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1 HEARING ON 2 PROPOSED REVISION TO 3 FINANCIAL ASSURANCE PROVISION OF 4 RULE RELATING TO OIL AND GAS 5 LEASES (192.100.23 NMAC) 6 7 At 8 9 New Mexico State Land Office 10 Morgan Hall 11 310 Old Santa Fe Trail 12 Santa Fe, New Mexico 87501 13 Held on 14 May 27, 2026 15 9:00 AM 16 17 18 19 20 21 22 REPORTED BY: MICHELE NELSON 23 INDEPENDENT COURT REPORTERS 24 46 Shawn Lane 25 Los Lunas, New Mexico 87031	1 TABLE OF CONTENTS 2 PAGE 3 1. WELCOME AND PROCEDURES 5 4 2. PRESENTATION OF PROPOSED RULE BY MR. BIERNOFF 7 5 3. PRESENTATION OF PROPOSED RULE BY MR. STEWART 9 6 4. PRESENTATION OF PROPOSED RULE BY DENISE GALLEGOS 18 7 5. SLIDE SHOW PRESENTATION BY ELIZABETH BISBEY-KUEHN 22 8 6. SLIDE SHOW PRESENTATION BY PAIGE CZOSKI 45 9 7. QUESTIONING OF STATE LAND PANEL 10 BY ROBERT SUTPHIN 53 11 8. QUESTIONING OF STATE LAND PANEL 12 BY OLGA SERAFIMOVA, NMOGA 71 13 9. PUBLIC COMMENTS 104 14 10. CONTINUED QUESTIONING OF STATE LAND PANEL 15 BY OLGA SERAFIMOVA, NMOGA 134 16 11. QUESTIONING OF STATE LAND PANEL 17 BY ADAM RANKIN, HOLLAND & HART 147 18 12. QUESTIONING OF STATE LAND PANEL 19 BY MR. CLOUTIER, IPANM 180 20 13. QUESTIONING OF STATE LAND PANEL 21 BY MARIEL NANASI, NEW ENERGY ECONOMY 209 22 14. QUESTIONING OF STATE LAND PANEL 23 BY SAMANTHA RUSCAVAGE-BARZ, WILDEARTH GUARDIANS 221 24 15. ADJOURN 231 25 16. REPORTER'S CERTIFICATE 231
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Page 5 1 HEARING OFFICER ORTH: Good morning. My name is 2 Felicia Orth, Hearing Officer appointed by the Land 3 Commissioner to conduct a hearing in the matter of 4 proposed amendments to 19.2.100.23 of the New Mexico 5 Administrative Code relating to financial assurance for 6 oil and gas leases on state trust lands. 7 This is a hybrid hearing, as you can hear and 8 see. The hearing will be conducted pursuant to 19.2.16 of 9 the New Mexico Administrative Code. These are the 10 Commissioner's rulemaking procedures. Pursuant to those 11 procedures, all interested persons or groups of persons 12 will have a reasonable opportunity to present written 13 materials, present oral comments on the proposed rule, 14 present questions and examine witnesses. 15 The Commissioner's rulemaking procedures, those 16 of you I know in the room, are a little different from the 17 rulemaking procedures that some of us are familiar with in 18 other contexts, for example, for the Water Quality Control 19 Commission or the Environmental Improvement Board or the 20 Oil Conservation Commission. Among other things, it 21 doesn't require prefilng of testimony, for example, or 22 oaths or affirmations. 23 No decisions will be made today or this month. 24 After we have a transcript, which is being prepared by 25 Michele Nelson over here on my right, I will write up a	Page 7 1 going to start by asking my colleague, Elaine Heltman, to 2 come up and introduce herself and describe how and what 3 steps the Land Office took to follow the requirements in 4 our rulemaking rule, and the State's Rules Act for 5 providing notice of this rulemaking. 6 HEARING OFFICER ORTH: Thank you. This raises a 7 question: Is it necessary for folks to speak into a 8 microphone in order to be heard on the platform? 9 MS. DI PALMA: I just sent a text just to see if 10 people were hearing, Ari. 11 But this picks up a lot of -- 12 HEARING OFFICER ORTH: Oh, it does. 13 MS. DI PALMA: It does pick up a lot. We do have 14 mics right there, for presenters. They can either do a 15 clip-on or they can do a hand-held, whichever they feel 16 more comfortable. 17 THE COURT: Thank you. I just wanted to double 18 check. 19 MR. BIERNOFF: No, thank you so much for doing 20 that. And is it better then, to use the mic? 21 MS. DI PALMA: I've just got to check that they 22 heard you clearly. They heard you clearly online. 23 MR. BIERNOFF: Great. I'll just go au naturel 24 then. Thank you. 25 HEARING OFFICER ORTH: And I'm going to ask
Page 6 1 report summarizing all of the comments and present that to 2 the Land Commissioner for her decision-making. Everyone 3 who provides an address as part of this process will be 4 sent a copy of that decision. 5 So this morning we're going to hear from the 6 State Land Office, and then hold by questioning of 7 whomever the presenters are, I expect that to take most or 8 all of the morning. Regardless, at 1:00 PM, I will invite 9 public comment from those who expect their comment to be 10 less than five minutes. And I'll invite that from folks 11 both in the room and on the platform. 12 When we have reached the end of folks wanting to 13 make brief public comments, I'll turn to the folks who 14 reached out to say that they wanted to make somewhat 15 longer comments, for example, NMOGA, IPANM, Mr. Pavlik, 16 Mr. Schoenburg and Ms. Anasi. 17 If we do not finish today, we will begin again in 18 the morning at 9:00 AM, and again I'll be inviting comment 19 of varying length beginning at 9:00. 20 So let me ask, Biernoff, are you going to call 21 witnesses, make an opening and introductory statement? 22 MR. BIERNOFF: Thank you, Madam Hearing Officer. 23 I'm Ari Biernoff. I'm an attorney here at the 24 Land Office, and along with my colleagues, several of my 25 colleagues. I'll be presenting on our proposed rule. I'm	Page 8 1 everyone, aside from Mr. Biernoff, to state and spell 2 their name for the transcript. 3 MS. HELTMAN: Good morning, everyone. My name is 4 Elaine Heltman, E-L-A-I-N-E, Heltman, H-E-L-T, as in 5 terrific, M-A-N. I work as a project manager in the 6 Office of General Counsel. And we -- in preparation for 7 today and the rulemaking process -- we had extensive 8 prepublication consultations. There was extensive 9 stakeholder input and review, which took place between the 10 fall of 2025 and spring of 2026. And after all of that 11 input, the proposed rule amendment was finalized. 12 And as far as the publication of the Notice of 13 Hearing, it was made pursuant to New Mexico State Land 14 Office Rules 19.2.16.9, which is called the "comment 15 period" and 19.2.16.9.10. Excuse me. I said that wrong. 16 19.2.16.10. And that is called the "Notice of 17 Rulemaking." That is part of the New Mexico 18 Administrative Code. 19 On April 6th, 2026, a transmittal letter 20 providing the Notice of Hearing was e-mailed to the 21 legislative council for distribution to the appropriate 22 interim and standing legislative committees. 23 On April 7th, the Notice of Bond Rule Amendment 24 Hearing was published in the New Mexico Register. On 25 April 7th -- lots happened on April 7th, 2026, the Notice

Page 9 1 of Bond Rule Amendment Hearing and the Proposed Rule 2 Amendment were made available on the New Mexico State Land 3 Office website. 4 On April 7th, 2026, the Notice of Bond Rule 5 Amendment Hearing and Proposed Rule Amendment were made 6 available on the New Mexico Sunshine portal. On 7 April 7th, 2026, the Notice of Bond Rule Amendment Hearing 8 and Proposed Rule Amendment were e-mailed to interested 9 parties. 10 And finally, on April 10th, 2026, the Notice of 11 Bond Rule Amendment Hearing was published in the 12 Albuquerque Journal. Thank you. 13 MR. STEWART: Good morning. My name is Sunalei 14 Stewart. I'm the Deputy Commissioner here at the State 15 Land Office. My name is S, as in Sam, U-N-A-L-E-I, 16 Stuart, S-T-E-W-A-R-T. 17 So this morning I'm going to take a couple of 18 minutes to going into a little bit of the background of 19 kind of how we got here and the public engagement that 20 we've employed so far before this official rulemaking, and 21 then I'm also going to go into a little bit of background 22 in terms of -- 23 MS. DI PALMA: You were asked to mic up. 24 MR. STEWART: Mic up. Okay. 25 MS. DI PALMA: They can't hear you as well as	Page 11 1 expressed interest regarding financial assurances, and it 2 was generally open to the public and whomever wanted to 3 attend as well. 4 We held both in-person and with a Zoom option 5 meetings. In Hobbs, Farmington, and we did two sessions 6 in Santa Fe. Those were opportunities for us to get the 7 initial feedback on the approach we were taking. And we 8 did get some very good feedback. And some of that was 9 incorporated into the rule that we eventually published as 10 our proposed amendments. 11 Next slide, please. 12 So I'm not going to go into a lot of detail 13 because we really haven't gone into the rule itself yet, 14 but I did want to have a couple of notes here just to 15 reflect on the types of changes that we made as part of 16 that initial process. 17 We allow for bulk bonds in the rule, and we got 18 concerns that if you had a per lease bond and you had a 19 ton of them, if you've got a thousand leases that that 20 number could be very, very high. And we got feedback from 21 the NMOGA that maybe we should consider a cap, like, they 22 have in Colorado, for the total amount of bond -- total 23 amount of financial assurance that any one lessee could 24 have. And we thought that was appropriate, and so we 25 capped it at 40 million.
Page 10 1 Ari. 2 MR. STEWART: I do not have that baritone -- 3 MS. DI PALMA: You do not have the Ari voice. 4 MR. STEWART: Okay. All right. Can folks hear 5 my better on Zoom? 6 MS. DI PALMA: Yes, they can hear you. 7 MR. STEWART: Okay. Great. So I'll restate that 8 for folks online. I'm Sunalei Stewart, Deputy 9 Commissioner of Public Lands. I'm going to go through a 10 little bit of a presentation on the background of how we 11 got here and the public engagement that we've employed so 12 far, and then I'm going to get into just a high-level 13 overview of the general purpose of the rule and why we're 14 here today. 15 So first of all, as our hearing officer noted, 16 our rulemaking process is a little bit different than some 17 of the ones that folks in the room are familiar with that 18 are ongoing. What we decided to do was to do an informal 19 engagement with the public and stakeholders as we began to 20 craft our rule. 21 So back in October 23, 2025, we released what was 22 called a "Prepublication Draft," and we engaged a variety 23 of stakeholders. I see a lot of lawyers in the room, 24 mostly your clients. There were three trade organizations 25 on the industry side, environmental groups, who had	Page 12 1 We also had concerns that folks had about if you 2 pulled one of the bulk bonds, would it mean that all the 3 financial assurances would be lost, and we clarified that. 4 We made changes with the heightened bonds to make them 5 more -- to enhance transparency, to be able to put them on 6 the website, not the bonds themselves, but who are subject 7 to those heightened bonds. That was something that we 8 heard back from the public, and we gave folks more time to 9 be able to get those heightened bonds when they're 10 required. 11 We made a variety of changes to the annual report 12 section, which was an area that we got a lot of feedback 13 on, including providing more time, creating a different 14 attestation standard when you've got a lessee who is just 15 simply the record title holder and they're not the 16 operator of a well. Maybe they don't have as much 17 information about on-the-ground activities, so we 18 reflected that in the rule. 19 We gave folks more time to fix reporting errors, 20 and clarified that, you know, if you have an innocent 21 omission in an annual report, that wouldn't be used as an 22 independent basis for canceling a lease. But I won't go 23 into too much substance there. 24 I guess my point here is simply that we took the 25 input we received to heart. That was incorporated into

Page 13 1 the proposed version of the rule that we ultimately kicked 2 off as part of the formal rulemaking process. 3 Next slide, please. 4 So why we're here today and the overall purpose 5 of the rule. I think most people in the room and the 6 public can agree that the current status quo and the 7 thresholds that we have are inadequate. You know, we have 8 \$10,000 for a single lease bond, 20,000 for blanket lease 9 bonds. You can have as many leases under one bond for 10 20,000 as possible, and then we have these so-called 11 "megabonds," the crazily-named "mega bond" because it's 12 nothing of the sort, that not only covers oil and gas 13 leases, it covers mineral leases; it covers leases of all 14 sort. It might cover infrastructure. And so for an extra 15 \$5,000 it covers a ton of additional potential 16 liabilities. 17 Those thresholds are outdated. They are 18 completely inadequate. They were set in 1981, the 10,000 19 and the 20,000 threshold. You know, to look at where we 20 were, Jimmy Carter was president; Thriller hadn't come out 21 yet; New Coke hadn't even failed yet; the Berlin Wall 22 hadn't come down. We were at a very different place. 23 The early eighties and '81 was a record year for 24 oil and gas. We were making \$120 million, you know, 25 compared to what we're doing now in terms of billions of	Page 15 1 partnering with oil and gas for development, we've made 2 many, many billions of dollars, and that revenue is 3 important. But any business will tell you there's two 4 sides of the ledger. You've got liabilities and you have 5 assets. 6 And on the liabilities side, with the amount of 7 inactive wells, marginal wells orphaned wells, you know, 8 throughout the state, we need to pay attention to what 9 those liabilities are so tax payers and our state trust 10 land beneficiaries aren't left holding the bag if things 11 go bust. 12 So, you know, you look at some of the things like 13 the recent LFC report that came out, and that was, I think 14 in 2025, and, you know, they indicated about \$1.6 billion 15 in potential near and future liabilities for the state for 16 plugging wells. There have been different reports -- we 17 did one commissioned by the Center for Applied Research 18 that showed potential liability in the multiple billions 19 of dollars on state trust land. You know, a lot of those 20 numbers are going to vary because it's are you looking at 21 just the well plugged? Are you looking at a site 22 remediation, reclamation, which can vary greatly. Are you 23 looking at long wells, shorter wells, related 24 infrastructure, all of those things. 25 But the bottom line is that it's billions of
Page 14 1 dollars, but there was, you know, we renewed interest in 2 this, because oil and gas activities were ramping up. 3 Drilling was showing a lot of renewed interest. So, you 4 know, and New Mexico was at a very different place. 5 If you use the Federal Reserve inflation 6 calculator and you plug in 20,000 bucks, and you look at 7 what that means today, 70 bucks, that's enough to fill up 8 a tank of gas. That is the value of the coverage that we 9 have today if you carry that, and you adjust for 10 inflation. So, you know, the levels may have been -- you 11 know, they look small today, but the reality is they 12 actually provided for a lot more coverage back in the day 13 when they were put in place. 14 The thresholds that we have now, I mean, they 15 don't even cover on their face the estimated cost of 16 plugging one well. And these are lease-wide base 17 minimums. So, you know, OCD has said that the 2024, you 18 know, per well bonding cost is to plug, basically they 19 were looking at, I think it was 164,000 bucks. So, you 20 know, from our perspective, this is just completely 21 inadequate in terms of the thresholds. They're outdated 22 and they need to be updated. 23 You know, historically, the Land Office hasn't 24 paid enough attention to the liability side. We look at 25 our assets, we look at our revenue. You know, in	Page 16 1 dollars in potential liability that we have, and what we 2 have in terms of financial assurances, the tens, the 3 \$20,000, et cetera, only amounts to, I think we have about 4 20 million bucks in terms of our oil and gas leases and 5 the financial assurances associated with that. And our 6 folks will go into that in more detail. So that's where 7 we are, and that's why we think that this is absolutely 8 insufficient. 9 The approach that we have taken in terms of our 10 core objectives of this rule are number one, we need more 11 adequate bonding. Now, when we talk about adequate 12 bonding, this is not 100 percent bonded to all potential 13 liability costs. We are trying to establish a baseline 14 for a minimum that recognizes that not all leases are the 15 same, that does get us to an overall higher level that has 16 a higher degree of adequacy, but it is not 100 percent 17 bonding and tailored to every single lease. 18 So what we wanted to do is raise the minimum, but 19 then also incorporate an annual reporting requirement in 20 the rule that would allow us to be able receive the 21 information, digest information that is helpful in us 22 making determinations about whether a particular lease or 23 lessee is a heightened risk. 24 If they've got a bunch of, you know, unremediated 25 spills, if they have a bunch of inactive wells, if they're

Page 17 1 teetering on bankruptcy, these are things that would be 2 appropriate factors for us to consider, take back and say, 3 "You know what? Actually, in this instance, we need to 4 have a higher financial assurance to protect us." 5 The last thing I want to note on this is we also 6 provided a lot of care and attention to try to make this 7 manageable for industry and for the agency. You know, we 8 understand this is a different way of doing things. 9 Annual reporting, for example, hasn't occurred in the 10 past. And, you know, we really did take to heart, as I 11 mentioned before, a lot of the informal feedback that we 12 got, and we look forward to constructive input, you know, 13 as part of the formal rulemaking process about if there 14 are things that we didn't consider and how we can make 15 this manageable. But ultimately, this rule needs to work 16 for the agency. 17 As was noted earlier, this is not the type of 18 proceeding where you have a party, a petition for 19 rulemaking, and it's negotiated among different parties. 20 We're doing this because the Commissioner believes as the 21 fiduciary of the State Land Trust we need better 22 protection on state trust lands. 23 We're going to work to find a rule that works for 24 the agency and we are going to consider all public 25 comments and all public engagement whether it's from	Page 19 1 Gallegos, D-E-N-I-S-E G-A-L-L-E-G-O-S. I'm the Oil and 2 Gas Leasing Manager. 3 MR. BIERNOFF: Can you just give a little bit of 4 detail about the work that you do in that role and some of 5 your prior experience dealing with oil and gas leasing and 6 operations. 7 MS. GALLEGOS: Yes. I oversee all of the oil and 8 gas bonding. I oversee the oil and gas lease assignments 9 to ensure that all underlying documents are submitted. 10 For example, if a least is from the 1940s, I ensure that 11 all underlying documents, probate trusts, et cetera, are 12 submitted. I oversee the rental payments for the oil and 13 gas leases, all extensions, and I ensure the lessees are 14 following the lease terms. 15 I came from OCD and I switched over to the State 16 Land Office. At OCD, I oversaw all the bonding, I made 17 demand letters to redeem bonds, I ensured compliance with 18 the New Mexico Secretary of State. I also did new 19 operator orientation. I worked with the environmental 20 group on non-oil and gas bonds, such as land farms. I 21 previously testified before at OCC rulemaking and with the 22 OCD hearings on compliance cases for inactive wells and 23 bonding-related compliance issues. I also helped with the 24 development of all out-facing bonds and conducted and 25 oversaw audits for both OCD and here at the State Land
Page 18 1 industry, environmental groups or people off the street 2 that care about this as taxpayers. 3 So I think I'm going to stop there. I don't 4 believe I have -- actually, just one more slide. 5 So I just wanted to hit real quickly -- I'm 6 obviously not going to go into this, but to reflect that 7 those thresholds that I mentioned, you know, they're 8 not -- when I say, "They were established. They're in 9 rule." And, you know, we do have an existing rule. We 10 did feel like it was the appropriate time, and it was 11 absolutely necessary to update it, but, you know, this 12 isn't a new concept or a new notion. We are trying to 13 improve what we have that is, as I noted, completely 14 inadequate at the current state. So I'm going to stop 15 now, and I believe Liz is up next. 16 MR. BIERNOFF: Denise and I are coming up next. 17 MR. STEWART: Oh, I'm sorry. Sorry. All right. 18 Thank you. 19 HEARING OFFICER ORTH: Thank you, Mr. Stewart. 20 MR. BIERNOFF: I just want invite my colleague, 21 Denise Gallegos, to join me just to give a little more 22 detail on our existing lease portfolio. 23 And could you just introduce yourself to 24 everybody, please? 25 MS. GALLEGOS: Good morning. My name is Denise	Page 20 1 Office. 2 MR. BIERNOFF: And the Oil, Gas and Minerals 3 Division that you're part of, I know did a look at some 4 basic numbers about our oil and gas lease portfolio. And 5 what did you all find in terms of the approximate number 6 of oil and gas leases, active leases that we have? 7 MS. GALLEGOS: We have approximately 5,700 active 8 oil and gas leases. 9 MR. BIERNOFF: Okay. And did you guys, did OGM 10 also look at about how many oil and gas lease bonds are on 11 file with us? 12 MS. GALLEGOS: There is approximately 674. 13 MR. BIERNOFF: Okay. And I know that Mr. Stewart 14 talked a little bit about different categories of bonds, 15 different types of bonds. Did OGM look at how many bonds 16 we have on file, again approximately for each one of those 17 categories? 18 MS. GALLEGOS: Yes, we did. 19 MR. BIERNOFF: What do those numbers look like? 20 MS. GALLEGOS: So we approximately have 397 21 megabonds, 224 blanket bonds, and approximately 53 single 22 lease bonds. 23 MR. BIERNOFF: Okay. And then did Oil, Gas and 24 Minerals Division also do a review to see approximately 25 how many wells are located on respective State Land Office

