temporary abandonment status terminates. Unless an operator of a well has renewed a temporary abandonment in accordance with this Paragraph, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

(3) Wells in expired temporary abandoned status. Any operator of a well in expired temporary abandoned status as of [effective date of amendments] shall apply to the division to extend temporary abandonment status in accordance with Subsection B of this Section. Unless an operator of a well has renewed a temporary abandonment in accordance with this Paragraph, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

F. The timeframes Subsections A, B and C in this Section shall be implemented consistent with any applicable federal requirements.

[19.15.25.12 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008; A, 1/15/2019]

19.15.25.~~13~~14 REQUEST FOR APPROVAL AND PERMIT FOR APPROVED TEMPORARY ABANDONMENT:

A. An operator seeking approval for approved temporary abandonment shall submit the request on form C-103 ~~a notice of intent~~ to seek approved temporary abandonment for the well setting forth the demonstration required in 19.15.25.13 NMAC and describing the proposed temporary abandonment procedure the operator will use. The operator shall not commence work until the division has approved the request. The operator shall give 24 hours' notice to the appropriate division district office before beginning work.

B. The division shall not approve a permit for approved temporary abandonment until the operator furnishes evidence demonstrating that the well's casing and cementing are mechanically and physically sound and in such condition as to prevent:

(1) damage to the producing zone;

(2) noncontainment of well bore fluids to the atmosphere or migration of hydrocarbons or water;

(3) the contamination of fresh water or other natural resources; and

(4) the leakage of a substance at the surface.

C. The operator shall demonstrate both internal and external mechanical integrity pursuant to Subsection A of 19.15.25.15 NMAC.

D. Upon successful completion of the work on the temporarily abandoned well, the operator shall submit a request for approved temporary abandonment to the appropriate division district office on form C-103 together with other information Subsection E of 19.15.7.15 NMAC requires.

E. The division shall not approve a permit for approved temporary abandonment until the operator provides financial assurance for the well that complies with Subsection D of 19.15.8.9 NMAC.

F. The division shall specify the permit's expiration date., ~~which shall be not more than five years from the date of approval.~~

[19.15.25.13 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008; A, 1/15/2019]

19.15.25.~~14~~15 DEMONSTRATING MECHANICAL INTEGRITY:

A. An operator may use the following methods of demonstrating internal casing integrity for wells to be placed in approved temporary abandonment, for wells for which approved temporary abandonment is to be renewed, and for wells for which an extension is to be granted:

(1) the operator may set a cast iron bridge plug within 100 feet of uppermost perforations or production casing shoe, load the casing with inert fluid and pressure test to 500 psi surface pressure with a pressure drop of not more than 10 percent over a 30 minute period;

(2) the operator may run a retrievable bridge plug or packer to within 100 feet of uppermost perforations or production casing shoe, and test the well to 500 psi surface pressure for 30 minutes with a pressure drop of not greater than 10 percent over a 30 minute period; or

(3) the operator may demonstrate that the well has been completed for less than five years ~~and has not been connected to a pipeline~~.

B. During the testing described in Paragraphs (1) and (2) of Subsection A of 19.15.25.15 NMAC the operator shall:

(1) open all casing valves during the internal pressure tests and report a flow or pressure ~~change~~ occurring immediately before, during or immediately after the 30 minute pressure test;

(2) top off the casing with inert fluid prior to leaving the location; and

(3) report flow during the test in Paragraph (2) of Subsection A of 19.15.25.15 NMAC to the appropriate division district office prior to completion of the temporary abandonment operations; the division may require remediation of the flow prior to approving the well's temporary abandonment.

(4) Any isolation device used to test mechanical integrity pursuant to Subsection A of this Section shall remain in place for the duration of the temporary abandonment.

(5) The operator shall perform a caliper log and casing integrity log. Taking into account the purpose and duration of the temporary abandonment, the division may waive this requirement upon a demonstration by the operator of the current and anticipated internal casing integrity of the well and that such integrity shall be maintained throughout the period of temporary abandonment.

C. An operator may use any method approved by the EPA in 40 C.F.R. section 146.8(c) to demonstrate external casing and cement integrity for wells to be placed in approved temporary abandonment.

D. The division shall not accept mechanical integrity tests or logs conducted more than 12 months prior to submittal.

E. The operator shall record mechanical integrity tests on a chart recorder with a maximum two hour clock and maximum 1000 pound spring, which has been calibrated within the six months prior to conducting the test. Witnesses to the test shall sign the chart. The operator shall submit the chart, caliper log, and casing integrity log with form C-103 requesting approved temporary abandonment.

F. The division may approve other testing methods the operator proposes if the operator demonstrates that the test satisfies the requirements of Subsection B of 19.15.25.14 NMAC.

[19.15.25.14 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008]

19.15.25.~~15~~16 WELLS TO BE USED FOR FRESH WATER:

A. When a well to be plugged may safely be used as a fresh water well and the landowner agrees to take over the well for that purpose, the operator does not need to plug the well above the sealing plug set below the fresh water formation.

B. The operator shall comply with other requirements contained in 19.15.25.10 NMAC through 19.15.25.12 NMAC regarding plugging, including surface restoration and reporting requirements.

C. Upon completion of plugging operations, the operator shall file with the division a written agreement signed by the landowner whereby the landowner agrees to assume responsibility for the well. Upon the filing of this agreement and division approval of well abandonment operations, the operator is no longer responsible for the well, and the division may release bonds on the well.

[19.15.25.15 NMAC - Rp, 19.15.4.204 NMAC, 12/1/2008]

HISTORY of 19.15.25 NMAC:
History of Repealed Material: 19.15.4 NMAC, Plugging and Abandonment of Wells (filed 11/29/2001) repealed 12/1/2008.

NMAC History:
19.15.4 NMAC, Plugging and Abandonment of Wells (filed 11/29/2001) was replaced by 19.15.25 NMAC, Plugging and Abandonment of Wells, effective 12/1/2008.

ATTACHMENT

4

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

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%

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,

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

- **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

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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Testimony of Douglas R. Emerick
NMOGA Exhibit F

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ATTACHMENT

5

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 (≥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 18 2025

Name: Douglas Emerick

Title: Director of Operations

Company: Insurance Expert Network

Dated this 19th day of September, 2025.

Respectfully submitted,

By:_____

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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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Oil Conservation Commission Clerk

Rachael Ketchledge

APPENDIX A

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 _____

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:	

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:

_____

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 _____

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

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.

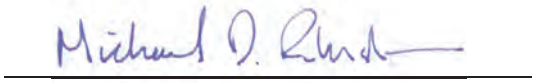
f. Endurance Assurance Corporation and Lexon Insurance Company may not make demands for collateral that are inconsistent with those of other the Other Sureties such that W&T Offshore, Inc. and W&T Energy VI, LLC cannot comply with both demands; and

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)

(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 Nov 9
(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 Rosemary Barrios

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 Nov 9
(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 Rosemary Barrios

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.

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
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 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. 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 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 Galois
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.

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
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 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.

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 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 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.

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. 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. 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	William J. Williford
Signature of Person Executing for Surety	Signature of Person Executing for Principal
Meredith K. Anderson, Attorney-in-Fact	William J. Williford, 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 Grabois
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.

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)
12390 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.

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 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 October, 2022.

By:
Daniel S. Lune, 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.

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 20 20.

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.

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

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:

Edwin A. Cairns

By:
Name: Janet Yang
Title: EVP & CFO
Date: 5/17/22

SURETY: Endurance Assurance Corporation

WITNESSES:

Wendy Pierson
Nadia Ortega

By: Meredith K Anderson
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/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 1st day of June 2022.

By:
Daniel S. Lune, Secretary

NOTICE: U. S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL (OFAC)

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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 Graves, Treasurer
Name/Title

Endurance Assurance Corporation
(Surety)

By: _____

Heather Noles, Attorney-In-Fact
Name/Title

Received by OCD: 09/19/2025

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
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 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 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 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. Lune, Secretary

NOTICE: U. S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL (OFAC)

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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: 615-563-9600 Mailing Address: Sompo International; 12890 Lebanon Road; Mount Juliet, TN 37122-2870

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

Received by OGD: 08/19/2025

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)

Received by OCD: 08/10/2023

Commissioner of 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 _____

Tracy Krohn, 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

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.

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	W & T Energy VI, LLC
Name of Surety	Name of Principal
Meredith K. Anderson	Thomas P. Murphy
Signature of Person Executing for Surety	Signature of Person Executing for Principal
Meredith K. Anderson, Attorney-in-Fact	REPRESENTATIVE
Name and Title (typed or printed)	Name and Title (typed or printed)
10002 Shelbyville Road, Suite 100	Nine Greenway Plaza, Suite 300
Business Address	Business Address
Louisville, Kentucky 40223	Houston, Texas 77046
Business Address	Business Address

Signed on this 4th day of May, 2018, 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 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 (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, 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."

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

Michell 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.

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
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 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

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

Michell 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.

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 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.

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 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, 2015, in the State of Texas, in the presence of:

Wendy Pierson	
Signature of Witness	Signature of Witness
Wendy Pierson	Todd Gubois
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.

Received by OMB 08/06/2014

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.

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: Thomas F. Getter

Name: Thomas F. Getter

Title: Representative

Lexon Insurance Company
10002 Shelbyville Road, Suite 100
Louisville, Kentucky 40223

By: Meredith K Anderson

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.*

Received by OCD: 09/19/2025

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*	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* 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.)*	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.*

Received by OCD: 09/19/2025

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.

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

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 14TH Day of Feb., 2017.

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."

Received by OCD: 09/19/2025

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 — A SOUTH DAKOTA INSURANCE COMPANY

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 — STATE OF TENNESSEE NOTARY PUBLIC — 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 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

BOND SAFEGUARD INSURANCE COMPANY — A SOUTH DAKOTA INSURANCE COMPANY

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."

Received by OCD: 09/19/2025

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 07-06-19

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

PRINCIPAL
W&T Offshore, Inc.

By: Thomas P. Murphy

Thomas P. Murphy Chief Operations Officer
(Name / Title)

SURETY
Lexon Insurance Company

Nancy A. Rios

Senia Hernandez

By: Michele K. Tyson
Michele K. Tyson, Attorney-in-Fact

IndemCo

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.

IndemCo

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").

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. 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

IndemCo

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.

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

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 8th 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."

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.

[Remainder of page intentionally left blank.]

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.	§	Civil Action No. 4:24-cv-03047
ENDURANCE ASSURANCE CORPORATION and LEXON INSURANCE COMPANY	§	
Defendants and Counterclaim-Plaintiffs.	§	

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

Received by OCD: 09/19/2025

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

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.

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

Received by OCD: 09/19/2025

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

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,

McGuireWoods LLP

/s/ Yasser A. Madriz

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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

ATTACHMENT

6

Policy Spotlight: Orphaned Wells



June 24, 2025

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
Representative Derrick J. Lente
Representative Joseph Sanchez
Representative Harlan Vincent
Senator Pete Campos
Senator Roberto "Bobby" J. Gonzales
Senator Steve D. Lanier
Senator Benny Shendo Jr.
Senator Nicole Tobiassen
Senator Linda M. Trujillo
Senator Pat Woods

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Charles Sallee

Deputy Director

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Ryan Tolman, Ph.D.
John Valdez, Ph.D.
Drew Weaver, MA

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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

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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.

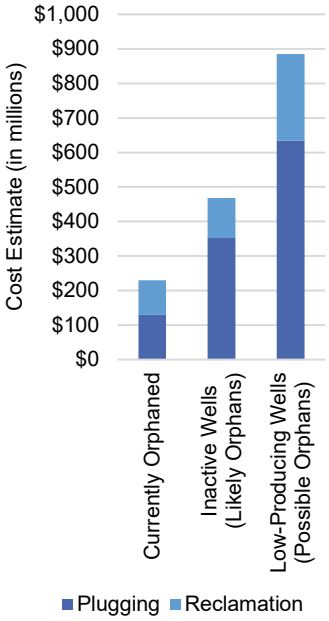
While operators plug most wells in New Mexico, the Oil Conservation Division (OCD) of the Energy, Minerals and Natural Resources Department (EMNRD) can intervene to plug wells that operators leave inactive and unplugged without authorization. In the past 20 years, OCD has plugged approximately 1,000 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.

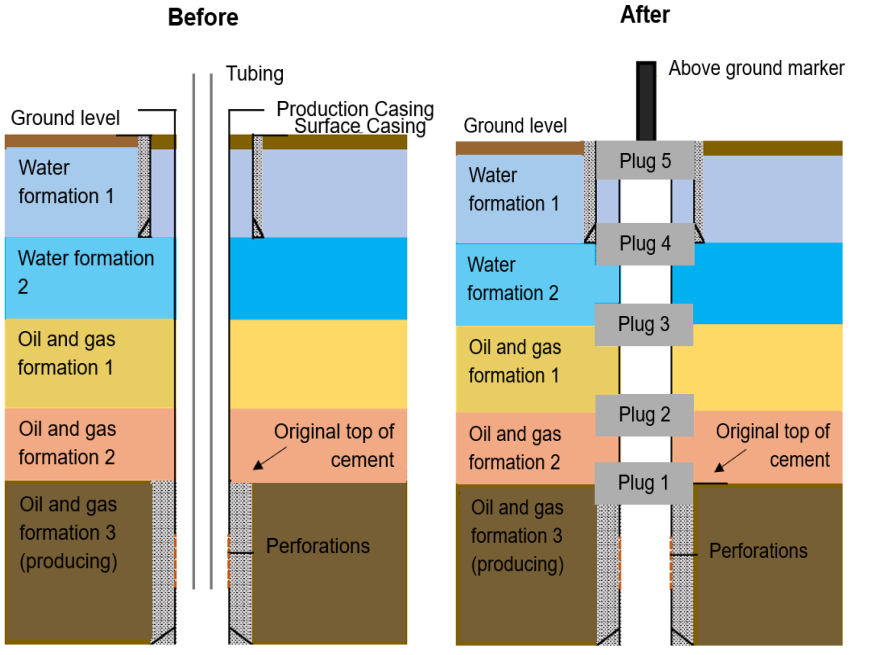
Produced water
Water that is brought to the surface alongside the oil and gas produced from a well. Produced water is also called "saltwater" because it typically contains high levels of salts, hydrocarbons, and other contaminants.

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.

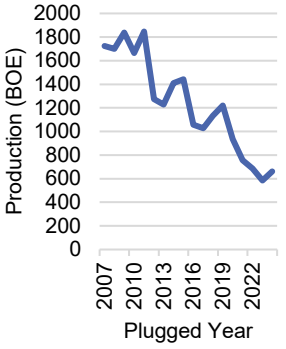
Figure 3. Modern Plugging Rig



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

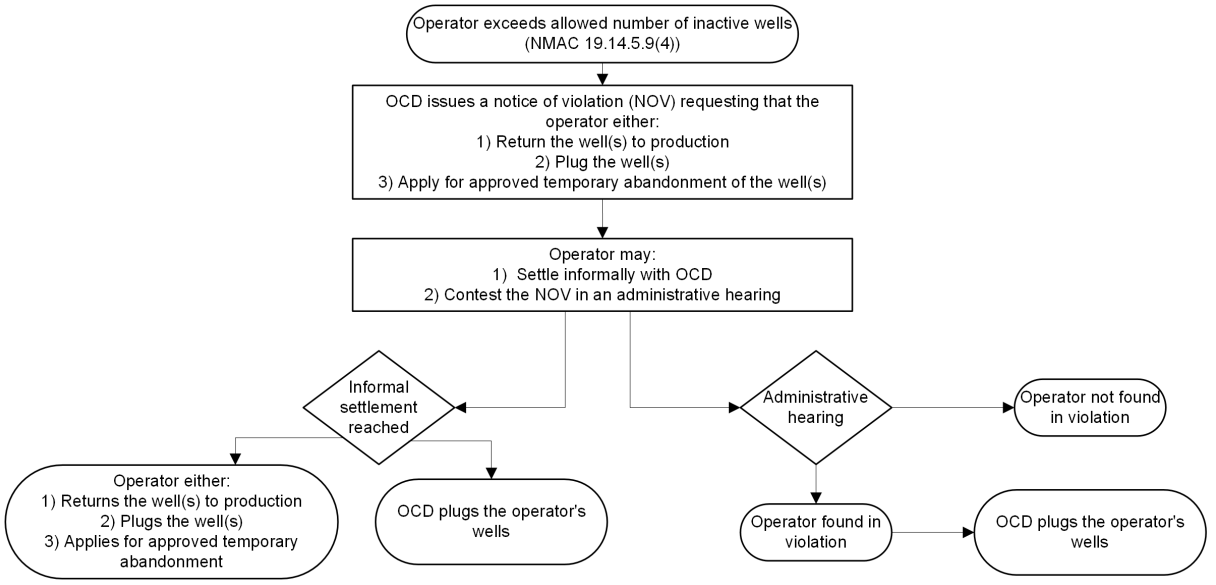
OCD typically pursues plugging authority for a well only when the operator is unresponsive to enforcement action. OCD can issue a notice of violation (NOV) to any operator that has more inactive wells than they are allowed under NMAC 19.15.5.9 A(4). Inactive wells are any production in 15 months and 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. Op 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 i a default judgment in OCD's favor at hearing. Following the hearing, if the d 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

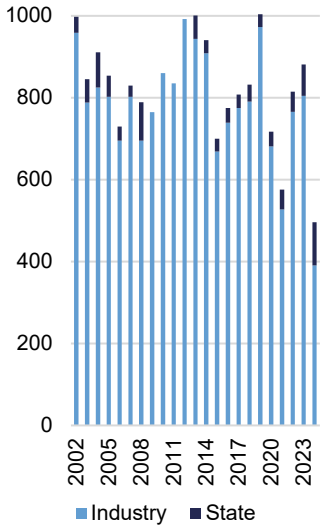
Figure 4. How Wells are "Orphaned" in New Mexico



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.

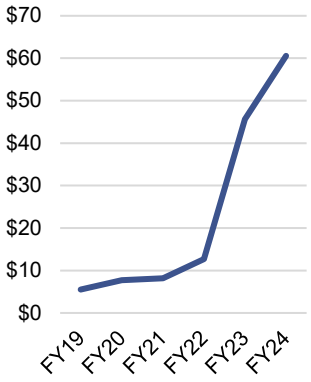
Cash bond
A cash deposit held by the state to guarantee the operator fulfills its obligations.

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)

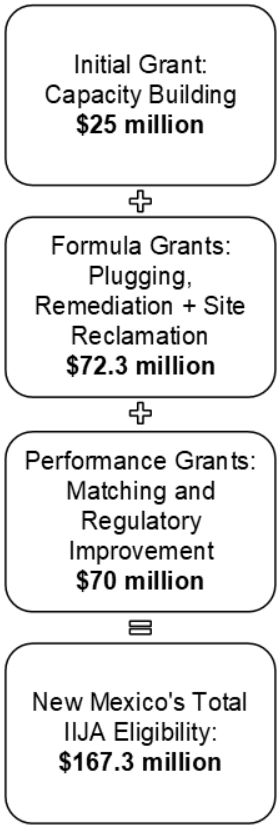
	FY19	FY20	FY21	FY22	FY23
Beginning Cash Balance July	**$4,226.4**	**$6,322.7**	**$7,777.7**	**$9,073.2**	**$26,995.0**
Oil and Gas Conservation Tax Revenue	$3,529.5	$3,340.3	$4,656.3	$22,222.6	$26,933.7
Bond Forfeitures, Salvage, and Reimbursement Recoveries	$88.5	$0.00	$0.00	$161.3	$0.00
Total Revenue	$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.

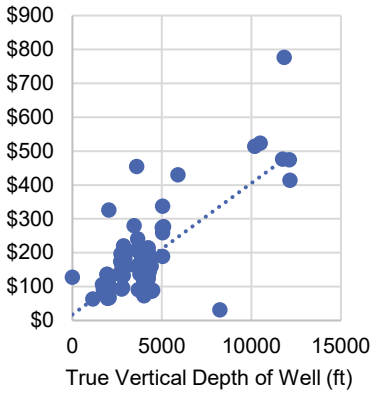
The average per-well cost of state-contracted plugging has risen nearly 450 percent since FY19 and the average per-foot cost has risen 270 percent, more than eight times the rate of overall oilfield inflation. OCD does not systematically track the cost of well plugging, but LFC analysis of available 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

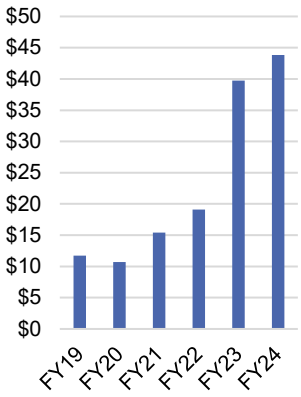
Cato San Andres Tank Battery #6	$ 623,024.02
Double L Queen Tank Battery	$ 5,151,041.47
Hal J Rasmussen Tank Battery	$ 7,607,260.24
Total	**$13,381,325.73**

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

Source: SHARE

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

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



Source: LFC analysis of OCD and SHARE data

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



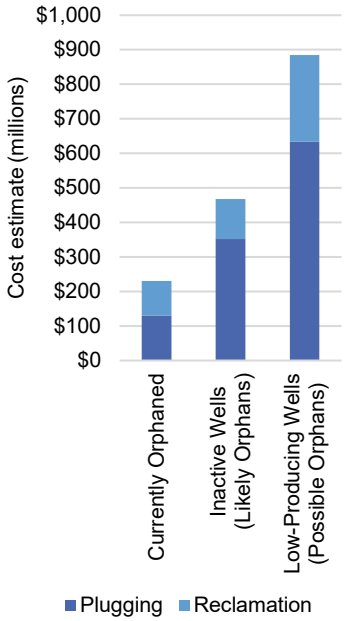
Cato San Andres tank battery #6 in Chaves county

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.

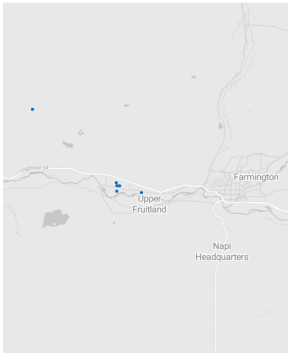
Based on internal OCD data, the division is currently responsible for plugging close to 1,000 orphaned wells, including roughly 700 on state or private land. At recent rates, plugging those wells will take close to a decade, not including well site remediation and reclamation. OCD is also responsible 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

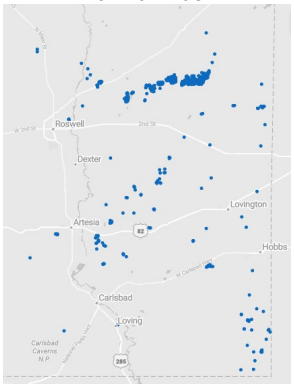
The term "orphaned well" is not defined in either statute or rule, complicating efforts to estimate the state's liability. While orphaned wells are commonly understood in the oil and gas industry to mean wells that have no viable operator and, therefore, have become the responsibility of the state or 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

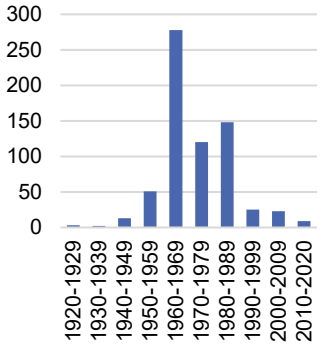
Source: OCD, SHARE, Enverus

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

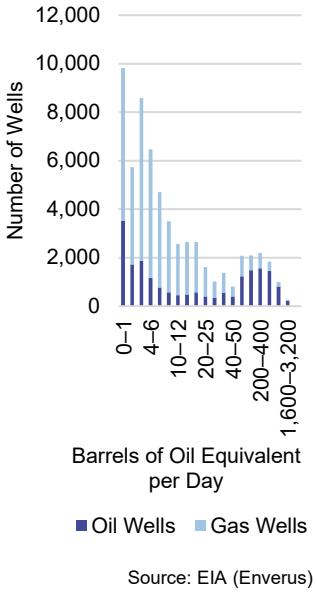
Source: OCD Inactive Well List, SHARE, Enverus

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.