Page 21 1 oil and gas leases? 2 MS. GALLEGOS: Yes, we did. 3 MR. BIERNOFF: And we don't have to go into 4 extensive detail but I did want to ask you for that 5 question. We could call it "well density." About what 6 percentage of State Land Office oil and gas leases have 10 7 or more wells on them? 8 MS. GALLEGOS: About a quarter of our leases. 9 MR. BIERNOFF: Okay. And what about leases that 10 have even more wells, let's say, like, 50 wells or more? 11 MS. GALLEGOS: That was a little bit less, so 12 that's about less than one percent of all of our leases. 13 MR. BIERNOFF: And about how many number of 14 leases? 15 MS. GALLEGOS: Fifty or more. 16 MR. BIERNOFF: Okay. So it's about one percent? 17 MS. GALLEGOS: About one percent, yes. 18 MR. BIERNOFF: Okay. Okay. And thank you for 19 giving that information. And I think it's important for 20 interested parties and for the public to understand what 21 our lease footprint looks like, what presence oil and gas 22 leasing on state trust lands look like, so thank you very 23 much. 24 And I wanted to invite Elizabeth Bisbey-Kuehn up. 25 I think she may be on her way back in, so we'll just wait	Page 23 1 of the Environmental Compliance Office mission and program 2 overview. ECO was created in 2022 to support the newly- 3 created Accountability and Enforcement Program. The 4 Environmental Compliance Office manages all of the 5 environmental issues on all of the different leases that 6 are issued by the -- or granted by the State Land Office. 7 This covers mining, oil and gas, business, commercial 8 business leasing, mineral leasing, geothermal. 9 We conduct environmental compliance inspections 10 on leases. We draft reports of findings. Much of our 11 work is involved in reviewing remediation and reclamation 12 work plans. The vast majority of the work that we do is 13 remediation and reclamation of oil and gas sites. 14 We're currently overseeing over 2,300 clean-up 15 projects on oil and gas sites, and we have projects with 16 over 250 oil an gas companies. 17 Next slide. 18 The ECO team provides technical and regulatory 19 expertise and support of the Office of General Counsel and 20 all of the divisions within the State Land Office. We 21 participate in multiagency programs to reclaim abandoned 22 uranium mines throughout New Mexico, and we're currently 23 overseeing the remediation and reclamation of several 24 sites that have no responsible party, or as the result of 25 a court order. We'll get into these facts soon, and as
Page 22 1 a minute for that. 2 Thank you. And you can come on down. 3 MR. BIERNOFF: Ms. Bisbey-Kuehn, if you could 4 please introduce yourself, please. 5 MS. BISBEY-KUEHN: Sure. 6 MR. BIERNOFF: And let's go to the next slide, 7 please. 8 MS. BISBEY-KUEHN: Good morning, everyone. My 9 name is Liz Bisbey-Kuehn, L-I-Z B-I-S-B-E-Y, hyphen, 10 K-U-E-H-N. It is my pleasure to be here this morning. I 11 am the Manager of the Environmental Compliance Office here 12 at the State Land Office. I've held this position since 13 August of 2024. Prior to coming to the State Land Office, 14 I worked with the New Mexico Environment Department Air 15 Quality Bureau for 20 years. I served in various 16 capacities there, and as the Permit Section Chief, Permit 17 Program Manager of the Technical Services Section, and the 18 Minor Source Permitting Section. 19 As the Bureau Chief, I oversaw the Compliance 20 Enforcement Section, the Planning Section, the Permitting 21 Section, and the Operations Section. Excuse me. 22 As you can see on the slide -- 23 Could we open my presentation that I sent? 24 Thanks. 25 This slide and the next slide provide an overview	Page 24 1 you know probably already, the cost to plug and remediate 2 oil and gas well sites is highly variable and ranges from 3 150,000 to many millions of dollars. 4 Thank you. 5 MR. BIERNOFF: Ready to talk about some case 6 studies? 7 MS. BISBEY-KUEHN: Yes. 8 MR. BIERNOFF: Okay. So we wanted to highlight a 9 few together -- a few sites, on state trust land former 10 oil and gas lease sites where we have had occasion -- we 11 have had the need to pull the lessee's bond. And we want 12 to illustrate how that bond and how the lessee's 13 compliance or non-compliance fits into our overall mandate 14 to clean up and restore state trust lands. 15 And so, if we can go back to the other screen, 16 please. 17 We can move on to the next slide, please. Thank 18 you. 19 Yeah. Let's start by talking about Smith & 20 Marrs. I will just give a quick introduction about who 21 this company is and why it involves the State Land Office. 22 So Smith & Marrs was a one- or two-person company, totally 23 defunct now. They operated wells on state trust land that 24 were marginal at best for most of their life span. When 25 the leases stopped producing all together, and the Land

Page 25 1 Office made a compliance demand on the company, that was 2 ignored. We did end up claiming Smith and Mars' parent 3 company, which was the lessee, their bond. 4 This was, as we note on the slide, a rare case of 5 the State Land Office having required a higher bond. And 6 I think everybody will see that it's not a lot higher. 7 Instead of \$10,000 or \$20,000, it's \$60,000. And that the 8 result of -- and the reason for that is there had been a 9 prior settlement with the operators Smith & Marrs and its 10 affiliated lessee under the last administration at the 11 Land Office. 12 We ended up filing suit. It ended up -- 13 We can go to the next slide, please. 14 This site is very seriously contaminated. We 15 obtained a court judgment for over \$7 million. That's 16 based on the estimate of clean up of the site. There's 17 five inactive wells, and some other already plugged wells, 18 very severe contamination. And as we note, that \$60,000 19 bond, which again, is anomalous because most bonds -- most 20 oil and gas lease bonds are 10,000 or 20,000 or 25,000. 21 We'll still end up, we think, covering only one percent or 22 even less of total clean up costs at the site. 23 Liz, I wanted to ask you to talk a little bit 24 more about the work that we're doing at the site. 25 MS. BISBEY KUEHN: Sure. The pictures here on	Page 27 1 MR. BIERNOFF: We can move on to the next slide, 2 please. 3 And this will be our next example. This company 4 is not going to be a household name. It's called 5 Nordstrand Engineering. I think it may at its peak 6 operated five or seven wells in New Mexico. It doesn't 7 currently operate in New Mexico although as we note here, 8 it does still operate very marginally in Texas, which is 9 where it's based. And Nordstrand had two State Land 10 Office leases, and we have actually had to sue the company 11 twice for compliance failures at both leases. 12 And this slide and this discussion focuses on the 13 first of those suits, and that's where we claimed the 14 company's bond initially a \$20,000 bond. So that's a 15 so-called "blanket bond." In Nordstrand's case it only 16 had two leases being held by that bond. But we have 17 lessees with blanket bonds who have scores of leases. 18 In Nordstrand's case, the company failed to honor 19 compliance demands after the lease had expired to plug 20 wells. Folks here and on Zoom are going to hear this a 21 lot throughout the day because it's unfortunately, a 22 frequent activity that Land Office staff have to engage 23 in, which is asking in the first instance, well operators 24 and then our lessees to plug chronically inactive wells 25 and clean up spills like the ones that are illustrated
Page 26 1 the slide are Sanmal Queen #5 and as already noted, this 2 site has been extensively contaminated, and I don't know 3 if we have any other visual guides. I have some here, if 4 we want to bring those up. But there were three large 5 tank batteries located on the site, extensive surface 6 spilling with free liquids. There was a flare and catwalk 7 and buildings and just infrastructure that needed to be 8 removed. 9 We broke apart this work into three phases so we 10 could -- first, we needed to empty the liquids, the free 11 liquids in the tanks and decommission the tanks and 12 remaining equipment. That was conducted under Phase I, 13 and cost \$83,000 just for the site decommissioning and 14 removing the liquids from the surface. Phase II will then 15 involve fully assessing the contamination on the site and 16 providing a cost estimate to complete the remediation and 17 reclamation. 18 Based on the kind of the extensive contamination 19 here, I can confidently value this type of job at -- in 20 the millions of dollars as the assessment -- as the 21 consultant's assessment attested to. 22 That assessment found approximately 41,000 cubic 23 yards of contaminated soil that will need to be removed at 24 this one site, and the estimated total cost to remediate 25 all of the sites was based at around 7.3 million.	Page 28 1 here. And in the case of Nordstrand, those requests were 2 met with silence. 3 And so after plugging the bond and taking legal 4 action against Nordstrand we are finally at a point -- or 5 we're finally at a point where we could do some site work. 6 This was through -- actually through a third party company 7 that we had entered into a settlement agreement with over 8 some other disputes. And that company performed just the 9 first phase of work at this site, and that cost over a 10 million dollars, over a million-three. And that was for 11 plugging the wells. One of the well plugging jobs alone 12 was nearly a million dollars. And for doing preliminary 13 site delineation, decommissioning equipment. 14 And as I noted here, we do have -- we did have to 15 sue the company a second time. That suit ended up being 16 put on hold because the company filed for bankruptcy 17 unfortunately. Unfortunately, that is also something that 18 we see increasingly. Companies avail themselves of 19 bankruptcy protection to avoid having to honor plugging 20 and remediation obligations. 21 Although in this case, the company was determined 22 not to have a valid claim, and the bankruptcy action was 23 dismissed, and so we'll be back to our judgment 24 enforcement. We did get a preliminary judgment in that 25 case.

Page 29 1 We can move on to the next slide, please. 2 And we wanted to offer an example lest we be 3 accused of cherry picking only the worst sites. The Smith 4 and Marrs site that we featured earlier is a very 5 seriously contaminated site. We also wanted to highlight 6 what's considered to be -- what we would consider, I 7 think, to be a relatively clean site. In fact, maybe one 8 of the cleanest sites that we've actually had to deal with 9 in the course of our enforcement work. This is a 10 one-person company that was both the well operator and the 11 lessee. This was a business that was, as far as we could 12 tell, essentially a hobby or a side business for a retired 13 person. 14 We have the misfortune of having this company's 15 only well anywhere in the world on state trust land. And 16 as the State Land Office bonding rule required at the time 17 and still requires, High Plains posted -- that's the name 18 of the company -- posted a \$10,000 bond for their one 19 lease, and that was in accordance with agency rules. 20 We initiated litigation as noted here, and also 21 claimed the \$10,000 bond. And this unlike the last case 22 study where the company sought bankruptcy protection 23 improperly, and is going to be the target of ongoing 24 enforcement effort, High Plains really didn't have any 25 assets to speak of, and so we were at the end of the line.	Page 31 1 maybe less than that of the total clean up costs. And, of 2 course, the paltry \$10,000 bond that we claimed and is in 3 the suspense here will be applied toward offsetting our 4 much larger bill for getting this site decommissioned. 5 You can go to the next slide. 6 And here's -- I think this is our last case 7 study. This is another example of a site that is not 8 abnormal. This is a relatively clean site, and clean is, 9 of course, a relative term. G&G Oil and Gas is a company 10 that I know at least one person in the audience is 11 familiar with for having participated in litigation. This 12 is a one-person firm that is defunct, and as far as we can 13 tell was a side business for a pretty successful Hobbs 14 businessman, who's involved in other lines of work, 15 including running a pawnshop and a sports vehicle 16 dealership. And apparently thought that it would be a 17 good idea to invest in marginal oil and gas wells. And it 18 ended up not really being such a great investment for this 19 individual. 20 We claimed the \$20,000 bond after compliance 21 requests fell on deaf ears. We have also -- we did also 22 initiate litigation, which is now concluded. And unlike 23 some of the other examples that we highlighted, the 24 Nordstrand case where we did get a monetary judgment in 25 that case. But unlike that and High Plains, we actually
Page 30 1 And, Liz, if you could talk about the work that 2 we're doing at the site. 3 And we can go to the next slide. 4 MS. BISBEY-KUEHN: Sure. So the work that's 5 going on right now at High Plains involved repairing some 6 road work to get heavy equipment back in there. This is, 7 as Ari's slide mentioned, it's in the 10,000 acre Hogback 8 Area of Critical Environmental Concern, which was 9 designated by the BLM in 1988 to protect two federally 10 state-listed species. 11 So it's a very fragile area. It involves 12 important species to protect. And we did need to do road 13 repair to get in there and to plug the well and to 14 decommission the site and to begin site delineation, and 15 finally remediating and reclaiming the site. So the well 16 has been plugged as of two weeks ago. The site is 17 currently being decommissioned this week, and remediation 18 is expected to begin next week. 19 The estimates to plug, remediate and reclaim this 20 site will likely be in the \$250,000 to \$330,000 range. 21 MR. BIERNOFF: And I just noted that -- and we 22 can see that, I think, indicated on the slide that this is 23 a rare instance of a bond, a state oil and gas lessee's 24 bond covering more than one percent or less than one 25 percent or two percent. It's a whopping 7 percent maybe,	Page 32 1 bought a mercurial settlement with the lessee. And that 2 is enough money to cover at least part of -- a good part 3 of the total clean up costs. 4 We have ground about to be broken on clean up. 5 In other words, plugging of two inactive wells followed by 6 a preliminary site assessment and decommissioning, and 7 that's happening literally right now. 8 Although this is an instance of the State Land 9 Office maybe not getting a huge haircut. That's only 10 because of the litigation that we initiated. If we were 11 relying only on the bond, the \$20,000 bond, we would 12 again, be looking at just a few percentage points of the 13 total cost being covered by that bond. 14 And I wanted to ask, Liz, if you have any other 15 detail on the G&G site? 16 MS. BISBEY-KUEHN: I just wanted to highlight the 17 estimated costs of plugging the wells at \$600,000, which 18 is, of course, well beyond what the bond would have 19 covered for that type of work. 20 MR. BIERNOFF: Okay. And I wanted to just -- 21 before we wrap up on this section, I just wanted to 22 mention by way of overview, we focused in on a handful of 23 examples. But we've claimed just under three dozen oil 24 and gas lease bonds at this point in time. 25 And for the most part, I think with the exception

Page 33 1 of a handful of bonds that may actually have been 2 associated with saltwater disposal easements, and have 3 been a little bit higher, just talking about oil and gas 4 lease bonds, all of them were \$10,000, \$20,000 or \$25,000 5 except for the Smith and Marrs example that we looked at 6 earlier, which was a little bit more, 60,000. 7 And so we wanted to highlight that these are just 8 a handful of examples in a much larger set of instances 9 where we need to claim a bond. And, of course, we 10 commenced a number of enforcement cases where we have not 11 made a bond claim. And that's out of -- honestly, that's 12 out of some deference to the lessee in instances where the 13 lessee is an otherwise responsible company, and where we 14 want to exhaust other avenues for recovery before making a 15 claim on an otherwise responsive and responsible lease 16 bond. 17 So I think that covers this section. Thank you. 18 MS. BISBEY-KUEHN: Great. Thank you. 19 MR. BIERNOFF: Okay. So we now want to move on 20 to an overview of the proposed rule now that we've tried 21 to illustrate some of the ways in which the status quo is 22 failing the State Land Office and our beneficiaries and 23 the State's environment. 24 MR. STEWART: All right. Okay. Once again 25 Sunalei Stewart, Deputy commissioner. So I'm just going	Page 35 1 it allows for heightened requirements as well, that we 2 could increase the bonding on a particular lease if 3 there's specific factors that play, and we'll go into 4 that. 5 But we wanted to have a baseline minimum that 6 captured a certain level of assurance. As I mentioned, 7 it's not 100 percent bonding. It is something that is 8 adequate in terms of enabling the agency to be able to 9 cover some of those risks. 10 The 150,000 is the approach that the BLM took in 11 their rule. They also had very outdated bonding rules. 12 And when the feds went through an assessment there, they 13 came up with 150,000 as well, so there's a level of 14 consistency there. 15 We also wanted to give some recognition in terms 16 of discounted rates when you have multiple leases. So the 17 proposed amendments to the rule include a -- if you got 18 between 10 and 19 leases a discounted rate to 130,000 per 19 lease, then it goes to 20 to 49 at 110, and then if you've 20 got 50 or more leases it's a 100,000 per lease. 21 As I noted previously, we did cap the total 22 amount at 40 million. That doesn't include if you have a 23 particular lease that is under a heightened bonding 24 requirement. But in general, we viewed the 40 million 25 threshold amount as a sufficient amount of money for the
Page 34 1 to provide a little bit more detail on -- 2 Next slide. 3 As we get into the proposed rule on the different 4 bonding levels and for the base minimum and for bulk 5 bonds. 6 As I had noted earlier, we have a 10,000 for 7 single, 20,000 for multi lease, and then we have the mega 8 bond. I actually did want to correct one thing I said 9 earlier. I had made a reference to the diminishment of 10 value that we had when we were talking about the value of 11 what 20,000 in 1981 was compared to what it was today. I 12 think I said, "bucks." It was supposed to be percent. So 13 we had a diminishment of value of about 73 percent. 14 So if you look back at 20,000 in 1981 that is 15 about 5,500 bucks today. It's declined in value in terms 16 of the dollar by about 73 percent, so I just wanted to 17 correct that real quick, before I jumped into this. 18 So what we decided to do in terms of structure in 19 establishing our bonding levels is to come up with a 20 initial baseline minimum bonding amount. And we chose 21 150,000 for that, and that level reflects a couple of 22 things. It reflects that we have small operators and 23 large operators. It reflects that no one lease is the 24 same. And as, you know, we discussed earlier, the rule is 25 structured in a way that it has a base minimum, but then	Page 36 1 agency to have to be able to cover risks. 2 And a significant increase in terms of where we 3 were currently, which is, you know, with the 25,000 4 mega bond, it covers everything to now a cap of 40 5 million. And you do have, you know, large operators that 6 have many, many leases. 7 The last thing I would note here is simply that 8 we also reflected the input that we received regarding 9 mineral-only estate, so sometimes we lease where we own 10 the surface and we own the mineral estate, and there are 11 other times where we're leasing for oil and gas, and we 12 only own the mineral and we don't own the surface. 13 It was noted that, you know, maybe the risk 14 profile when we don't have the surface may look a little 15 bit different, and we recognize that and we now have a one 16 100,000 minimum for mineral-only estate. 17 With that, I think we can move on to the 18 heightened bonding. 19 MR. BIERNOFF: One of the important features of 20 the rule proposal is that for the first time, at least for 21 the Land Office, includes considerations of compliance. 22 In other words, the current -- and as Mr. Stewart 23 mentioned long-standing State Land Office bond rule, pays 24 no attention to whether a particular lessee is doing a 25 good job or a bad job of managing lease operations when it

Page 37 1 comes to compliance with the lease contract and with 2 environmental rules. 3 We are now, through this proposal, trying to take 4 cognizance of some of the compliance problems that led to 5 the bond claims that we highlighted in the case studies 6 and that have burdened the State Land Office and our 7 beneficiaries with having to clean up legacy oil and gas 8 contamination on state lands. 9 And so the proposed rule identifies a series of 10 factors that the Commissioner can consider in requiring a 11 heightened bond for a particular lease. And these are 12 factors that we think are pretty much derived from our 13 experience enforcing our rights and our beneficiaries' 14 rights and for common sense. 15 Wells that have -- I'm sorry. Leases that have 16 inactive wells on them are a high compliance risk, and the 17 proposed rule identifies inactive wells as a compliance 18 factor to be considered for heightened bonding. There are 19 exceptions that are noted in the rule for instances where 20 a well may appropriately be not producing or injecting, 21 and those are specified. For purposes of this overview, 22 I've noted the primary examples, which is wells that are 23 in oil conservation division-approved temporary 24 abandonment for a limited period of time. 25 We've encountered significant problems with	Page 39 1 marginally. And so this is a red alert to us when a well 2 is producing so low that it's not offsetting -- its 3 production is not offsetting what will be the eventual 4 plug-in cost. 5 And then we note other factors of concerns 6 including spills that have not been addressed for a year. 7 We understand and recognize that unfortunately, spills 8 take place all the time on oil and gas sites, that that is 9 an operational hazard, but also that spills should not 10 remain unaddressed for extended periods of time. And so 11 that's why this is featured as a factor. 12 And we've also indicated that if we've had -- if 13 the Land Office has had to take the step of claiming a 14 lessee's bond for compliance failures that, in itself, is 15 a compliance risk. And certainly if OCD has done likewise 16 that is also a compliance risk that the Land Office needs 17 to consider and would be unwise to ignore. 18 Okay. Could we go to the next slide, please? 19 And we just wanted to highlight that there are 20 other -- we do create in the rule the ability of the 21 Commissioner to consider other factors that are related to 22 lease compliance. There's provisions in the heightened 23 bond section of the proposed rule that describe the notice 24 that the Land Office will provide to lessees about these 25 requirements.
Page 38 1 several lessees who are also well operators, who have 2 maintained with a straight face that wells that have been 3 in temporary abandonment literally since the 1980s or 4 early 1990s should be allowed to remain in that status 5 indefinitely. 6 That's not acceptable to the Land Office. Those 7 are prime candidates -- those wells -- for inactivity, and 8 in many cases for transfer to lessees or operators who are 9 less financially viable, so that's a big concern. 10 But wells that are in temporary abandonment for a 11 limited period of time, there are certainly legitimate 12 reasons that operators put wells in TA, and we recognize 13 that in this proposal. 14 We also recognize that if the Commissioner is 15 approving a shut-in that that's another appropriate basis 16 for essentially accepting an inactive well from this 17 heightened bond factor. 18 Extremely low producing wells have also, in our 19 experience, been a significant compliance risk. All or 20 most of the wells that we have had to compel the plugging 21 of through litigation or other enforcement actions, I 22 guess with the exception of wells that are on expired or 23 cancelled leases that may not be totally inactive, but all 24 other wells that we've had to compel the plugging of 25 before they came inactive were producing very, very, very	Page 40 1 And as Mr. Stewart mentioned, a deferral period, 2 so that lessees who are not just trying to externalize 3 compliance costs onto the Land Office and the public or 4 the beneficiaries, who may not have been aware of the 5 extent of the compliance problem, will have time, if they 6 are diligently addressing the issue to defer posting a 7 heightened bond. 8 And then we also -- as noted, we also spell out 9 that there may be additional reporting obligations on this 10 particular subset of leases. And finally, that at the 11 request of stakeholders that we consulted with during the 12 informal consultation process that Mr. Stewart described, 13 leases that are subject to this heightened bond 14 requirement will be publicized. And I think that serves 15 several a real important purposes including making other 16 interested parties that are interested -- that may have a 17 commercial interest in a given lease that is subject to 18 heightened bond requirements aware of that fact, and also 19 making members of the public who may have concerns, for 20 example, about a non-compliant lease that's in their 21 vicinity, near where they live or near where they work. 22 And so that is important information, we agree, to be made 23 public. 24 If we could go to the next slide, please. 25 I just wanted to illustrate -- and I'm sorry that

Page 41 1 the type size is so small. I will summarize -- I won't 2 read every line, but I'll summarize what this is intended 3 to show. 4 We took a look to see, because the original rule 5 proposal that was -- the prepublication version of this 6 rule amendment that was shared with the public and with 7 stakeholders last fall, had a marginal production cut-off 8 of 100 barrels. And I think our conclusion, especially 9 after getting feedback through the stakeholder process is 10 that that's actually way too low. And we looked at 11 different royalty rates and different prices -- different 12 price points. And at our -- as I think a lot of people 13 here know, but maybe not everybody, the State Land 14 Office's lowest royalty rate is 12 1/2 percent, and its 15 highest royalty rate, at least for these leases that have 16 established compliance problems on them is 20 percent. 17 And, of course, that's been increased now through the 18 Commissioner's effort to 25 percent going forward. 19 So we looked at these different price points, and 20 it would literally take over 200 years for a well that's 21 producing at 100 barrels a year at 60 -- I think you said 22 \$65 barrel, which was an average price for 2025, that 23 royalty rate takes over 200 years for that well to earn us 24 enough royalties to offset the cost of plugging that well 25 at today's prices. And in 200 years, I think it's fair to	Page 43 1 and this is part of that solution. 2 The lessee should know who's operating on their 3 lease and so should we. And this is a mechanism for 4 memorializing that information. 5 We did, in response to feedback, make clear that 6 lessees are required to make a reasonable and diligent 7 inquiry into operations that may not be their own on a 8 lease. We recognize there may be some information that is 9 ultimately unavailable to lessees, and so we've tried to 10 make that distinction clear in this provision of the rule. 11 And we do also make clear that lessees don't have 12 to just jump through hoops. This is not intended to be a 13 burden without a purpose. It's intended to be purposeful, 14 and we think that it will be. And so to that end, if the 15 status of a given lease doesn't change year over year, the 16 rule makes clear -- the proposed rule makes clear that a 17 lessee can certify to that fact and doesn't have to go 18 through a full report. 19 We also heard feedback, I think particularly from 20 NMOGA a concern that leases might get canceled if 21 someone -- a lessee had an error in their annual report. 22 And that's certainly not the Land Office's intention. 23 And I think the revised rule proposal, the one 24 that got published in early April and is the subject of 25 today's hearing addresses that and makes clear that while
Page 42 1 say that it's unlikely that plugging an inactive well is 2 going to cost \$163, 000. 3 And this table breaks down again, for different 4 royalty rates, different price points and different 5 production thresholds, how long it would take for a 6 low-producing well to break even. 7 And so we wanted to illustrate this to give some 8 detail for how we're looking at some of the considerations 9 around what's an appropriate threshold for deeming a well 10 such a low producer that it's a compliance problem. 11 You can go on to the next slide, please. 12 Okay. And real briefly, the proposed rule 13 amendment as, I think many people know and many have 14 commented on creates a annual report process. And this is 15 a requirement that each lessee undertakes, and each lease 16 gets -- and this is, we think, pretty basic -- gets an 17 inventory on of what's on the lease related to oil and gas 18 development. And that means what are the wells that are 19 on the lease and what's the status of the those wells? 20 Are they in active? Are they producing? Who are the 21 operators of those wells? 22 We've been, I think really shocked at how many 23 lessees really have no idea or claim to have no idea of 24 what companies are operating on their lease acreage. And 25 that seems like a problem that has a fairly easy solution,	Page 44 1 we can take action in the event of false reporting or 2 materially incorrect reporting, we -- that action consists 3 initially of us alerting a lessee, and that there's an 4 opportunity for lessees to fix issues. And that's our 5 interest here is in getting accurate information and not 6 in canceling leases. 7 And then finally, we think that there's a very 8 clear connection between what this reporting requirement 9 does and ultimately how bond levels are adjusted in the 10 future. And this is, of course, a two-way street. 11 Compliant leases that are in really good condition or 12 leases whose compliance status has improved are entitled 13 to consideration for a downward adjustment in bonding. 14 And similarly, what may be a compliant lease 15 today, may have compliance problems in 10 years. And so 16 reporting will help the Land Office have a better 17 picture -- and lessees -- have a better picture, and for 18 that matter operators and working interest owners and 19 other interested parties who may be depending on a lessee 20 to do what they're supposed to do. All of us will have a 21 better idea of what's actually on the lease. 22 And I wanted to invite my colleague, Paige Czoski 23 to join me here, because we want to -- pertinent to these 24 sections, we want to walk through some specific examples 25 of what we encounter when we look at State Land Office oil

Page 45 1 and gas leases. 2 MS. CZOSKI: Good morning, everyone. My name is 3 Paige Czoski. It's P-A-I-G-E, C as in cat, Z as in zebra, 4 O-S-K-I. 5 MR. BIERNOFF: Okay. If we can go to the next 6 slide, please. 7 And I wanted to just ask Ms. Czoski if you could 8 just describe generally the series of slides that we're 9 going to be looking at next, what that consists of. 10 MS. CZOSKI: Sure. We're going to be looking at 11 some example leases kind of spread out all over the 12 southeastern part of the state. And we looked at three 13 different lessees: A major company, a mid company and a 14 small company. And we looked potential issues that we 15 might want to look at. 16 MR. BIERNOFF: Okay. And this first slide here 17 is, to Ms. Czoski's point, just an overview of the 18 specific leases that we're using in these examples, like, 19 where they're located, how many acres they are. We're not 20 using company names. We're not -- the point of this is 21 not to cast a spotlight on any particular company, but 22 more to show conditions generally. 23 And we can go to the next slide, please. 24 MS. CZOSKI: Okay. I'll just walk you through 25 these leases that I reviewed. So Lessee A is a major	Page 47 1 two operators, and one of the wells has an open compliance 2 issue for staining around the wellhead. And you can see 3 some staining from Google Earth imagery. 4 Next slide, please. 5 So now look at Lessee B, which is a mid-sized 6 company. Here is a lease that is about 160 acres with two 7 wells and one operator. One of the wells is approved 8 temporary abandonment until June 1st of this year, and 9 there has been no production since June of 2016. And from 10 the satellite imagery you can see some old well pads that 11 could have possibly have better reclamation. 12 Next slide, please. 13 And this lease covers multiple sections, but only 14 one part has wells on it in Section 28. 15 Next slide, please. 16 So there are six wells on this lease. Three of 17 them are plugged, not released, and they were plugged in 18 2023 and 2024. And since it's been over a year, this is 19 in violation of 19.15.25.10(D) of the NMAC. 20 Next slide, please. 21 Okay. Now look at Lessee C, which is a smaller 22 company. Here's a lease that is 640 acres with 16 wells, 23 one tank battery and two operators. There's a previously 24 idle well since 2016, but since 2024 has produced 335 25 barrels. There's two open spills with OCD on this lease.
Page 46 1 company. This is about a 320-acre lease with 14 wells and 2 one tank battery and three operators on the lease. Five 3 of the wells from of the operators has cumulatively only 4 produced about 170 barrels, 1,160 MCF since 2018. And 5 some of the wells appear to be overgrown, which could be a 6 fire hazard. And then the tank battery -- 7 If you could go to the next slide. 8 So the tank battery is registered with the OCD. 9 It has a current status of "Closure Not Accepted." 10 There's an open spill from 2015, and you can see the 11 status of that spill from OCD. And from satellite imagery 12 it appears that there could be staining, unused equipment 13 and it appears to be overgrown. 14 Next slide. 15 Here's another lease from the same Lessee A. 16 Again, 320 acres, 10 wells, three tank batteries, one 17 operator. And for this lease there was one open spill 18 from the tank battery of 15 barrels of crude oil and 46 19 barrels of produced water from 2022. And the current 20 status is that the remediation closures were approved, but 21 there's still reclamation to be done. 22 Next slide, please. 23 And here's another lease. This is one of those 24 leases that covers thousands of acres over multiple 25 townships and ranges. There are two wells on this lease,	Page 48 1 And some of the wells have compliance issues for rusted 2 tanks, tank batter liner tears, missing secondary 3 containment, equipment left on site, et cetera. 4 Next slide, please. 5 And here's just some examples from this lease of 6 satellite imagery of potential spills. We use Google 7 Earth and Esri way back, which are both publicly-available 8 satellite imagery services. 9 And one of these spills on the bottom right-hand 10 corner looks to be a spill that was reported to the OCD, 11 and it has a current status that it's still pending. And 12 you could see in 2025 that it looks like the spill is 13 still there or there's work that needs to be done at 14 least. 15 Next slide. 16 Okay. And this is one more lease that has 12 17 wells, and they're all one operator. And all 12 wells 18 have been producing less than 200 barrels per year since 19 2017, and it's been declining. And approximately half of 20 these wells appear to have possible staining around the 21 wellhead. And I believe that was the last one. 22 MR. BIERNOFF: These examples all show some 23 compliance issues. Do all of the State Land Office oil 24 and gas leases that you look at have issues like this? 25 MS. CZOSKI: No, not all leases have issues that

Page 49 1 we review. 2 MR. BIERNOFF: Okay. So this is a good overview 3 though of some of the -- would you say some of the 4 compliance issues that we do encounter when leases have 5 those issues? 6 MS. CZOSKI: Yeah. This is kind of a good 7 overview of different issues we might encounter when we do 8 these reviews. 9 MR. BIERNOFF: Okay. We can go to the next 10 slide, please. 11 I want to just briefly touch on some of the 12 remaining -- well, I'll try to cover all of the remaining 13 provisions of the proposed rule amendment. We do -- I 14 think we wanted to focus on the meat of the rule, which 15 was the increase in basic bonding amounts, the bulk bonds, 16 the cap on bonding for compliant leases, and then the 17 high-risk factors and reporting. 18 Here are some of the remaining provisions. So 19 there is language in the rule proposal that builds in an 20 inflationary adjustment. We think this is essential. And 21 the description that Mr. Stewart gave of not only how long 22 ago it's been since bonding rates were raised, but also 23 how much of an erosion in value we face when bonding rates 24 remain fixed in time for 40 or 45 years. 25 So that's a change. There's also the ability --	Page 51 1 We wanted to make clear that a lessee is not 2 limited to a surety bond although that is the most common 3 type of financial assurance that's on file with us now by 4 quite a margin. But that letters of credit and cash 5 deposits and other mechanisms that we may not know about, 6 that we haven't been told about, that may be developed in 7 the future, can also be considered. 8 Letters of credit, in our experience, have been 9 abused. And so, for example, banks that are based in 10 Texas just ignoring claims on letters of credit and not 11 being subject to jurisdiction potentially in New Mexico. 12 And so we've put in additional guardrails on accepting 13 letters of credit. 14 And then if we can go to the next slide, please? 15 And then, finally, we have provisions addressing 16 the circumstances under which a lessee can ask for and 17 obtain a waiver of the bond requirement. For example, if 18 a lessee has acquired a lease at auction and doesn't 19 intend to do any development on it, that's suitable for a 20 waiver request. 21 We address riders. And finally, we put into 22 writing what is our practice now governing claims on 23 financial assurance. So we provide what that process 24 looks like and who gets notice, and also make clear that 25 claiming a particular bond doesn't jeopardize other leases
Page 50 1 the Land Office has the ability to look at specific 2 compliance factors more frequently than every five years, 3 and that's consistent with the high-risk provisions of the 4 proposed rule. 5 And then we've also heard particularly from 6 industry groups and I think, maybe at least one oil and 7 gas lessee, that in their view this bonding is duplicative 8 because OCD currently requires -- and OCD currently 9 requires an OCC in considering a rule amendment that would 10 involve an upward adjustment in many cases of OCD bonds, 11 and that that's duplicative. And that's -- we'll be happy 12 to talk more about that, but it's not duplicative in the 13 Land Office's view because we don't have access, first and 14 foremost, to OCD funding bonds. 15 And we also look for different kinds of 16 compliance. Plugging is important to the State Land 17 Office for wells that are on state trust land. But so 18 too, is soil remediation. And reclamation of lease sites 19 and a lot of that surface work, OCD is under its 20 regulatory framework, agnostic about. It doesn't enforce. 21 But we did want to build in the possibility of a 22 downward adjustment in the event that the Land Office in 23 the future gets access to OCD plugging bonds because there 24 is some overlap potentially. And so that's the final 25 feature of periodic adjustment.	Page 52 1 that aren't held or affected by that particular bond, that 2 a given lessee might have. And that was in response to a 3 request from industry groups that we considered that 4 change. 5 And finally, there's in the rule proposal, I 6 think a built-in recognition that at least for some 7 lessees there's going to be some planning and some work 8 involved in implementing different aspects of the rule. 9 And so leases that are of greatest concern have a shorter 10 compliance window, and the proposal pegs that at 90 days. 11 And larger lessees -- this is actually an error in the 12 slide that I'll correct verbally, and then we'll prepare a 13 corrected slide, but it's the larger lessees have 90 days 14 to get into compliance. 15 And then all other lessees, the implementation 16 date is next May. And then finally, the annual reporting 17 requirement we had, as Mr. Stewart noted -- we had moved 18 that date further into the future at the request of 19 industry groups that expressed a desire to have more time, 20 and so that requirement is currently at July 1st of next 21 year. 22 So that's an overview of the rule itself. 23 I want to just take a quick moment to check with 24 the rest of our team before we move on to questions. 25 So I just want to correct my correction. The

Page 53 1 implementation for larger lessees is not 30 days, as it 2 says on the slide nor is it 90 days, which is what I said 3 a moment ago. It's -- in the current proposal it's 4 December 1st of this year, so I wanted to correct that. 5 And then that is the conclusion of our 6 presentation on the rule proposal. 7 I don't know, Madam Hearing Officer, if we want 8 to take a break? 9 HEARING OFFICER ORTH: Yes. Thank you very much, 10 Mr. Biernoff and staff. 11 It's 10:27. Let's come back at 10:40, please, 12 and we'll begin with questions. 13 Mr. Rankin, I'll start with you. 14 (A break was taken from 10:27 AM to 10:40 AM and the 15 proceedings continued as follows:) 16 HEARING OFFICER ORTH: Okay. Great. Thank you. 17 We are back after a short break. We will turn to the 18 questioning of the State Land Office panel. And the way 19 this is going to work, ideally you will throw out a 20 question related to some of the testimony that was given 21 this morning, in the presentation, the slides, and the 22 best person to answer it will speak up. So you could 23 certainly indicate who you believe might be best to answer 24 it, but ultimately the folks who believe they have the 25 best answer will be speaking up themselves. So thank you.	Page 55 1 HEARING OFFICER ORTH: Yes. 2 MR. SUTPHIN: Okay. My first question, I assume 3 this would be addressed to Ms. Heltman or Mr. Biernoff, is 4 really just one of underlying procedure. As we all know 5 rule 19.12.16.11 provides that at the hearing all 6 interested persons shall have the opportunity to review 7 all documents or other pertinent information prepared in 8 advance of the hearing. So my first question is: Could 9 we get some clarification of the statement on the State 10 Land Office's position about when we will be given that 11 opportunity and what it will consist of. 12 MR. BIERNOFF: Mr. Sutphin, I'll be happy to try 13 and address that question. 14 Thanks. The slide presentation that we presented 15 in our morning session will be available to you and your 16 client and to any other interested party, and that is the 17 material that we prepared in advance of the hearing. 18 Certainly materials that the Land Office has cited or 19 talked about in our presentation, if they have not 20 already been made available via the Serial IPRA requests 21 that NMOGA counsel have made on the Land Office, I'll be 22 happy to furnish you, for example, a copy of any study or 23 figure that we cited today. But I think the CRA report, 24 the Legislative Finance Council report have been provided. 25 And so anything else, I'll double check if there's not
Page 54 1 Tell me your name. 2 MR. SUTPHIN: Good morning, Madam Hearing 3 Officer. Robert, R-O-B-E-R-T Sutphin, S-U-T-P-H-I-N. 4 HEARING OFFICER ORTH: Who do you represent? 5 MR. SUTPHIN: I, along with my colleagues, Adam 6 Rankin and Olga Serafimova, represent NMOGA. 7 HEARING OFFICER ORTH: Thank you very much. Go 8 ahead. 9 MR. SUTPHIN: My first -- well, let me first say, 10 my client, NMOGA, indeed the public, appreciates the 11 opportunity to be here to engage with you on this very 12 important rule, to appreciate where you're coming from, 13 your perspectives, your concerns, and to engage in this 14 fundamental exercise of our rights. So thank you for 15 that. 16 NMOGA especially appreciates the reach out, the 17 opportunity for dialogue and discussion that has occurred 18 leading up to this, and we appreciate all the effort that 19 has been made by the agency and its many folks. 20 HEARING OFFICER ORTH: Mr. Sutphin, is your 21 microphone on? 22 MR. SUTPHIN: It is. Am I not holding it close 23 enough to my mouth? 24 HEARING OFFICER ORTH: Thank you. 25 MR. SUTPHIN: Better?	Page 56 1 anything else besides our slide show that's been cited in 2 today's presentation. And if there is, we'll make it 3 available to you. 4 MR. SUTPHIN: Okay. Thank you, Mr. Biernoff. 5 As I was preparing questions today, I was looking 6 for a document, some statement by the State Land Office 7 that gave a good summary of its objectives and its 8 concerns. And I was drawn to the very recent press 9 release, the April 8th, 2026 press release entitled 10 "Commissioner Garcia Richard proposes stronger financial 11 protections for state lands." I have a few questions 12 about that. I believe that we have copies of that with 13 us, if it would be helpful to whoever is going to answer. 14 But let me start. There's just a couple of 15 statements in that press release that I wanted to ask 16 questions about, explore, make sure I understood. And I 17 think I want to start with the recognition, the statement 18 about the launching of the accountability and enforcement 19 program within the State Land Office in 2020. 20 My first question is: What was the -- what were 21 the directives? What were the objectives of the 22 accountability and enforcement program that was launched 23 in 2020? 24 MR. STEWART: Once again for the record, Sunalei 25 Stewart, Deputy Commissioner. So Commissioner Stephanie

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1 Garcia Richard launched an effort to try to ensure that we
2 had contractual compliance from lessees. So our oil and
3 gas leases and our rules and OCD rules required that
4 operators and lessees clean up their spills, clean up
5 their messes, and that leases are closed out
6 appropriately.

7 So the objective of that effort was try to ensure
8 that that was being adhered to.

9 MR. SUTPHIN: And it sounds like, Mr. Stewart,
10 that the foundation, the basis for that effort was to use
11 your words, "contractual compliance." Is that fair?

12 MR. STEWART: Contractual and regulatory. I
13 mean, there are other rules at play.

14 MR. SUTPHIN: Okay. Getting back to the press
15 release, that is, when I say, "press release," let me just
16 clarify that I'm speaking to the April 8th, 2026, press
17 release, and again, I'm glad to provide a copy to
18 whoever --

19 MR. BIERNOFF: Mr. Sutphin, I'm sorry to jump in.
20 Why don't you provide a copy just for our reference. We
21 can share one.

22 MR. SUTPHIN: My assistant, Mr. Rankin, will make
23 that happen.

24 MR. RANKIN: Mr. Biernoff, it is Tab 11 in the
25 folder.

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1 captured in that statement from the Commissioner, my sense
2 is probably that it is going to low-producing, marginal,
3 inactive, abandoned wells. Wells that essentially are
4 appropriate to be plugged, and capturing that as a general
5 category.

6 MR. BIERNOFF: And if I can just give a short
7 follow-up on that. This is actually something we talk
8 about all the time. Abandoned the way, I think ordinary
9 people, regular people use the term is what we have in
10 mind here. In other words, wells that a responsible party
11 has literally walked away from, the way that you would
12 abandon -- unfortunately, the way that some people abandon
13 animals, children, responsibilities, and it's certainly
14 not the term of art "abandon" that actually, I think
15 signifies the successful and responsible closure of a
16 well.

17 Sometimes "bad" means "bad" and sometimes "bad"
18 means "good," apparently. But I think it's that -- it is
19 that vernacular that we usually talk about, as Mr. Stewart
20 said, when we're communicating with a larger audience.