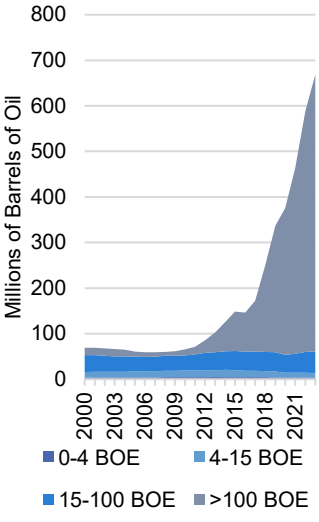
Wells producing extremely low volumes pose a financial risk to the state because they may not generate sufficient revenues to fund their own end-of-life plugging and abandonment. Stripper wells are defined in Section 7-29B-3 NMSA 1978 as an oil well producing less than 10 barrels of oil a day, a gas 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

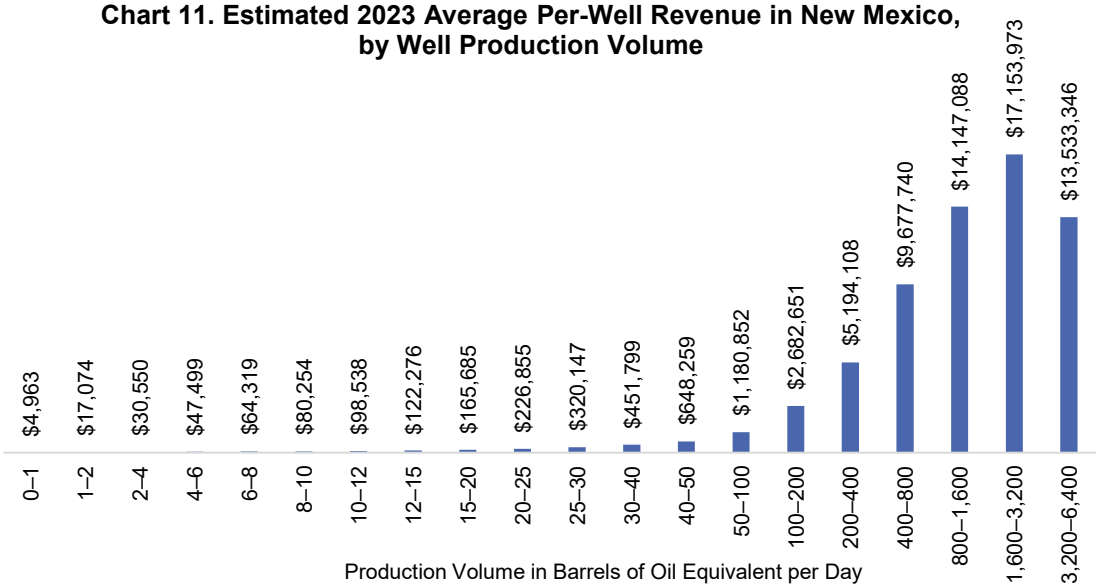


Source: EIA (Enverus)

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

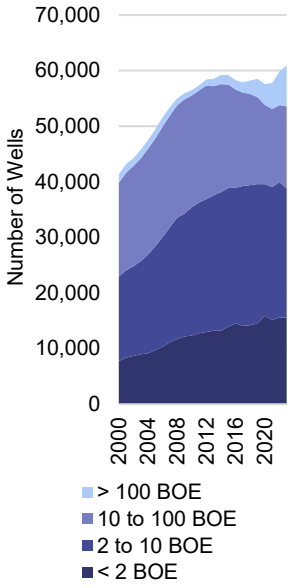


*Note: Estimates are based on EIA's 2023 average WTI price of $77.58/barrel and Henry Hub spot price of $2.53/MMBtu. EIA classified wells based on peak production, without accounting for well downtime, so for categories with a small sample size (11 wells produced 3,200 boe +/day), well downtime has a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

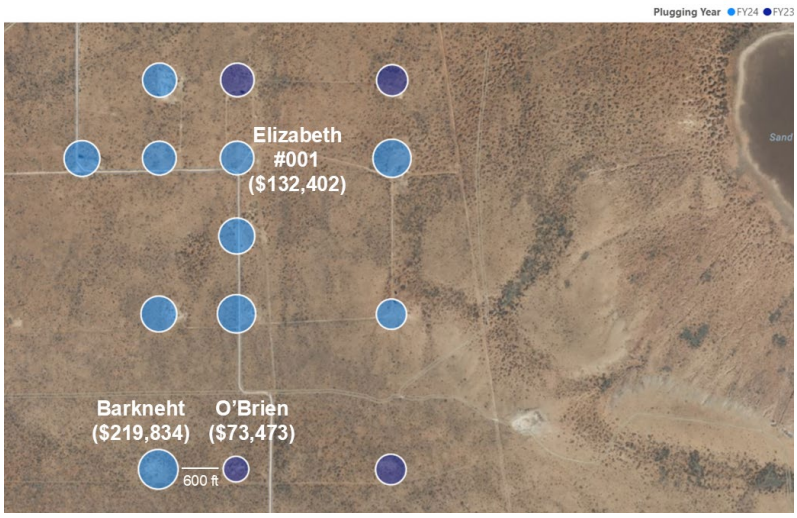
Source: SHARE

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."

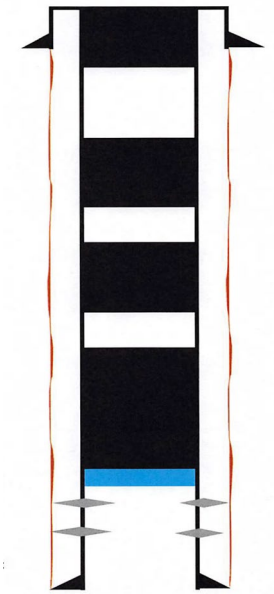
Plugging costs and designs vary widely between sites with similar characteristics, suggesting inadequate quality and financial controls. Examining a set of 12 oil wells plugged between March and November 2023 within a half-mile radius by the same contractor, total plugging costs ranged from $73 thousand 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



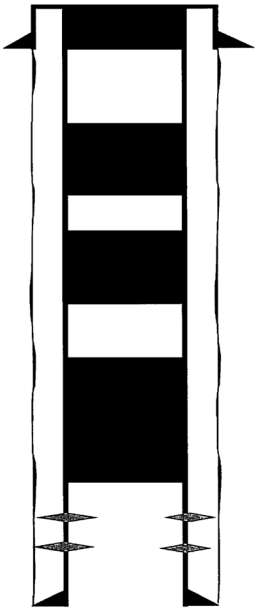
Source: OCD, SHARE

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

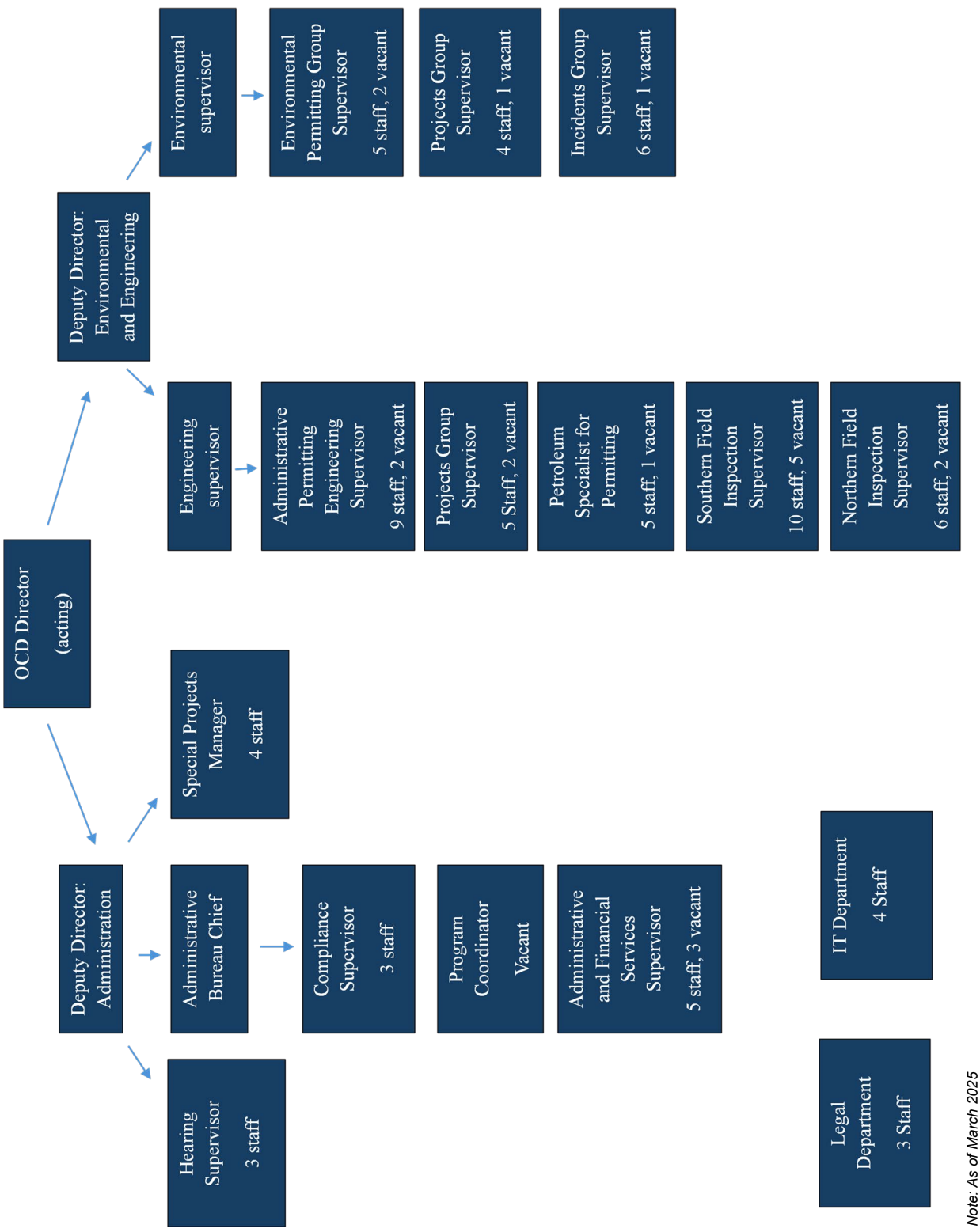
Each well is scored on 21 different criteria, with different weights assigned to each criterion. Wells that are actively leaking are automatically deemed highest priority, but other criteria that may boost a well's overall score include if it is within 300 feet of an occupied structure, if it is within 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

ATTACHMENT

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=KGHEwPGImcOhp4xNYILFFnSCz2bHRX.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.

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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ATTACHMENT

8

BEFORE THE OIL CONSERVATION COMMISSION
EXAMINER HEARING OCTOBER 20, 2025

CASE NO. 24683

IN THE MATTER OF PROPOSED AMENDMENTS TO 19.15.2, 19.15.5, 19.15.8, 19.15.9, AND 19.15.25 NMAC



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

HEARING PACKAGE
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- **OXY Exhibit A:** Oxy's Proposed Modifications
- **OXY Exhibit B:** Self-Affirmed Statement of Tiffany A. Wallace
- **OXY Exhibit C:** Self-Affirmed Statement of Kelley A. Montgomery

EXHIBIT A

Oxy's Proposed Modifications

- **WELC Proposed Amendments – Redline/Strikeout.**
- **Oxy's Modifications to WELC'S Proposed Amendments – Highlighted Green.**
- **Current Rule Language WELC Seeks to Strike That Oxy Contends Should be Retained – Highlighted Blue.**

APPLICANTS' PROPOSED REVISED AMENDMENTS TO 19.15.2 NMAC

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 2 GENERAL PROVISIONS FOR OIL AND GAS OPERATIONS

19.15.2.1 ISSUING AGENCY: Oil Conservation Commission.
[19.15.2.1 NMAC - Rp, 19.15.1.1 NMAC, 12/1/2008; A, 6/26/2018]

19.15.2.2 SCOPE: 19.15.2 NMAC applies to persons or entities engaged in oil and gas development and production within New Mexico and to 19.15.2 NMAC through 19.15.39 NMAC.
[19.15.2.2 NMAC - Rp, 19.15.1.2 NMAC, 12/1/2008]

19.15.2.3 STATUTORY AUTHORITY: 19.15.2 NMAC is adopted pursuant to the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978, which grants the oil conservation division jurisdiction and authority over all matters relating to the conservation of oil and gas, the prevention of waste of oil and gas and of potash because of oil and gas operations, the protection of correlative rights and the disposition of wastes resulting from oil and gas operations.
[19.15.2.3 NMAC - Rp, 19.15.1.3 NMAC, 12/1/2008; A, 6/26/2018]

19.15.2.4 DURATION: Permanent.
[19.15.2.4 NMAC - Rp, 19.15.1.4 NMAC, 12/1/2008]

19.15.2.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.2.5 NMAC - Rp, 19.15.1.5 NMAC, 12/1/2008]

19.15.2.6 OBJECTIVE: To set forth general provisions and definitions pertaining to the authority of the oil conservation division and the oil conservation commission pursuant to the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978.
[19.15.2.6 NMAC - Rp, 19.15.1.6 NMAC, 12/1/2008; A, 6/26/2018]

19.15.2.7 DEFINITIONS: These definitions apply to 19.15.2 NMAC through 19.15.39 NMAC.

A. Definitions beginning with the letter "A".

(1) **"Abate"** means to investigate, contain, remove or mitigate water pollution.

(2) **"Abatement"** means the investigation, containment, removal or other mitigation of water pollution.

(3) **"Abatement plan"** means a description of operational, monitoring, contingency and closure requirements and conditions for water pollution's prevention, investigation and abatement.

(4) **"Act" or "Oil and Gas Act"** means Chapter 70, Article 2 NMSA 1978, as it may be modified or amended.

(5) **"Adjoining spacing units"** mean those existing or prospective spacing units in the same pool that are touching at a point or line on the subject spacing unit.

(6) **"Adjusted allowable"** means the allowable production a well or proration unit receives after all adjustments are made.

(7) **"AFE"** means authorization for expenditure.

(8) **"Affected persons"** means the following persons owning interests in a spacing unit or other identified tract:

(a) the operator, as shown in division records, of a well on the tract, or, if the tract is included in a division-approved or federal unit, the designated unit operator;

(b) in the absence of an operator, or with respect to an application wherein the operator of the spacing unit or identified tract is the applicant, each working interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant files the application;

(c) as to any tract or interest therein that is not subject to an existing oil and gas lease, each mineral interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant filed the application; and

(d) if the United States or state of New Mexico owns the mineral estate in the spacing unit or identified tract or any part thereof, the BLM or state land office, as applicable; or

(e) if the mineral estate in the spacing unit or identified tract or any part thereof is tribal land, the BLM, the United States department of the interior, bureau of Indian affairs, and the relevant tribe.

(9) "Allocated pool" means a pool in which the total oil or gas production is restricted and is allocated to various wells in the pool in accordance with proration schedules.

(10) "Allowable production" means that number of barrels of oil or cubic feet of gas the division authorizes to be produced from an allocated pool.

(11) "APD" means application for permit to drill.

(12) "API" means the American petroleum institute.

(13) "Approved temporary abandonment," "temporary abandonment," or "temporarily abandonment status" means the status of a well that is inactive, has been approved in accordance with 19.15.25.13 NMAC and complies with 19.15.25.12 NMAC through 19.15.25.14 NMAC.

(14) "Aquifer" means a geological formation, group of formations or a part of a formation that can yield a significant amount of water to a well or spring.

(15) "ASTM" means ASTM International - an international standards developing organization that develops and publishes voluntary technical standards for a wide range of materials, products, systems and services.

B. Definitions beginning with the letter "B".

(1) "Back allowable" means the authorization for production of an underproduction resulting from pipeline proration.

(2) "Background" means, for purposes of ground water abatement plans only, the amount of ground water contaminants naturally occurring from undisturbed geologic sources or water contaminants occurring from a source other than the responsible person's facility. This definition does not prevent the director from requiring abatement of commingled plumes of pollution, does not prevent responsible persons from seeking contribution or other legal or equitable relief from other persons and does not preclude the director from exercising enforcement authority under any applicable statute, rule or common law.

(3) "Barrel" means 42 United States gallons measured at 60 degrees fahrenheit and atmospheric pressure at the sea level.

(4) "Barrel of oil" means 42 United States gallons of oil, after deductions for the full amount of basic sediment, water and other impurities present, ascertained by centrifugal or other recognized and customary test.

(5) "Barrel of oil equivalent" is determined by converting the volume of gas the well produced to barrels of oil by using a ratio of 6,000 cubic feet to one barrel of oil.

~~(5)~~(6) "Below-grade tank" means a vessel, excluding sumps and pressurized pipeline drip traps, where a portion of the tank's sidewalls is below the surrounding ground surface's elevation. Below-grade tank does not include an above ground storage tank that is located above or at the surrounding ground surface's elevation and is surrounded by berms.

~~(7) "Beneficial purposes" or "beneficial use" means 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.~~

~~(6)~~(8) "Berm" means an embankment or ridge constructed to prevent the movement of liquids, sludge, solids or other materials.

~~(7)~~(9) "Biopile", also known as biocell, bioheap, biomound or compost pile, means a pile of contaminated soils used to reduce concentrations of petroleum constituents in excavated soils through biodegradation. This technology involves heaping contaminated soils into piles or "cells" and stimulating aerobic microbial activity within the soils through the aeration or addition of minerals, nutrients and moisture.

~~(8)~~(10) "BLM" means the United States department of the interior, bureau of land management.

~~(9)~~(11) "Bottom hole pressure" means the gauge pressure in psi under conditions existing at or near the producing horizon.

~~(10)~~(12) "Bradenhead gas well" means a well producing gas through wellhead connections from a gas reservoir that has been successfully cased off from an underlying oil or gas reservoir.

~~(11)~~(13) "BS&W" means basic sediments and water.

~~(12)~~(14) "BTEX" means benzene, toluene, ethylbenzene and xylene.

C. Definitions beginning with the letter "C".

(1) "Carbon dioxide gas" means noncombustible gas composed chiefly of carbon dioxide occurring naturally in underground rocks.

(2) "Casinghead gas" means a gas or vapor or both gas and vapor indigenous to and produced from a pool the division classifies as an oil pool. This also includes gas-cap gas produced from such an oil pool.

(3) "Certified mail" or "certified mail, return receipt requested" means United States Postal Service Certified Mail or equivalent service that provides tracking and signature receipt, including Federal Express, United Parcel Service, or similar courier services.

(4) "Cm/sec" means centimeters per second.

(5) "CPD" means central point delivery.

(6) "Combination multiple completion" means a multiple completion in which two or more common sources of supply are produced through a combination of two or more conventional diameter casing strings cemented in a common well bore, or a combination of small diameter and conventional diameter casing strings cemented in a common well bore, the conventional diameter strings of which might or might not be a conventional multiple completion.

(7) "Commission" means the oil conservation commission.

(8) "Commission clerk" means the division employee the director designates to provide staff support to the commission and accept filings in rulemaking or adjudicatory cases before the commission.

(9) "Common purchaser for gas" means a person now or hereafter engaged in purchasing from one or more producers gas produced from gas wells within each common source of supply from which it purchases.

(10) "Common purchaser for oil" means every person now engaged or hereafter engaging in the business of purchasing oil to be transported through pipelines.

(11) "Common source of supply". See pool.

(12) "Condensate" means the liquid recovered at the surface that results from condensation due to reduced pressure or temperature of petroleum hydrocarbons existing in a gaseous phase in the reservoir.

(13) "Contiguous" means acreage joined by more than one common point, that is, the common boundary is at least one side of a governmental quarter-quarter section.

(14) "Conventional completion" means a well completion in which the production string of casing has an outside diameter exceeding 2.875 inches.

(15) "Conventional multiple completion" means a completion in which two or more common sources of supply are produced through one or more strings of tubing installed within a single casing string, with the production from each common source of supply completely segregated by means of packers.

(16) "Correlative rights" means the opportunity afforded, as far as it is practicable to do so, to the owner of each property in a pool to produce without waste the owner's just and equitable share of the oil or gas in the pool, being an amount, so far as can be practically determined, and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas under the property bears to the total recoverable oil or gas in the pool, and for the purpose to use the owner's just and equitable share of the reservoir energy.

(17) "Cubic feet of gas or cubic foot of gas" means that volume of gas contained in one cubic foot of space and computed at a base pressure of 10 ounces per square inch above the average barometric pressure of 14.4 psi (15.025 psi absolute), at a standard base temperature of 60 degrees fahrenheit.

D. Definitions beginning with the letter "D".

(1) "Deep pool" means a common source of supply that is situated 5000 feet or more below the surface.

(2) "Depth bracket allowable" means the basic oil allowable the division assigns a pool and based on its depth, unit size or special pool orders, which, when multiplied by the market demand percentage factor in effect, determines the pool's top proration unit allowable.

(3) "Director" means the director of the New Mexico energy, minerals and natural resources department, oil conservation division.

(4) "Division" means the New Mexico energy, minerals and natural resources department, oil conservation division.

(5) "Division clerk" means the division employee the director designates to accept filings in adjudicatory cases before the division.

(6) "Downstream facility" means a facility associated with the transportation (including gathering) or processing of gas or oil (including a refinery, gas plant, compressor station or crude oil pump station); brine production; or the oil field service industry.

(7) "DRO" means diesel range organics.

E. Definitions beginning with the letter "E".

(1) "EC" means electrical conductivity.

(2) "Enhanced oil recovery project" means the use or the expanded use of a process for the

displacement of oil from an oil well or division-designated pool other than a primary recovery process, including but not limited to the use of a pressure maintenance process; a water flooding process; an immiscible, miscible, chemical, thermal or biological process; or any other related process.

(3) "EOR project" means an enhanced oil recovery project.

(4) "EPA" means the United States environmental protection agency.

(5) "Exempted aquifer" means an aquifer that does not currently serve as a source of drinking water, and that cannot now and will not in the foreseeable future serve as a source of drinking water because:

(a) it is hydrocarbon producing;

(b) it is situated at a depth or location that makes the recovery of water for drinking water purposes economically or technologically impractical; or

(c) it is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption.

(6) "Exempt waste" means oil field waste exempted from regulation as hazardous waste pursuant to Subtitle C of RCRA and applicable regulations.

(7) "Existing spacing unit" means a spacing unit containing a producing well.

(8) "Expired temporary abandonment" or **"expired temporary abandonment status"** means the status of a well that is inactive and has been approved for temporary abandoned status in accordance with 19.15.25.13 NMAC, but that no longer complies with 19.15.25.12 NMAC through 19.15.25.14 NMAC.

F. Definitions beginning with the letter "F".

(1) "Facility" means a structure, installation, operation, storage tank, transmission line, access road, motor vehicle, rolling stock or activity of any kind, whether stationary or mobile.

(2) "Field" means the general area that at least one pool underlies or appears to underlie; and also includes the underground reservoir or reservoirs containing oil or gas. The words field and pool mean the same thing when only one underground reservoir is involved; however, field unlike pool may relate to two or more pools.

(3) "Fresh water" to be protected includes the water in lakes and playas (regardless of quality, unless the water exceeds 10,000 mg/l TDS and it can be shown that degradation of the particular water body will not adversely affect hydrologically connected fresh ground water), the surface waters of streams regardless of the water quality within a given reach, and underground waters containing 10,000 mg/l or less of TDS except for which, after notice and hearing, it is found there is no present or reasonably foreseeable beneficial use that contamination of such waters would impair.

G. Definitions beginning with the letter "G".

(1) "Gas", also known as natural gas, means a combustible vapor composed chiefly of hydrocarbons occurring naturally in a pool the division has classified as a gas pool.

(2) "Gas lift" means a method of lifting liquid to the surface by injecting gas into a well from which oil production is obtained.

(3) "Gas-oil ratio" means the ratio of the casinghead gas produced in standard cubic feet to the number of barrels of oil concurrently produced during any stated period.

(4) "Gas-oil ratio adjustment" means the reduction in allowable of a high gas oil ratio unit to conform with the production permitted by the limiting gas-oil ratio for the particular pool during a particular proration period.

(5) "Gas transportation facility" means a pipeline in operation serving gas wells for the transportation of gas, or some other device or equipment in like operation where the gas produced from gas wells connected with the pipeline or other device or equipment can be transported or used for consumption.

(6) "Gas well" means a well producing gas from a gas pool, or a well with a gas-oil ratio exceeding 100,000 cubic feet of gas per barrel of oil producing from an oil pool.

(7) "Geomembrane" means an impermeable polymeric sheet material that is impervious to liquid and gas if it maintains its integrity and is used as an integral part of an engineered structure designed to limit the movement of liquid or gas in a system.

(8) "Geotextile" means a sheet material that is less impervious to liquid than a geomembrane but more resistant to penetration damage, and is used as part of an engineered structure or system to serve as a filter to prevent the movement of soil fines into a drainage system, to provide planar flow for drainage, to serve as a cushion to protect geomembranes or to provide structural support.

(9) "GRO" means gasoline range organics.

(10) "Ground water" means interstitial water that occurs in saturated earth material and can enter a well in sufficient amounts to be used as a water supply.

(11) "Ground water sensitive area" means an area the division specifically designates after

evaluation of technical evidence where ground water exists that would likely exceed WQCC standards if contaminants were introduced into the environment.

H. Definitions beginning with the letter "H".

(1) "Hardship gas well" means a gas well where underground waste occurs if the well is shut-in or curtailed below its minimum sustainable flow rate.

(2) "Hazard to public health" exists when water that is used or is reasonably expected to be used in the future as a human drinking water supply exceeds at the time and place of the use, one or more of the numerical standards of Subsection A of 20.6.2.3103 NMAC, or the naturally occurring concentrations, whichever is higher, or if a toxic pollutant as defined at Subsection WW of 20.6.2.7 NMAC affecting human health is present in the water. In determining whether a release would cause a hazard to public health to exist, the director investigates and considers the purification and dilution reasonably expected to occur from the time and place of release to the time and place of withdrawal for use as human drinking water.

(3) "Hazardous waste" means non-exempt waste that exceeds the minimum standards for waste hazardous by characteristics established in RCRA regulations, 40 CFR 261.21-261.24, or listed hazardous waste as defined in 40 CFR, part 261, subpart D, as amended.

(4) "HDPE" means high-density polyethylene.

(5) "High gas-oil ratio proration unit" means a unit with at least one producing oil well with a gas-oil ratio exceeding the limiting gas-oil ratio for the pool in which the unit is located.

(6) "H2S" means hydrogen sulfide.

I. Definitions beginning with the letter **"I"**.

(1) "Illegal gas" means gas produced from a gas well exceeding the division-determined allowable.

(2) "Illegal oil" means oil produced exceeding the allowable the division fixes.

(3) "Illegal product" means a product of illegal gas or illegal oil.

(4) "Inactive well" means a well that is not being used for beneficial purposes such as production, injection or monitoring and that is not being drilled, completed, repaired or worked over.

(5) "Injection well" means a well used for the injection of air, gas, water or other fluids into an underground stratum.

J. Definitions beginning with the letter "J". [RESERVED]

K. Definitions beginning with the letter "K". "Knowingly and willfully", for assessing civil penalties, means the voluntary or conscious performance of an act that is prohibited or the voluntary or conscious failure to perform an act or duty that is required. It does not include performances or failures to perform that are honest mistakes or merely inadvertent. It includes, but does not require, performances or failures to perform that result from a criminal or evil intent or from a specific intent to violate the law. The conduct's knowing and willful nature may be established by plain indifference to or reckless disregard of the requirements of statutes, rules, orders or permits. A consistent pattern or performance or failure to perform also may be sufficient to establish the conduct's knowing and willful nature, where such consistent pattern is neither the result of honest mistakes nor mere inadvertency. Conduct that is otherwise regarded as being knowing and willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.

L. Definitions beginning with the letter "L".

(1) "Limiting gas-oil ratio" means the gas-oil ratio the division assigns to a particular oil pool to limit the volumes of casinghead gas that may be produced from the various oil producing units within that particular pool.

(2) "Liner" means a continuous, low-permeability layer constructed of natural or human-made materials that restricts the migration of liquid oil field wastes, gases or leachate.

(3) "LLDPE" means linear low-density polyethylene.

(4) "Load oil" means oil or liquid hydrocarbon that has been used in remedial operation in an oil or gas well.

(5) "Log" means a systematic detailed and correct record of formations encountered in drilling a well.

M. Definitions beginning with the letter "M".

(1) "Marginal unit" means a proration unit that is incapable of producing top proration unit allowable for the pool in which it is located.

~~**(2) "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.~~

~~**(2)**~~**(3) "Market demand percentage factor"** means that percentage factor of one hundred percent or less as the division determines at an oil allowable hearing, which, when multiplied by the depth bracket allowable applicable to each pool, determines that pool's top proration unit allowable.

~~**(3)**~~**(4) "MCF"** means 1000 cubic feet.

~~**(4)**~~**(5) "MCFD"** means 1000 cubic feet per day.

~~**(5)**~~**(6) "MCFGPD"** means 1000 cubic feet of gas per day.

~~**(6)**~~**(7) "Measured depth"** means the total length of the well bore.

~~**(7)**~~**(8) "Mg/l"** means milligrams per liter.

~~**(8)**~~**(9) "Mg/kg"** means milligrams per kilogram.

~~**(9)**~~**(10) "Mineral estate"** is the most complete ownership of oil and gas recognized in law and includes the mineral interests and the royalty interests.

~~**(10)**~~**(11) "Mineral interest owner"** means a working interest owner, or an owner of a right to explore for and develop oil and gas that is not subject to an existing oil and gas lease.

~~**(11)**~~**(12) "Minimum allowable"** means the minimum amount of production from an oil or gas well that may be advisable from time to time to the end that production will repay reasonable lifting cost and thus prevent premature abandonment and resulting waste.

~~**(12)**~~**(13) "Miscellaneous hydrocarbons"** means tank bottoms occurring at pipeline stations; oil storage terminals or refineries; pipeline break oil; catchings collected in traps, drips or scrubbers by gasoline plant operators in the plants or in the gathering lines serving the plants; the catchings collected in private, community or commercial salt water disposal systems; or other liquid hydrocarbon that is not lease crude or condensate.

N. Definitions beginning with the letter "N".

(1) "Non-aqueous phase liquid" means an interstitial body of liquid oil, petroleum product, petrochemical or organic solvent, including an emulsion containing such material.

(2) "Non-exempt waste" means oil field waste not exempted from regulation as hazardous waste pursuant to Subtitle C of RCRA and applicable regulations.

(3) "Non-hazardous waste" means non-exempt oil field waste that is not hazardous waste.

(4) "Non-marginal unit" means a proration unit that can produce the top proration unit allowable for the pool in which it is located, and to which the division assigns a top proration unit allowable.

(5) "NORM" means the naturally occurring radioactive materials regulated by 20.3.14 NMAC.

O. Definitions beginning with the letter "O".

(1) "Official gas-oil ratio test" means the periodic gas-oil ratio test the operator performs pursuant to division order by the method and in the manner the division prescribes.

(2) "Oil" means petroleum hydrocarbon produced from a well in the liquid phase and that existed in a liquid phase in the reservoir. This definition includes crude oil or crude petroleum oil.

(3) "Oil field waste" means non-domestic waste resulting from the exploration, development, production or storage of oil or gas pursuant to Paragraph (21) of Subsection B of Section 70-2-12 NMSA 1978 and the oil field service industry, the transportation of crude oil or natural gas, the treatment of natural gas or the refinement of crude oil pursuant to Paragraph (22) of Subsection B of Section 70-2-12 NMSA 1978, including waste generated from oil field remediation or abatement activity regardless of the date of release. Oil field waste does not include waste not generally associated with oil and gas industry operations such as tires, appliances or ordinary garbage or refuse unless generated at a division-regulated facility, and does not include sewage, regardless of the source.

(4) "Oil well" means a well capable of producing oil and that is not a gas well as defined in Paragraph (6) of Subsection G of 19.15.2.7 NMAC.

(5) "Operator" means a person who, duly authorized, manages a lease's development or a producing property's operation, or who manages a facility's operation.

(6) "Overproduction" means the amount of oil or gas produced during a proration period exceeding the amount authorized on the proration schedule.

(7) "Owner" means the person who has the right to drill into and to produce from a pool, and to appropriate the production either for the person or for the person and another.

P. Definitions beginning with the letter "P".

(1) "Penalized unit" means a proration unit to which, because of an excessive gas-oil ratio,

the division assigns an allowable that is less than top proration unit allowable for the pool in which it is located and also less than the ability of the well or wells on the unit to produce.

(2) "Person" means an individual or entity including partnerships, corporations, associations, responsible business or association agents or officers, the state or a political subdivision of the state or an agency, department or instrumentality of the United States and of its officers, agents or employees.

(3) "Pit" means a surface or sub-surface impoundment, man-made or natural depression or diked area on the surface. Excluded from this definition are berms constructed around tanks or other facilities solely for safety, secondary containment and storm water or run-on control.

(4) "Playa lake" means a level or nearly level area that occupies the lowest part of a completely closed basin and that is covered with water at irregular intervals, forming a temporary lake.

(5) "Pool" means an underground reservoir containing a common accumulation of oil or gas. Each zone of a general structure, which zone is completely separated from other zones in the structure, is covered by the word pool as used in 19.15.2 NMAC through 19.15.39 NMAC. "Pool" is synonymous with "common source of supply" and with "common reservoir".

(6) "Potential" means a well's properly determined capacity to produce oil or gas under division-prescribed conditions.

(7) "Ppm" means parts per million by volume.

(8) "PQL" means practical quantitation limit.

(9) "Pressure maintenance" means the injection of gas or other fluid into a reservoir, either to maintain the reservoir's existing pressure or to retard the reservoir pressure's natural decline.

(10) "Produced water" means a fluid that is an incidental byproduct from drilling for or the production of oil and gas.

(11) "Producer" means the owner of a well or wells capable of producing oil or gas or both in paying quantities.

(12) "Product" means a commodity or thing made or manufactured from oil or gas, and derivatives of oil or gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, treated crude oil, fuel oil, residuum, gas oil, naphtha, distillate, gasoline, kerosene, benzene, wash oil, lubricating oil and blends or mixtures of oil or gas or a derivative thereof.

(13) "Proration day" consists of 24 consecutive hours that begin at 7:00 a.m. and end at 7:00 a.m. on the following day.

(14) "Proration month" means the calendar month that begins at 7:00 a.m. on the first day of the month and ends at 7:00 a.m. on the first day of the next succeeding month.

(15) "Proration period" means for oil the proration month and for gas the 12-month period that begins at 7:00 a.m. on January 1 of each year and ends at 7:00 a.m. on January 1 of the succeeding year or other period designated by general or special order of the division.

(16) "Proration schedule" means the division orders authorizing the production, purchase and transportation of oil, casinghead gas and gas from the various units of oil or of gas in allocated pools.

(17) "Proration unit" means the area in a pool that can be effectively and efficiently drained by one well as determined by the division or commission (see Subsection B of Section 70-2-17 NMSA 1978) as well as the area assigned to an individual well for the purposes of allocating allowable production pursuant to a prorationing order for the pool.

(18) "Prospective spacing unit" means a hypothetical spacing unit that does not yet have a producing well.

(19) "PVC" means poly vinyl chloride.

(20) "Psi" means pounds per square inch.

Q. Definitions beginning with the letter "Q". [RESERVED]

R. Definitions beginning with the letter "R".

(1) "RCRA" means the federal Resource Recovery and Conservation Act.

(2) "Recomplete" means the subsequent completion of a well in a different pool from the pool in which it was originally completed.

(3) "Regulated NORM" means NORM contained in oil-field soils, equipment, sludges or other materials related to oil-field operations or processes exceeding the radiation levels specified in 20.3.14.1403 NMAC.

(4) "Release" means breaks, leaks, spills, releases, fires or blowouts involving oil, produced water, condensate, drilling fluids, completion fluids or other chemical or contaminant or mixture thereof, including oil field wastes and gases to the environment.

(5) "Remediation plan" means a written description of a program to address unauthorized

releases. The plan may include appropriate information, including assessment data, health risk demonstrations and corrective action or actions. The plan may also include an alternative proposing no action beyond the spill report's submittal.

(6) **"Responsible person"** means the owner or operator who shall complete a division-approved corrective action for pollution from releases.

(7) **"Rules"** means the rules enacted pursuant to the Oil and Gas Act, 19.15.2 to 19.15.39 NMAC, as they may be modified or amended.

(8) **"Royalty interest owner"** means the owner of an interest in oil and gas that does not presently entitle the owner to explore, drill or otherwise develop those minerals, including lessors, royalty interest owners and overriding royalty interest owners. Royalty interests are non-cost bearing.

(9) **"Run-on"** means rainwater, leachate or other liquid that drains from other land onto any part of a division-approved facility.

S. **Definitions beginning with the letter "S"**.

(1) **"SAR"** means the sodium adsorption ratio.

(2) **"Secondary recovery"** means a method of recovering quantities of oil or gas from a reservoir which quantities would not be recoverable by ordinary primary depletion methods.

(3) **"Sediment oil"** means tank bottoms and other accumulations of liquid hydrocarbons on an oil and gas lease, which hydrocarbons are not merchantable through normal channels.

(4) **"Shallow pool"** means a pool that has a depth range from zero to 5000 feet.

(5) **"Shut-in"** means the status of a production well or an injection well that is temporarily closed, whether by closing a valve or disconnection or other physical means.

(6) **"Shut-in pressure"** means the gauge pressure noted at the wellhead when the well is completely shut-in, not to be confused with bottom hole pressure.

(7) **"Significant modification of an abatement plan"** means a change in the abatement technology used excluding design and operational parameters, or relocation of twenty-five percent or more of the compliance sampling stations, for a single medium, as designated pursuant to Subparagraph (d) of Paragraph (2) of Subsection D of 19.15.30.13 NMAC.

(8) **"Soil"** means earth, sediments or other unconsolidated accumulations of solid particles produced by the physical and chemical disintegration of rocks, and that may or may not contain organic matter.

(9) **"Spacing unit"** means the area allocated to a well under a well spacing order or rule. Under the Oil and Gas Act, Paragraph (10) of Subsection B of Section 70-2-12 NMSA 1978, the commission may fix spacing units without first creating proration units. See *Rutter & Wilbanks corp. v. oil conservation comm'n*, 87 NM 286 (1975). This is the area designated on form C-102.

(10) **"Subsurface water"** means ground water and water in the vadose zone that may become ground water or surface water in the reasonably foreseeable future or that vegetation may use.

(11) **"Surface waste management facility"** means a facility that receives oil field waste for collection, disposal, evaporation, remediation, reclamation, treatment or storage except:

(a) a facility that utilizes underground injection wells subject to division regulation pursuant to the federal Safe Drinking Water Act, and does not manage oil field wastes on the ground in pits, ponds, below-grade tanks or land application units;

(b) a facility permitted pursuant to the New Mexico environmental improvement board rules or WQCC rules;

(c) a temporary pit as defined in 19.15.17 NMAC;

(d) a below-grade tank or pit that receives oil field waste from a single well, permitted pursuant to 19.15.37 NMAC, regardless of the capacity or volume of oil field waste received;

(e) a facility located at an oil and gas production facility and used for temporary storage of oil field waste generated on-site from normal operations, if the facility does not pose a threat to fresh water, public health, safety or the environment;

(f) a remediation conducted in accordance with a division-approved abatement plan pursuant to 19.15.30 NMAC, a corrective action pursuant to 19.15.29 NMAC or a corrective action of a non-reportable release;

(g) a facility operating pursuant to a division emergency order;

(h) a site or facility where the operator is conducting emergency response operations to abate an immediate threat to fresh water, public health, safety or the environment or as the division has specifically directed or approved; or

(i) a facility that receives only exempt oil field waste, receives less than 50 barrels of liquid water per day (averaged over a 30-day period), has a capacity to hold 500 barrels of liquids or less and is permitted pursuant to 19.15.17 NMAC.

T. Definitions beginning with the letter "T".

(1) "Tank bottoms" means that accumulation of hydrocarbon material and other substances that settles naturally below oil in tanks and receptacles that are used in oil's handling and storing, and which accumulation contains more than two percent of BS&W; provided, however, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet to the tank.

(2) "TDS" means total dissolved solids.

~~**(3) "Temporary abandonment" or "temporarily abandoned status"** means the status of a well that is inactive.~~

~~(4)~~(3) "Top proration unit allowable for gas" means the maximum number of cubic feet of gas, for the proration period, the division allocates to a gas producing unit in an allocated gas pool.

~~(5)~~(4) "Top proration unit allowable for oil" means the maximum number of barrels for oil daily for each calendar month the division allocates on a proration unit basis in a pool to non-marginal units. The division shall determine the top proration unit allowable for a pool by multiplying the applicable depth bracket allowable by the market demand percentage factor in effect.

~~(6)~~(5) "TPH" means total petroleum hydrocarbons.

~~(7)~~(6) "Treating plant" means a plant constructed for wholly or partially or being used wholly or partially for reclaiming, treating, processing or in any manner making tank bottoms or other waste oil marketable.

~~(8)~~(7) "Tribal lands" means those lands for which the United States government has a trust responsibility to a native American tribe or a member of a native American tribe. This includes reservations, pueblo land grants, tribal trust lands and individual trust allotments.

~~(9)~~(8) "Tribal leases" means those leases of minerals or interests in or rights to minerals for which the United States government has a trust responsibility to a native American tribe or a member of a native American tribe.

~~(10)~~(9) "Tribal minerals" means those minerals for which the United States government has a trust responsibility to a native American tribe or a member of a native American tribe.

~~(11)~~(10) "True vertical depth" means the difference in elevation between the ground level at the surface location of the well and the deepest point in the well bore.

~~(12)~~(11) "Tubingless completion" means a well completion in which the production string of casing has an outside diameter of 2.875 inches or less.

~~(13)~~(12) "Tubingless multiple completion" means completion in which two or more common sources of supply are produced through an equal number of casing strings cemented in a common well bore, each such string of casing having an outside diameter of 2.875 inches or less, with the production from each common source of supply completely segregated by cement.

U. Definitions beginning with the letter "U".

(1) "Underground source of drinking water" means an aquifer that supplies water for human consumption or that contains ground water having a TDS concentration of 10,000 mg/l or less and that is not an exempted aquifer.

(2) "Underproduction" means the amount of oil or the amount of gas during a proration period by which a given proration unit failed to produce an amount equal to that the division authorizes in the proration schedule.

(3) "Unit of proration for gas" consists of such multiples of 40 acres as may be prescribed by division-issued special pool orders.

(4) "Unit of proration for oil" consists of one 40-acre tract or such multiples of 40-acre tracts as may be prescribed by division-issued special pool orders.

(5) "Unorthodox well location" means a location that does not conform to the spacing requirements division rules establish.

(6) "Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all a division-approved facility's structural components. Examples of unstable areas are areas of poor foundation conditions, areas susceptible to mass earth movements and karst terrain areas where karst topography is developed because of dissolution of limestone, dolomite or other soluble rock. Characteristic physiographic features of karst terrain include sinkholes, sinking streams, caves, large springs and blind valleys.

(7) "Upstream facility" means a facility or operation associated with the exploration, development, production or storage of oil or gas that is not a downstream facility.

V. Definitions beginning with the letter "V". "Vadose zone" means unsaturated earth material below the land surface and above ground water, or in between bodies of ground water.

W. Definitions beginning with the letter "W".

(1) **"Waste",** in addition to its ordinary meaning, includes:

(a) underground waste as those words are generally understood in the oil and gas business, and to embrace the inefficient, excessive or improper use or dissipation of the reservoir energy, including gas energy and water drive, of a pool, and the locating, spacing, drilling, equipping, operating or producing of a well or wells in a manner to reduce or tend to reduce the total quantity of oil or gas ultimately recovered from a pool, and the use of inefficient underground storage of gas;

(b) surface waste as those words are generally understood in the oil and gas business, and to embrace the unnecessary or excessive surface loss or destruction without beneficial use, however caused, of gas of any type or in any form, or oil, or a product thereof, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage or fire, especially such loss or destruction incident to or resulting from the manner of spacing, equipping, operating or producing a well or wells, or incident to or resulting from the use of inefficient storage or from the production of oil or gas, in excess of the reasonable market demand;

(c) oil production in this state in excess of the reasonable market demand for the oil; the excess production causes or results in waste that the Oil and Gas Act prohibits; reasonable market demand as used herein with respect to oil means the demand for the oil, for reasonable current requirements for current consumption and use within or outside of the state, together with the demand of amounts as are reasonably necessary for building up or maintaining reasonable storage reserves of oil or the products thereof, or both the oil and products;

(d) the non-ratable purchase or taking of oil in this state; the non-ratable taking and purchasing causes or results in waste, as defined in Subparagraphs (a), (b) and (c) of Paragraph (1) of Subsection W of 19.15.2.7 NMAC and causes waste by violating the Oil and Gas Act, Section 70-2-16 NMSA 1978;

(e) the production in this state of gas from a gas well or wells, or from a gas pool, in excess of the reasonable market demand from such source for gas of the type produced or in excess of the capacity of gas transportation facilities for such type of gas; the words "reasonable market demand", as used herein with respect to gas, shall be construed to mean the demand for gas for reasonable current requirements, for current consumption and for use within or outside the state, together with the demand for such amounts as are necessary for building up or maintaining reasonable storage reserves of gas or products thereof, or both the gas and products.

(2) **"Water"** means all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water.