21 MR. SUTPHIN: Okay. Thank you for those answers
22 and that clarification.

23 I want to next turn your attention to the use of
24 the phrase "compelled companies to plug over 840 abandoned
25 oil and gas wells." Compelled companies is what I'm

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1 MR. SUTPHIN: And we have multiple copies, I
2 believe.

3 MR. BIERNOFF: One will be sufficient. Thank
4 you, Gentlemen.

5 MR. SUTPHIN: Okay.

6 MR. BIERNOFF: I'm sorry for the interruption.

7 MR. SUTPHIN: No, no interruptions, Mr. Biernoff.

8 On -- I printed this out, you know. I don't know
9 what format it might take, but in the copy I'm looking at,
10 the copy you have, Mr. Biernoff, on page 4 is where I'm
11 going to spend just a little bit of time.

12 There's a statement in there that since then, the
13 program has compelled companies to plug over 840 abandoned
14 oil and gas wells on state land. So my first question is:
15 Is the use of "abandon" in that statement accurate? In
16 other words, what I'm getting at, and it sounds like,
17 Mr. Stewart, you're going to step up. What I'm getting at
18 is do you really mean "abandoned" or do you mean inactive
19 or do you mean a combination or do you mean something
20 else?

21 MR. STEWART: Yeah. So I appreciate the
22 question. As you can imagine for a press release that is
23 geared to the public it might have a little bit less
24 technical terminology. You know, there's not a definition
25 per se of "abandoned," but the -- what is trying to be

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1 interested in here. So were all of these 840 oil and gas
2 wells referenced, were those plugged and addressed by
3 companies?

4 MR. STEWART: Yes. So what we are talking about
5 here are not wells -- I'm sorry. I don't know if the mic
6 is picking me up. We are not talking about wells that are
7 closed in the ordinary course of operations where, you
8 know, companies are plugging wells, you know, as they deem
9 fit as part of normal operations.

10 What we're talking about here is when we have to
11 go to a lessee or an operator and we have to compel them
12 to plug it or clean up a site through a demand letter,
13 through a lawsuit, through some type of compliance action
14 from our legal division. So that is what we are trying to
15 capture when we're talking about these wells. And, yes,
16 they are plugged at industry's expense and by industry,
17 which is the objective of the program is to ensure that
18 taxpayers that are beneficiaries are not picking up the
19 tab, and that we look to the responsible party or parties
20 and have those entities do the plugging.

21 They may all -- I'll defer to Mr. Biernoff, if
22 there are some, you know, exceptions in there. There
23 might be a couple that we've had to plug or sounds like
24 it's noted at --

25 MR. BIERNOFF: The answer to that is no.

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1 There's two wells that the State Land Office has
2 plugged through a contractor. We don't operate our own
3 rig as much as I sometimes wish we did. And those two
4 wells are not reflected. One of them was featured in this
5 morning's presentation, and that's the High Plains well in
6 the far Four Corners that was plugged literally, like,
7 within the last couple of weeks, maybe last week. And
8 another well that was plugged, I believe last year, and
9 those two are not included in this tally.

10 MR. SUTPHIN: So you have been successful in at
11 least -- for at least 840 wells in avoiding taxpayer
12 expense for all of those 840 wells. And you've been
13 successful in getting industry to step up, take care of
14 them, and pay the tab with these two exceptions that we're
15 talking about, right?

16 MR. STEWART: We've been successful in compelling
17 through the threat of litigation in compliance action
18 industry to uphold their obligation to plug wells.

19 MR. SUTPHIN: Okay.

20 MR. BIERNOFF: And may I just add to that answer?

21 MR. SUTPHIN: Of course.

22 MR. BIERNOFF: I will note that a good number --
23 I don't have a figure for you. If you're interested, we
24 can have further discussion about it though after this
25 hearing. A good number of that 840, which is now over 860

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1 are wells that have been plugged, but if they are on
2 surface of the state have not necessarily been remediated
3 and reclaimed. And so I would qualify to the question, I
4 would qualify the statement that we've been successful, I
5 wish that we could say we've been fully successful. I
6 would say we've had a partial success in that the wells --
7 that these wells have been plugged, and of course, there's
8 many inactive wells that have not been plugged. But in
9 some cases there is still work that is outstanding. And
10 in many cases, if a company takes our demands seriously or
11 as a result of litigation is required to plug a well, will
12 stop there and not do what is often the much more
13 expensive work of surface remediation.

14 MR. SUTPHIN: Okay. So, Mr. Biernoff, if I
15 understand you correctly, you're basically saying 840, now
16 860, count refers to plugging. Many of those wells are at
17 different stages of post-plugging compliance; is that
18 fair?

19 MR. BIERNOFF: That's fair. And some of those
20 wells are on split estate; and therefore, were finished in
21 terms of our enforcement although we certainly hope and
22 encourage responsible parties to be responsible and
23 remediate the surface of a well site regardless of who the
24 landowner is. But our role is finished for a split estate
25 well once it's been compliant.

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1 MR. BIERNOFF: Mr. Biernoff, you mentioned that
2 the State Land Office had plugged two wells through a
3 contractor. The High Plains, which was featured in your
4 slide deck. Do you happen to recall the name of the other
5 one?

6 MR. BIERNOFF: I do. It's APD Federal Number 1.
7 It's a SWD well. It's an infamous case that I think some
8 of the attorneys in this room and some of the
9 non-attorneys are familiar with. The operator was called
10 Siana. And let me know if you want to know anything else
11 about them.

12 MR. SUTPHIN: Okay. No. I was really just
13 looking for clarification of a universe of the wells that
14 the State Land Office has taken on itself.

15 Switching gears a bit, but still sticking to the
16 press release, the press release also states that the
17 program has filed over 40 lawsuits for non-compliance by
18 lessees. My question is: Setting aside the Marathon
19 case, the case pending at the New Mexico Supreme Court,
20 has the State Land Office lost a single one of those
21 lawsuits?

22 MR. BIERNOFF: I'm pausing to think. I think
23 that the answer is no, however, a number of these lawsuits
24 are still pending, and so the outcomes are unknown at this
25 point in time. But if you're asking, have we lost on the

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1 merits or via a dispositive motion in any other case
2 besides the district court stage of the Marathon case, I
3 think the answer is no.

4 MR. SUTPHIN: Okay. And, Mr. Biernoff, the State
5 Land Office has settled quite a few of these lawsuits,
6 have they not?

7 MR. BIERNOFF: Yes.

8 MR. SUTPHIN: And has the State Land Office
9 settled any of those lawsuits on terms that were
10 unacceptable to the State Land Office?

11 MR. BIERNOFF: The State Land Office has
12 sometimes settled cases for terms that appear to be
13 acceptable at the time, and that the responsible party
14 whether a lessee, an operator or both, later failed to
15 fulfill. And we have unfortunately, more than one or two
16 cases that settled where we are now having to move the
17 responsible court for enforcement of a settlement
18 agreement, and in some cases for contempt sanctions. We
19 don't like to have to do that. We know that the courts
20 favor settlement, and certainly we like to try to reach
21 settlement where it's possible, but where responsible
22 parties don't honor their settlement obligations, we have
23 to take further steps.

24 MR. SUTPHIN: Okay. So there's two things going
25 on here. And let me clarify. It sounds like there have

Page 65 1 been a few cases where a settling party has failed to 2 fulfill its agreed upon settlement obligations, and that's 3 what you're speaking to, right? 4 MR. BIERNOFF: That has happened. 5 MR. SUTPHIN: But I -- a different question, but 6 related, has the State Land Office ever entered into, 7 executed a settlement agreement to resolve one of those 8 lawsuits where the State Land Office said or thought: 9 We're not getting the compliance we're entitled to under 10 law here? 11 MR. BIERNOFF: That's a fair question. I will 12 not be able to share the details of any specific 13 settlement -- internal discussion about a settlement 14 agreement, which in the abstract, as you know from doing 15 the same work, generally, involves all kinds of 16 considerations. 17 And so in the abstract, there may be instances 18 where the settlement is far from ideal, but is ultimately 19 determined to be the best course of action for us to take. 20 So I'll put it in those terms to avoid getting into 21 protected information. 22 MR. STEWART: And if I could just add one 23 additional point in terms of, you know, when we talk about 24 success, you know, we are proud of our record. And, you 25 know, bringing litigation and successfully resolving it,	Page 67 1 seen that process through. 2 MR. SUTPHIN: Okay. Still sticking, 3 Mr. Biernoff, with the 40 lawsuits, as you know, I've been 4 involved in quite a few of those myself. I just did a 5 survey of some of the complaints. Is it fair to say that 6 all or at least the majority involve claims for breach of 7 contract, that being the oil and gas lease statutory 8 trespass, and common law trespass; is that a fair 9 characterization overall of those lawsuits? 10 MR. BIERNOFF: We frequently bring those claims. 11 We also bring other claims sometimes. We've brought 12 claims for conversion and unjust enrichment. We've 13 brought claims based on violation of State Land Office 14 rules. In some cases we sought declaratory judgments. We 15 think that covers certainly most of the claims that we've 16 filed. 17 MR. SUTPHIN: And injunctions. I didn't mention 18 injunctions. 19 MR. BIERNOFF: And sometimes injunctions. 20 MR. SUTPHIN: Yes. Okay. 21 MR. BIERNOFF: And, Mr. Sutphin, if you would 22 like the Land Office to consider filing additional types 23 of claims against oil and gas lessees, we're certainly 24 glad to consider doing that, if that facts and law support 25 such a claim.
Page 66 1 but success also, in some cases means winning and not 2 being able to collect. So in Smith and Marrs, as an 3 example of that, where we got a default judgment in 4 damages of, you know, was it seven-and-a-half million. 5 But that's something likely that the we will not be able 6 to collect on. 7 So I just wanted to point out that, you know, 8 some of the litigation, while we are successful in 9 winning, that is a different consideration than whether we 10 will be made whole. 11 MR. SUTPHIN: Moving on here, and talking 12 still -- but still sticking with these 40 lawsuits, have 13 any of those lawsuits asserted a claim against the 14 defendant or defendants to pull a bond? 15 MR. BIERNOFF: They have not. We have not needed 16 to file an action against a surety although we could do 17 that. But typically, I know I mentioned approximately 18 three dozen bond claims that the Land Office has made, and 19 in most cases the outcome of a bond claim is one of two 20 things: Either the claim is honored because we've 21 established our entitlement to the, unfortunately, very 22 minimal amount of money held by the bond, held in the 23 bond, or the responsible party, the obligor, has come 24 forward and has expressed a desire to work with us and to 25 try to cure its deficiencies, and we've, in some cases,	Page 68 1 MR. SUTPHIN: All right. Switching gears a 2 little bit -- and I don't know if this is for Liz Bisbey- 3 Kuehn or for a different member of the panel. But I did 4 have a few questions on a couple of the case studies that 5 were in the slide deck. 6 I really want to focus on the Smith and 7 Marrs/Sanmal Queen Unit case study and the Nordstrand 8 Engineering case study. Would you agree that the 9 negligent operations, the damage that was shown in those 10 pictures occurred over time? 11 MR. BIERNOFF: I think it's evident that, to me 12 as layperson, and I'd like if others from the Land Office 13 panel have more expertise and want to share it, I think 14 we'd be happy for that to be brought forward. But as a 15 layperson, this operator and its affiliated lessee were 16 operating at the lease site for a period of at least 15 17 years. 18 MR. SUTPHIN: And given the damage that you 19 guys -- that we see just in the pictures, and that you 20 have been involved in actively remediating, that is not 21 the type of damage that happens with an overnight spill or 22 necessarily with one incident. That appears to have been 23 a series of negligent operations. Is that a fair 24 observation? 25 MS. BISBEY-KUEHN: That is a fair observation.

Page 69 1 MR. SUTPHIN: Okay. And then would you agree 2 with me that affirmative New Mexico law whether it's OCD, 3 State Land Office, common law, prevents that type of 4 negligent operations? 5 MR. BIERNOFF: If this was in a trial proceeding, 6 I would object to the form of that question, sir, but I 7 want to make sure I understand the gist of it since this 8 is not a trial proceeding, and we're trying to understand 9 each other. 10 Are you asking whether the behavior that the 11 operator and lessee engaged in, the misbehavior that they 12 engaged in, is a violation of various provisions of New 13 Mexico law? 14 MR. SUTPHIN: That's a fair way to state my 15 question, yes, Mr. Biernoff. 16 MR. BIERNOFF: I think we can agree to that. 17 MR. SUTPHIN: Okay. And would you agree that it 18 at least appears, because these violations have appeared 19 over or have occurred over a long period of time, that 20 there was a failure of the regulators to recognize those 21 violations and curb them or get them addressed? 22 MR. BIERNOFF: There is no question, and the 23 State Land Office since 2020 has been very candid about 24 this point. Past State Land Office administrations and 25 past OCDs certainly bear a responsibility for their own	Page 71 1 name is Olga, O-L-G-A, Serafimova, S-E-R-A-F-I-M-O-V-A. 2 I wanted to ask -- you mentioned two wells that 3 have been plugged by State Land Office; is that right? 4 And those are the only two wells that the State Land 5 Office has plugged itself via contracted? 6 MR. BIERNOFF: I believe so. Certainly we're 7 talking about here the enforcement program that we've 8 discussed in our presentation. And so certainly from the 9 2020 onward period -- and I'm looking around to my 10 colleagues to make sure no one -- so there's a possibility 11 of a third well. 12 MS. SERAFIMOVA: Okay. And I'll say the number 13 of wells is not crucial to my question, but I just want 14 to, you know, specify the scope of the question, which is: 15 Are those wells for which the State Land Office engaged a 16 contractor, paid for the work, and the work was performed 17 on behalf of the State Land Office? 18 MR. BIERNOFF: Yes, and/or is currently 19 engaged -- has currently engaged a contractor who is still 20 performing work. I think Ms. Bisbey-Kuehn mentioned when 21 we were talking about the -- like, for example, the High 22 Plains site, the work that's taking place now is the 23 preliminary work in plugging and site delineation, and 24 there may be more work that's needed in a subsequent 25 phase. We're not sure about that.
Page 70 1 shortcomings. 2 That in no way absolves the private businesses 3 that plundered state-owned resources, like oil and gas, 4 and left behind a multimillion dollar mess. So I think we 5 would be the first people to admit that ideally back in 6 2010 or 2015 the State Land Office and OCD and possibly 7 others should have been attentive to problems like this. 8 I'll also point out that the State Land Office 9 doesn't currently, I think, despite a much more diligent 10 and vigorous approach to surveilling our lands and 11 enforcing obligations, like what we've talked about today, 12 nonetheless, we have a field staff of 15 or 20 people 13 responsible for keeping an eye on, you know, 9,000,000 14 surface acres. 15 And so inevitably, even with very robust and 16 vigilant attention some misdeeds will go undetected. And 17 indeed, some lessees in our experience, have been more 18 than negligent and have willfully concealed or attempted 19 to conceal contamination. And this is the kind of 20 unlawful behavior that may escape detection sometimes. 21 It's hard to say. 22 MR. SUTPHIN: Okay. Thank you for your attention 23 and responsiveness to my questions. I'm going to hand the 24 microphone over to my colleague, Ms. Serafimova. 25 MS. SERAFIMOVA: Thank you. Good morning. My	Page 72 1 MS. SERAFIMOVA: Okay. And as far as funding the 2 work, which funding source does that money come out of? 3 MR. STEWART: So we have two funding sources at 4 the State Land Office. One is our base contractual money 5 that is allocated from the legislature as part of our 6 budget process. And then we also have what is called the 7 "Restoration Reclamation Fund," and we're able to move 8 money into contracts in addition to that. So those are 9 the two funding sources. 10 Those are Land Maintenance Fund monies, which is 11 essentially the money that we pay for our overall budget 12 from. 13 MS. SERAFIMOVA: So just to clarify, the two 14 sources are the Land Maintenance Fund and then the State 15 Trust Land Restoration and Reclamation Fund? 16 MR. STEWART: No, that's not correct. So our 17 funding structure is that you have the Land Maintenance 18 Fund. The Land Maintenance Fund is essentially the 19 earnings that are nonrenewable -- I'm sorry -- that are 20 renewable in nature, so these are earnings that we made 21 from ag, oil and gas bonus lease sales, from commercial. 22 If it is not a permanent depletion of the resource, that 23 is our Land Maintenance Fund money. 24 Permanent depletions, like oil and gas royalties 25 or land sales, would go to the land grant permit fund.

Page 73 1 Our budget is allocated each year from the legislature, 2 and they tell us how much of that money in the Land 3 Maintenance Fund we can spend. Within that, there is a 4 line item for contractual services. That is the base 5 amount that is allocated, and then we can draw in 6 additional money from the fund -- the Restoration Fund -- 7 as may be appropriate. And that money comes from land 8 maintenance money as well. So it's a little bit 9 complicated, but that's the general overview. 10 MS. SERAFIMOVA: Okay. And for the contractual 11 services line item, is that a request that the State Land 12 Office makes to the legislature every year with its budget 13 proposal? 14 MR. STEWART: It is. 15 MS. SERAFIMOVA: Okay. And what limitations, if 16 any, apply to what types of contractual services money 17 from that line item can be spent on it? 18 MR. STEWART: It can be professional services, it 19 can be general services, so as long as it's contractual it 20 falls within that category. 21 MS. SERAFIMOVA: So any outside contract 22 essentially, for any purpose, any type of work? 23 MR. STEWART: I wouldn't say any purpose, any 24 contract. I mean, there are DFA rules; there are 25 procurement rules. There's all sorts of -- in terms of	Page 75 1 programmatic unit is defined in a way of managing state 2 trust land. To support that programmatic objective, that 3 the legislature, our state constitution and federal law 4 lays out, we are authorized to spend budget in accordance 5 with that objective. 6 The legislature further defines how much we can 7 spend in salaries and benefits, contractual, and the other 8 category. And as long they are, you know, lawful 9 purchases within there, and what I mean by that is they 10 comply with DFA rules and state procurement rules, we have 11 flexibility to use all of our money in furtherance of our 12 core objective, which is to manage the 9,000,000 acres of 13 surface and 13,000,000 acres within our state. 14 MS. SERAFIMOVA: Okay. But again, just to be 15 clear, you cannot point me to a specific statute? 16 MR. STEWART: I just did. HB-2, it is the law. 17 It is the budget and it is what is allocated every year by 18 the legislature to each individual agency. I can also 19 point you in Chapter 19 to the mission of the State Land 20 Office and the duties of the State Land Office, and it 21 speaks to, you know, allocations, you know, appropriations 22 in furtherance of that. 23 So, I mean, you can look at Chapter 19 about what 24 our statute says. You know, you can also look to the 25 Enabling Act and the state constitution, all of which
Page 74 1 what we could use it for, but if it is a lawful contract 2 for a lawful purpose and it complies with our rules, we 3 are able to use contractual services to the extent 4 allocated by the legislature for that purpose. 5 MS. SERAFIMOVA: Okay. And which statute, if 6 any, make using funds from that line item for plugging of 7 wells lawful? 8 MR. BIERNOFF: I'm going to just say, I know 9 we're not in a trial, and so I'm not making an objection, 10 but I am noting that I think that question presupposes or 11 implies that the Land Office responsibly managing state 12 trust land, which in some unfortunate cases means plugging 13 wells is somehow unlawful. And I don't think that there's 14 support for that proposition if that is a proposition that 15 the question is intended to establish. 16 MS. SERAFIMOVA: It is not. The question is 17 intended to establish the statutory authority for the 18 expenditure, and so the question is neutral in and of 19 itself, so -- 20 MR. STEWART: So -- 21 MS. SERAFIMOVA: -- is there statutory authority? 22 MR. STEWART: Yeah. So each year we go to the 23 legislature and we get budgeting. And that budget is 24 based on the allocation of the legislature in HB-2. The 25 State Land Office is one programmatic unit and the	Page 76 1 create a framework where you have a trustee who is 2 responsible for managing state trust lands in New Mexico 3 in accordance with those rules. So HB-2 is the funding 4 each year that we receive by law that allocates that in 5 furtherance of that general legal structure. 6 MS. SERAFIMOVA: Okay. But again, it is a 7 general legal structure; would you agree? 8 MR. STEWART: Our federal law, our state 9 constitution, our state laws and our appropriations each 10 year in furtherance of the mission of the State Land 11 Office creates a framework. Yeah, I guess you could 12 consider it general. 13 MR. BIERNOFF: I would use the term "broad" 14 because the Commissioner of Public Lands is vested with 15 broad authority. Some courts have described it as 16 "plenary authority" over the management of state trust 17 land. 18 I don't think, even if we spent a lot of time 19 looking, that we would find a statute that said that the 20 State Land Office is authorized to ask the legislature to 21 use some money from the fund that it generates to pay 22 utility bills, and yet I think it's lawful for the State 23 Land Office to pay its electrical and water bill for this 24 office or to maintain field offices or to expend money on 25 other purposes that are in furtherance of that broad,