(3) **"Water contaminant"** means a substance that could alter if released or spilled water's physical, chemical, biological or radiological qualities. Water contaminant does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954.

(4) **"Watercourse"** means a river, creek, arroyo, canyon, draw or wash or other channel having definite banks and bed with visible evidence of the occasional flow of water.

(5) **"Water pollution"** means introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or property use.

(6) **"Well blowout"** means a loss of control over and subsequent eruption of a drilling or workover well or the rupture of the casing, casinghead or wellhead of an oil or gas well or injection or disposal well, whether active or inactive, accompanied by the sudden emission of fluids, gaseous or liquid, from the well.

(7) **"Well bore"** means the interior surface of a cased or open hole through which drilling, production or injection operations are conducted.

(8) **"Wellhead protection area"** means the area within 200 horizontal feet of a private, domestic fresh water well or spring used by less than five households for domestic or stock watering purposes or within 1000 horizontal feet of any other fresh water well or spring. Wellhead protection areas does not include areas around water wells drilled after an existing oil or gas waste storage, treatment or disposal site was established.

(9) **"Wetlands"** means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico. This definition does not include constructed wetlands used for wastewater treatment purposes.

(10) **"Working interest owner"** means the owner of an operating interest under an oil and gas lease who has the exclusive right to exploit the oil and gas minerals. Working interests are cost bearing.

(11) **"WQCC"** means the New Mexico water quality control commission.

[19.15.2.7 NMAC - Rp, 19.15.1.7 NMAC, 12/1/2008; A, 3/31/2015; A, 6/30/2016; A, 6/26/2018; A, 1/15/2019; A, 10/13/2020; A, 8/23/2022]

19.15.2.8 GENERAL OPERATIONS/WASTE PROHIBITED:

A. The production or handling of oil or gas of any type or in any form or the handling of oil or gas products in a manner, under conditions or in an amount as to constitute or result in waste is prohibited.

B. Operators, contractors, drillers, carriers, gas distributors, service companies, pipe pulling and salvaging contractors, treating plant operators or other persons shall conduct their operations in or related to the drilling, equipping, operating, producing, plugging and abandonment of oil, gas, injection, disposal and storage wells or other facilities in a manner that prevents waste of oil and gas, the contamination of fresh waters and shall not wastefully utilize oil or gas or allow either to leak or escape from a natural reservoir or from wells, tanks, containers, pipe or other storage, conduit or operating equipment.

[19.15.2.8 NMAC - Rp, 19.15.1.13 NMAC, 12/1/2008]

19.15.2.9 ORDERS: The division or commission may issue orders, including division or commission special pool orders when required and the orders shall prevail against rules if in conflict with them.

[19.15.2.9 NMAC - Rp, 19.15.1.11 NMAC, 12/1/2008]

19.15.2.10 ONLINE APPLICATION AND SUBMITTALS:

A. The division shall establish online application and submittal procedures on the division's website for the electronic filing of all forms, applications and other written documents and information with the division.

B. All applications that require the payment of a fee, as provided in Section 70-2-39 NMSA 1978, shall include the fee payment with the application.

C. A person whose filing is made untimely due to a technical failure of the division's web-based online application process may request an extension of time. Technical failures not originating with the division's process, such as problems with the filer's equipment, software, or telecommunications facility will not constitute a basis for relief.

[19.15.2.10 NMAC - N, 8/23/2022]

19.15.2.11 EMERGENCY ORDERS AND RULES:

A. Notwithstanding other provisions of 19.15.2 NMAC through 19.15.39 NMAC, in the event the division or commission finds an emergency exists that requires an order's or rule's issuance without a hearing, the emergency rule or order shall have the same validity as if the division or commission held a hearing before the division or commission after due notice. The emergency rule or order shall remain in force no longer than 15 days from its effective date.

B. Notwithstanding other provisions of 19.15.2 NMAC through 19.15.39 NMAC, if the division or commission finds an emergency exists, the division or commission may conduct a hearing on an application within less than 30 days after party files an application and the director may set the notice period at the director's discretion.

[19.15.2.11 NMAC - Rp, 19.15.14.1225 NMAC, 12/1/2008]

19.15.2.12 FILING AND NOTIFICATION: All requirements in the rules:

A. to file a form or application with the division or commission, including documents required to be filed with district offices or the Santa Fe office, shall be accomplished by using the applicable online process on the division's website,

B. to otherwise notify, advise, contact, or report to the division, including to any unit of the division (such as a bureau or office) or any division official (such as the director or a bureau chief), may be accomplished by electronic mail or as otherwise provided on the division's website; the division shall provide contact instructions on the division's website, and

C. to file an original financial assurance instrument with the division as provided in 19.15.8 NMAC shall require delivery to the Santa Fe office unless otherwise directed by the division.

[19.15.2.12 NMAC - Rp, 19.15.15.1304 NMAC, 12/1/2008; 19.15.2.12 NMAC - Rp, 19.15.2.12 NMAC, 8/23/2022]

19.15.2.13 COMPUTATION OF TIME: In computing a period of time prescribed by the Oil and Gas Act, the rules or an order, the division and commission shall comply with the Uniform Statute and Rule Construction Act, Section 12-2A-7 NMSA 1978.

[19.15.2.13 NMAC - Rp, 19.15.14.1226 NMAC, 12/1/2008; A, 8/23/2022]

19.15.2.14 MEETINGS BY TELECONFERENCE: Pursuant to Section 10-15-1 NMSA 1978, commission members may participate in commission meetings and hearings by conference telephone or other

similar communications equipment when it is otherwise difficult or impossible for members to attend the meeting or hearing in person. Each member participating by conference telephone or other similar communications equipment shall be identified when speaking. Participants shall be able to hear each other at the same time. Members of the public hearing attending the meetings or hearing shall be able to hear commission members who speak during the meeting or hearing.
[19.15.2.14 NMAC - Rp, 19.15.1.20 NMAC, 12/1/2008]

19.15.2.15 AUTHORITY TO COOPERATE WITH OTHER AGENCIES: The division may from time to time enter into arrangements with state and federal governmental agencies, industry committees and individuals with respect to special projects, services and studies relating to oil and gas conservation and the associated protection of fresh waters.
[19.15.2.15 NMAC - Rp, 19.15.1.17 NMAC, 12/1/2008]

19.15.2.16 DUTIES AND AUTHORITY OF DIVISION PERSONNEL: Division personnel have the authority and duty to enforce division rules. Upon a showing by an operator that changes are necessary to avoid waste or protect public health or the environment, division personnel may allow minor deviations from approved field operational plans such as drilling and plugging plans. The operator shall file a Form C-103 as a notice of intention showing the change of plans within two business days of the approval.
[19.15.2.16 NMAC - Rp, 19.15.15.1303, 12/1/2008; A, 8/23/2022]

19.15.2.17 ORGANIZATIONAL UNITS: When necessary to assist in the administration of the Oil and Gas Act, the director may divide the state into districts or other organizational units as appropriate. Upon establishment of, or revisions to, such units, the director shall provide or amend a map on the division's website with the boundaries of the units. Contact information for the units, including any assigned personnel, shall be maintained on the division's website.
[19.15.2.17 NMAC - Rp, 19.15.15.1301 NMAC, 12/1/2008; 19.15.2.17 NMAC - Rp, 19.15.2.17 NMAC, 8/23/2022]

19.15.2.18 RENUMBERING OR REORGANIZATION OF RULES: When the commission approves reorganization or renumbering of division rules, either through amendment or repeal and replacement, persons with permits, orders or agreements that reference rules that have been reorganized or renumbered shall comply with the rules as reorganized or renumbered.
[19.15.2.18 NMAC - N, 12/1/2008]

HISTORY of 19.15.2 NMAC:

History of Repealed Material: 19.15.1 NMAC, General Provisions (filed 04/27/2001); 19.15.14 NMAC, Procedure (filed 09/16/2005); and 19.15.15 NMAC, Administration (filed 07/12/2004) all repealed 12/1/2008.

NMAC History:
Those applicable portions of 19.15.1 NMAC, General Provisions (Sections 1-7, 11, 13, 17, & 20) (filed 04/27/2001); 19.15.14 NMAC, Procedure (Sections 1225 and 1226) (filed 09/16/2005); and 19.15.15 NMAC, Administration (Sections 1301 and 1303) (filed 07/12/2004) were replaced by 19.15.2 NMAC, General Provisions for Oil and Gas Operations, effective 12/1/2008.

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APPLICANTS' PROPOSED REVISED AMENDMENTS TO 19.15.5 NMAC

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 5 ENFORCEMENT AND COMPLIANCE

19.15.5.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.5.1 NMAC - N, 12/1/2008]

19.15.5.2 SCOPE: 19.15.5 NMAC applies to persons engaged in oil and gas development and production within New Mexico.
[19.15.5.2 NMAC - N, 12/1/2008]

19.15.5.3 STATUTORY AUTHORITY: 19.15.5 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11, Section 70-2-12, Section 70-2-31 and Section 70-2-31.1 NMSA 1978.
[19.15.5.3 NMAC – N, 12/1/2008, A, 2/25/2020]

19.15.5.4 DURATION: Permanent.
[19.15.5.4 NMAC - N, 12/1/2008]

19.15.5.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.5.5 NMAC - N, 12/1/2008]

19.15.5.6 OBJECTIVE: To establish a process to ensure compliance with the Oil and Gas Act, division rules and division and commission orders.
[19.15.5.6 NMAC - N, 12/1/2008]

19.15.5.7 DEFINITIONS: [RESERVED]
[See 19.15.2.7 NMAC for definitions.]

19.15.5.8 ENFORCEMENT OF STATUTES AND RULES: The division is charged with the duty and obligation of enforcing the state's rules and statutes relating to the conservation of oil and gas, including the prevention of waste and the protection of correlative rights, and the protection of public health and the environment. An owner or operator shall obtain information pertaining to the regulation of oil and gas before beginning operations.
[19.15.5.8 NMAC - Rp, 19.15.1.12 NMAC, 12/1/2008, A, 2/25/2020]

19.15.5.9 COMPLIANCE:

A. An operator is in compliance with Subsection A of 19.15.5.9 NMAC if the operator:

(1) currently meets the financial assurance requirements of 19.15.8 NMAC;

(2) is not subject to a division or commission order, issued after notice and hearing, finding the operator to be in violation of an order requiring corrective action;

(3) does not have a penalty assessment that is unpaid more than 30 days after issuance of the order assessing the penalty; ~~and~~

(4) currently meets the requirements of 19.15.25.8 NMAC; and ~~has no more than the following number of wells out of compliance with 19.15.25.8 NMAC that are not subject to an agreed compliance or final order setting a schedule for bringing the wells into compliance with 19.15.25.8 NMAC and imposing sanctions if the schedule is not met:~~

~~**(a)** two wells or fifty percent of the wells the operator operates, whichever is less, if the operator operates 100 wells or less;~~

~~**(b)** five wells if the operator operates between 101 and 500 wells;~~

~~**(c)** seven wells if the operator operates between 501 and 1000 wells; and~~

~~**(d)** 10 wells if the operator operates more than 1000 wells.~~

(5) currently meets the requirements of 19.15.27.A.8 NMAC.

B. Inactive wells.

(1) The division shall make available on its website, and update daily, an "inactive well list" listing each well, by operator, that according to division records:

(a) shows no production or injection for past ~~13~~ 15 months;

(b) does not have its well bore plugged in accordance with 19.15.25.9 NMAC

through 19.15.25.11 NMAC;

(c) is not in approved temporary abandonment in accordance with 19.15.25.12 NMAC through 19.15.25.14 NMAC; and

(d) is not subject to an agreed compliance or final order setting a schedule for bringing the well into compliance with 19.15.25.8 NMAC.

(2) A well inactive for more than ~~13~~15 months creates a rebuttable presumption that the well is out of compliance with 19.15.25.8 NMAC.

C. Financial assurance. The division shall make available on its website and update weekly the status of operators' financial assurance that 19.15.8 NMAC requires, according to division records.

[19.15.5.9 NMAC - Rp, 19.15.1.40 NMAC, 12/1/2008; A, 11/30/2016, A, 2/25/2020]

19.15.5.10 ENFORCEMENT:

A. General. Whenever the division determines that a person violated or is violating the Oil and Gas Act or a provision of any rule, order, permit or authorization issued pursuant to the Oil and Gas Act, the division may seek a sanction by:

(1) issuing a temporary cessation order if it determines that the alleged violation is causing or will cause an imminent danger to public health or safety or a significant imminent environmental harm. The temporary cessation order shall remain in place until the earlier of when the division determines that the alleged violation is abated or 30 days, unless a hearing is held before the division and a new order is issued;

(2) issuing a notice of violation; or

(3) commencing a civil action in district court.

B. Sanctions. The division may seek one or more of the following sanctions:

(1) a civil penalty;

(2) modification, suspension, cancellation or termination of a permit or authorization;

(3) plugging and abandonment of a well;

(4) remediation and restoration of a well location and associated facilities, including the removal of surface and subsurface equipment and other materials;

(5) remediation and restoration of a location affected by a spill or release;

(6) forfeiture of financial assurance;

(7) shutting in a well or wells; and

(8) any other remedy authorized by law.

C. Notice of violation.

(1) A notice of violation issued by the division shall state with reasonable specificity:

(a) the identity of the alleged violator;

(b) the nature and factual and legal basis of the alleged violation, including the provision of the Oil and Gas Act or rule, order, permit or authorization allegedly violated;

(c) whether compliance is required immediately or within a specified time period;

(d) the sanction(s) available for the alleged violation, the sanction(s) proposed by the division, and a statement that the division will take into consideration the violators good faith efforts to comply with the applicable requirements;

(e) the availability of a process for informal review and resolution of the alleged violation, and the procedure to initiate the informal review process, including the contact information of the appropriate division employee;

(f) a statement that if the notice of violation is not informally resolved within 30 days of service, the division will hold a hearing, but that the hearing shall not prohibit the parties from negotiating and settling the notice of violation at any time; and

(g) the date of the hearing, which shall be no later than 90 days after the date of the notice of violation.

(2) The division shall serve the notice of violation on the alleged violator by certified mail, and may provide the notice of violation by electronic mail if possible.

(3) If during the informal review the division and the alleged violator agree to resolve the alleged violation, they shall incorporate their agreement into a stipulated final order signed by both parties. The stipulated final order shall state that the alleged violator admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives the alleged violator's right of review by the commission.

(4) If the division and the alleged violator fail to enter a stipulated final order within 30 days

of service, the division shall hold a hearing at the division's principal office.

D. Civil penalties. A civil penalty assessed by the division shall account for the seriousness of the violation, good faith efforts to comply with the applicable requirement, history of noncompliance under the Oil and Gas Act and other relevant factors. The civil penalty assessed by the division shall not exceed $2,500 per day of noncompliance for each alleged violation, unless the alleged violation presents a risk either to the health or safety of the public or of causing significant environmental harm, or unless the noncompliance continues beyond the time specified in the notice of violation or stipulated final order, whereupon the civil penalty may not exceed $10,000 per day of noncompliance for each alleged violation, provided that the civil penalty assessed by the division for an alleged violation shall not exceed $200,000.

E. Adjudicatory procedures. These adjudicatory procedures shall apply to hearings on temporary cessation orders and notices of violation before the division, and the provisions of 19.15.4 NMAC shall not apply.

(1) General provisions.

(a) Designation of parties. The parties shall be the division and the person served with a notice of violation or order, referred to herein as "respondent".

(b) Representation. Respondent may appear and participate in a hearing either pro se or through counsel, provided that a collective entity, including a corporation, partnership, unincorporated association, political subdivision or governmental agency shall appear only through counsel or a duly authorized officer or member.

(c) Rule applicability. In the absence of a specific provision in this section, the hearing examiner may apply the New Mexico rules of civil procedure and evidence.

(d) Computation of time. In computing any period of time under 19.15.5.10 NMAC the day of the event from which the designated period begins to run shall not be included, and the last day of the computed period shall be included, unless it is a Saturday, Sunday or legal state holiday, in which case the time is extended until the next day which is not a Saturday, Sunday or legal state holiday. Whenever a party must act within a prescribed period after service, and service is by first class mail only, three days is added to the prescribed period.

(e) Extensions of time. The hearing examiner may grant an extension of time to file a document or continue a hearing upon timely motion upon consent of the parties, or for good cause shown after consideration of prejudice to the other party and undue delay to the hearing.

(f) Filing of documents. A party shall file the original of each document and serve a copy on the other party, accompanied by a certificate of service identifying the method and address used to complete service.

(g) Service of documents. A party shall serve each document on the other party or its counsel, as applicable, by personal service or first class mail, or by electronic mail if the parties agree.

(h) Form of documents. Unless otherwise ordered, all documents, except exhibits, shall be on 8 1/2 x 11-inch white paper, shall contain the caption of the notice of violation or temporary cessation order on the first page and shall be signed by the party or its counsel, as applicable.

(2) Pre-hearing procedures.

(a) Docketing. At the expiration of the 30 day period for informal resolution of a notice of violation, when a party appeals a final order under Subsection E of 19.15.5.10 NMAC, or when the division gives notice that it intends to extend a temporary cessation order, the division shall docket the notice of violation or order for hearing, identify the factual basis for the alleged violation and proposed sanction(s), and serve a notice of docketing on respondent.

(b) Answer. No later than 10 days after service of the notice of docketing, respondent shall file an answer stating its objection, if any, and the factual and legal basis for such objection, to each alleged violation and proposed sanction in the notice of violation or order.

(c) Hearing examiner. The hearing examiner shall have the authority to take all measures necessary to conduct a fair, impartial and efficient adjudication of issues, and to maintain order and avoid undue delay, including the authority to conduct pre-hearing conferences and hearings, rule on procedural and evidentiary motions, govern the examination of witnesses and the admission of evidence, issue orders and prepare a recommended decision. After the division issues the notice of violation, the hearing examiner shall not discuss ex parte the merits of the proceeding with the division or the respondent.

(d) Pre-hearing conference. The hearing examiner may hold a pre-hearing conference to narrow the issues, eliminate or resolve preliminary matters and encourage settlement, and may issue a pre-hearing order on procedural and evidentiary matters, including a schedule for the filing of motions and testimony, stipulations regarding alleged violations and requested relief, including proposed civil penalties or

elements thereof, and any other matter necessary for the efficient conduct of the hearing.

(e) Pre-hearing statements. No later than seven calendar days before the hearing, a party who intends to present evidence at the hearing shall file and serve a statement that contains the following information:

(i) the name, address, employment and qualifications, including education and work history, of each witness;

(ii) a statement identifying the opinions and factual assertions supporting each witness' testimony;

(iii) the exhibits and other evidence to be presented by each witness; and

(iv) procedural matters that are to be resolved prior to the hearing.

(f) Enforcement. The hearing examiner may enforce the requirements of 19.15.5.10 NMAC by any appropriate means, including the exclusion of testimony, exhibits and other evidence.

(g) Motions.

(i) General. All motions, except motions made orally during the hearing, shall be in writing, specify the grounds for the motion, state the relief sought, indicate whether the motion is opposed or unopposed and be served on the other party.

(ii) Unopposed motions. An unopposed motion shall state that concurrence of the other party was obtained and shall be accompanied by a proposed order approved by the parties.

(iii) Opposed motions. An opposed motion shall state either that concurrence was sought and not obtained, or the reason that concurrence was not sought.

(iv) Response. No later than 10 days after service of an opposed motion, the opposing party may file a response. Failure to file a response shall be deemed a waiver of any objection to the granting of the motion.

(v) Reply. No later than 10 days after service of a response to an opposed motion, the moving party may file a reply.

(vi) Decision. The hearing examiner shall decide all motions without a hearing, unless otherwise ordered by the hearing examiner sua sponte or upon written request of a party.

(h) Shortening Deadlines. On the written request of the alleged violator showing good cause, the hearing examiner may shorten the deadlines specified in Paragraph (2) of Subsection E of 19.15.10 NMAC to conduct the hearing on the division's application for a temporary cessation order as expeditiously as possible. If the division opposes the request to shorten deadlines, the procedures for opposed motions set forth in Subparagraph (g) of Paragraph (2) of Subsection G of 19.15.5.10 NMAC shall not apply and the hearing examiner shall decide the request, with or without hearing, as quickly as practicable.

(3) Hearing procedures.

(a) General. The hearing examiner shall admit all evidence, unless he or she determines that the evidence is irrelevant, immaterial, unduly repetitious or otherwise unreliable or of little probative value. Evidence relating to settlement that would be excluded by the New Mexico rules of evidence is not admissible.

(b) Witness examination. Witnesses shall be examined orally and under oath or affirmation, provided that the parties may stipulate to the admission of the testimony of a witness, or part thereof. Parties shall have the right to cross-examine a witness, provided that the hearing examiner may limit cross-examination that is unduly repetitious, harassing or beyond the scope of the direct testimony.

(c) Exhibits. A party shall label each exhibit used during the hearing or offered into evidence with a designation identifying the party, the witness using or offering the exhibit and a serial number.

(d) Burden of persuasion. The division has the burden of going forward with the evidence and of proving by a preponderance of the evidence the facts relied upon to show the alleged violation occurred and that the proposed civil penalty is appropriate. Following the establishment of a prima facie case, respondent shall have the burden of going forward with any adverse evidence or defense to the allegations.

(4) Post-hearing procedures.

(a) Transcript. The hearing shall be transcribed verbatim. Respondent may order a copy of the transcript from the reporter at its own expense.

(b) Recommended decision. The hearing examiner shall prepare a recommended decision for review by the director.

(c) Final order. The director shall file a final order addressing the material issues of fact and law and may assess a sanction for each alleged violation, which shall be served on the division and the respondent.

F. Commission review. No later than 30 days after the director serves the final order, a party may file a notice of appeal with the commission and shall serve the notice of appeal on the other party. The commission shall schedule a hearing on the appeal and notify the parties of the date and time of the hearing. The commission shall conduct a de novo review, provided however, that the parties may stipulate to the issues to be heard and to the admission of all or part of the record before the division. The commission shall conduct the hearing in accordance with the adjudicatory procedures in Paragraph (1), Subparagraphs (c) through (g) of Paragraph (2), Paragraph (3) and Subparagraph (a) of Paragraph (4) of Subsection E of 19.15.5.10 NMAC.

G. Rehearings. A party may file an application for rehearing with the commission pursuant to Section 70-2-25 NMSA 1978.

H. Payment of civil penalty. Respondent shall pay the full amount of the civil penalty assessed in the final order (i) no later than 30 days after the director serves the final order, or (ii) if respondent files a notice of appeal to the commission or the district court pursuant to Section 70-2-25 NMSA 1978, no later than 30 days after the commission or the district court files a final order or the appeal is withdrawn.

I. Resolution after commencement of hearing. If the parties agree to resolve a notice of violation at any time after the commencement of a hearing, they shall file a stipulated final order signed by both parties. The stipulated final order shall state that respondent admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives respondent's right of review by the commission or the court, as applicable.

J. Publication. On or about October 1 of each year, the division shall publish a list identifying the temporary cessation orders and notices of violation issued during the preceding year, along with the civil penalty paid, if any.

K. Reservation. Nothing in 19.15.5.10 NMAC precludes the division from bringing any other action and seeking any relief allowed by the Oil and Gas Act.

[19.15.5.10 NMAC – Rp, 19.15.5.10 NMAC, 2/25/2020]

19.15.5.11 **ENFORCEABILITY OF PERMITS AND ADMINISTRATIVE ORDERS:** A person who conducts an activity pursuant to a permit, administrative order or other written authorization or approval from the division shall comply with every term, condition and provision of the permit, administrative order, authorization or approval.

[19.15.5.11 NMAC - Rp, 19.15.1.41 NMAC, 12/1/2008]

HISTORY of 19.15.5 NMAC:

History of Repealed Material: 19.15.1 NMAC, General Provisions (filed 04/27/2001) and 19.15.14 NMAC, Procedure (filed 09/16/2005) repealed 12/1/2008.

NMAC History:

Those applicable portions of 19.15.1 NMAC, General Provisions (Sections 12, 40 & 41) (filed 04/27/2001) and 19.15.14 NMAC, Procedure (Section 1227) (filed 09/16/2005), were replaced by 19.15.5 NMAC, Enforcement and Compliance, effective 12/1/2008.

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APPLICANTS' PROPOSED REVISED AMENDMENTS TO 19.15.8 NMAC

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 8 FINANCIAL ASSURANCE

19.15.8.1 ISSUING AGENCY: Oil Conservation Commission.
[19.15.8.1 NMAC - N, 12/1/2008; A, 1/15/2019]

19.15.8.2 SCOPE: 19.15.8 NMAC applies to persons engaged in oil and gas development and production within New Mexico.
[19.15.8.2 NMAC - N, 12/1/2008]

19.15.8.3 STATUTORY AUTHORITY: 19.15.8 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11, Section 70-2-12 and Section 70-2-14 NMSA 1978.
[19.15.8.3 NMAC - N, 12/1/2008; A, 1/15/2019]

19.15.8.4 DURATION: Permanent.
[19.15.8.4 NMAC - N, 12/1/2008]

19.15.8.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.8.5 NMAC - N, 12/1/2008]

19.15.8.6 OBJECTIVE: To establish financial assurance requirements for persons, firms, corporations or associations who have drilled or acquired, are drilling or propose to drill or acquire an oil, gas or injection or other service well to furnish financial assurance acceptable to the division.
[19.15.8.6 NMAC - N, 12/1/2008]

19.15.8.7 DEFINITIONS: [RESERVED]
[See 19.15.2.7 NMAC for definitions.]

19.15.8.8 GENERAL REQUIREMENTS FOR FINANCIAL ASSURANCE:

A. The operator shall file financial assurance documents with the division's Santa Fe office and obtain approvals and releases of financial assurance from that office.

B. Financial assurance documents shall be on forms prescribed by or otherwise acceptable to the division.

C. The division may require proof that the individual signing for an entity on a financial assurance document or an amendment to a financial assurance document has the authority to obligate that entity.

D. Any time an operator changes the corporate surety, financial institution or amount of financial assurance, the operator shall file updated financial assurance documents on forms prescribed by the division. Notwithstanding the foregoing, if an operator makes other changes to its financial assurance documents, the division may require the operator to file updated financial assurance documents on forms prescribed by the division.
[19.15.8.8 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 6/30/2015]

19.15.8.9 CATEGORIES AND AMOUNTS OF FINANCIAL ASSURANCE FOR WELL PLUGGING:

A. Applicability. An operator who has drilled or acquired, is drilling or proposes to drill or acquire an oil, gas or injection or other service well within this state shall furnish a financial assurance acceptable to the division in accordance with 19.15.8.9 NMAC and in the form of an irrevocable letter of credit, plugging insurance policy or cash or surety bond running to the state of New Mexico conditioned that the well be plugged and abandoned and the location restored and remediated in compliance with commission rules, unless the well is covered by federally required financial assurance. The division shall not approve, and the operator shall not proceed with any proposed drilling or acquisition until the operator has furnished the required financial assurance.

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.

C. Active wells. An operator shall provide financial assurance for wells that are covered by Subsection A of 19.15.8.9 NMAC and are not subject to Subsections D and E of 19.15.8.9 NMAC in one of the following categories:

(1) a one well plugging financial assurance in the amount of $150,000 per well; ~~$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;~~ or

(2) a blanket plugging financial assurance in the amount of $250,000 ~~following amounts~~ covering all the wells of the operator subject to Subsection C of 19.15.8.9 NMAC.~~:~~

~~**(a)** $50,000 for one to 10 wells;~~

~~**(b)** $75,000 for 11 to 50 wells;~~

~~**(c)** $125,000 for 51 to 100 wells; and~~

~~**(d)** $250,000 for more than 100 wells.~~

~~**D. Marginal wells and inactive wells.** Notwithstanding the provisions in Subsection C(2) in this Section:~~

~~**(1)** As of the [effective date of amendments] a transferee operator shall provide a one well plugging financial assurance of $150,000 for each marginal well prior to transfer.~~

~~**(2)** Beginning January 1, 2028, an operator shall provide a one well plugging financial assurance for each marginal well.~~

~~**(3)** An operator with 15 percent or more of their wells in marginal or inactive well status, or a combination thereof, shall provide a one well plugging financial assurance in the amount of $150,000 for each well registered to the operator until the percentage of the operator's marginal and inactive wells is decreased below 15 percent.~~

~~**(4)** An operator may furnish all necessary one well plugging financial assurance in the form of a single instrument.~~

E.~~D.~~ Inactive wells and wells in approved ~~and expired~~ temporarily abandoned status. An operator shall provide financial assurance for wells that are inactive and wells ~~in approved and expired temporarily abandoned status~~ covered by Subsection A of 19.15.8.9 NMAC that have been in temporarily abandoned status for more than two years or for which the operator is seeking approved temporary abandonment pursuant to 19.15.25.13 NMAC in one of the following categories:

(1) a one well plugging financial assurance in the amount of $150,000 per well; ~~$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;~~ or

(2) a blanket plugging financial assurance equal to an average of $150,000 per well covering all wells of the operator subject to Subsection E~~D~~ of 19.15.8.9 NMAC.~~:~~

~~**(e)** $150,000 for one to five wells;~~

~~**(f)** $300,000 for six to 10 wells;~~

~~**(g)** $500,000 for 11 to 25 wells; and~~

~~**(h)** $1,000,000 for more than 25 wells.~~

F.~~D.~~ Operators who have on file with the division a blanket plugging financial assurance that does not cover additional wells shall file additional one ~~single~~ well plugging ~~bond~~ financial assurance for any wells not covered by the existing blanket plugging financial assurance ~~bond~~ in an amount as determined by Section 19.15.8.9 NMAC, subject to any limitations in Section 70-2-14 NMSA 1978.or, in the alternative, may file a replacement blanket bond.

G. On January 1, 2028 and on January 1 of each successive year, the division may adjust the financial assurance amounts provided for inactive wells and wells in a temporarily abandoned status for more than two years ~~by Subsections C(1), D, E and F of this Section~~ by multiplying the financial assurance as of January 1, 2027 by a fraction, the numerator of which is the consumer price index ending in September of the previous year and the denominator of which is the consumer price index ending September 2026; provided that any financial assurance shall not be adjusted below the existing amounts ~~minimum amounts required in Subsections C(1), D, E and F of this Section~~ as a result of a decrease in the consumer price index. By November 1, 2027 and by November 1 of each successive year, the division ~~shall~~ may post on its website the financial assurance requirements for inactive wells and wells in a temporarily abandoned status for more than two years ~~in Subsection A through E of this Section~~ for the next year. As used in this subsection, "consumer price index" means the consumer price index, not seasonally adjusted, for all urban consumers, United States city average for all items, or its successor index, as published by the United States department of labor for a 12 month period ending September 30.

[19.15.8.9 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 6/30/2015; A, 1/15/2019]

19.15.8.10 ADDITIONAL REQUIREMENTS FOR CASH AND SURETY BONDS:

A. Surety bonds shall be issued by a reputable corporate surety authorized by the office of the superintendent of insurance to do business in the state. The surety shall be listed on U.S. department of the

treasury circular 570.

B. The operator shall deposit cash representing the full amount of the bond in an account in a federally-insured financial institution located within the state, such account to be held in trust for the division. Authorized representatives of the operator and the depository institution shall execute a document evidencing the cash bond's terms and conditions. The operator shall file the document with the division prior to the bond's effective date. If the operator's financial status or reliability is unknown to the director, the director may require the filing of a financial statement or such other information as may be necessary to evaluate the operator's ability to fulfill the bond's conditions. From time to time, any accrued interest over and above the bond's face amount may be paid to the operator.

[19.15.8.10 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 6/30/2015]

19.15.8.11 ADDITIONAL REQUIREMENTS FOR LETTERS OF CREDIT:

A. The division may accept irrevocable letters of credit issued by national or state-chartered banking associations.

B. Letters of credit shall be irrevocable for a term of not less than five years, unless the applicant shows good cause for a shorter time period.

C. 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.

D. The division may forfeit and collect a letter of credit if not replaced by an approved financial assurance at least 30 days before the expiration date.

E. Authorized representatives of the operator and the depository institution shall execute a document evidencing the letter of credit's terms and conditions.

[19.15.8.11 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 6/30/2015]

19.15.8.12 RELEASE OF FINANCIAL ASSURANCE:

A. 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 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.

B. Transfer of a property or a change of operator does not of itself release a financial assurance. The division shall not approve a request for change of operator for a well until the new operator has the required financial assurance in place and is otherwise in compliance with the requirements of 19.15.5.9 NMAC and 19.15.9.9 NMAC.

[19.15.8.12 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008]

19.15.8.13 FORFEITURE OF FINANCIAL ASSURANCE:

A. Upon the operator's failure to properly plug and abandon and restore and remediate the location of a well or wells a financial assurance covers, the division shall give notice to the operator and surety, if applicable, and hold a hearing as to whether the well or wells should be plugged and abandoned and the location restored and remediated in accordance with a division-approved plugging program. If it is determined at the hearing that the operator has failed to plug and abandon the well and restore and remediate the location as provided for in the financial assurance or division rules, the director shall issue an order directing the well to be plugged or abandoned and the location restored and remediated in a time certain. Such an order may also direct the forfeiture of the financial assurance upon the failure or refusal of the operator, surety or other responsible party to properly plug and abandon the well and restore and remediate the location.

B. If the financial assurance's proceeds exceed the costs the division incurred plugging and abandoning the well and restoring and remediating the location the financial assurance covers, the division shall return the excess to the surety or the operator, as appropriate.

C. If the financial assurance's proceeds are not sufficient to cover all the costs the division incurred in plugging and abandoning the well and restoring and remediating the location, the division may seek indemnification from the operator as provided in Subsection E of Section 70-2-14 NMSA 1978.

D. The division shall deposit forfeitures and funds collected pursuant to a judgment in a suit for indemnification in the oil and gas reclamation fund.

[19.15.9.13 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008]

19.15.8.14 EFFECTIVE DATES.

A. 19.15.8 NMAC applies to wells drilled or acquired after December 15, 2005.

B. As to all other wells, 19.15.8 NMAC is effective January 1, 2008.

C. The 2018 amendments to 19.15.8.9 NMAC apply to applications for permits to drill, deepen or plug back and applications for approved temporary abandonment filed on or after January 15, 2019, and for all other wells on April 15, 2019.
[19.15.8.14 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 1/15/2019]

19.15.8.15 ADDITIONAL REQUIREMENTS FOR PLUGGING INSURANCE POLICIES:

A. The plugging insurance policy must be issued by a company authorized by the office of the superintendent of insurance to do business in New Mexico.

B. The policy shall name a specific well and name the state of New Mexico as the owner of the policy and contingent beneficiary.

C. The policy shall name a primary beneficiary who agrees to plug the specified wellbore.

D. The policy shall be fully prepaid and cannot be canceled or surrendered.

E. The policy shall continue in effect until the specified wellbore has been plugged.

F. The policy shall provide that benefits will be paid when, but not before, the specified wellbore has been plugged in accordance with division rules in effect at the time of plugging.

G. The policy shall provide benefits that are not less than an amount equal to the one-well financial assurance required by division rules. If, subsequent to an operator obtaining an insurance policy, the one-well financial assurance requirement applicable to the operator's well covered by said policy increases, either because the well is deepened or the division's rules are amended, the operator will meet the additional financial assurance requirement by complying with one of the requirements below.

(1) The operator's existing policy benefit equals or exceeds the revised requirement.

(2) The operator obtains and files with the division within 30 days an amendment increasing the policy benefit by the amount of the increase in the applicable financial assurance requirement.

19.15.8.16 The operator obtains financial assurance equal to the amount, if any, by which the revised requirement exceeds the policy benefit and files said financial assurance with the division within 30 days. [19.15.8.15 NMAC - N, 6/30/2015]

19.15.8.17 DUTY TO REPORT: Any operator who filed for bankruptcy shall provide notice to the division, in writing, through the processes provided for under the rules of the United States bankruptcy court. [19.15.8.16 NMAC - N, 6/30/2015]

HISTORY of 19.15.8 NMAC:

History of Repealed Material: 19.15.3 NMAC, Drilling (filed 10/29/2001) repealed 12/1/2008.

NMAC History:
That applicable portion of 19.15.3 NMAC, Drilling (Section 101) (filed 10/29/2001) was replaced by 19.15.8 NMAC, Financial Assurance, effective 12/1/2008.

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APPLICANTS' PROPOSED REVISED AMENDMENTS TO 19.15.9 NMAC

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 9 WELL OPERATOR PROVISIONS

19.15.9.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.9.1 NMAC - N, 12/1/08]

19.15.9.2 SCOPE: 19.15.9 NMAC applies to persons or entities operating oil or gas wells within New Mexico.
[19.15.9.2 NMAC - N, 12/1/08]

19.15.9.3 STATUTORY AUTHORITY: 19.15.9 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12.
[19.15.9.3 NMAC - N, 12/1/08]

19.15.9.4 DURATION: Permanent.
[19.15.9.4 NMAC - N, 12/1/08]

19.15.9.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section. [19.15.9.5 NMAC - N, 12/1/08]

19.15.9.6 OBJECTIVE: To require an operator of a well or wells to register with the division prior to commencing operations and to require the reporting of a change of operator or a change of name to the division. [19.15.9.6 NMAC - N, 12/1/08]

19.15.9.7 DEFINITIONS:[RESERVED]
[See 19.15.2 NMAC for definitions.]
[19.15.9.7 NMAC - N, 12/1/08]

19.15.9.8 OPERATOR REGISTRATION:

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:

(1) an oil and gas registration identification (OGRID) number obtained from the division, the state land office or the taxation and revenue department;

(2) a current address of record to be used for notice and a current emergency contact name and telephone number for each district in which the operator operates wells; and

(3) the financial assurance 19.15.8 NMAC requires.

B. Prior to commencing operations, an operator shall provide to the division a certification by an authorized official ~~officer, director, or partner~~ that the new operator is not subject to any forfeiture demands from any state or federal agency, has not forfeited financial assurance to any state or federal agency, and does not have unresolved adjudicated orders or unresolved settlement agreements for any state or federal ~~is in compliance with federal and state oil and gas laws and regulations~~ in any domestic jurisdiction ~~each state~~ in which the new operator does business~~.~~ a disclosure of any officer, director, partner in the new operator or person with an interest in the new operator exceeding 25 percent, who is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC; and a disclosure whether the new operator is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC.

~~B.~~C. The division may deny registration as an operator if:

(1) the applicant is not in compliance with Subsection A of 19.15.5.9 NMAC;

(2) the applicant has forfeiture demands from any state or federal agency, has forfeited financial assurance to any state or federal agency, or has unresolved adjudicated orders or unresolved settlement agreements for any state or federal violations ~~is in compliance with federal and state oil and gas laws and regulations~~

in any domestic jurisdiction ~~each state~~ in which the applicant does business;

(~~2~~3) an officer, director, partner in the applicant or person with an interest in the applicant exceeding 25 percent, is or was within the past five years an officer, director, partner or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC;

(~~3~~4) the applicant is or was within the past five years an officer, director, partner or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC; or

(~~4~~5) the applicant is a corporation, ~~or~~ limited liability company, or limited partnership and is not registered or is not in good standing with the New Mexico secretary of state ~~public regulation commission~~ to do business in New Mexico.~~; or~~

~~**(5)** the applicant is a limited partnership and is not registered with the New Mexico secretary of state to do business in New Mexico.~~

~~C.~~D. An operator shall inform the division of its current address of record and emergency contact names and telephone numbers by submitting changes in writing to the division's financial assurance administrator in the division's Santa Fe office within 30 days of the change.

~~D.~~E. The division may require an ~~An~~ operator ~~shall~~ or applicant to ~~certify compliance annually of~~ identify its current and past officers, directors and partners and its current and past ownership interest in other operators ~~consistent with 19.15.9.8.C(2) and (3) NMAC~~.

[19.15.9.8 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

19.15.9.9 CHANGE OF OPERATOR:

A. A change of operator occurs when the entity responsible for a well or a group of wells changes. A change of operator may result from a sale, assignment by a court, a change in operating agreement or other transaction. Under a change of operator, wells are moved from the OGRID number of the operator of record with the division to the new operator's OGRID number.

B. The operator of record with the division and the new operator shall apply for a change of operator by jointly filing a form C-145 using the division's web-based online application. If the operator of record with the division is unavailable, the new operator shall apply to the division for approval of change of operator without a joint application. The new operator shall make such application in writing and provide documentary evidence of the applicant's right to assume operations; a certification by an authorized official ~~officer, director, or partner~~ of the new operator that the new operator is not subject to any forfeiture demands from any state or federal agency, has not forfeited financial assurance to any state or federal agency, and does not have unresolved adjudicated orders or unresolved settlement agreements for any state or federal violations ~~is in compliance with federal and state oil and gas laws and regulations~~ in any domestic jurisdiction ~~each~~ state in which the new operator does business~~;~~ a plugging and abandonment plan; a disclosure of any officer, director, partner in the new operator or person with an interest in the new operator exceeding 25 percent, who is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC; and a disclosure whether the new operator is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC. The new operator shall not commence operations until the division approves the application for change of operator. The plugging and abandonment plan shall be certified by an authorized representative ~~an officer, director, or partner of the new operator~~ and shall demonstrate that the new operator has and will have the financial ability to meet the plugging and abandonment requirements of 19.15.25 NMAC for the well or wells to be transferred in light of all the 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 report, records of the operator's historical costs for decommissioning activities, estimate of the operator's decommissioning obligations, and history of inactive wells and returning wells to production.

C. The director of the director's designee may deny a change of operator if:

(1) the new operator is not in compliance with Subsection A of 19.15.5.9 NMAC; ~~or~~

(2) the new operator is acquiring wells, facilities or sites subject to a compliance order requiring remediation or abatement of contamination, or compliance with 19.15.25.8 NMAC, and the new operator has not entered into an agreed compliance order setting a schedule for compliance with the existing order.

(~~2~~3) the new operator has forfeiture demands from any state or federal agency, has

forfeited financial assurance to any state or federal agency, or has unresolved adjudicated orders or unresolved settlement agreements for any state or federal violations ~~is out of compliance with federal and state oil and gas laws and regulations~~ in any domestic jurisdiction ~~each state~~ in which the new operator does business~~;~~

(3~~4~~) any officer, director, partner in the new operator or person with an interest in the new operator exceeding 25 percent, who is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC;

(4~~5~~) the new operator is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC;

(5~~6~~) the applicant is a corporation, limited liability company, or limited partnership and is not registered or is not in good standing with the New Mexico secretary of state to do business in New Mexico; or

(6~~7~~) the certification or disclosure requirements set forth in Subsection B of this Section disclose a substantial risk that the new operator would be unable to satisfy the plugging and abandonment requirements of 19.15.25 NMAC for the well or wells the new operator intends to take over.

D. In determining whether to grant or deny a change of operator when the new operator is not in compliance with Subsection A of 19.15.5.9 NMAC, the director or the director's designee shall consider such factors as whether the non-compliance with Subsection A of 19.15.5.9 NMAC is caused by the operator not meeting the financial assurance requirements of 19.15.8 NMAC, being subject to a division or commission order finding the operator to be in violation of an order requiring corrective action, having a penalty assessment that has been unpaid for more than 70 days since the issuance of the order assessing the penalty or having ~~more than the allowed number of~~ wells out of compliance with 19.15.25.8 NMAC. If the non-compliance is caused by the operator having ~~more than the allowed number of~~ wells not in compliance with 19.15.25.8 NMAC, the director or director's designee shall consider the number of wells not in compliance, the length of time the wells have been out of compliance and the operator's efforts to bring the wells into compliance.

E. No well, facility or site that is out of compliance with Subsection A of 19.15.5.9 NMAC, 19.15.29 NMAC, or 19.15.30 NMAC shall be transferred unless, prior to transfer, the current operator brings the associated well, facility or site into compliance or the new operator submits a schedule of compliance approved by the division.

[19.15.9.9 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

19.15.9.10 CHANGE OF NAME:

A. A change of operator name occurs when the name of the entity responsible for a well or wells changes but the entity does not change. For a change of name, the OGRID number remains the same, but division records are changed to reflect the new operator name.

B. An operator shall apply for a change of name by filing a form C-146 using the division's web-based online application and supplying documentary proof that the change is a name change and not a change of operator. If the operator is a corporation, limited liability company or limited partnership, the name must be registered with the public regulation commission or the New Mexico secretary of state, as applicable. The division shall not approve a change of name until the state land office and the taxation and revenue department have cleared the change of name on the OGRID.

[19.15.9.10 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

19.15.9.11 EXAMPLES OF CHANGE OF OPERATOR AND CHANGE OF NAME:

A. Mr. Smith, a sole proprietor, operates five wells under the name "Smith oil company". Mr. Smith changes the name of his company to "Smith production company". The name of the entity operating the wells has changed, but the entity has not changed. Mr. Smith should apply for a change of name.

B. Mr. Smith incorporates his business, changing from the sole proprietorship, "Smith production company", to a corporation: "Smith production company, inc.". The entity responsible for the wells has changed, and Mr. Smith and "Smith production company, inc." should apply for a change of operator.

C. Smith production company, inc., a New Mexico operator, merges with XYZ, inc., which does not operate in New Mexico. At the surviving entity's election, this transaction may be treated as a change of name from Smith production company, to XYZ, inc., maintaining the existing OGRID, or as a change of operator, with a new OGRID.

D. Two New Mexico operators, Smith production company, inc. and Jones production company, inc., merge. The surviving corporation is Jones production company, inc. A different entity now operates the wells Smith production company, formerly operated, and the wells must be placed under that entity's OGRID. Jones production company, inc. and Smith production company, inc. should apply for a change of operator as to the wells Smith production company, inc. operated.
[19.15.9.11 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

HISTORY of 19.15.9 NMAC:

History of Repealed Material: 19.15.3 NMAC, Drilling (filed 10/29/2001) repealed 12/1/08.

NMAC History:
That applicable portion of 19.15.3 NMAC, Drilling (Section 100) (filed 11/30/2005) was replaced by 19.15.9 NMAC, Well Operator Provisions, effective 12/1/08.