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1 mandatory duty to maintain state trust lands.
 2 MS. SERAFIMOVA: Okay.
 3 MR. STEWART: And I would ask -- just one
 4 additional aspect, you know, in different context you also
 5 have, you know, more specific authority, for example, in
 6 the Restoration Fund. That is the state law, and there is
 7 a provision in there that talks about before using those
 8 funds, we should go after the responsible actors before we
 9 have a trustee have the -- you know, the beneficiaries
 10 pick up the tab. Because that fund all comes from the
 11 earnings of the schools. So there is specific language on
 12 that.
 13 MS. SERAFIMOVA: Now, you did not use Restoration
 14 Fund monies for the three wells that we've been discussing
 15 though, right?
 16 MR. STEWART: I am not sure exactly which fund
 17 was used. Sometimes we use different funds depending on
 18 what we have available in a fiscal year. And, you know,
 19 there's broader project -- you know, there's site
 20 characterization, you know, and there might be some things
 21 that we include and some things that are other -- I don't
 22 know. Others on the panel may know that offhand, but we
 23 can provide that information.
 24 MR. BIERNOFF: Well, and I'll say that we're in
 25 the process of compiling in response to IPANM's IPRA

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1 requests seeking -- I'm paraphrasing -- all contract
 2 expenditures for a two-year period. I expect that
 3 although the timing may or may not line up, but that
 4 information about the procurement and the funding of these
 5 specific plugging or restoration projects would be
 6 included in that production.
 7 MS. SERAFIMOVA: Okay. So we can look to that
 8 production when it's issued for these questions. Great.
 9 Could I ask -- in those -- so the three wells
 10 that we've been discussing, hypothetically, if the State
 11 Land Office, if there were bonds in place for those three
 12 wells, and the State Land Office was successful in making
 13 claims against those bonds and received money from the
 14 Surety or whoever, whatever the set up was, where would
 15 that money be deposited?
 16 MR. BIERNOFF: The money is suspended, and it's
 17 actually not a hypothetical. We've claimed the bonds in
 18 the two instances that we're sure are part of plugging
 19 that's been initiated by this office. So that's the High
 20 Plains case that we talked about earlier. That's a
 21 \$10,000 bond, and that was claimed, I think I said in
 22 2022. And then the other instance was not from an oil and
 23 gas lease. I think I mentioned earlier in discussion that
 24 it's a waste water disposal well called, "APD Federal
 25 Number 1." And that was operated -- that was not operated

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1 under an oil and gas lease, but it did have a \$10,000 bond
 2 coincidentally, and the Land Office did claim that bond.
 3 And so in those instances the money gets
 4 suspended and will eventually be used to offset, in its
 5 modest way, the ultimate bill that we face. And then
 6 the --
 7 MS. SERAFIMOVA: So if we could --
 8 MR. BIERNOFF: Oh, I'm sorry.
 9 MS. SERAFIMOVA: Oh. Please.
 10 MR. BIERNOFF: I was just going to add -- and I
 11 don't want to say too much about this possible third well
 12 because we haven't confirmed whether that's one of the
 13 wells that the State Land Office is taking on the plugging
 14 of, but if it turns out that there is a third well, that
 15 responsible party, that lessee and operator is a client of
 16 your firms called, "Jay Management," and Jay Management
 17 actually had two bonds, an oil and gas lease bond and a
 18 salt water disposal easement bond. And both of those have
 19 been claimed.
 20 MS. SERAFIMOVA: Okay. So can I just ask if we
 21 can focus on the High Plains Petroleum example because I
 22 think it's closest to the rule that we're here to discuss.
 23 You're saying the bond was claimed and the funds were put
 24 in suspense. What does that mean?
 25 MR. STEWART: So you can think of "suspense"

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1 essentially as our internal escrow account. It's our
 2 holding account. So we have bonds that are, you know,
 3 deposited. If they're pulled, the proceeds of the bonds
 4 would be essentially sitting in that account until they're
 5 ready to be utilized. And that would be when we would
 6 move it into the contractual line to actually spend the
 7 money or in some cases just go ahead and distribute that
 8 money directly to the beneficiaries.
 9 MS. SERAFIMOVA: Okay. And so the surety wrote a
 10 check presumably, right, for the bond funds for that
 11 amount?
 12 MR. BIERNOFF: Sometimes we receive bond proceeds
 13 by wire transfer, but typically we get a check. And in
 14 this case it was a letter of credit, and the issuer was
 15 Wells Fargo Bank.
 16 MS. SERAFIMOVA: And it was issued to the State
 17 Land Office?
 18 MR. BIERNOFF: Correct, or the Commissioner of
 19 Public Lands.
 20 MS. SERAFIMOVA: Okay. So -- oh, the
 21 Commissioner. Okay. So would you agree that it becomes
 22 state funds at that moment?
 23 MR. STEWART: The moment it's sitting in our
 24 account? Yeah.
 25 MS. SERAFIMOVA: Right. The moment it -- yes.

Page 81 1 MR. STEWART: Yeah, to a certain extent. I mean, 2 there are -- for example, instances where we hold cash 3 bonds in our suspense account where, you know, a company 4 actually just provides the cash in lieu of a surety, and 5 that money is, you know -- until we actually convert it, 6 you know, it's not something that we would be able to use 7 that is being held, you know, as money that was provided 8 for a company for that particular assurance. 9 MS. SERAFIMOVA: Okay. But so to be clear, that 10 money, those state funds were not deposited into the 11 Maintenance Fund, right? 12 MR. STEWART: So the Maintenance Fund -- maybe 13 one way to think about it is our internal general fund. 14 So, you know, within the Maintenance Fund you have a lot 15 of different accounts. And different funds that are able 16 to hold in the suspense account is one of them. 17 MS. SERAFIMOVA: Okay. So it goes into the 18 maintenance fund/suspense account? 19 MR. STEWART: Correct. 20 MS. SERAFIMOVA: Okay. And how -- and you're 21 saying that the Maintenance Fund statute authorizes that 22 deposit; is that right? 23 MR. STEWART: In terms of our ability to accept 24 and hold the money? 25 MS. SERAFIMOVA: Uh-huh.	Page 83 1 permanent depletion of the resource then it could. And 2 what I mean by that is, for example, this is outside of 3 the oil and gas context, but there was a sand and gravel 4 lessee, and their bond was for \$7,000, and that was 5 distributed directly to the beneficiary through the Land 6 Grant Permanent Fund because it was for unpaid royalties. 7 So depending on what it's being used for, if it's 8 a payment for unpaid royalties then potentially it could 9 go to the Land Grant Permanent Fund. 10 MS. SERAFIMOVA: Okay. Can you think of a 11 scenario where funds recovered from the type of bond that 12 this rule contemplates would go to the permanent? 13 MR. STEWART: Yeah. You could have a scenario 14 where, you know, maybe we already paid for -- or the 15 reclamation has already occurred, and they owe us money on 16 royalties, and their oil and gas royalties. You know, our 17 current bonds, we didn't really touch on this, but -- 18 because we're primarily focused on remediation reclamation 19 of the sites. That's really where the primary problem is. 20 But it is a performance bond as well. And if you 21 do have an entity that simply just hasn't paid the bills 22 that would be an appropriate use of the bond. And if the 23 bills, both were royalties in the oil and gas context, you 24 know, we could distribute it directly to the Land Grant 25 Permanent Fund, which eventually distributes it to the
Page 82 1 MR. STEWART: Yes, we're able to accept, and I 2 think our rule may also refer to cash bonds as well or 3 existing. I'll need to double check whether we allow for 4 cash bonds. 5 MS. SERAFIMOVA: Okay. But the bond amount does 6 not go to a beneficiary's permanent fund, for example? 7 MR. STEWART: So it is -- the bond proceeds will 8 sit until they're ready for disposition. And that means, 9 you know, sometimes if work needs to be done, and we're 10 going to take that \$10,000 and apply it towards a project 11 that costs \$200,000 and we need the contractual funds, 12 we'll move it into contracts, and then we will spend that 13 bond proceed that way. 14 There are other times where sometimes we would do 15 a direct distribution, and the money from the Maintenance 16 Fund, including bond proceeds, would go to the beneficiary 17 directly. It doesn't go to Land Grant Permanent Fund. 18 That's a different fund, but we distribute both through 19 the Land Maintenance Fund and there are distributions 20 through the Land Grant Permanent Fund. 21 MS. SERAFIMOVA: Okay. So bond money never goes 22 to the Land Grant Permanent Fund; am I understanding that 23 correctly? 24 MR. STEWART: I don't want to say, "never" 25 because there are certain instances, if it involves a	Page 84 1 beneficiaries. 2 MS. SERAFIMOVA: Okay. Thank you. And if I 3 could just ask just a couple more questions on the wells 4 that were discussed during the presentation. So for the 5 Smith and Marrs example, did that example involve a 6 situation where the surface estate had been sold by the 7 State Land Office prior to the issuance of the oil and gas 8 lease at issue? 9 MR. BIERNOFF: It's a mix. So there were three 10 leases, and Mr. Cloutier may remember because I think a 11 client of his was tangentially involved or more than 12 tangentially involved, but was not the defendant that we're 13 talking about here. There were, I believe three leases, 14 and it's a mix of full estate and split estate. 15 MS. SERAFIMOVA: Okay. So some of the surface 16 had been sold by the State Land Office prior to issuing 17 the oil and gas lease, the operating oil and gas lease? 18 MR. BIERNOFF: Some of the surface had been sold. 19 I don't know and I'm not -- I don't -- I wouldn't think 20 any of us would know off hand the date of the patent out 21 from the Commissioner of Public Lands State Land Office to 22 a private party. 23 In most cases, when we're looking at split estate 24 scenarios like this, the sale took place in the 1990s or 25 sooner. I don't know if it predated the issuance of the

Page 85 1 lease. 2 MS. SERAFIMOVA: Okay. So it's at least possible 3 that the Smith and Marrs example involved state lands 4 where the surface had not been sold prior to the issuance 5 of the operative oil and gas lease; is that fair? 6 MR. BIERNOFF: I guess it's possible. It would 7 be a pretty easy inquiry for any of us to make. 8 MS. SERAFIMOVA: Sure. Okay. But the State Land 9 Office did not make that inquiry prior to making a claim 10 to the bond, right? 11 MR. BIERNOFF: No. We have no reason to do that 12 because for one thing, the responsible parties didn't plug 13 inactive wells that were on split estate or full estate, 14 and had left significant contamination on land that 15 remained under the care and custody of the Land 16 Commissioner. 17 MS. SERAFIMOVA: Okay. And the same question for 18 the Nordstrand example. Is it possible that that example 19 likewise included, you know, surface estate that had not 20 been sold prior to the issuance of the operative oil and 21 gas lease? 22 MR. BIERNOFF: I would take a little bit of issue 23 with the premise of the question because the Nordstrand 24 case study involves full estate. 25 MS. SERAFIMOVA: Okay. So there's no sale of the	Page 87 1 MS. SERAFIMOVA: Okay. Would you agree that 2 Section 19.10.26 is the only statute that specifically 3 provides the State Land Office with authority to require 4 bonding or other financial surety for oil and gas leases? 5 MR. BIERNOFF: No, I wouldn't. 6 MS. SERAFIMOVA: Okay. 7 MR. BIERNOFF: The statutory lease forms 8 reference bonds, but perhaps and other obligations. But 9 perhaps more important -- maybe this is a quibble about 10 what "specific" means. But our foundational statutes 11 again, provide for -- I don't want to use the word 12 "total," but subject really only to what courts say or 13 what the legislature has clearly said to the contrary, the 14 Land Commissioner does have very extensive authority and 15 discretion over the management of state lands. 16 And I don't think it's any surprise or spoiler to 17 say that our view is that the Land Office, the 18 Commissioner, clearly has the authority to require oil and 19 gas lessees and other lessees to post bonds. 20 MR. STEWART: And I would also just add one thing 21 on that that is often overlooked. You know, the word 22 "trust," these are state trust lands. The Commissioner is 23 the fiduciary of a trust. We have a trust asset, which is 24 primarily the land. So applying just basic trust 25 principles as well, there is an obligation and a fiduciary
Page 86 1 surface estate? 2 MR. BIERNOFF: There was never a sale of any 3 lands that are issue in that matter. 4 MS. SERAFIMOVA: Okay. And same question for the 5 High Plains Petroleum example. Was the surface estate for 6 which a claim on the bond was made sold prior to the 7 issuance of the oil and gas lease? 8 MR. BIERNOFF: It was never sold. 9 MS. SERAFIMOVA: Okay. And for the other three 10 dozen or so claims on bonds that were mentioned, do those 11 involve the situation where the surface estate was sold 12 prior to the operative oil and gas lease? 13 MR. BIERNOFF: I don't know. I think many of 14 those bond claims -- I'd say most of them involved full 15 estate. Some of them don't. Some of them are 16 mineral-only leases or split estate. The dates of sale 17 have not been -- I would not say that that's a salient 18 detail for this particular purpose. 19 MS. SERAFIMOVA: Okay. So the -- 20 MR. BIERNOFF: To us, it's not salient. Maybe -- 21 MS. SERAFIMOVA: Uh-huh. 22 MR. BIERNOFF: -- maybe NMOGA thinks that it is, 23 but -- and I'm certainly happy to hear about your thoughts 24 on that, but that has not been a particular area of 25 inquiry.	Page 88 1 to protect those trust assets, and look out for the 2 beneficiaries of the trust, which primarily are the school 3 kids, but there's 21 of them. 4 So I think there is specific statutory authority, 5 but, you know, there's a lot of other, you know, broader 6 authority that comes into play that also supports our 7 ability to act in this regard. 8 MS. SERAFIMOVA: Okay. Thank you for that. 9 And I agree there are statutes that codify the 10 State Land Office's trust responsibilities. Do you agree 11 with that as well? 12 MR. STEWART: Yeah. The Enabling Act of 1912, 13 the compact with the federal government making our state 14 constitution and, you know, throughout Chapter 19. 15 MS. SERAFIMOVA: Okay. And there's -- and I 16 don't have the statute number in front of me, but there is 17 a specific statute in Chapter 19 that says, "protect -- 18 the State Land Office can protect state trust lands by 19 reclaiming and remediating." Am I remembering that 20 correctly? 21 MR. STEWART: I mean, we have -- it's probably 22 mentioned maybe in multiple places. I'm not sure what 23 you're referring to. I mean, you just look at the 24 Restoration Fund, and it talks about restoring state trust 25 land, you know, going after responsible parties. So I'm

Page 89 1 not sure of the specific reference, but we would agree 2 that there is statutory and constitutional support for the 3 notion of protection, protecting state trusts. 4 MS. SERAFIMOVA: Sure. But none of those 5 statutes mention plugging abandoned wells specifically, do 6 they? 7 MR. BIERNOFF: I don't think we want to commit 8 without looking page by page. 9 MS. SERAFIMOVA: Sure. 10 MR. BIERNOFF: But I will say that I, at least 11 personally, am not aware of statutes referring to plugging 12 of wells or paying utility bills or requiring 13 archaeological clearance. Those are all things that we do 14 as a responsible land manager. 15 MS. SERAFIMOVA: Sure. 16 MR. STEWART: And I would also push back a little 17 bit that there are, you know, just one example of a 18 statutory lease, right. Our lease in a oil and gas 19 context is statutory. You know, there is language in 20 there about compliance with laws. And, you know, there 21 are obligations in terms of plugging related to compliance 22 with laws, so -- 23 MS. SERAFIMOVA: Uh-huh. Is that a bit circular 24 though because you need a statute to be the law the lessee 25 has to comply with; don't you agree?	Page 91 1 the 19-teens and twenties with laws from the mid and late 2 20th century. You're comparing a very broad and very wide 3 delegation of authority. Again, some might say, 4 "plenary." Some courts including our Supreme Court have 5 said, "plenary" with a very specific and very 6 prescriptive, and I would say, very important. But also 7 in some respects, much narrower granted authority to the 8 Oil Conservation Commission and by extension, the Oil 9 Conservation Division. 10 MS. SERAFIMOVA: That reference to "plenary 11 authority," that in and of itself is pretty old, isn't it? 12 MR. BIERNOFF: That is true. Although the 13 principle that the Land Commissioner and State Land Office 14 have very broad discretion over the management of state 15 lands has been reaffirmed many times by the State Supreme 16 Court including within the last 10 or 20 years. 17 MS. SERAFIMOVA: Okay. 18 MR. STEWART: And this approach is consistent, 19 you know, with other areas. For example, our authority to 20 lease. It does not say, "A lease for billboards for 21 industrial parks," for, you know, various -- "tank 22 batteries for frac ponds." 23 It says that we have the authority to lease the 24 state trust land's property. 25 MS. SERAFIMOVA: There is a statute authorizing
Page 90 1 MR. STEWART: I don't think it's circular. 2 MR. BIERNOFF: I don't think it's circular at 3 all. 4 MS. SERAFIMOVA: Okay. 5 MR. BIERNOFF: The current form of lease anyway, 6 has a compliance with laws provision that refers 7 explicitly to state administrative rules and regulations. 8 MS. SERAFIMOVA: It also refers explicitly to the 9 type of bond that 19.10.26 authorizes, right? 10 MR. BIERNOFF: A different provision of the lease 11 does. 12 MS. SERAFIMOVA: And that's the only bonding 13 provision in the form lease? 14 MR. BIERNOFF: That's correct. 15 MS. SERAFIMOVA: Okay. And, Mr. Biernoff, would 16 you commit that the Oil and Gas Act explicitly gives OCD 17 the authority to plug abandoned wells? 18 MR. BIERNOFF: I think that was pretty well 19 established in the OCC rulemaking proceeding. 20 MS. SERAFIMOVA: Okay. So the legislature has 21 given OCD very specific authority in this realm and not 22 given the same authority to the State Land Office, the 23 same explicit authority? 24 MR. BIERNOFF: I don't think I would set up the 25 distinction quite that way. You're comparing laws from	Page 92 1 business leases, is there not? 2 MR. STEWART: Yeah. We have laws on leasing in 3 general, yeah. 4 MS. SERAFIMOVA: Okay. Well, to your point, 5 Mr. Biernoff, that some of these laws are pretty old, what 6 efforts, if any, has the State Land Office made to work 7 with the legislature to amend any of the statutes in 8 Chapter 19 to give you explicitly the authority to require 9 the bonds that the proposed rule seeks to impose on 10 operators and lessees? 11 MR. BIERNOFF: Well, I don't think we can speak 12 for what past administrations might have done, but I -- 13 and I want to make sure that others have a chance to 14 address this too. But from my point of view, we're using 15 the authority that we already have to try to establish and 16 set expectations for our lessees about responsible 17 conduct. We are not willing to tolerate oil and gas 18 companies trashing state trust land. 19 They have done it for far too long. And, of 20 course, not all of them are irresponsible. But the ones 21 that are irresponsible have gotten away with it, Counsel, 22 for many, many years. 23 And as we talked about in reference to the Smith 24 and Marrs matter with Mr. Sutphin, I wouldn't say that 25 it's a legal responsibility, but certainly the State Land

Page 93 1 Office of the past has some moral responsibility for not 2 having minded state trust resources and state trust lands 3 vigorously enough, and we're trying to change that. 4 So there's certainly a lot of room, I think in 5 the abstract to talk about positive legislative changes 6 that might enhance New Mexico State Land Office and 7 Commissioner of Public Land's ability to better protect 8 public and trust resources. 9 But under existing authority, I think that's 10 where we've seen this important first step. And that's 11 where the bond claims come from, and that's where the 12 enforcement work comes from. 13 MS. SERAFIMOVA: And to be clear, I don't think 14 anyone in this room objects to cleaner, you know, 15 environment. That's not the issue. The issue is how does 16 the State Land Office go about getting there. 17 So just to clarify, this administration has not 18 made any effort to work with the legislature to accomplish 19 the ends that the proposed rule is seeking including 20 broader bonding authority? 21 MR. STEWART: So as Ari, I think already 22 articulated, you know, we don't think it's a very 23 beneficial use of our time to seek authority we already 24 have. So that, in itself, is something that we don't 25 think would be very productive.	Page 95 1 if your reading of, you know, the totality of the law is 2 incorrect, and your rule is actually eventually held to 3 be -- or the proposed rule is eventually held to be 4 unlawful, and between here and there, you know, a number 5 of steps are taken. Bonds are required; bonds are 6 forfeited on, all of that effort could be undone if the 7 rule is ultimately held to be unlawful, right? 8 MR. BIERNOFF: Anything's possible. But we're 9 not going to engage in speculation about proceedings that 10 haven't taken place. 11 MS. SERAFIMOVA: And you're not going to engage 12 with the legislature either? 13 MR. BIERNOFF: I think we've already made 14 clear -- if you're asking prospectively, I'm not in a 15 position to speak -- and I don't think any of us, at least 16 on the leadership team, are in a position to speak about 17 what the next commissioner might do in the next 18 legislative session. 19 But if you're asking retrospectively, I think 20 we've already made clear our reasoning for using the tools 21 that are already available to us under our law to enforce 22 our rights and our trust beneficiaries' rights. 23 MR. STEWART: And I would like to make, you know, 24 one clarification because I don't think it goes to the 25 heart of your question about, you know, us working with
Page 94 1 But I would also note that we have an existing 2 rule. We've had an existing rule for a very long time. 3 And while this is updating, strengthening, improving and 4 adding some aspects that maybe didn't exist before such 5 as, annual reporting that we think will, you know, make 6 this a more workable and effective process, you know, I 7 think if we didn't have authority, you-all would have 8 maybe challenged this a long time ago. 9 MS. SERAFIMOVA: Well, we are challenging it now 10 so there's that. But also, would you agree that the 11 current version of the rules goes beyond the scope of 12 19.10.26? 13 MR. BIERNOFF: I don't think that the current 14 version of the rule goes beyond our statutory authority. 15 MS. SERAFIMOVA: In general? 16 MR. BIERNOFF: Right. 17 MS. SERAFIMOVA: Okay. 18 MR. BIERNOFF: There's a lot of statutes that 19 we're going to read together and come, if you're a 20 reasonable observer, to the conclusion that the 21 Commissioner of Public Lands absolutely can require 22 financial assurance for oil and gas leases including for 23 the protection of the trust. Not just for agricultural 24 lessees, if that's what you're getting at. 25 MS. SERAFIMOVA: Okay. So would you agree that	Page 96 1 the legislature on bonding. I think you're getting at, 2 you know, some statute that specifically says, "State Land 3 Office may issue bonding in this amount," you know, 4 et cetera. 5 There are related areas where we have expressed 6 an interest in engaging on bonding, and that might be, you 7 know, already in his presentation noted that the Oil and 8 Gas Act, and there are certain rules on the OCD side that 9 limit our ability to access those bonds. 10 In theory, you could have statutory changes 11 related to bonding that address, you know, somehow the 12 so-called, "duplication," you know, to the extent there 13 was overlap. So there may be some legislative, you know, 14 efforts in that regard. There aren't in the OFC, and we 15 don't see really any reason to seek legislative authority 16 in terms of allowing us to do bonding when we already have 17 that authority. 18 MS. SERAFIMOVA: Okay. And I believe 19 Mr. Biernoff mentioned earlier that given the parallel OCD 20 legislatively-enacted procedure to require bonds for oil 21 and gas wells to forfeit those bonds when an 22 administrative order to plug a well is violated. Given 23 the existence of that parallel procedure, you opined that 24 there wouldn't be overlap between the proposed rule that 25 we're here to discuss and the OCD parallel procedure. Do

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1 you recall that?

2 MR. BIERNOFF: I wouldn't use the word "opine" to
3 describe what I do. I hope I don't opine. I was trying
4 my best in response to earlier discussion, earlier
5 questions, and also in our affirmative presentation to
6 point out that there may be some area of overlap. I don't
7 think anyone would dispute that. But the notion that
8 industry has advanced in the past, that these bonds are
9 totally duplicative, I think doesn't hold up to scrutiny.

10 MS. SERAFIMOVA: And -- oh. Please.

11 MR. STEWART: Sorry. Just, you know, to
12 emphasize that point, we have different parties. We look
13 through lessee -- through the lessee lens, because they
14 are who we have a contract with. OCD looks through the
15 lens of an operator. We have different coverage. As Ari
16 noted, you know, we are looking at site remediation,
17 reclamation, maybe broader than OCD's perspective, and
18 maybe is more focused on well plugging.

19 And we have different parties that are able to
20 access that bond, the State Land Office can't access, the
21 OCD bonds. So while there may be overlap in certain
22 areas, as he indicated, you know, well plugging being, you
23 know, in certain situations, there is a lot of area that
24 is not overlap.

25 MS. SERAFIMOVA: Sure. And I completely agree.

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1 That's fair. So let's just focus, if I may, on an area
2 where we can agree there would be overlap. An abandoned
3 well on state trust land has to be plugged. To your
4 point, there's different parties, different agencies, but
5 a well can only be plugged once. Would you agree with
6 that?

7 MR. BIERNOFF: I would not agree with that
8 although, I think in most cases it's true --

9 MS. SERAFIMOVA: Okay.

10 MR. BIERNOFF: -- that an inactive well is only
11 plugged once. Unfortunately, sometimes plugging jobs
12 fail. The wells need to be plugged again. Sometimes
13 operators will attempt to reopen a plugged well and rework
14 it or use it for some other purpose, and those efforts
15 will fail and it will need to be plugged a second time,
16 and we've certainly seen that before.

17 MS. SERAFIMOVA: Okay. Thank you.

18 MR. STEWART: And also assuming that the lessee
19 is the operator, that those are the same entities on that
20 single well.

21 MS. SERAFIMOVA: And thank you for that
22 clarification. With that clarification, would you agree
23 with me that the state, as the trustee of state trust
24 lands, can recover for that well. However, many times it
25 needs to be plugged only once for the entirety of that

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1 job. There cannot be double recovery, right?

2 MR. BIERNOFF: I'm not sure that I understand the
3 question. I don't know if anyone does.

4 MS. SERAFIMOVA: Let me clarify. So if a well on
5 state trust lands needs to be plugged, the OCD has a bond
6 for that purpose and the reclamation fund. The State Land
7 Office has a bond for that purpose and apparently some
8 other accounts.

9 Is this a race to the courthouse? Is this a race
10 to the well site? How does that get worked out because
11 it's not addressed in the rule; would you agree?

12 MR. BIERNOFF: I'm still not really following. A
13 race between who or what? And maybe you can say more.

14 MS. SERAFIMOVA: Well, between the OCD and the
15 State Land Office. Who would have priority? Is it
16 whoever acts first?

17 MR. BIERNOFF: I think as long as there's work
18 that's outstanding -- I can only speak for the State Land
19 Office. You know, we do not obviously administer OCD
20 bonds, but our financial assurance for oil and gas leases
21 certainly covers or is meant to cover more than just well
22 plugging. It's meant to cover a variety of categories of
23 either damage or obligation.

24 And so if you're talking about \$10,000 or \$20,000
25 or -- I would pause at many cases, \$150,000 or even much

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1 more than that. We may be in a position to claim a
2 financial assurance for some other purpose until all of
3 that money is expended and there's still a need.

4 MS. SERAFIMOVA: Understood --

5 MR. BIERNOFF: Even assuming the same well in the
6 hands of the same party for OCD to take action, but we,
7 needless to say, don't have any control over what actions
8 he takes or doesn't take.

9 MS. SERAFIMOVA: So my question was a little
10 different, which is let's say, a well on state trust land
11 has to be plugged. OCD has issued an order requiring that
12 it be plugged. OCD has a bond and it has a process to
13 forfeit on that bond, to collect on that bond if their
14 order is not complied with.

15 How does the proposed rule fit into that
16 scenario? Are you saying that the State Land Office will
17 then stand down as far as the plugging of the well is
18 considered and seek, you know, bond funds for other
19 purposes or --

20 MR. BIERNOFF: I'm still not really following. I
21 was trying to make clear, and maybe I wasn't being clear
22 that we can claim an oil and gas lease bond for a variety
23 of purposes. And unfortunately, it's usually multiple
24 compliance issues that we see with the same lessee or with
25 issues that are held with the same bond. And so we may

Page 101 1 need to take action against a bond. And if it happens -- 2 and I mean, I'm -- I know you're posing a hypothetical, if 3 it so happens that the well has already been plugged, then 4 the bond money can be used for other purposes that the 5 bond is intended for, like site reclamation. 6 MS. SERAFIMOVA: Yeah. Understood. But what if 7 the well has not been plugged, and OCD wants to enforce 8 its bonding authority and its administrative order again, 9 you know, whoever posted the bond on the OCD side, and the 10 State Land Office wants to do the same under the proposed 11 rule? 12 MR. STEWART: There's no -- 13 MR. BIERNOFF: There's not -- go ahead. 14 MR. STEWART: There's no conflict. OCD is 15 absolutely free to enforce their IODs to hold bonds to the 16 extent that they do. That is not something that we 17 prohibit, that our rule contemplates interfering with. 18 They have the ability to exercise that. 19 If the well is plugged, and they are successful 20 on their side, then there would be no reason for us to 21 pull the bond for the plugging. 22 Now, as Ari indicated, if there was also an 23 unremediated spill or other damage to the state trust 24 land, then we may pull the bond for those purposes if they 25 are unaddressed. But there's not a competition, I would	Page 103 1 MS. SERAFIMOVA: I appreciate the leeway you 2 afforded me. Thank you. 3 HEARING OFFICER ORTH: Thank you. Let's come 4 back at 1:00. 5 (A lunch break was taken from 11:50 AM to 1:00 PM 6 and the proceedings continued as follows:) 7 HEARING OFFICER ORTH: Let's come back from the 8 break please. All righty. We are in the middle of a 9 hearing on proposed amendments to the State Land Office 10 rules on financial assurance for oil and gas wells. 11 We have come to the part of the hearing that I 12 had identified in a prehearing procedural document as the 13 time that I would be inviting public comment. I'd like to 14 invite those comments first, which are shorter than five 15 minutes. I do have a list of folks who have reached out 16 via e-mail to say they would like to make longer comment, 17 and I will call on you, but I'd like to invite those 18 anticipating less than five-minute long comments first. 19 So let's see here. On the first sheet -- let's 20 see. Sabri Sansoy. If I mispronounce your name, please 21 let me know. 22 MR. SANSOY: Do I come up here? 23 HEARING OFFICER ORTH: Please use the mic, so 24 that folks on the platform can hear you. Please spell 25 your first and last name.
Page 102 1 say, between the two parties or some type of conflict on 2 the regulatory side. 3 MS. SERAFIMOVA: But in your version of the 4 hypothetical there isn't because the well has been 5 plugged. In my -- if I may, my hypothetical is: The well 6 not been plugged. Under the proposed rule and the 7 existing statutory authority granted to the OCD, in 8 principle, both agencies can go after the same violation 9 at the same time. So who has priority? 10 MR. STEWART: So you are correct that a company 11 may have obligations under different authorities. They 12 may have a contractual obligation to plug wells and clean 13 up on our side, and they may also have, under our rules -- 14 and they may also have under OCD's framework an obligation 15 to do so. You know, if it is -- I'm a little unclear in 16 your scenario if it's actually being plugged or not. But 17 if there's inaction on that side, then I would assume we 18 would take action on our side and ensure that is pulled to 19 be able to perform that. 20 HEARING OFFICER ORTH: I had hoped we could get 21 to, you know, a great stopping point, but we do need a 22 lunch hour. And when we come back at 1:00, because I put 23 this in the prehearing procedural document, I will be 24 inviting public comment. And so we're going to have to 25 resume questioning of the staff panel after that.	Page 104 1 MR. SANSOY: So I'm Sabri Sansoy with New Mexico 2 AI Labs. And the first name is spelled S-A-B-R-I, and the 3 last name S-A-N-S-O-Y. 4 So I'm one of the cofounders, and we've been 5 evaluating converting oil wells, abandoned oil wells into 6 geothermal energy sources. The conversion would take 7 about six months before the first kilowatt hour is 8 produced. My only comment is regarding the proposed 9 deferral of the increased bonding requirement, I suggest 10 that the conversion of an abandoned wellbore into a 11 geothermal energy site be recognized as a state-approved 12 remediation pathway. That's all I have to say. 13 HEARING OFFICER ORTH: Thank you very much, 14 Mr. Sansoy. 15 All right. Sarah Knopp would be next. 16 All right. Michael Sweringen. 17 MR. SWERINGEN: Is Sarah not here? 18 HEARING OFFICER ORTH: She's not answering. If 19 she changes her mind or comes later, I'm happy to invite 20 her again. 21 MR. SWERINGEN: Cool. 22 HEARING OFFICER ORTH: First and last name, 23 please, for the transcript. 24 MR. SWERINGEN: Michael, M-I-C-H-A-E-L, 25 S-W-E-R-I-N-G-E-N.

Page 105 1 HEARING OFFICER ORTH: Thank you. 2 MR. SWERINGEN: Good afternoon. I'm Michael 3 Sweringen. I live in Albuquerque. I'm a teacher of 4 global warming science. I am very excited about this new 5 proposed, beefed-up bonding requirement. I think the 6 State Land Office is to be congratulated for proposing 7 these essential changes. 8 I'm going to talk about two things today: The 9 Pottery Barn Rule and stopping all methane leaks. The 10 Pottery Barn Rule is: You break it; you buy it. Pottery 11 Barn is a store that sells, like, dishes and stoneware and 12 home stuff. And, you know, I take out a dish; I drop it. 13 It shatters. I have to pay for that. 14 The oil and gas industry has not been operating 15 by the Pottery Barn Rule. Basically, they broke it. They 16 sucked every dollar of profit out of this oil or gas well, 17 and now you should pay for the cleanup. Their motto 18 should be, "We broke it. You should pay for it so we 19 don't have to." So that was one piece. 20 The second important piece is that we need to 21 stop all methane leaks, and that has to do with global 22 warming, which I like to call "global heating." 23 Here in the Southwest, every year it's getting 24 hotter, less and less water. We know this. To fight 25 global warming or global heating there's about a 100	Page 107 1 atmosphere only 12 years. That means if we were to cut 2 off the leaks of methane that are getting into our 3 atmosphere, in 12 years a third of the heat that's 4 increasing in the planet gets -- turns to zero. So it's 5 the most important thing we can do. 6 Once again, I am totally for beefed-up bonds that 7 make sure abandoned wells are sealed and not leaking 8 methane when the money stops. So my two ideas: Pottery 9 Barn Rule and stop all methane leaks. Thank you. 10 HEARING OFFICER ORTH: Thank you, Mr. Sweringen. 11 Ms. Knopp, I believe you have rejoined us. And 12 you have a comment that's five minutes or so? All right. 13 Thank you. 14 MS. KNOPP: Maybe less. 15 HEARING OFFICER ORTH: If you would just spell 16 your first and last name. 17 MS. KNOPP: Sure. It's Sarah, S-A-R-A-H. And 18 the last name is K-N-O-P-P. 19 HEARING OFFICER ORTH: Thank you. 20 MS. KNOPP: Thank you. Thank you, Commission and 21 Hearing Officer. My name is Sarah Knopp, and I'm a Policy 22 Specialist with Amigos Bravos. Amigos Bravos is a 23 statewide water quality protection and restoration 24 organization guided by social justice principles and 25 dedicated to restoring the ecological and cultural
Page 106 1 things we need to do, but the most important is stopping 2 all methane leaks. 3 So a little show-and-tell here. Just a reminder, 4 what's causing global heating. So for me and for behind 5 me too, 60 percent of it is caused by a molecule called 6 "carbon dioxide," and oil, coal and natural gas are the 7 main parts of this. I don't know if you can see, but on 8 the bottom there's a picture of a bathtub. So imagine a 9 bathtub filled with very slow, rising warm water, but 10 instead of water we're calling that "carbon dioxide." 11 The good news is that carbon dioxide is not that 12 great at trapping heat, thank goodness. The bad news is 13 once it gets in the atmosphere, it can stay hundreds or 14 thousands of years, so that's the bad news. Once it's 15 there, it's pretty much always there. 16 Here's the part that I usually forget. 30 17 percent of global heating is caused by methane. And one 18 of the biggest contributors to methane are producing oil 19 and gas wells and abandoned oil and gas wells. They're a 20 huge part of this problem. 21 So you can't really see it, but that's a picture 22 of a blow torch. So instead of a warm bath, being carbon 23 dioxide, methane is like using a blow torch. It absorbs 24 heat 80 times more than carbon dioxide. 25 The only good news here is it lasts in the	Page 108 1 integrity of New Mexico's water in the communities that 2 depend on it. I'm also an avid user of state lands. 3 We appreciate all that the State Land Office is 4 doing to safeguard public lands and the people who use 5 them. As a former high school teacher, I also can't help 6 but saying that I would like to thank the presenters this 7 morning for all the examples and the case studies that 8 they gave of the challenges that we're facing about the 9 contamination of our public lands. 10 I always taught my students that good writing and 11 good presentations are led by concrete examples. That's 12 how we get our heads around things, and I feel like the 13 range of examples given this morning have given me a good 14 picture as a member of the public of the threats to our 15 public lands and not just from bad actors. 16 Thank you also, to the Commission for some of the 17 major paradigm shifts in the current proposed rule. In 18 particular, we think that it's important that all 19 regulatory agencies write inflation adjustments into 20 rules, given the decades of time that often take place 21 between rulemakings and intensive nature of rulemakings. 22 Writing adjustments for inflation into the rules would 23 mean that taxpayers no longer get so far behind as the gap 24 between bonds and actual cleanup costs increases. 25 We also thank the Commission for considering

Page 109 1 increased bonding amounts for operators with unremediated 2 spills of low-producing wells. And we also support the 3 transparency measures incorporated in the additional 4 reporting requirements. 5 On this note, we'd like to encourage even further 6 high-risk multipliers, and in particular, would like to 7 underline the recommendations made by WildEarth Guardians 8 that language be included that clarifies that the \$150,000 9 floor would be that, a floor, and not a ceiling. Most 10 well plugging will cost significantly more than that. And 11 the risk of higher costs can be reasonably estimated 12 through standardized cost factors for plugging, which OCD 13 already uses under 19.15.8.9 NMAC factors such as, well 14 depth, the state of the infrastructure, the number of 15 wells, and in particular the presence of produced water 16 storage, handling and treatment facilities. 17 As a water justice organization, Amigos Bravos is 18 particularly concerned with impacts to water quality from 19 spills and abandoned wells. We know that contamination 20 from spilled, leaking and dumped produced water continues 21 to be one of the largest and growing contamination 22 concerns on public lands and other lands. 23 Spills, leaks and dumps of produced water are a 24 daily occurrence. We hope that the final rule will 25 specifically name that damage to public lands from	Page 111 1 regulatory agencies that self-bonding does not protect the 2 public. Thank you very much. 3 HEARING OFFICER ORTH: Thank you very much, 4 Ms. Knopp. 5 Penelope Mainz. 6 If you would please spell your first and last 7 name. 8 MS. MAINZ: Penelope, P-E-N-E-L-O-P-E, Mainz, 9 M-A-I-N-Z. 10 HEARING OFFICER ORTH: Thank you. 11 MS. MAINZ: I have lived in New Mexico 45 years. 12 I came up from Albuquerque today to fervently support the 13 new rule proposed to strengthen bonding requirements for 14 oil and gas development on New Mexico lands. But first, 15 thank you, thank you, thank you for putting forward these 16 critically needed reforms. 17 The proposed rule is a giant step forward. As 18 you know, the oil and gas industry has for many years 19 acted dangerously and irresponsibly toward New Mexicans by 20 leaving unplugged and abandoned gas wells that leak 21 methane, produced water and chemicals, like benzene. 22 This dire situation brought to my mind Robert 23 Fulghum's book, All I really need to know I learned in 24 kindergarten. Why? It was published in 1988, a best 25 seller, but it is pertinent now because Fulghum's big
Page 110 1 produced water and sludge, and other waste exempt from 2 hazardous waste law. We support the recommendations in 3 this regard written in the written comments submitted by 4 WildEarth Guardians. 5 We also support the recommendations that in key 6 areas of the rule where "may" should be transformed to 7 "shall." 8 Additionally, in working through some of the 9 major policy questions regarding produced water at the 10 legislative and rule level, access to the quantified 11 information on OCD's website has been crucial to myself, 12 as a member of the public and to frontline communities 13 attempting to engage in the public process. So we hope 14 that the increased reporting of this rule will require it 15 will also be made available to the public in an 16 equally-accessible manner. 17 Lastly, we strongly support prohibiting 18 alternative forms of financial assurance such as, 19 self-insurance. In today's volatile geopolitical climate, 20 we cannot rely on oil and gas operators and companies and 21 their parent companies to be guarantors of their own 22 cleanup costs. 23 Amigos Bravos has seen examples of the dangers of 24 self-insurance in our work on hard rock mining, and we 25 hope that the Commission will set an example for other	Page 112 1 point was "Clean up your own mess." And today we say to 2 oil and gas, "Clean up your own mess." 3 Because sadly, and obviously, it is not the 4 innocent Crayons and building blocks and construction 5 paper of childhood that need cleaning up. It is dangerous 6 pollution and deadly greenhouse gas, methane, including 7 the other chemicals. 8 So it is time for a regulatory overall. New 9 Mexico must interrupt the old playbook of oil and gas by 10 forcing oil and gas companies to cover the actual cost of 11 plugging and reclamation of the wells. Otherwise, the 12 health, environmental and financial cost of plugging and 13 reclamation will be dumped on communities and landowners. 14 That bill New Mexicans would have is unimaginable. 15 I fervently support the amendments, and you know 16 what they are, so I won't outline them here. But I will 17 say, I also fervently support an addition, which would 18 require the repeat offenders, operators with multiple, 19 major spills or releases of produced water and other 20 substances to be subject to further heightened bond 21 requirements because of the environmental risk their 22 operations pose to New Mexicans' land. 23 So to oil and gas we say, thank you for some of 24 what you have given New Mexico, but it is past time and it 25 is now time to clean up your own mess. Thank you.