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APPLICANTS' PROPOSED REVISED AMENDMENTS TO 19.15.25 NMAC

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 25 PLUGGING AND ABANDONMENT OF WELLS

19.15.25.1 ISSUING AGENCY: Oil Conservation Commission.
[19.15.25.1 NMAC - Rp, 19.15.4.1 NMAC, 12/1/2008; A, 1/15/2019]

19.15.25.2 SCOPE: 19.15.25 NMAC applies to persons that operate oil or gas wells within New Mexico.
[19.15.25.2 NMAC - Rp, 19.15.4.2 NMAC, 12/1/2008]

19.15.25.3 STATUTORY AUTHORITY: 19.15.25 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-12 NMSA 1978, which authorizes the division to require dry or abandoned wells to be plugged so as to confine oil, gas or water in the strata in which they are found and to prevent them from escaping into other strata.
[19.15.25.3 NMAC - Rp, 19.15.4.3 NMAC, 12/1/2008]

19.15.25.4 DURATION: Permanent.
[19.15.25.4 NMAC - Rp, 19.15.4.4 NMAC, 12/1/2008]

19.15.25.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of asection.
[19.15.25.5 NMAC - Rp, 19.15.4.5 NMAC, 12/1/2008]

19.15.25.6 OBJECTIVE: To establish requirements for properly abandoning and plugging wells drilled for oil or gas or service wells including seismic, core, exploration or injection wells or placing the wells in temporary abandonment in order to protect public health, fresh water and the environment.
[19.15.25.6 NMAC - Rp, 19.15.4.6 NMAC, 12/1/2008]

19.15.25.7 DEFINITIONS: [RESERVED]
[See 19.15.2.7 NMAC for definitions.]

19.15.25.8 WELLS TO BE PROPERLY ABANDONED:

A. The operator of wells drilled for oil or gas or services wells including seismic, core, exploration or injection wells, whether cased or uncased, shall plug the wells as Subsection B of 19.15.25.8 NMAC requires.

B. The operator shall either properly plug and abandon a well or apply to the division to place the well in approved temporary abandonment in accordance with 19.15.25 NMAC within 90 ~~30~~ days after:

(1) a 60 day period following suspension of drilling operations;

(2) a determination that a well is no longer usable for beneficial purposes; or

(3) a period of one year in which a well has been continuously inactive.

[19.15.25.8 NMAC - Rp, 19.15.4.201 NMAC, 12/1/2008]

19.15.25.9 PRESUMPTIONS OF NO BENEFICIAL USE:

A. For oil and gas production wells, there is a rebuttable presumption that a well is not capable of beneficial use if, in a consecutive 12 month period, the well has not produced for at least 90 days and has not produced at least 90 barrels of oil equivalent.

B. For injection or salt water disposal wells, there is a rebuttable presumption that a well is not capable of beneficial use if, in a consecutive 12 month period, the well has not injected at least 90 days and at least 100 barrels of fluid.

C. The rebuttable presumptions in this Section do not apply to wells that have been drilled but not completed for less than 18 months and wells that have been completed but have not produced for less than 18 months.

D. Within 30 calendar days after notice of a preliminary determination from the division that a well or wells are not being used for beneficial purposes, a well operator may submit an application for administrative review of such determination through the division's electronic permitting portal. The division shall issue a final determination based on the application, ~~and~~ information available in division records, and any information requested by the Division. The final determination may be appealed pursuant to 19.15.4 NMAC. Applications must ~~to~~ demonstrate beneficial use of a well or wells and the operator must provide any information requested by the Division. Such documentation ~~shall~~ may include:

(1) Documentation demonstrating that the well is reasonably projected to produce in paying quantities; and

(2) Documentation demonstrating that the operator maintains adequate capitalization or reasonably projected revenue sufficient to meet all reasonably anticipated plugging and environmental liabilities of the well or wells and associated production facilities, not inclusive of any financial assurance associated with the well or wells; ~~and~~

(3) ~~Other relevant information requested by the division including~~ ~~a~~ A plugging and abandonment plan as described in 19.15.9.9.B NMAC; and

(4) Other relevant information requested by the divison.

19.15.25.~~9~~10 NOTICE OF PLUGGING:

C. The operator shall file notice of intention to plug with the division on form C-103 prior to commencing plugging operations. The notice shall provide all the information 19.15.7.14 NMAC requires including operator and well identification and proposed procedures for plugging the well.

D. In addition, the operator shall provide a well bore diagram showing the proposed plugging procedure.

E. The operator shall notify the division 24 hours prior to commencing plugging operations. In the case of a newly drilled dry hole, the operator may obtain verbal approval from the appropriate district supervisor or the district supervisor's representative of the plugging method and time operations are to begin. The operator shall file written notice in accordance with 19.15.25.11 NMAC with the division within 10 days after the district supervisor has given verbal approval.

[19.15.25.9 NMAC - Rp, 19.15.4.202 NMAC, 12/1/2008]

19.15.25.~~10~~11PLUGGING:

F. Before an operator abandons a well, the operator shall plug the well in a manner that permanently confines all oil, gas and water in the separate strata in which they are originally found. The operator may accomplish this by using mud-laden fluid, cement and plugs singly or in combination as approved by the division on the notice of intention to plug.

G. The operator shall mark the exact location of plugged and abandoned wells with a steel marker not less than four inches in diameter set in cement and extending at least four feet above mean ground level. The operator name, lease name and well number and location, including unit letter, section, township and range, shall be welded, stamped or otherwise permanently engraved into the marker's metal. A person shall not build permanent structures preventing access to the wellhead over a plugged and abandoned well without the division's written approval. A person shall not remove a plugged and abandonment marker without the division's written approval.

H. The operator may use below-ground plugged and abandonment markers only with the division's written approval when an above-ground marker would interfere with agricultural endeavors. The below-ground marker shall have a steel plate welded onto the abandoned well's surface or conductor pipe and shall be at least three feet below the ground surface and of sufficient size so that all the information 19.15.16.8 NMAC requires can be stenciled into the steel or welded onto the steel plate's surface. The division may require a re-survey of the well location.

I. As soon as practical, but no later than one year after the completion of plugging operations, the operator shall:

(1) level the location;

(2) remove deadmen and other junk; and

(3) take other measures necessary or required by the division to restore the location to a safe and clean condition.

J. The operator shall close all pits and below-grade tanks pursuant to 19.15.17 NMAC.

K. Upon completion of plugging and clean up restoration operations as required, the operator shall contact the appropriate division district office to arrange for an inspection of the well and location.

[19.15.25.10 NMAC - Rp, 19.15.4.202 NMAC, 12/1/2008]

19.15.25.~~11~~12 REPORTS FOR PLUGGING AND ABANDOMENT:

A. The operator shall file form C-105 as provided in 19.15.7.16 NMAC.

B. Within 30 days after completing required restoration work, the operator shall file with the division a record of the work done on form C-103 as provided in 19.15.7.14 NMAC.

C. The division shall not approve the record of plugging or release a bond until the operator has filed necessary reports and the division has inspected and approved the location.

[19.15.25.11 NMAC - Rp, 19.15.4.202 NMAC, 12/1/2008]

19.15.25.~~12~~13 APPROVED TEMPORARY ABANDONMENT:

A. The division may place a well in approved temporary abandonment for a period of up to five years after review of the evidence and tests required by Section 19.15.25.13 and Section 19.15.25.14 [current] and upon a demonstration from the operator that the well will be used for beneficial use within the approved period of temporary abandonment. The operator's demonstration shall include an explanation why the well should be placed in temporary abandonment, how the well will be put to beneficial use in the future ~~including supporting technical and economic data,~~ a plan that describes the ultimate disposition of the well, the time frame for that disposition, and any other information the division determines appropriate, including a current and complete well bore diagram; ~~geological evidence; geophysical data; well casing information; waste removal and disposition; production engineering; geophysical logs, e.g., cement bond logs, caliper logs, and casing inspection logs; and health, safety, and environmental information~~. If the division denies a request, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

B. Prior to the expiration of an approved temporary abandonment, the operator shall return the well to beneficial use under a plan the division approves, permanently plug and abandon the well and restore and remediate the location, or apply ~~for a new approval to temporarily abandon the well~~ to the division to extend temporary abandonment status ~~pursuant to the procedures for adjudicatory proceedings in 19.15.4 NMAC, except that in any such adjudicatory proceeding any interested person may intervene under 19.15.4.11.A NMAC~~. To continue in temporary abandonment, the operator must ~~demonstrate to the division that the well will be returned to beneficial use within the requested period of temporary abandonment~~, address ~~The request shall include documentation demonstrating~~ why the well should remain in temporary abandonment; address ~~documentation demonstrating~~ why the well was not brought back to beneficial use or plugged and abandoned during the period of temporary abandonment; address ~~documentation demonstrating~~ how the well will be put to beneficial use in the future, demonstrate ~~and supporting technical and economic data; a plan that describes the ultimate disposition of the well, the time frame for that disposition; and a health and safety plan demonstrating~~ the well's casing and cementing meet the requirements of Subsections B and C of Section 19.15.25.13 NMAC [current]; and any other information the division determines appropriate ~~and the operator has adequate monitoring procedures in place to ensure such requirements will be met. An extended term shall not exceed two additional years, upon which time the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.~~

C. An operator is limited to placing the following numbers of wells in approved temporary abandonment:

~~**A.**~~**(1)** one well, if the operator operates between one and five wells; or

~~**B.**~~**(2)** one-third of all wells (rounded to the nearest whole number), if the operator operates more than five wells.

D. Implementation schedule for existing wells.

(1) Inactive wells. Wells that are inactive as of [effective date of amendments] shall be returned to beneficial use, permanently plug or subject to a request to place the wells in temporary abandoned status within a year of [effective date of amendment]. ~~Wells that have been inactive for less than three years are eligible for temporary abandonment status. Wells that have been inactive for three or more years are not eligible for temporary abandonment status.~~

(2) Wells in approved temporary abandoned status. Any operator of a well in temporary abandoned status as of [effective date of amendments] shall apply to the division to extend temporary abandonment status in accordance with Subsection B of this Section prior to the date temporary abandonment status terminates. Unless an operator of a well has renewed a temporary abandonment in accordance with this Paragraph, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

(3) Wells in expired temporary abandoned status. Any operator of a well in expired temporary abandoned status as of [effective date of amendments] shall apply to the division to extend temporary abandonment status in accordance with Subsection B of this Section. Unless an operator of a well has renewed a temporary abandonment in accordance with this Paragraph, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

E. The timeframes Subsections A and B in this Section shall be implemented consistent with any applicable federal requirements.

[19.15.25.12 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008; A, 1/15/2019]

19.15.25.~~13~~14 REQUEST FOR APPROVAL AND PERMIT FOR APPROVED TEMPORARY

ABANDONMENT:

L. An operator seeking approval for approved temporary abandonment shall submit the request on form C-103 ~~a notice of intent~~ to seek approved temporary abandonment for the well setting forth the demonstration required in 19.15.25.12 NMAC and describing the proposed temporary abandonment procedure the operator will use. The operator shall not commence work until the division has approved the request. The operator shall give 24 hours' notice to the appropriate division district office before beginning work.

M. The division shall not approve a permit for approved temporary abandonment until the operator furnishes evidence demonstrating that the well's casing and cementing are mechanically and physically sound and in such condition as to prevent:

(1) damage to the producing zone;

(2) noncontainment of well bore fluids to the atmosphere or migration of hydrocarbons or water;

(3) the contamination of fresh water or other natural resources; and

(4) the leakage of a substance at the surface.

N. The operator shall demonstrate both internal and external mechanical integrity pursuant to Subsection A of 19.15.25.14 NMAC.

O. Upon successful completion of the work on the temporarily abandoned well, the operator shall submit a request for approved temporary abandonment to the appropriate division district office on form C-103 together with other information Subsection E of 19.15.7.14 NMAC requires.

P. The division shall not approve a permit for approved temporary abandonment until the operator provides financial assurance for the well that complies with Subsection D of 19.15.8.9 NMAC.

Q. The division shall specify the permit's expiration date.~~, which shall be not more than five years from the date of approval.~~

[19.15.25.13 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008; A, 1/15/2019]

19.15.25.~~14~~15 DEMONSTRATING MECHANICAL INTEGRITY:

R. An operator may use the following methods of demonstrating internal casing integrity for wells to be placed in approved temporary abandonment:

(1) the operator may set a cast iron bridge plug within 100 feet of uppermost perforations or production casing shoe, load the casing with inert fluid and pressure test to 500 psi surface pressure with a pressure drop of not more than 10 percent over a 30 minute period;

(2) the operator may run a retrievable bridge plug or packer to within 100 feet of uppermost perforations or production casing shoe, and test the well to 500 psi surface pressure for 30 minutes with a pressure drop of not greater than 10 percent over a 30 minute period; or

~~(3)~~ the operator may demonstrate that the well has been completed for less than five years ~~and has not been connected to a pipeline.~~

(4) Any isolation device used to test mechanical integrity pursuant to Subsection A of this Section shall remain in place for the duration of the temporary abandonment.

(5) The operator shall perform a caliper log and casing integrity log.

S. During the testing described in Paragraphs (1) and (2) of Subsection A of 19.15.25.14 NMAC the operator shall:

(1) open all casing valves during the internal pressure tests and report a flow or pressure ~~change~~ occurring immediately before, during or immediately after the 30 minute pressure test;

(2) top off the casing with inert fluid prior to leaving the location;

(3) report flow during the test in Paragraph (2) of Subsection A of 19.15.25.14 NMAC to the appropriate division district office prior to completion of the temporary abandonment operations; the division may require remediation of the flow prior to approving the well's temporary abandonment.

T. An operator may use any method approved by the EPA in 40 C.F.R. section 146.8(c) to demonstrate external casing and cement integrity for wells to be placed in approved temporary abandonment.

U. The division shall not accept mechanical integrity tests or logs conducted more than 12 months prior to submittal.

V. The operator shall record mechanical integrity tests on a chart recorder with a maximum two hour clock and maximum 1000 pound spring, which has been calibrated within the six months prior to conducting the test. Witnesses to the test shall sign the chart. The operator shall submit the chart, caliper log, and casing integrity log with form C-103 requesting approved temporary abandonment.

W. The division may approve other testing methods the operator proposes if the operator demonstrates that the test satisfies the requirements of Subsection B of 19.15.25.13 NMAC.

[19.15.25.14 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008]

19.15.25.~~15~~16 WELLS TO BE USED FOR FRESH WATER:

A. When a well to be plugged may safely be used as a fresh water well and the landowner agrees to take over the well for that purpose, the operator does not need to plug the well above the sealing plug set below the fresh water formation.

B. The operator shall comply with other requirements contained in 19.15.25.9 NMAC through 19.15.25.11 NMAC regarding plugging, including surface restoration and reporting requirements.

C. Upon completion of plugging operations, the operator shall file with the division a written agreement signed by the landowner whereby the landowner agrees to assume responsibility for the well. Upon the filing of this agreement and division approval of well abandonment operations, the operator is no longer responsible for the well, and the division may release bonds on the well.

[19.15.25.15 NMAC - Rp, 19.15.4.204 NMAC, 12/1/2008]

HISTORY of 19.15.25 NMAC:
History of Repealed Material: 19.15.4 NMAC, Plugging and Abandonment of Wells (filed 11/29/2001) repealed 12/1/2008.

NMAC History:
19.15.4 NMAC, Plugging and Abandonment of Wells (filed 11/29/2001) was replaced by 19.15.25 NMAC, Plugging and Abandonment of Wells, effective 12/1/2008.

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EXHIBIT B

Self-Affirmed Statement of Tiffany A. Wallace

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

WESTERN ENVIRONMENTAL LAW CENTER, et al.
PETITIONERS.

CASE NO. 24683

SELF-AFFIRMED STATEMENT OF TIFFANY A. WALLACE

1. My name is Tiffany A. Wallace and I am employed by OXY USA Inc. ("OXY"). I am officed in Santa Fe, New Mexico, and my current duties include managing policy and externals affairs for Oxy in the lower 48 states, including New Mexico.

2. I am familiar with the application filed in this matter, the proposed amendments to existing rules, and Oxy's modifications to the proposed rule amendments.

BACKGROUND

3. I have previously testified before the New Mexico Oil Conservation Commission in my capacity as the Deputy Director of the New Mexico Oil Conservation Division ("NMOCD"). My testimony addressed the development, implementation and overview of the "Venting and Flaring Rules" enacted under 19.15.27 and 19.15.28.

4. I am a petroleum engineer, receiving an M.S. in Petroleum Engineering from Texas A&M University. I have held several engineering and leadership positions in the oil and gas industry for over 20 years before joining the NMOCD in 2020. Prior to joining the NMOCD, I was the development director for Marathon Oil Company overseeing oil and gas assets in the Delaware Basin in New Mexico. My responsibilities in that role included managing over 100

employees, including subsurface geoscience, reservoir engineering, planning-type support groups, production engineering, operations, and regulatory groups.

5. From April 2020 through January 2023, I was the deputy director of the NMOCD. My duties included managing the NMOCD engineering and environmental staff, rulemaking, industry guidance, compliance, and budgets. During this time the NMOCD enacted the Venting and Flaring rules, updated the spill rules, converted to digital files, created and implemented induced seismicity operational protocol and several process improvement efforts. As a result of my employment with the NMOCD, I am familiar with the NMOCD's statutory role of preventing waste and protecting correlative rights, interpreting and implementing the Oil and Gas Act and NMOCD regulations, and the process of enacting new regulations.

PROPOSED CHANGES TO 19.15.8 (FINANCIAL ASSURANCE - WELC EX. 1-C)

6. The current rule addressing financial assurance requires financial assurance for "active wells" (subpart C) and "inactive wells" (subpart D). For "active wells," current subpart 8.9(C) provides New Mexico operators with two financial assurance options:

- The first option allows a one-well financial assurance that starts at $25,000 plus $2 per foot of projected depth.
- The second option allows an operator to elect a blanket financial assurance in a graduated amount based on four ranges of active wells managed by the operator (1-5 wells, 11-50 wells, 51-100 wells, and over 100 wells).

7. Subpart 8.9(D) addresses the financial assurance for "inactive wells," which includes wells that "have been in temporarily abandoned status for more than two years." Existing subpart 8.9(D) provides similarly structured increased financial assurance options:

- The first option allows a one-well assurance that commences at $25,000 plus $2 per foot of projected depth.
- The second option allows an operator to elect blanket financial assurance in graduated amounts based on four ranges of inactive wells managed by the operator (1-5 wells, 6-10 wells, 11-25 wells, and over 25 wells).

8. Oxy does not object to WELC's proposal to increase the required financial assurance for active or inactive wells. However, as noted in Oxy's prehearing statement, WELC's proposal to create a new category of financial assurance for what it defines as "marginal wells" and WELC's effort to remove the two-year period for wells in temporarily approved status to remain under an operator's active blanket financial assurance are improper.

A. The New "Marginal Wells" Financial Assurance Proposal

9. WELC seeks to define "marginal well" and impose a new financial assurance requirement for these active wells that (a) removes them from the $250,000 blanket well financial assurance provided in Section 70-2-14, and (b) requires instead a $150,000 "one-well" financial assurance "for each marginal well." See WELC Ex. 1-A at p. 6 (proposing a definition of "marginal well") and WELC Ex. 1-C at p. 2 (proposed 19.15.8.9.D).

10. As reflected in WELC's proposed definition, "marginal wells" are producing active wells. Nonetheless, WELC's proposal removes these wells from the blanket financial assurance for active wells and requires instead financial assurance in the amount of $150,000 for each of these active wells. As noted in Oxy's prehearing statement, WELC proposal to carve out

"marginal" wells from the statutory restriction on financial assurance is not authorized by the legislature.

11. Wells that WELC considers "marginal" (defined by WELC as producing less than 1,000 barrels of oil equivalent within a consecutive 12-month period) should normally not be a concern. In my opinion, these wells remain marketable with yearly production fluctuations based on the price of oil, the cost of operations, and timetables for production enhancement workover activities. Wells that WELC considers "marginal" can in many instances be subject to workover operations or other downhole stimulations to improve production, thereby making them attractive options over the drilling of new wells.

12. In my opinion, any concern with "marginal wells" can be addressed by the notice of "no beneficial use" proposed by WELC under 19.15.25. *See* WELC Ex. 1-E at p. 1. As proposed by WELC, a notice of no beneficial use is triggered "if, in a consecutive 12-month period, the well has not produced at least 90 days and has not produced at least 90 barrels of oil equivalent." *Id.* This notice and subsequent required response by the affected operator can address any concerns raised by marginal wells without running afoul of the legislative directive in Section 70-2-14(A) to keep blanket financial assurance at or below $250,000.

13. As a former regulator of the oil and gas industry, I see no need to enact a new financial assurance category for active marginal wells that is inconsistent with Section 70-2-14(A) when an alternative method exists to address any concerns with active marginal wells.

14. In addition, WELC's proposal creates a circumstance where an operator will be constantly adjusting on a monthly basis the financial assurance for "marginal wells" depending upon the number of wells falling in or out of the proposed "marginal well" production threshold.

15. Financial assurance is routinely obtained from third-party companies. A constant fluctuation in the financial assurance required for "marginal wells" will require operators to constantly update the financial assurance from these third-party vendors. This will create an unnecessary, heavy administrative burden for both the operator and the Division, especially for larger companies with more well activity. Oxy proposes that if the marginal well category stands, that financial assurance reviews for these wells be adjusted annually.

B. WELC's Proposed Financial Assurance For Inactive Wells And Wells In Approved Temporary Abandonment Status.

16. Oxy does not object to WELC's proposal to increase the financial assurance required for inactive wells and wells in approved temporarily abandoned status for more than two years. However, as noted in Oxy's prehearing statement, WELC's proposal to require additional financial assurance for wells in approved temporary abandonment status for less than two years does not comply with Section 70-2-14.

17. Current rule 19.15.8.9.D provides:

> D. Inactive wells. An operator shall provide financial assurance for wells that are covered by Subsection A of 19.15.8.9 NMAC *that have been in temporarily abandoned status for more than two years* or for which the operator is seeking approved temporary abandonment pursuant to 19.15.25.13 NMAC in one of the following categories: [emphasis added]

18. The italicized language in the current rule is consistent with Section 70-2-14(A), which authorizes increased financial assurance "on any well that has been held in a temporarily abandoned status for more than two years."

19. It is important to note that a well in approved temporary abandoned status has been vetted by the Division after a review of the evidence and testing on the mechanical integrity of the casing and cement required by current Rules 19.15.25.13 and 19.15.25.14.

20. Putting aside the legislative instructions in Section 70-2-14(A), I see no reason to change the current rule by removing wells in approved temporary abandoned status for less than two-years from the $250,000 blanket financial assurance authorized by Section 70-2-14(A).

C. WELC's Proposed Removal Of Ability To File A "Replacement Blanket Financial Assurance"

21. Rule 19.15.8.9.D currently allows an operator to "file a replacement blanket financial assurance" when appropriate to cover additional active or inactive wells.

22. WELC has proposed to eliminate this provision for unknown reasons.

D. WELC's Proposed CPI Adjustment

23. WELC has proposed a subpart G that provides a yearly increase in the "financial assurance amounts" proposed by WELC in all previous subsections. *See* Ex. 1-C at p. 2, proposed subpart G.

24. As noted in Oxy's prehearing statement, WELC's proposed CPI adjustment cannot apply to blanket financial assurances for active wells that that are already at the statutory limit of $250,000 set forth in Section 70-2-14.

25. Oxy's modifications limit the applicability of the CPI adjustment to the financial assurance for inactive wells and wells in a temporarily abandoned status for more than two years.