Page 113 1 HEARING OFFICER ORTH: Thank you, Ms. Mainz. 2 Barbara Wisoff. 3 Oh, Ms. Wisoff, I think you're online. 4 MS. WISOFF: Here I am. Thank you for unmuting 5 me. 6 HEARING OFFICER ORTH: Hello. Would you spell 7 your first and last name, please? 8 MS. WISOFF: BARBARA W-I-S, as in Sam, O, as in 9 Oscar, F, as in Frank, F, as in Frank. 10 HEARING OFFICER ORTH: Thank you. 11 MS. WISOFF: I live in Albuquerque. I have two 12 toddler-age grandchildren and other family here in 13 Albuquerque. I have asthma and particulate allergies. 14 When I visited the Carlsbad Caverns, I think not quite 15 four years ago, I physically got sick. I had a headache. 16 I was nauseated. It was horrible. I mean -- and we have 17 so much wind here. The air quality in Albuquerque is 18 affected by pollution from far away. So -- and I just 19 wanted to say that. 20 I don't even call it "produced water." It's 21 toxic fracking waste, and I would hope that if geothermal 22 companies are going to use the abandoned wells for, you 23 know, processing geothermal energy, that they would make 24 sure that their processes do not -- it would still have to 25 be cleaned up. It can't leak that toxic waste anywhere.	Page 115 1 And I'm very grateful for comments that have 2 already happened. I want to especially affirm those of 3 Sarah Knopp, the comments about water. 4 I really think it's very important to support 5 these heightened bond requirements. I remember a few 6 years ago, there was -- one of the agencies was, it was in 7 one of the groups that I'm part of and the statement that 8 they had been working on a cleanup of one well that was 9 actually reaching into over a \$1,000,000, close to 10 2,000,000, so there's a lot of variance in the costs of 11 this cleanup. 12 I also want to pose a question. You know, as 13 there's more and more produced water injected into the 14 earth, a number of the wells that have been -- especially 15 in Texas -- that have been closed off, again because of 16 the pressure coming from underground, I would just like 17 that to be taken into consideration who would be 18 responsible for that cleanup then in New Mexico and how 19 does that work? 20 I've also been part of the solidarity with the 21 uranium folks that are in the communities with uranium 22 mining and know the long, long, long, long term of the 23 legacy issues with that. I would not like to see that 24 happening in New Mexico with oil and gas. We need to have 25 money up front that is adequate, more than adequate,
Page 114 1 It will get into our aquifers. In Oklahoma, it's already 2 in the aquifers. I mean, nationwide there is such a 3 horrible situation going on with irresponsible fracking. 4 So, yeah. Thank you for -- thank you for wanting 5 to charge the oil and gas companies for appropriate 6 expenses for remediating these abandoned wells. And also, 7 you know, there are blowouts. There are leaks. I mean, 8 there is so much pollution going on every day. And, you 9 know, I hope you can go further than this increased bond. 10 I certainly -- I'm a 69-year-old fixed-income 11 woman. I can't afford to pay taxes to fix the pollution. 12 It's not my job, and it's not fair to the average person. 13 That's all I have to say. 14 HEARING OFFICER ORTH: Thank you, Ms. Wisoff. 15 Joan Brown. 16 MS. BROWN: Good afternoon, and thank you for 17 this hearing, and also for this good work of the State 18 Land Commission, their office. 19 HEARING OFFICER ORTH: Would you spell your first 20 and last name? 21 MS. BROWN: J-O-A-N B-R-O-W-N, and I'm a 22 Franciscan sister and I'm a founder of New Mexico and El 23 Paso Interfaith Power and Light. Now I work as a 24 volunteer with them working a lot on climate justice and 25 oil and gas concerns.	Page 116 1 actually, because we don't know what the unforeseen 2 consequences might be. 3 And I take people of faith to immersion retreat 4 experiences in the Permian, and they are always astounded 5 by the vastness of the oil and gas infrastructure down 6 there. They also experience some headaches and nausea, 7 and health concerns. But looking at the long term and the 8 health and wellbeing of the communities is a very big 9 ethical and moral concern. 10 So please take these into consideration, and I 11 support very, very much heightened bond requirements. 12 Thank you so much. 13 HEARING OFFICER ORTH: Thank you, Sister. 14 Nodiah Brent. 15 MS. BRENT: Can you hear me? 16 HEARING OFFICER ORTH: Yes, thank you. Would you 17 spell your first and name last, please. 18 MS. BRENT: Yes. N-O-D-I-A-H is the first name. 19 Last name, B-R-E-N-T. 20 HEARING OFFICER ORTH: Thank you. 21 MS. BRENT: My comment is that it's hard for me 22 to feel sympathy toward the oil and gas industry because 23 they've already been so irresponsible. And we have a part 24 in that, allowing it. So now that we have come to our 25 senses and would like to impose cleanup costs, I can't

Page 117 1 imagine what they have to lose because if we require them 2 to pay for cleanup, they'll just pass the cost on to 3 consumers. Thank you. 4 HEARING OFFICER ORTH: Thank you, Ms. Brent. 5 Camilla Feibelman. 6 MS. FEIBELMAN: Are you able to hear me? 7 HEARING OFFICER ORTH: Yes, I can hear. Would 8 you spell your first and last name, please? 9 MS. Yes. It's Camilla, CAMILLA. Last name is, 10 Feibelman. F, as in Frank, E-I-B, as in boy, E-L-M-A-N. 11 HEARING OFFICER ORTH: Thank you. 12 MS. FEIBELMAN: Great. Well, first of all, thank 13 you for hearing these rules and also, thank you to the 14 State Land Office for continually meeting on oil and gas 15 policy in the state. 16 First, I'm calling for no use of fresh water in 17 the fracking on the state lands, establishing the Chaco 18 buffer area, ensuring a fair and competitive set of 19 royalty rates. The office is really leading on these 20 policy areas for the entire state, not to mention the 21 country, and so we're grateful to see these proposed 22 rules. 23 The Sierra Club Rio Grande Chapter, which I 24 represent and our 35,000 members and supporters are 25 especially concerned about low-producing, high-polluting	Page 119 1 Naomi Kline has five planks for environmental justice, and 2 one of her planks is polluters pay. And we need to hold 3 these people accountable, and then they'll be able to 4 sleep at night. Thank you for taking my words. 5 HEARING OFFICER ORTH: Thank you, 6 Ms. Argenbright. 7 Olivia Hartwell. 8 MS. HARTWELL: Can you hear me? 9 HEARING OFFICER ORTH: Oh, yes. Would you spell 10 your first and last name, please? 11 MS. HARTWELL: Sure. Olivia, O-L-I-V-I-A, 12 Hartwell, H-A-R-T-W-E-L-L. 13 HEARING OFFICER ORTH: Thank you. 14 MS. HARTWELL: Good afternoon, Commissioner 15 Garcia Richard and those in the room. My name is Olivia 16 Hartwell, and I'm speaking today on behalf of Extreme 17 Energy, a fictional corporation, proudly dedicated to 18 maximizing shareholder value, while minimizing cleanup 19 accountability. 20 First, we want to thank the State Land Office for 21 finally acknowledging that oil and gas cleanup 22 occasionally costs more than a strongly-worded apology or 23 a deeply inadequate bond. Frankly, this has been a 24 difficult few years for our industry between the spills, 25 the blowouts, the leaking infrastructure, inactive wells,
Page 118 1 wells, and the financial liability of companies that run 2 this type of well that are at risk first, of abandonment 3 and later potential orphaning. There's actually federal 4 legislative to relax oversight of this type of 5 highly-polluting well. And so to help protect the state, 6 we stand in support of these financial assurance rules. 7 We do want to insure that there's no self-bonding 8 on financial assurances and that that cleanup of produced 9 water is included as an expense to bond against. But 10 overall, we're supportive and appreciative of the effort. 11 Thank you so much. 12 HEARING OFFICER ORTH: Thank you, Ms. Feibelman. 13 Sharon Argenbright. You're in the room. 14 HEARING OFFICER ORTH: If you would spell your 15 first and last name. 16 MS. ARGENBRIGHT: S-H-A-R-O-N, Argenbright, 17 A-R-G-E-N-B-R-I-G-H-T. 18 HEARING OFFICER ORTH: Thank you. 19 MS. ARGENBRIGHT: It was a short notice, but I've 20 been clinging on to the New Mexico Spill Report for many 21 years. And it just dissects what's going on. The number 22 of spills, the location of spills, what is spilled, who is 23 doing it, and where it is. And it's decimating our 24 environment, our health. And I strongly encourage these 25 increased costs for oil and gas to clean up their mess.	Page 120 1 methane releases, groundwater contamination, and this 2 growing orphan well crisis. 3 Regulators have started asking extremely unfair 4 questions like, what happens if the company disappears? 5 Well, at Extreme Energy we reject this negativity. 6 According to public records, New Mexico operators have 7 spilled more than 9.4 million gallons of field waste last 8 year alone. But we prefer not to call them "spills." At 9 Extreme Energy we call them "fluid freedom events" or 10 "free samples." 11 And, yes, state data shows that plugging a single 12 well can cost more than \$163,000 on average with some 13 wells approaching \$800,000. But our industry has worked 14 really hard to preserve a proud New Mexico tradition. 15 Posting dramatically less financial assurance than actual 16 cleanup costs and hoping that nothing catastrophic 17 happens. And honestly, that strategy has worked 18 incredibly well for shareholders. But now, some critics 19 say repeat offenders should face heightened bonding 20 requirements. 21 But at Extreme Energy we believe that repeated 22 spills are not evidence of risk. They are evidence of 23 experience. If a company like, NGL, who had a blowout 24 last week, caused 47 spills, multiple blowouts, one and 25 five, and repeated infrastructure failures, but that

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1 company clearly understands produced water better than 2 anyone. That's leadership. 3 We're excited about the industry's visionary plan 4 to rebrand our toxic fracking waste as water and to 5 potentially reuse it more broadly across New Mexico. 6 Because if there's one thing that inspires public 7 confidence, it's companies repeatedly failing to contain 8 the exact same waste stream that they're asking the public 9 to trust. 10 And finally, we want to defend the sacred 11 principle that has guided oil and gas regulation for 12 generations. Profits are private, but cleanup costs are 13 free samples. 14 In closing, we urge the Commission to weaken this 15 rule immediately before corporations are forced to 16 confront the dangerous precedent of paying for the messes 17 we've created. Thank you. 18 HEARING OFFICER ORTH: Thank you, Ms. Hartwell. 19 Is there anyone else in the room who would like 20 to offer brief public comment? 21 Is there anyone else online who would like to 22 offer brief public comment? 23 All right. So the e-mails I received reaching 24 out for an opportunity to offer public comment included 25 Peter Schoenburg. Is Mr. Schoenburg with us? No.	1 HEARING OFFICER ORTH: Later. 2 MS. NANASI: Yes. 3 HEARING OFFICER ORTH: Okay. Thank you. 4 And let's see. Mr. Katsu. Mr. Pavlik. 5 MR. PAVLIK: I'm happy to give you comments now. 6 HEARING OFFICER ORTH: To give it now? Terrific. 7 Thank you. 8 MR. PAVLIK: Yes. 9 HEARING OFFICER ORTH: Just spell your first and 10 last name for the record and you can begin. 11 MR. PAVLIK: Sure. My name is Zach Pavlik, 12 Z-A-C-H, P-A V, as in Victor, L-I-K, and I'm an attorney 13 with the Center for Biological Diversity's New Mexico 14 program. Thank you for the opportunity to provide comment 15 on this matter. I'm offering these comments on behalf of 16 the Center for Biological Diversity. 17 The Center for Biological Diversity supports the 18 State Land Office's proposal to amend its financial 19 assurance rule, and the impressive work that the Land 20 Office has done and continues to undertake in New Mexico 21 to confront head on the critical issue of inactive, 22 orphaned and improperly abandoned wells. 23 As increasingly highlighted by studies and 24 reports such as, the recent report by the New Mexico 25 Legislative Finance, we are facing a growing crisis caused
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1 All right. Mr. Rankin, Mr. Cloutier, Ms. Nanasi, 2 and Mr. Pavlik. 3 Madam Hearing Officer, if it would be acceptable, 4 I might ask if we do our presentation of oral comment at 5 the end of the questioning, after we resume that process? 6 HEARING OFFICER ORTH: Okay. Thank you. 7 MR. RANKING: I was going to actually ask what 8 you preferred. 9 MR. RANKIN: That would be my preference. I 10 appreciate it. 11 HEARING OFFICER ORTH: Mr. Rankin said he 12 preferred to make their presentation following the 13 questioning of the State Land Office panel, and I think 14 that's a good idea. 15 Mr. Cloutier, do you feel the same? 16 MR. CLOUTIER: I do, Madam Hearing Officer. 17 Thank you. 18 HEARING OFFICER ORTH: Thank you. 19 Ms. Nanasi? 20 MS. NANASI: Yes. I'd like to give the statement 21 first, and then do the questions. 22 HEARING OFFICER ORTH: Oh. Well, then come on 23 up. 24 MS. NANASI: Okay. Are we doing the panel? No, 25 I don't mean now. I mean, when it's my opportunity to --	1 by the thousands of inactive wells left behind by the oil 2 and gas industry. This crisis is not just physical 3 although it is likely to cost our state billions of 4 dollars. It also harms the health of New Mexican 5 communities and New Mexico's lands and resources that the 6 State Land Office is charged with protecting. 7 There are glaring shortcomings in the current 8 financial assurance landscape in New Mexico. At base, the 9 problem is three-fold. First, the oil and gas industry in 10 our state frequently fails to clean up its mess. Instead, 11 it leaves behind thousands of wells for the state and 12 public to clean up on its behalf. 13 Second, the Oil Conservation Division, which is 14 supposed to make operators clean up their mess, fails to 15 fulfill this duty. It fails to enforce the law against 16 operators who leave inactive wells unplugged and 17 unremediated for years across the state. And third, as we 18 have heard thus far in the proceeding already, there's an 19 immense gap between the financial assurance that the 20 industry carries to secure its promises to clean up, and 21 the actual costs to clean up the mess industry leaves 22 behind. 23 In other words, the financial assurance 24 instruments on record with our state agencies, do not come 25 close to covering the liabilities posed by the tens of

Page 125 1 thousands of wells across the state, and the decades-long 2 history of releases and contamination many of them leave 3 behind. 4 For example, in 2021, in a report released by the 5 State Land Office identified nearly a \$3.2 billion gap 6 between the financial assurance on record with the Land 7 Office compared to the expected costs of cleaning wells 8 just on state land. 9 Further, this was limited to wells and did not 10 include the cost to clean up the vast network of oil and 11 gas infrastructure such as, pipelines and other 12 facilities. 13 Notably, since that report was released, oil and 14 gas production in New Mexico has nearly doubled. The 15 Legislative Finance Committee Report released last year 16 highlighted again, the many of the challenges posed by 17 financial assurance insufficiencies in the state. 18 Our state agencies must take proactive steps to 19 confront this issue, and we thank the Land Office for all 20 the work that it is already doing in its commitment to 21 preserving the health and integrity of state lands for 22 future generations for New Mexicans. 23 Through this rule, the State Land Office has 24 taken an important step forward in addressing financial 25 assurance shortcomings for wells on state lands. The	Page 127 1 We offer the following specific suggestions: 2 Starting with accountability and enforcement. On a 3 positive note, the Center appreciates that the Land Office 4 has added a 90-day limit for deferment extensions on 5 heightened financial assurance requirements. This is an 6 important safeguard, and we think this limit is in the 7 public interest, protects state lands, and helps ensure 8 that lessees are held to meaningful but reasonable 9 compliance timelines. 10 However, enforcement can be also be strengthened 11 in at least two key ways. The first is that heightened 12 financial assurance requirements should be mandatory, that 13 they name the risk factors integrated and the proposed 14 Sections B(1) and B(2) are present such as, a lessee with 15 inactive wells or unremediated spills. 16 The Land Office has already put in the work to 17 identify risks of harm to state lands in its proposed 18 rule, but this work has the potential to be neutralized 19 without provisions to ensure that enforcement takes place 20 consistently under this commissioner and any future 21 Commissioner of Public Lands. 22 The Land Office has highlighted factors that 23 carry substantial risks to state lands and should ensure 24 that they lead to reasonable action to protect those 25 lands. If the "may" in that section were changed to
Page 126 1 proposed rule is strong in many ways, and we especially 2 appreciate that the Land Office has provided for 3 heightened financial assurance requirements that allow the 4 Land Office to incorporate certain risks to state lands 5 such as, inactive wells and unremediated spills. 6 We also appreciate the increased minimum bond to 7 at least \$150,000, establishing an annual report that will 8 be available to the public, and providing inflationary 9 adjustments to financial assurance instruments. 10 That being said, there's much more that can be 11 done. We encourage the State Land Office to further 12 strengthen the rule in four key areas, each of which I 13 will go into some detail with specific recommendations. 14 To name these areas, we suggest amending the 15 proposed rule to one, bolster meaningful enforcement in 16 the industry accountability; two, increase public 17 participation; three, minimize potential liability for the 18 state; and four, create tools for the Land Office to 19 effectively identify and weigh risk. 20 We also submitted written comment with detailed 21 suggestions to the original draft rule concerning specific 22 language the Land Office could use to strengthen these 23 four areas. I'm not going to read all of those comments 24 here, but I'd like to point out some of our key 25 suggestions that are still relevant.	Page 128 1 "shall," this would require additional financial 2 assurance. 3 The second area that the Center suggests 4 strengthening concerns wells in approved temporary 5 abandonment. There should not be a carve-out for a lessee 6 with a well that has been in approved temporary 7 abandonment status for up to five years. Any well that 8 has not produced for two years, not five years, should be 9 subject to heightened financial assurance. 10 The Oil and Gas Act already mandates additional 11 financial assurance for wells that have been inactive for 12 two years or longer, underscoring this threshold as a 13 reasonable one for risk assessment purposes. 14 There is no reason for the Land Office to allow 15 wells to linger in an approved temporary abandonment 16 status without additional financial assurance for longer 17 than OCD does. It makes sense to align the two. 18 I would next like to briefly turn to transparency 19 and public access. The Land Office has included some very 20 important transparency provisions in the proposed rule. 21 We are grateful that it has added language that will allow 22 the public to access the list of leases subject to 23 heightened financial assurance. We believe this will 24 allow the public to better understand and monitor steps 25 the Commissioner is taking to protect public lands.

Page 129 1 However, transparency would be even further 2 strengthened if the public also had access to annual 3 reports submitted by the operators to the Land Office, and 4 we would suggest those reports also be made publicly 5 accessible on the agency's website. 6 The third area of improvements I'd like to 7 address is the potential liability the State exposes 8 itself to through these financial assurance provisions. 9 The goal of any financial assurance rule should be to 10 decrease the state's and in effect, the public's exposure 11 to liability for damage caused to public lands by 12 unplugged and unremediated wells. 13 To do this, financial assurance must be 14 structured to adequately respond to the risks posed by oil 15 and gas operations on state leases. We have two primary 16 concerns with the rule as currently written. First, the 17 bonding amount is certainly much better than it has 18 historically been. It was not high enough. And second, 19 the production threshold for heightened financial 20 assurance is still too low. 21 Currently as written, one lease is generally 22 protected by one financial assurance instrument. However, 23 as we have seen, the lease may have multiple wells 24 present. A single financial assurance of \$150,000 is not 25 likely enough to cover cleanup and remediation obligations	Page 131 1 financial assurance requirements. It is still only 250 2 barrels of oil equivalent during the past year. This is 3 far too low. The production threshold must capture the 4 high risk posed by exhausted or marginal wells to state 5 lands due to their increased likelihood of becoming 6 orphans. 7 There are already various examples of higher 8 production thresholds that more adequately capture the 9 risk posed by marginal wells. For example, the current 10 bonding rulemaking before the Oil Conservation Commission 11 includes a production threshold for low-producing wells at 12 1,000 BOE, barrel of oil equivalent, in a prior year. 13 Further, the June 2025 New Mexico Legislative 14 Finance Committee report on orphaned wells noted that 15 industry normally plugs wells once they reach only 750 BOE 16 or less annually. 17 Notably, both of these numbers are much higher 18 than the 250 BOE annual production currently proposed by 19 this rule. We suggest the Land Office change this to 20 1,000 BOE to align with the rulemaking at the Oil 21 Conservation Division. Even at this rate of production 22 for a low-producing well, according to the chart shared by 23 the State Land Office this morning, it would still take 24 roughly 10 to 20 years to cover its own decommissioning 25 depending on the royalty rate.
Page 130 1 for even a single well, let alone multiple wells. The 2 average cost cited by the Oil Conversation Division in 3 recent years for plugging a well is roughly \$160,000, and 4 site remediation can be many times more, potentially 5 millions of dollars. 6 Not only this, but the likelihood of expensive 7 complications increases the longer a wells sits inactive. 8 As such, we recommend that the minimum financial assurance 9 per lease be calculated on a per-well basis, and the 10 current \$150,000 per lease should be clearly identified as 11 only a starting point. The actual financial assurance 12 numbers should increase with the numbers of wells present 13 on the lease, and be at least \$150,000 per well. 14 The Center also supports WildEarth Guardian's 15 suggestions and its comment on the original discussion 16 draft in this rule to incorporate cost-based formula 17 provisions to calculate financial assurance on each lease 18 as well as propose financial assurance multipliers for 19 high-risk operators. Those provisions would be a 20 reasonable and more accurate manner to capture the actual 21 risk posed by wells on state lands by oil and gas 22 extractions taking place on leases. 23 The second concern we have regarding the State's 24 potential liability is the current threshold for a well's 25 production to trigger heightened financial assurances --	Page 132 1 Finally, the Center has two recommendations for 2 the Land Office to amend the rule to ensure it has access 3 to accurate information and regulatory tools to identify 4 and weigh the risks posed by inactive wells. 5 First, the rule allows the Land Office to examine 6 a lessee's compliance history in considering the 7 appropriateness of heightened financial assurance. This 8 should be expanded to include the compliance history 9 regarding a lessee's off-lease operations. This is 10 relevant to the level of risk posed by a lessee's on-lease 11 operations and the heightened financial assurance 12 requirements that might be necessary to mitigate that risk 13 as a result. 14 For example, it is important that the Land Office 15 be aware of an operator's history of unremediated releases 16 or other non-compliance off-leases. It weighs whether a 17 lessee's operations on lease pose a risk. This should 18 include significant non-compliance and/or releases in 19 other jurisdictions outside of New Mexico. 20 Next, it is unclear whether the Land Office 21 removed provisions for the rule that required lessees to 22 demonstrate retirement planning and provide a statement of 23 assets dedicated to asset retirement obligations. This 24 provision was included as part of the annual reports and 25 should be returned to the rule. This information is