PROPOSED CHANGES TO 19.15.9 (WELL OPERATOR PROVISIONS – WELC EX. 1-D)

26. Oxy supports rule revisions designed to ensure new operators seeking authority to operate, and existing operators acquiring new assets in New Mexico, do not have a history of financial assurance forfeitures in other states.

27. Oxy has proposed modifications to 19.15.9.8 (operator registration) and 19.15.9.9 (change of operator) that I believe provide a certification that can be met by large operators, is administratively efficient and provides the Division with information to gauge whether an operator has had difficulty meeting financial obligations in other states.

A. WELC's Proposed Annual 25% Interest Certification By All Operators

28. Rule 19.15.9.8 currently allows the Division to deny the registration of an operator where "an officer, director partner or person with an interest exceeding 25 percent" was involved in a similar capacity with an operator not in compliance with the requirements listed in 19.15.5.9.A.

29. WELC seeks to add a requirement to disclose these relationships upon the registration of a new operator or in connection with the transfer of operations to a new operator. *See* Ex. 1-D at pp. 1 and 2 (proposed 9.8.B and 9.9.B). Oxy does not oppose this disclosure but does oppose WELC's proposed annual frequency.

30. WELC has proposed to modify existing 19.15.9.8.D to require all operators to certify to the Division "annually" whether "an officer, director partner or person with an interest exceeding 25 percent" was involved in a similar capacity with an operator not in compliance with the requirements listed in 19.15.5.9.A. *See* Ex. 1-D at p. 2 (proposed 9.8.E).

31. In my opinion, this annual certification by all operators in New Mexico is unwarranted and will place an unnecessary burden on the Division to monitor and review this annual requirement.

32. The goal of preventing operators whose principals consist of "bad actors" from entering or continuing to operate in New Mexico is accomplished by examining the principals of an operator at the time of registration or at the time a transfer of assets to a new operator is requested. Disclosure of relationships at the time of registration or transfer is a tool to assist in determining whether the principals of the new operator have a consistent inability to meet the requirements in 19.15.5.9.A.

33. In contrast, an annual certification and monitoring of the principals of existing operators, including large operators like Oxy, is an unnecessary "paperwork" burden on the Division and operators. Any problems with an existing operator's compliance with Rule 19.15.5.9.A can be addressed by the enforcement actions the Division is authorized to take under 19.15.5.10.

B. WELC's New Proposed Certification For Operator Registration Or Change Of Operator.

34. For both Operator Registration (subpart 9.8) and Change of Operator (subpart 9.9), WELC has proposed to require the following new certification:

> "certification by an officer, director, or partner that the new operator is in compliance with federal and state oil and gas laws and regulations in each state in which the new operator does business;"

See Ex. 1-D at pp. 1 and 2 (proposed 9.8.B and 9.9.B). Corresponding changes are proposed in the provisions addressing the Division's approval of new operators or a request to change operators. *Id.* (proposed 9.8.C(2) and 9.9(C)(3)).

35. Oxy does not oppose a certification designed to avoid registration or transfer of assets to an operator that has experienced problems in other states. However, WELC's proposed

certification goes too far and cannot be met by companies such as Oxy that operate in numerous states under various state and federal regulatory frameworks.

36. Oxy operates in numerous states and jurisdictions. Each state has oil and gas regulations that contain various requirements, including:

- deadlines for filing forms and reports;
- deadlines for reporting incidents; and
- well-site and facility signage.

37. As a practical matter, large companies like Oxy operating in multiple states can never certify that at a particular point in time the company is in full compliance with *all* filing, reporting, signage or similar requirements in each state in which it operates.

38. Further, Oxy has received notices from state and federal agencies of alleged filing, reporting, signage or similar deficiencies that upon investigation turned out to be incorrect.

39. To meet the goal of the proposed certification, Oxy has met with the Division and WELC and proposes the following whenever a new operator seeks to register in New Mexico or change the existing operator of New Mexico assets:

> Prior to commencing operations, an operator shall provide to the division a certification by an authorized official that the new operator is not subject to any forfeiture demands from any state or federal agency, has not forfeited financial assurance to any state or federal agency, and does not have unresolved adjudicated orders or unresolved settlement agreements for any state or federal violations in any domestic jurisdiction in which the new operator does business.

40. In my opinion, this proposed certification is feasible for new operators and will provide the Division with the information it needs to examine potentially problematic operators.

C. WELC's Removal Of Agreed Compliance Orders For New Operators.

41. WELC has proposed to remove subsection C(2) of existing Rule 19.15.9.9 which states the Division may deny a change of operator if the new operator has not agreed on a schedule

to complete the requirements imposed on the existing operator by an agreed compliance order. *See* WELC Ex. 1-D at p. 2.

42. The reason for this change is unknown, but Oxy notes WELC has proposed adding a new subsection E to 19.15.9.9, which appears to contain a similar provision. *Id.* at p. 3.

43. Oxy believes the existing subpart C(2) is sufficient but does not oppose the proposed deletion so long as the new subsection E is adopted by the Commission.

PROPOSED CHANGES TO 19.15.25 (PLUGGING AND ABANDONEMENT OF WELLS – WELC EX. 1-E)

A. Changes to Timeframe for Action on Inactive Wells

44. WELC has proposed to shorten the period for action under 19.15.25.8.B from 90 to 30 days, and to remove the word "continuously" from subpart B(3). *See* WELC Ex. 1-E at p. 1. Absent a clear need to change this time period, the rules should not be modified.

45. The longstanding 90-day period can be needed for operators to review facts and circumstances and make appropriate decisions, particularly when the time for action under subpart 25.8 is triggered by the suspension of drilling operations or a determination that the well is no longer usable for a beneficial purpose While at times a shorter period may be possible, it is not always the case and the longer period should be retained.

46. These provisions were enacted by the Commission after an extensive public hearing and testimony. Operators and the Division have become accustomed to these timelines and Oxy is not aware of any problems posed by these timelines.

47. It is also unclear why WELC seeks to remove the word "continuously" from subpart B(3). The current rule contains this provision to clarify that periods of inactivity within a year do not require action by an operator under this provision.

48. Any concerns about the inactive state of a well during a period of one year can be addressed by the inquiry provided by WELC's proposed 19.15.25.9 "Presumptions of No Beneficial Use." Subpart A of WELC's proposed rule triggers action by the Division if a well "has not produced for 90 days and has not produced at least 90 barrels of oil equivalent" within a 12-month period.

B. WELC's Proposed "Presumptions Of No Beneficial Use"

49. Oxy supports WELC proposed 19.15.25.9 entitled "Presumptions Of No Beneficial Use" with a few modifications. *See* WELC Ex. 1-E at p. 1. In my opinion, this is an efficient way to address wells whose level of activity or production raises concerns about whether those wells continue to serve a potentially beneficial purpose.

50. Oxy's minimal suggested changes to this new provision are designed to provide (a) the Division with flexibility to address a variety of circumstances, and (b) avoid the need for large operators such as Oxy to submit documentation about its "capitalization or reasonably projected revenue" each and every time the Division inquiries about the viability of a particular well.

51. Indeed, the current mandatory ("shall") requirement to submit this information in every circumstance, including "demonstrating that the well is reasonably projected to produce in paying quantities," is not applicable to injection wells, monitoring wells, or wells that are part of an enhanced oil recovery project.

52. Oxy suggests that WELC's proposed list of information remain in the proposed rule, but as an example of what an operator "may" submit to the Division or what the Division "may" request based on the circumstances of a particular case.

53. With this proposed provision, Oxy does not see a need to define "beneficial purpose" or "beneficial use" as proposed by WELC. *See* WELC Ex. 1-A at p. 2. Instead, leaving

the term undefined will allow the Division and operators flexibility when addressing a notice of no beneficial use from the Division under proposed 19.15.25.9.

C. WELC's Proposed New Language For Approved Temporary Abandonment

54. The current rules governing the placement of wells in a temporarily abandoned status provide:

- Current Rule 19.15.25.12 allows the Division to place the wells in a temporarily abandoned status for "up to five years" (which means the Division can set a shorter initial period) and allows the Division to extend the status for good cause shown. It is important to note that this current rule limits the number of wells an operator can have in approved temporary abandonment status.
- Current Rule 19.15.25.13 identifies the evidence an operator must submit on the well's casing and cementing when seeking approval of temporary abandonment status.
- Current Rule 19.15.25.14 identifies the mechanical integrity tests an operator must perform on the well before seeking approval of temporary abandonment status.

55. Oxy is not aware of any deficiency in this process that has caused concerns with the integrity of wells in approved for temporary abandonment status.

56. Nonetheless, WELC has a proposal to split what is now Rule 19.15.25.12 into a subpart A that addresses the initial request for temporary abandonment status, and a subpart B that addresses requests to extend that status. *See* WELC Ex. 1-E at p. 3. However, some of WELC's proposed changes to 19.15.25.12 are unnecessary and take discretion away from the Division.

1. WELC's proposed mandatory submissions for requests to approve temporary abandonment status.

57. Oxy does not oppose WELC's proposal to require operators seeking approved temporary abandonment to explain the purpose of the request, the future use of the well, the period needed for that future use and related information. *See* WELC Ex. 1-E at p. 3 (at the top, proposals for subpart A).

58. However, WELC proposes to require a litany of mandatory submissions ("shall") to the Division for every application. *Id.* These mandatory submissions include:

- "supporting technical and economic data"
- "geologic evidence"
- "geophysical data"
- "well casing information"
- "waste removal and disposition"
- " production engineering"
- "geophysical logs, e.g., cement financial assurance logs, caliper logs, and casing inspection logs"
- "health, safety, and environmental information."

59. Many of these proposed mandatory submissions are vague (i.e. "supporting technical and economic data"; "geologic evidence"; "health, safety, and environmental information"). The proposed mandatory submissions include proprietary information ("geophysical data"). Other proposed mandatory submissions have little to do with placing a well in approved temporary abandonment status (i.e. "waste removal and disposition"; "production engineering"). Still others are addressed by what is currently required by Rules 19.15.25.13 and 19.15.25.14, thereby creating confusion ("well casing information," "geophysical logs, e.g., cement financial assurance logs, caliper logs, and casing inspection logs").

60. Oxy's proposed modifications eliminate these mandatory submissions and instead refer the operator to the requirements in current Rules 19.15.25.13 and 19.15.25.14. Indeed,

WELC's proposed changes to Subpart B likewise refer to these existing provisions. *See* WELC Ex. 1-E at p. 3.

61. Oxy's proposed modifications further retain WELC's suggestion that the operator initially:

- Provide the evidence and tests on mechanical integrity of the casing and cementing currently required by 19.15.25.13 and 19.15.25.14;
- Explain why the well should be placed in temporary abandonment and how the well will be put to beneficial use in the future;
- Provide a plan that describes the ultimate disposition of the well and the time frame for that disposition;
- Provide the Division with any other information it deems appropriate, including a current and complete well bore diagram.

62. Oxy's proposed modifications further require any operator seeking to extend the initial term of approved temporary abandonment to:

- Demonstrate the well casing and cement continue to meet the mechanical integrity requirements in 19.15.25.13(B) and (C)
- Address why the well was not brought back to beneficial use or plugged and abandoned during the initial period of temporary abandonment;
- Address why the well should remain in temporary abandonment and how the well will be put to beneficial use in the future, and
- Provide the Division with any other information it determines appropriate.

63. In my opinion, Oxy's proposed modifications will allow the Division to tailor the information required to the unique circumstances presented by a particular well, avoid the mandatory submission of unnecessary and proprietary information, and ensure the Division has the information it needs for each particular request.

2. WELC's proposed procedure and arbitrary time limit for an extension of temporary abandonment status.

64. WELC has proposed that (a) all requests for an extension of approved temporary abandonment status proceed to an adjudicatory hearing, (b) the Commission eliminate the longstanding requirement that an interested party demonstrate "standing" to intervene in an adjudicatory hearing, and (c) the Division is prohibited from extending the temporary abandonment status beyond an additional two-year period.

65. With respect to the proposed mandatory adjudicatory hearing, a review of the Division's current dockets for adjudicatory hearings demonstrates the Division is at capacity both in schedule and in order issuance. Delays in hearing and orders could create potential compliance issues with wells awaiting hearing or decision.

66. I see no reason to further burden that docket with requests for an extension of an approved temporary abandonment status. Given what must be submitted with an application to extend the period, the Division can efficiently and effectively continue to address those requests with administrative applications. If warranted, the Division has the authority to move administrative applications to an adjudicatory hearing.

67. WELC's companion request that the Commission eliminate the requirement that an interested party demonstrate "standing" to intervene in an adjudicatory hearing for these particular requests is likewise unnecessary for the reasons set forth in Oxy's prehearing statement. In my opinion, there is nothing unique about requests for an extension of a temporary abandonment status that warrants departure from the traditional "standing" requirement.

68. WELC has also proposed to tie the Division's hands by imposing an arbitrary two-year limit on any extension of an approved temporary abandonment status. *See* WELC Ex. 1-E at p. 3 (last sentence of proposed subpart B). WELC similarly seeks to prohibit the Division from

approving temporary abandonment status for any well that has been inactive for more than three years. *See* WELC Ex. 1-E at p. 3 (proposed subpart D(1)).

69. First, as proposed by WELC, the two-year extension limitation applies whether the Division allows one-year or a five-year initial period of approved temporary abandonment. Accordingly, the approved period for approved temporary abandonment could be as short as three years.

70. Second, Oxy believes the Division should retain full discretion on the eligible wells and length of time for approved temporary abandonment status to accommodate known and unknown present and future development situations.

71. For example, Kelley Montgomery's statement explains that Oxy has existing and planned enhanced oil recovery projects that encompass large blocks of land and take years to implement. These projects are dependent on an inventory of wells in approved temporary abandonment across the approved project area that can be utilized as injection, monitoring or production wells as the enhanced oil recovery project gradually expands across the project area.

72. Requiring operators such as Oxy to plug existing wells that have maintained casing and cement integrity after an arbitrary period of time is a waste of valuable assets and may require the unnecessary drilling of new wells to implement enhanced oil recovery projects, thereby increasing surface disturbance.

73. Enhance oil recovery projects are just one example of the type of innovative oil and gas production mechanisms that require an inventory of wells in approved temporary abandonment status. The future likely holds other types of production mechanisms that will similarly be able to utilize existing wells.

74. In my opinion, the Division must retain the authority to grant extensions of approved temporary abandonment status to allow for innovative development projects and investment in new technologies.

D. WELC's Proposed Implementation Schedule For Existing Wells

75. WELC has proposed an implementation schedule for the applicability of the proposed amendments to existing wells. *See* WELC Ex. 1-E at p. 3 (proposed subpart D).

76. WELC's implementation schedule recognizes operators may have wells in an inactive status for over three years due to the allowances provided by the current rules.

77. WELC has proposed to remove the ability of operators to apply with the Division to place inactive wells into a temporary abandoned status if they "have been inactive for three or more years…". *See* WELC Ex. 1-E at p. 3 (proposed subpart D(1)).

78. Oxy disagrees with this approach, particularly where wells have been in an inactive status for more than three years in compliance with the allowances provided by the current rules.

79. Oxy's proposed modifications will allow an operator to apply with the Division to place a well in temporary abandoned status so long as that operator files the request within a year of the enactment of the proposed rules. Oxy believes this time frame will allow operators to take the appropriate action on currently allowed inactive wells in a timely manner.

80. Oxy further notes that once the application is filed, it is up to the Division whether to grant that application upon receipt of the mechanical integrity information required by current Rules 19.15.25.13 and 19.15.25.14, and the other information Oxy has proposed in its modifications to the process for applying for approved temporary abandonment status.

81. I affirm under penalty of perjury under the laws of the State of New Mexico that the foregoing statements are true and correct. I understand that this self-affirmed statement will be

used as written testimony in this case. This statement is made on the date next to my signature below.

/s/ Tiffany A. Wallace	8/8/25
Tiffany A. Wallace	Date

EXHIBIT C

Self-Affirmed Statement of Kelley A. Montgomery

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

WESTERN ENVIRONMENTAL LAW CENTER, et al.
PETITIONERS.

CASE NO. 24683

SELF-AFFIRMED STATEMENT OF KELLEY A. MONTGOMERY

1. My name is Kelley A. Montgomery and I am employed by OXY USA Inc. ("OXY"). I am officed in Houston, Texas and my current duties include Vice President of our Air Programs. I spent the previous 10 years with Oxy as Regulatory Director for the Permian.

2. I have previously testified before the New Mexico Oil Conservation Commission in my capacity as a Regulatory Manager. My testimony addressed new and expanded Enhanced Oil Recovery (EOR) projects.

3. I have a BS in Mechanical Engineering and am a registered Professional Engineer in Texas. I have 34 years of experience with Oxy in the Permian Basin as a production engineer, environmental engineer and regulatory director.

4. I understand the applicant in this matter has proposed to limit the Division's ability to extend the time for wells in an approved temporary abandonment status to no longer than two additional years beyond the initial term. *See* WELC Ex. 1-E at p. 3 (last sentence of proposed subpart B). WELC similarly seeks to prohibit the Division from approving temporary abandonment status for any well that has been inactive for more than three years. *See* WELC Ex. 1-E at p. 3 (proposed subpart D(1)).

5. These proposed limitations will have a negative impact on Oxy's existing and planned enhanced oil recovery projects in New Mexico. Oxy believes the Division should retain full discretion on the eligible wells and length of time for approved temporary abandonment status to accommodate known and unknown present and future development technologies.

6. For example, Oxy's existing and planned enhanced oil recovery projects encompass large blocks of land and take years to fully develop. These projects often substantially benefit from an inventory of approved temporarily abandoned wells across the approved project area that can be utilized as injection or production wells as the enhanced oil recovery operations gradually expand across the project area.

7. Oxy's current approved enhanced oil recovery projects encompass over 15,000 acres and involve 523 wells that have been or will be converted over time to injection or producing wells.

8. These projects can take many years to implement due to the necessary infrastructure, the need to study reservoir behavior and changing economics. Often the project area can expand and require additional regulatory approvals.

9. The economics of these projects are improved if an operator has an inventory of wells in approved temporary abandonment status for future use, such as injection, production or monitoring wells.

10. Prematurely plugging wells in approved temporary abandonment status that remain viable for use in enhanced oil recovery or similar development projects will likely require new wells to be drilled. These new drills will not only lower the economic returns on these economically sensitive projects, but also create additional surface and environmental disturbance.

11. Technology is ever changing, fields continue to evolve towards secondary and tertiary recovery needs, and tertiary recovery techniques are on horizon for more operators and more acreage. Having a regulatory process that allows wells with mechanical integrity to remain in approved temporary abandonment status will promote these recovery projects, avoid the premature plugging of viable wellbores, and avoid wasting recoverable hydrocarbons.

12. It is important to note that the existing rules, and Oxy's proposed modifications, require operators seeking an extension of approved temporarily abandonment status to demonstrate, among other things, the continued mechanical integrity of the casing and cement in the subject well. The existing rules and Oxy's proposed modifications allow the Division to tailor the time frame and conditions of approval to particular circumstances. If a well does not meet these mechanical integrity requirements or if the well is deemed no longer necessary for the development project, the Division can require the wells to be plugged.

13. For example, in Oxy's approved projects, we routinely assess and plug wells that have been determined over time to be no longer necessary to the enhanced oil recovery efforts.

14. Enhanced oil recovery projects are just one example of the type of innovative oil and gas production mechanisms that require an inventory of wells in approved temporarily abandonment status. The future likely holds other types of production mechanisms that will similarly be able to utilize these wells.

15. In my opinion, the Division must retain the authority to grant extensions of approved temporary abandonment status in appropriate intervals with supported and approved plans and well testing to allow for innovative development projects and investment in new technologies.

16. I affirm under penalty of perjury under the laws of the State of New Mexico that the foregoing statements are true and correct. I understand that this self-affirmed statement will be used as written testimony in this case. This statement is made on the date next to my signature below.

/s/Kelley A. Montgomery	8/8/25
Kelley A. Montgomery	Date

ATTACHMENT

9

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

OXY'S NOTICE OF REBUTTAL TESTIMONY AND EXHIBITS

OXY USA Inc., a party in the above-referenced case, gives notice that it is filing the attached rebuttal testimony and exhibits pursuant to 19.15.3.11.B NMAC and the Hearing Officer's Amended Prehearing Procedural Order in this matter.

Attached hereto is the complete rebuttal testimony of Oxy's rebuttal witnesses along with related exhibits. Their qualifications and a description of their education and experience was previously provided with their direct testimony and are unchanged. Presentation of a summary of their rebuttal testimony is expected to take approximately 30 minutes for each rebuttal witness.

Respectfully submitted,

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By: _____

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ATTORNEYS FOR OXY USA INC.

CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2025, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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EXHIBIT B

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

WESTERN ENVIRONMENTAL LAW CENTER, et al.
PETITIONERS.

CASE NO. 24683

SELF-AFFIRMED STATEMENT OF TIFFANY A. WALLACE

1. My name is Tiffany A. Wallace and I am employed by Oxy USA Inc. ("Oxy"). I am officed in Santa Fe, New Mexico, and my current duties include managing policy and externals affairs for Oxy in the lower 48 states, including New Mexico.

2. I am familiar with the application filed in this matter, the proposed amendments to existing rules, and Oxy's proposed modifications to the proposed rule amendments. I previously filed direct testimony in this matter in support of Oxy's proposed modifications to the proposed rule amendments on August 8, 2025 that was marked as Oxy Exhibit B. My qualifications were previously provided as part of my direct testimony filed in this case.

3. I have reviewed the testimony of the Oil Conservation Division's witness, Justin Wrinkle, and have prepared this rebuttal in response to specific statements set out below that reflect Mr. Wrinkle's opinion of the value of a "marginal well," as defined in the proposed rule.

4. Specifically, Mr. Wrinkle testifies that "marginal wells" have "low production, are aging, and hold little value as an asset other than the lease." *See* OCD Exhibit 7-0002 at lines 2-3. He further alleges that wells are often retained to hold leases or other reasons. *See id.* OCD Exhibit 7-0006 at lines 9-19.

5. While Mr. Wrinkle's testimony may accurately reflect the role of marginal wells in certain transactions, it is not always the case that marginal wells have value only for purposes of holding or conveying the underlying lease. Such testimony oversimplifies and overstates the role marginal wells sometimes play in oil and gas transactions or lease management as well as understates their potential value for workovers.

6. For instance, using only a few wells by way of example[1], Oxy has been able to improve overall production of wells using various workover operations or downhole stimulations.

a. Harroun 9 001: The Harroun well was categorized as a marginal well in 2022, but after re-frac operations, successfully produced thousands of additional barrels of oil in the following 12 months.

b. FNR 35 Fed 3H: The FNR well was categorized as a marginal well due to downhole mechanical problems, but after implementation of an artificial lift revision, its subsequent production is trending upward.

c. Similarly, the CC15 well was classified as marginal prior to Oxy's re-completion job, and that well more than doubled its prior level of production in just 6 months.

7. As evidenced by the data in Exhibit B-1, asserting that "marginal wells," as defined by the proposed rule, hold little value outside of holding the underlying lease paints these often highly marketable wells with far too broad of a brush. Prudent operators, including Oxy, should and do periodically review their active well inventory looking for opportunities to increase

[1] Graphs depicting well performance for these three wells are attached hereto as Oxy **Exhibit B-1**.

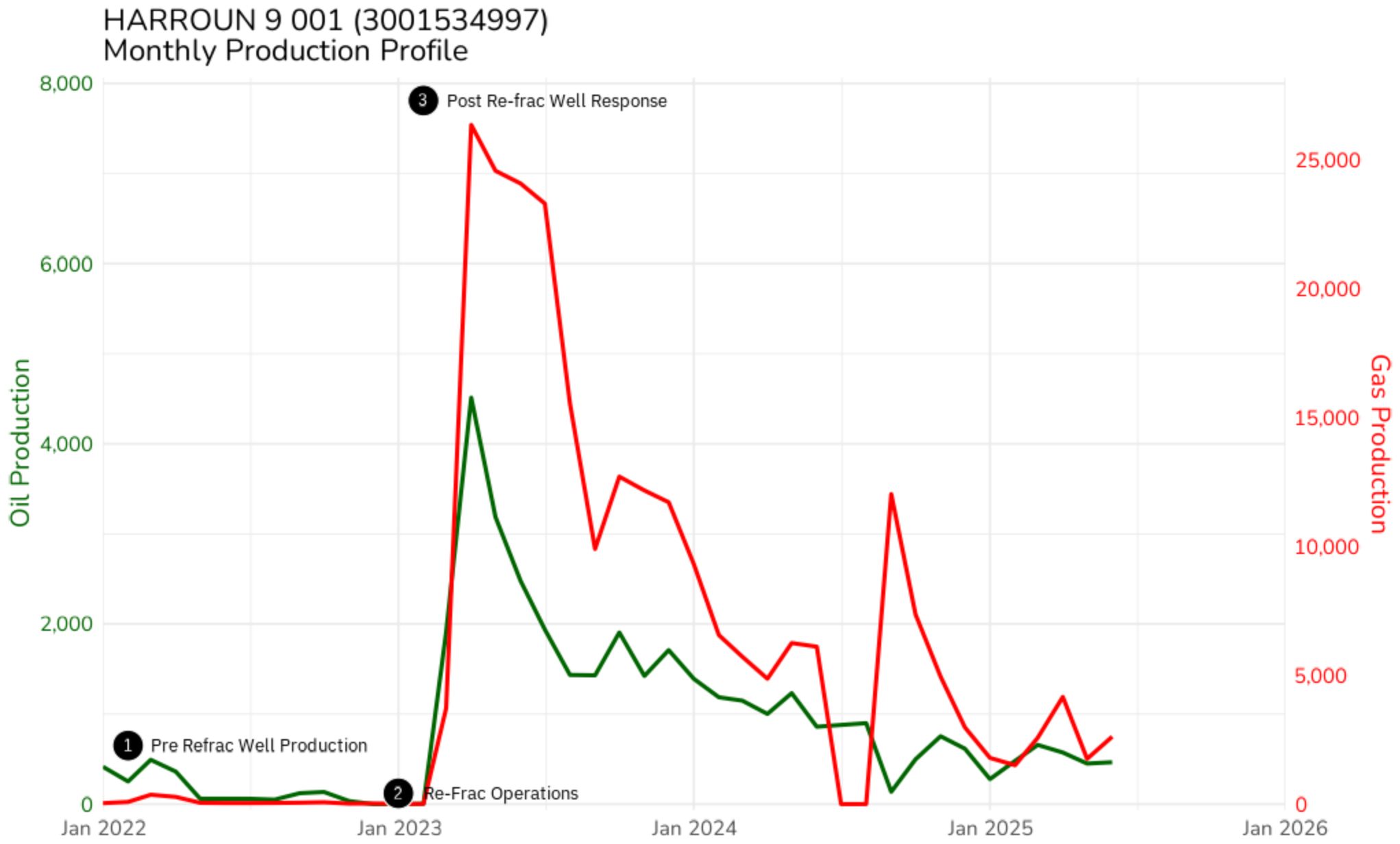
production in under-performing wells, such as wells that fall within the vast "marginal well" category proposed by WELC. Describing all wells capable of producing up to 1,000 barrels of oil equivalent within a consecutive 12-month period as being of "little value" is an overstatement that fails to account for the specific circumstances of a given well. Under the proposed rule, each "marginal" well, and its potential value or utility—either for continued production or some other valuable purpose, such as injection or enhanced oil recovery operations—must be evaluated on a case-by-case basis. The Division and Commission should take care to avoid over generalizing and discounting the State's often overlooked valuable and marketable well inventory, as it is their statutory responsibility to prevent waste and protect correlative rights.

8. The few examples highlighted above and found in Oxy's own inventory demonstrate that there are real and current opportunities to efficiently and effectively improve well production through existing well inventories without having to incur the cost and expense of drilling new wells and disturbing additional surface acreage. Additionally, for bigger and smaller operators alike, it can be cost prohibitive or even economically wasteful to attempt to redrill a well after plugging. Because the evaluation of marginal wells calls for such a fact specific inquiry, such wells should not be so easily written off as valueless.

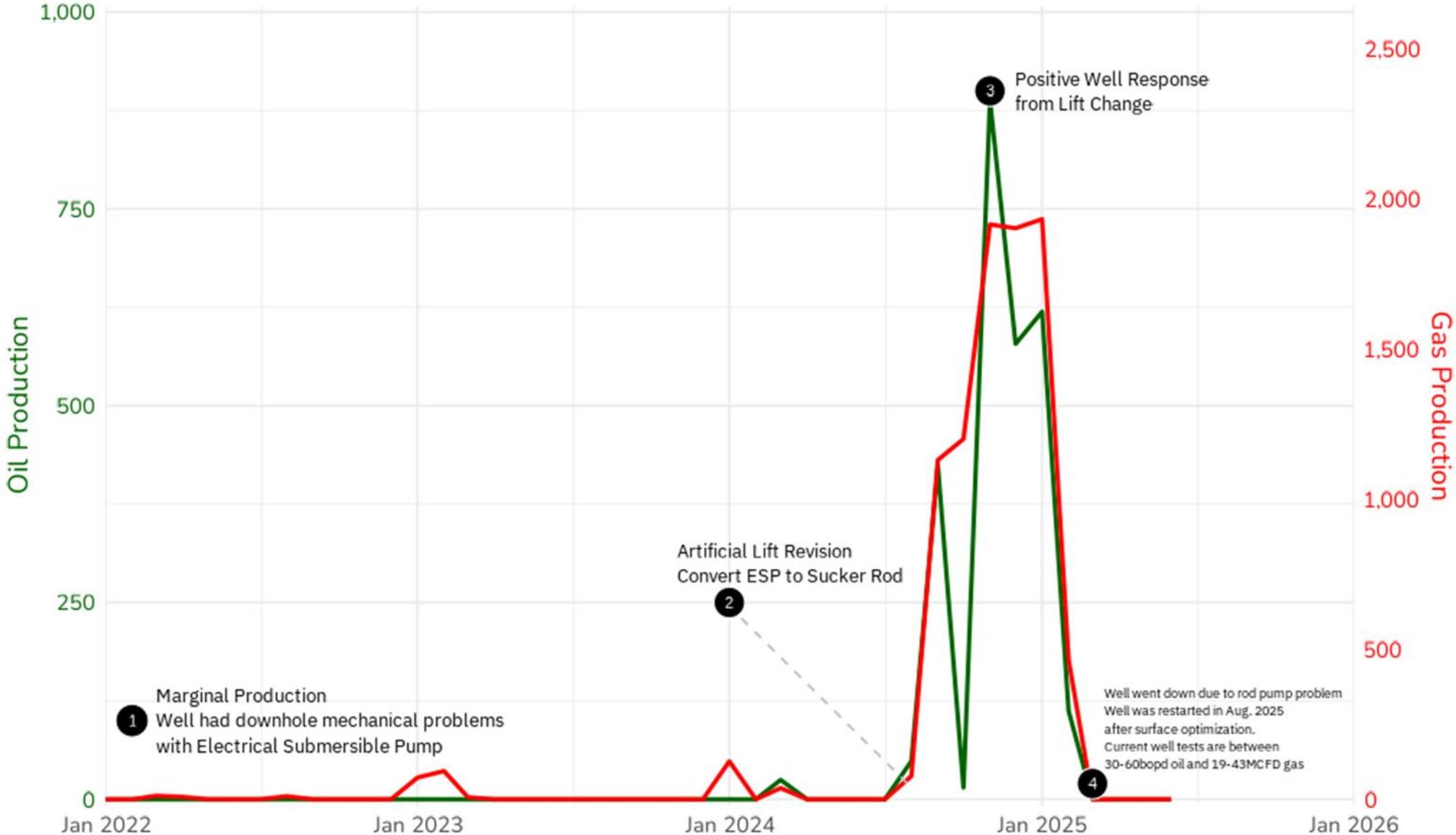
9. I affirm under penalty of perjury under the laws of the State of New Mexico that the foregoing statements are true and correct. I understand that this self-affirmed statement will be used as written testimony in this case. This statement is made on the date next to my signature below.

/s/ Tiffany A. Wallace	9/19/25
Tiffany A. Wallace	Date

EXHIBIT B-1


HARROUN 9 001 (3001534997)
Monthly Production Profile
Oil Production
Gas Production
8,000
6,000
4,000
2,000
0
25,000
20,000
15,000
10,000
5,000
0
Jan 2022
Jan 2023
Jan 2024
Jan 2025
Jan 2026
1 Pre Refrac Well Production
2 Re-Frac Operations
3 Post Re-frac Well Response

FNR 35 Fed 3H (3001542298)
Monthly Production Profile



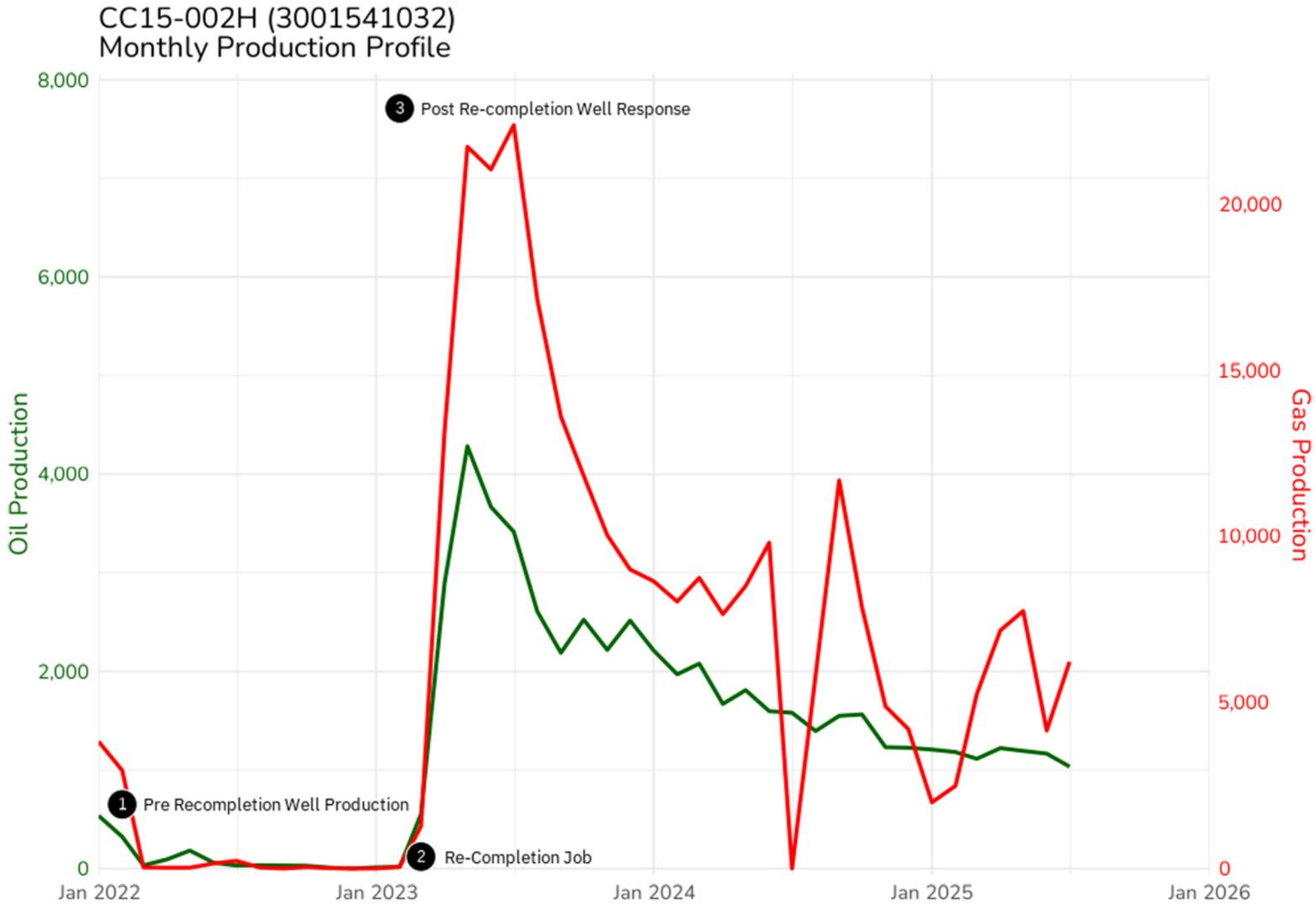

CC15-002H (3001541032)
Monthly Production Profile
8,000
6,000
4,000
2,000
0
Oil Production
20,000
15,000
10,000
5,000
0
Gas Production
3 Post Re-completion Well Response
1 Pre Recompletion Well Production
2 Re-Completion Job
Jan 2022
Jan 2023
Jan 2024
Jan 2025
Jan 2026

EXHIBIT C

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

WESTERN ENVIRONMENTAL LAW CENTER, et al.
PETITIONERS.

CASE NO. 24683

SELF-AFFIRMED STATEMENT OF KELLEY MONTGOMERY

1. My name is Kelley A. Montgomery and I am employed by OXY USA Inc. ("Oxy"). I am officed in Houston, Texas currently serving as Vice President of Air Programs and I spent the previous 10 years as Regulatory Director for the Permian.

2. I previously filed direct testimony in this matter on August 8, 2025 in support of Oxy's proposed modifications to the proposed rule amendments that was marked as Oxy Exhibit C. My qualifications were previously provided as part of my direct testimony filed in this case.

3. I have reviewed the testimony of WELC's witnesses Thomas Alexander and Adam Peltz and have prepared this rebuttal statement in response to certain issues raised in their testimony regarding the proposed rule amendments limiting the Division's ability to extend the time for wells in approved temporary abandonment status.

4. In support of placing non-discretionary limits on the Division's ability to manage wells in "temporary abandonment status," Thomas Alexander testifies that "[i]f a well has no present or future beneficial use, there is no good reason not to P&A the well." WELC Ex. 3 at 54, lines 1-2; *see also id.* at 46, lines 17-18. He states that "Placing a well in temporary abandonment with no evidence for beneficial use just delays the

inevitable and creates a risk that the well will become orphaned and the State will become responsible for plugging, abandonment, and site remediation." *Id.* at 46, lines 18-21.

5. In support of the proposed rule's eight-year limit for "temporary abandonment status," he states that allowing wells to stay in that status "indefinitely . . . makes no sense and is not in the best interest of preserving resources or the safety of the public and environment." *Id.* at 88, lines 1-2. Accordingly, WELC proposes to require operators to either return all wells in temporary abandonment status after a period of seven years (an initial 5-year term plus up to a potential additional two years) "to beneficial use under a plan the division approves" or "[to] permanently plug and abandon the well and restore and remediate the location." *See* WELC Ex. 1-E, proposed 19.15.25.13.B NMAC.

6. The data Mr. Alexander cites to support this rule modification—and elimination of all Division discretion on the management and handling of wells that have been in temporary abandonment status for seven years—is based on a subset of wells from the Division's public database and includes only production data from 2010 to 2024 for wells spudded prior to 2017. *See* WELC Ex. 13. According to Mr. Alexander's analysis many wells do not return to production after eight years. WELC Ex. 3 at 96, lines 3-6.

7. First, Mr. Alexander's testimony fails to recognize that the proposed rule's two-year extension limitation applies whether the Division allows a one-year or five-year initial period of approved temporary abandonment—meaning the approved period for temporary abandonment could be as short as three years and the Division would have no discretion to extend its status any further. Three years is an unreasonably short period of

time, and the Division should be given discretion to further extend temporary abandonment status when circumstance supports doing so.

8. Second, while it may be true that the majority of wells on a statewide basis are returned to production from temporary abandonment status sooner than eight years, the magnitude of sample wells in Mr. Alexander's analysis masks important exceptions to the general rule. These important exceptions justify the Division retaining its discretion to extend temporary abandonment status if the operator otherwise makes the necessary showings as Oxy has proposed. *See* Oxy Ex. B, Self-Affirmed Statement of T. Wallace at 13-14, ¶¶ 57-63.

9. For example, since 2015, in just the Hobbs, NM area alone, Oxy has returned 49 wells to production or injection that had been temporarily abandoned, with 46 of those wells currently active. *See* **Oxy Exhibit C-1**, attached hereto. But what makes this information particularly notable is that 22 of those wells, or **45%,** had been in temporary abandonment status for eight years or more – and 21 wells, or 43%, had been in temporary abandonment status for more than 10 years before they were returned to production/injection. *Id.* Of the 22 wells that had been in temporary abandonment status for eight years or more 12 of them are now producing wells currently making a combined 652 barrels of oil per day.

10. If WELC's proposed rule had been in place, and the Division had no discretion to allow Oxy the extension of temporary abandonment status, all these daily production volumes would have been arbitrarily lost. This point is best illustrated by wells that had been placed in temporary abandonment status but were subsequently reactivated in connection with enhanced oil recovery projects. Had these wells been

plugged, new wells would have had to be drilled to see the same production levels, but the capital expenditures required for drilling would have greatly reduced the overall recovery.

11. This data evidences Oxy's position that the value of a well cannot be determined by the number of years spent in temporary abandonment status and is exemplary of why the Division should be authorized to retain its discretion over these wells. While certainly not all wells in lengthy periods of temporary abandonment will be returned to production or injection, there are numerous situations in which the Division's discretion would (and could) result in production or value that would otherwise be lost.

12. Non-discretionary termination of temporary abandonment status after a maximum of seven years, no matter the condition of the well and its mechanical integrity or its potential utility in future known and unknown development situations and technologies, is likely to result in waste of valuable resources. For example, if Oxy's 22 wells from the first example above had not been returned to production and instead were required to be plugged after a maximum of seven years in temporary abandonment status it is unlikely the remaining reserves would have been targeted by future development due to the cost of drilling new wells, potentially stranding those reserves in place. That would have resulted in waste and would be contrary to the express statutory obligation of the Division and Commission to prevent waste. These and other similar exceptions deserve attention from the Commission and militate against the arbitrary imposition of such a rigid rule.

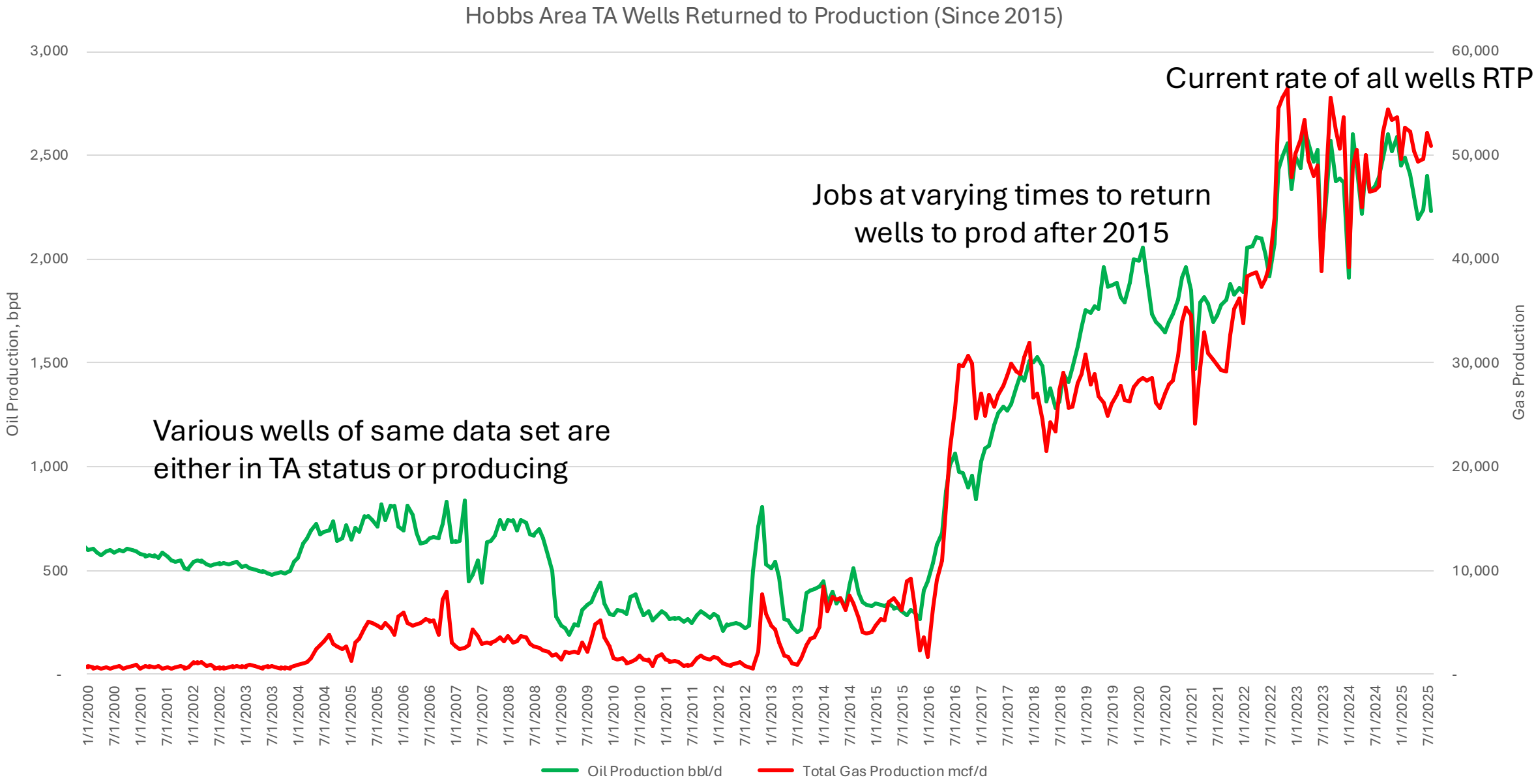
13. The Commission should reject WELC's proposed amendment and instead adopt Oxy's modification of the proposed rule. *See* Oxy Exhibit B at 19.15. 13.B NMAC.

At a minimum, WELC's proposed rule should be modified to authorize the Division to extend temporary abandonment status for additional terms for good cause shown.

14. I affirm under penalty of perjury under the laws of the State of New Mexico that the foregoing statements are true and correct. I understand that this self-affirmed statement will be used as written testimony in this case. This statement is made on the date next to my signature below.

/s/ Kelley A. Montgomery	9/19/25
Kelley A. Montgomery	Date

EXHIBIT C-1



**Graph is not time normalized. Rates are actual production over time*