Page 133 1 instrumental to the Land Office to obtain a full picture 2 of the risk posed by a lessee's operations. 3 Ultimately, this rule is a significant step in 4 the right direction. The Center for Biological Diversity 5 is grateful for the intentional steps that have been taken 6 by the Commissioner and the State Land Office to create a 7 transparent rulemaking process with robust public 8 participation. 9 We also commend the Land Office for the 10 remarkable progress it has made and continues to make in 11 proactively confronting the State's current financial 12 assurance gap in the orphan well crisis including through 13 this much-needed rulemaking. Thank you for your 14 consideration of these comments. 15 HEARING OFFICER ORTH: Thank you, Mr. Pavlik. 16 If there's no other comment to be given, at this 17 time we will return to the questioning of the State Land 18 Office panel. I will invite public comment again when we 19 have finished their questioning. 20 Folks, would you join me up here on the dais 21 again. 22 MR. BIERNOFF: And, Madam Hearing Officer, if I 23 may, I just want to thank the individuals whether they're 24 on online or here in the room especially folks who are 25 having to leave, for your engagement, your attention. And	Page 135 1 MR. BIERNOFF: Well, I think it's fair to say 2 that an agency unless and until the court tells it 3 otherwise is able to promulgate rules pursuant to its 4 rulemaking authority, and for those rules to have a 5 prospective effect. 6 I don't think -- if you're asking is there a 7 statute that speaks to when a rule goes into effect or 8 which actors are covered prospectively by a rule that goes 9 into effect, I'm not aware of such a statute, as a general 10 matter. But I think these are pretty ironclad principles 11 of administrative law. 12 And I certainly would be interested if NMOGA has 13 different perspective, but that's our perspective. 14 MS. SERAFIMOVA: Okay. And I'm sorry. I just -- 15 it was -- there was a lot in the answer, so just to make 16 sure I understand, it is State Land Office's position that 17 the proposed rule that we're here to discuss is 18 prospective; is that what you said? 19 MR. BIERNOFF: It is prospective. We're not -- 20 the rule -- no one is in violation of the rule for a 21 failure to post an adjusted bond, 150,000 bond, last year. 22 MS. SERAFIMOVA: Okay. 23 MR. BIERNOFF: No one is in violation of the rule 24 for conduct that happened in the past, that may not be 25 consistent if this rule is enacted with what the rule
Page 134 1 regardless of the content of your comments, for caring 2 about this rulemaking proceeding. 3 HEARING OFFICER ORTH: Thank you, Mr. Biernoff. 4 All right. When we broke for lunch 5 Ms. Serafimova was questioning. Are you finished or is 6 there more? 7 MS. SERAFIMOVA: Just one more -- a couple of 8 more, if I may? 9 HEARING OFFICER ORTH: All righty. 10 MS. SERAFIMOVA: Thank you. I just wanted to 11 clarify, what is the precise mechanism by which the 12 proposed rule would become applicable to existing leases? 13 MR. BIERNOFF: Like any other rule change that 14 the State Land Office makes, the application is 15 prospective. And that is the case whether we're talking 16 about a lease that is issued the day after the rule goes 17 into effect or a lease that was issued a day before the 18 rule goes into effect. 19 So similar to the Cultural Properties Protection 20 rule and other administrative rules, the rules apply to 21 State Land Office lessees, and that is the case regardless 22 of the vintage of the lease. 23 MS. SERAFIMOVA: And what is the source of that 24 that? That is a conclusion, so if you could just -- what 25 is the source that leads to that conclusion?	Page 136 1 requires. But parties could be in violation of the rule 2 if they don't adhere to its requirements after it takes 3 effect. 4 MS. SERAFIMOVA: Okay. And those parties include 5 lessees of leases that were issued yesterday, a year ago, 6 10 years ago, in some case, you know, many, many years 7 more? 8 MR. BIERNOFF: It applies to leases that were 9 issued in 1920 -- 10 MS. SERAFIMOVA: Okay. 11 MR. BIERNOFF: -- or 1922, at least. I don't 12 know if we have any leases on the books from 1920, but we 13 certainly have leases from the 1920s. And your colleague, 14 Mr. Rankin, has represented oil and gas companies who have 15 leases that date back that far. And those lessees have 16 taken the position that the intervening century of 17 rulemaking is inapplicable to them, and that we 18 essentially need to climb into a time machine and go back 19 to 1920 or 1925 in order to understand what those 20 companies legal obligations are, and that is not our view 21 of the law. 22 MS. SERAFIMOVA: Okay. And -- but if it is your 23 view that the rule would apply to all these prior existing 24 older leases regardless of the actual terms of each of 25 those leases; is that right?

Page 137 1 MR. BIERNOFF: I suppose it's possible that 2 there's a lease that I've never seen before that says in 3 it, that no subsequently inactive rule has any effect, and 4 that the law as it stands in the year of issuance of the 5 lease is the only law that can be considered. I suppose 6 it's -- I have never seen -- to be clear, I have never 7 seen a lease that says anything like that. But if it did 8 say that, then I think it's certainly possible. I'm not 9 prepared to say that there's not a contrary argument. But 10 it's certainly possible that that lease would not be 11 subject to a subsequently inactive rule. 12 MS. SERAFIMOVA: Okay. So to be clear, it's the 13 State Land Office's position that the only leases that 14 would be exempt from the proposed rules requirements are 15 leases that say "future enacted regulations and laws are 16 not applicable." 17 MR. BIERNOFF: I can't think of another reason 18 why a subsequent enacted regulation wouldn't apply to 19 present day conduct. 20 MS. SERAFIMOVA: Can you think of a lease 21 provision that would allow it? 22 MR. BIERNOFF: I think that our laws and rules as 23 a whole, unquestionably allow for it. 24 MS. SERAFIMOVA: So we're back to general 25 principles, big picture, overall authority; is that right?	Page 139 1 you got your permit 30 years ago, it doesn't mean that the 2 new rules apply, so that from a policy perspective is a 3 consistent approach as well. 4 MS. SERAFIMOVA: So I think just to be clear, the 5 State Land Office's position that for the rule to be 6 applicable to an existing lease there doesn't have to be 7 any specific provision in that lease that allows it to be 8 applicable. It just applies to all leases whether a 9 1920-something lease or a 2026 lease; is that right? 10 MR. BIERNOFF: I think it's -- 11 MR. STEWART: Yeah, Ari answered that. 12 MR. BIERNOFF: Yeah, I think we've answered that. 13 I mean, I think it's an astonishing proposition if NMOGA 14 is offering this, that an oil and gas lease would 15 literally need to say that subsequently enacted rules 16 don't apply in order for that to be the case. 17 I think if that is NMOGA's position, and I'm not 18 sure whether it is. But if that is NMOGA's position, I 19 think that's an extraordinary and reactionary position 20 that won't find much comfort in New Mexico law. 21 MS. SERAFIMOVA: Well, one of us is having a 22 reaction, but I don't know that it's NMOGA. 23 MR. BIERNOFF: I don't know. I mean, I'm trying 24 to understand from Counsel's questions what the 25 organization does and doesn't believe, and I guess we'll
Page 138 1 MR. BIERNOFF: I think once again, if NMOGA's 2 position is that the State Land Office is shackled and is 3 helpless and cannot take any action to fulfill its 4 constitutional and statutory mandates, which include 5 protecting state trust land, unless there is a statute 6 that explicitly speaks to a particular action, if that is 7 NMOGA's position, then I think that it's true that the 8 Land Office has a different view. 9 MS. SERAFIMOVA: Well, that's a position that you 10 hypothesized on right now on the spot, that's not a 11 position that anyone has put in front of you. Is that -- 12 do you agree with that? 13 MR. BIERNOFF: I'm not sure. I've heard 14 different things today, in the question and answer. You 15 know, in the discussion, I guess I am not entirely clear 16 on what NMOGA's position is, and that's fine. Your client 17 will have additional time in this proceeding to make a 18 presentation of its own. 19 MS. SERAFIMOVA: Uh-huh. Okay. 20 MR. STEWART: If I could just -- this is not a 21 legal answer, but a policy answer, in terms of the 22 proposed rule, the approach we have taken in terms of 23 prospective application with a phase-in is what you see on 24 the BLM side the Feds took in terms of their rule. You 25 see it with OCD. You know, if you're a permit holder and	Page 140 1 learn about that later on today or maybe tomorrow. 2 MS. SERAFIMOVA: Well, we're trying to understand 3 the intended scope of the rule, its applicability, its 4 limits, if any. It doesn't sound like there are many, so 5 that's what our questions are aimed at. 6 So a lot of the -- well, a lot, if not most of 7 the presentation today, focused on abandoned wells, the 8 issues that are caused by abandoned wells, the cost of 9 remediating, plugging, reclaiming lands affected or 10 surrounding an abandoned well. So is it fair to say that 11 the main focus of this rule is abandoned wells? 12 MR. BIERNOFF: The main focus of this rule is 13 protecting state trust land from harms caused by oil and 14 gas lease activity, and that includes companies that leave 15 wells that should have been plugged years ago, inactive 16 and untouched. 17 It includes companies leaving tank batteries full 18 of corrosive fluid that then leaks and contaminates the 19 soil and sometimes the water. It includes other harmful 20 impacts, the produced waste water releases that some of 21 the public commenters mentioned. 22 There's a whole host of harms, but certainly 23 inactive wells, spills, junk left on site, and other 24 surface disturbance like, failure to reclaim well pads and 25 roads and other areas of disturbance. I would say that

Page 141 1 those are primary concerns. 2 MS. SERAFIMOVA: Okay. So we talked about the 3 April 8th, 2026, press release. As that press release 4 states, currently oil and gas lessees are required to have 5 a \$10,000 bond on file to cover expenses for plugging 6 abandoned wells and remediating other damage to state 7 lands, a figure that has been woefully inadequate, 8 considering plugging a single abandoned well with no other 9 remediation activities can cost over one \$100,000 by 10 conservative estimates. 11 So the press release certainly seems to focus on 12 plugging abandoned wells. Is that not the State Land 13 Office's main focus in proposing this rule? 14 MR. BIERNOFF: I think we've already answered 15 this question sufficiently. 16 MS. SERAFIMOVA: Okay. What enforcement 17 mechanism would the State Land Office follow in, you know, 18 should this rule go into effect in making claims on the 19 bonds? 20 MR. BIERNOFF: The enforcement mechanism that's 21 laid out in the proposed rule, if the rule is promulgated 22 as it's currently drafted. 23 MS. SERAFIMOVA: Well, there isn't one, which is 24 why I'm asking the question. So do you expect to have to 25 litigate to judgment and then once you have a judgement in	Page 143 1 practice of other agencies, and indeed, with private 2 industry in making claims that are against surety bonds, 3 for example, or letters of credit. And it is clear on the 4 face of a surety bond at least, that it is our 5 responsibility as the obligee to show that we're entitled 6 to payment. And if we make that showing to the surety's 7 satisfaction, we are entitled to payment, and that is the 8 contractual promise that's enshrined in the bond. 9 And if an industry association or an individual 10 lessee wanted to challenge our entitlement to bond 11 proceeds and some have unsuccessfully, they're certainly 12 able to do that. 13 MS. SERAFIMOVA: Uh-huh. Well -- 14 MR. BIERNOFF: That's a process that's managed by 15 the surety or in the case of a letter of credit by the 16 issuing bank, not by the Land Office. 17 MS. SERAFIMOVA: But the Land Office has formed 18 bonds in its manual, correct? 19 MR. BIERNOFF: We have a form of bond, that's 20 correct. 21 MS. SERAFIMOVA: That form of bond does not 22 specify a process, does it? 23 MR. BIERNOFF: This is the first time, I think 24 I've ever heard someone suggest there needs to be a 25 statement of every step that's taken by parties --
Page 142 1 hand, make a claim against the bond? 2 MR. BIERNOFF: I would respectfully disagree that 3 there isn't one. I think that was your comment. The 4 proposed rule weighs out the steps that the Land Office 5 will take, which is currently, as I said earlier, is 6 currently a matter of agency practice. We're making that 7 explicit in the proposed rule and we explain the steps 8 that we take in the process of claiming the bond of a 9 non-compliant lessee. 10 So I think it's our expectation that we would 11 follow those steps. If there are additional steps that 12 need to be taken outside of the framework of the rule, I 13 think that remains within the agency's discretion to take 14 other action that it may need to take, just as we do 15 today. 16 MS. SERAFIMOVA: Okay. Well, I read the rule and 17 it -- I mean, I'm happy to be corrected on that, but I did 18 not see a process by which, you know, one could be proven 19 to be in the type of breach required for their bond to be 20 forfeited up on. 21 Is there a due process procedure, and if there is 22 one, could you please walk us through it? 23 MR. BIERNOFF: I think that it's very consistent, 24 our practice and what we're now enshrining in at least the 25 proposed version of the rule is very consistent with the	Page 144 1 MS. SERAFIMOVA: Well, we don't mean every 2 step -- 3 MR. BIERNOFF: -- by parties outside of our 4 control. I don't think that that's our responsibility as 5 an agency. I think what we do make clear is the kind of 6 bonds that are required, and we're going a step beyond our 7 vintage 1981 bonding rule in this proposal by actually 8 laying out what happens when we need to make a bond claim, 9 and who we notify, and how much time they have, and what 10 happens next, and what the consequences are of a bond 11 claim, and what the consequences are not. 12 And certainly, if your client thinks that it's 13 essential for this administrative rule proposal to spell 14 out what the surety does, you know, we're here to accept 15 public comment from all interested persons. So we'll 16 receive that comment. But that is not a component of the 17 rule as written. 18 MS. SERAFIMOVA: Well, I'll just clarify the 19 hearing officer is here to receive comments, not the State 20 Land Office. We do have a separation, right? Due process 21 requires a certain separation between the hearing officer 22 and the entity? 23 MR. BIERNOFF: I think you're splitting hairs, 24 Counsel. The hearing officer, of course, is presiding 25 over this hearing. And after the hearing is concluded,

Page 145 1 the State Land Office receives all of the comment, written 2 and oral, presented either before or during this hearing. 3 So we are actually the recipient of all of those comments, 4 and it is for our benefit that we are receiving these 5 comments. 6 MS. SERAFIMOVA: Okay. Well, my question was 7 aimed at the fact that, you know, the 4th Amendment is a 8 thing. The State may not just, you know, take private 9 property. And so if you're proposing a rule whereby the 10 State Land Office can make a claim on a bond that it's 11 mandating of entity, citizens, et cetera, and there is no 12 due process baked into that rule to guarantee that those 13 funds are not arbitrarily collected, that seems relevant 14 to us, so that's what I was getting at. 15 MR. BIERNOFF: Is there a question? 16 MS. SERAFIMOVA: Yes. What is the due process 17 that will come with the rule? 18 MR. BIERNOFF: I think there's a lot of due 19 process built into the rule. The rule, as I said, makes 20 explicit what has been our long-standing practice of what 21 steps we need to take when we claim a bond. And the rule 22 makes explicit that a lessee is given notice, and the 23 lessee has an opportunity to respond. And if the lessee 24 can convince the surety that it was really somebody else 25 in the dead of night who crept onto the lease premises and	Page 147 1 goal is, of course, for us to understand better the intent 2 of the rule and also, for you to understand better our 3 concerns and potentially make a better rule in the end. 4 My questions are going to focus more on 5 understanding certain aspects of the proposed rule, how 6 it's drafted and how it would be implemented, because 7 there are some uncertainties based on the way, I think 8 it's drafted that I would like to clarify. 9 I did provide a copy of our notebook. I believe 10 it's tab -- I misdirected you previously, Mr. Biernoff. 11 MR. BIERNOFF: We found it. Thank you. 12 MR. RANKIN: I apologize for that. I said, "Tab 13 11," which is actually the proposed rule, and that's where 14 I mean to go now. So looking at Tab 11 in our notebook 15 which has the State Land Office's proposed rule, I'm going 16 to ask some questions about Sub Part A. The way I read 17 this and the way, as you heard some of the public comments 18 address this provision, that is says, "a floor," not a 19 "maximum," right, for what the per lease bond would be 20 under this rule of \$150,000, correct? 21 MR. BIERNOFF: So I just want to clarify, 22 Mr. Rankin, are we looking at Section NMSA 1978 Section 23 70-2-14 from the Oil and Gas Act -- 24 MR. RANKIN: I'm sorry. Tab 11 should be -- 25 MR. BIERNOFF: Tab 11. Okay.
Page 146 1 caused the spill and has nothing to do with the oil and 2 gas operations, so much the better for the lessee. I 3 guess we don't get paid out on the bond in that instance. 4 And there -- so there is and there are built in 5 throughout the other provisions of the rule notification 6 requirements because the ultimate purpose of the rule is 7 not to catch lessees in a trap. The purpose of the rule 8 is to get our lands cleaned up. 9 And some lessees are already doing that and some 10 are not. And for lessees that are not, there are various 11 mechanisms that are at the agency's disposal to try to get 12 better cooperation, and bond claims are one of those. 13 MS. SERAFIMOVA: And again, the only reason the 14 State of New Mexico is not pursuing this path via the 15 legislature is the State Land Office's belief that it has 16 all the authority required -- 17 HEARING OFFICER ORTH: Ms. Serafimova, you are 18 simply repeating questions that have already been 19 answered. 20 MS. SERAFIMOVA: Okay. Thank you. 21 HEARING OFFICER ORTH: Mr. Rankin, do I 22 understand that you have questions also? 23 MR. RANKIN: I just want to reiterate my 24 partner's commentary. Thank you very much for being here, 25 being willing to take our questions. It means a lot. The	Page 148 1 MR. RANKIN: -- the proposed rule. And 2 paragraph -- 3 MR. BIERNOFF: Paragraph A -- okay. 4 MR. RANKIN: -- paragraph A(1). 5 MR. BIERNOFF: Okay. My mistake. I was in the 6 wrong tab. 7 MR. RANKIN: No problem. Yeah. I was used to 8 that other statutory provision, but I'm at least switching 9 gears and this will make it -- so looking at Tab 11 and 10 the proposed provision A(1). The -- my understanding is 11 that the proposal here would set a minimum of \$150,000 for 12 a single lease, correct? 13 MR. STEWART: It's a minimum baseline because it 14 also contemplates the potential for a heightened financial 15 assurance in B, on a case-by-case basis based on the 16 factors out lined there. But the baseline minimum 17 financial assurance per lease would be 150. 18 MR. RANKIN: So to be perfectly clear, as I read 19 A(1) currently there are no -- it provides for a minimum, 20 but no maximum. So my understanding is I would need to 21 understand that -- so is there a maximum under A(1)? 22 MR. BIERNOFF: There is not a maximum under A(1) 23 and I'll -- just to clarify I just want to point out A(2) 24 does actually call for a lower monetary threshold for 25 certain leases for mineral-only leases.

Page 149 1 MR. RANKIN: Correct. But as to A(1) the way I 2 read it, if an owner or a lessee has one lease and seeks 3 to comply with the standards of this rule, the 4 Commissioner is not limited by anything under this 5 proposal to set the maximum for that lease bond, correct? 6 MR. STEWART: So the intent of the rule is that 7 you have a minimum financial assurance for -- that's the 8 baseline, the initial baseline is the 150. You also have 9 the ability on a case-by-case basis to have adjustments 10 based on the factors in the heightened section, which 11 could bring it up on a per-lease basis. 12 You also have adjustments to that minimum on the 13 bulk bonding side, so if you have multiple leases, you 14 might get a discount, depending on the thresholds. So 15 that's the minimum. And then there may be adjustments 16 based on how the other paragraphs in the rule interact to 17 the lessee at hand. 18 MR. RANKIN: So as drafted, paragraph A(1) makes 19 no reference to the heightened financial assurance 20 provisions. So as drafted, it appears that the 21 Commissioner under A(1) has the authority to set the 22 maximum amount per bond at whatever she deems appropriate. 23 And I'm asking, I guess, is that the intent or does that 24 need to be corrected? 25 MR. BIERNOFF: I don't think it needs to be	Page 151 1 provisions of the rule to do that, correct? 2 MR. BIERNOFF: No, I wouldn't go that far. I 3 think that's a little bit of a stretch. I think the way 4 that A(1) is written, there is a possibility for another 5 lawful basis for requiring a high bond that doesn't meet a 6 high-risk factor. Let me give an example. You might have 7 a lease that has 100 wells on it, and the lease currently 8 has no known compliance problems that would trigger, you 9 know, the Sub Section B heightened financial assurance 10 factors. 11 That might be -- I'm not saying any particular 12 person would perceive that to be a lease that needs higher 13 bonding, but somebody might, and that would certainly 14 be -- that requiring a heightened bond in that instance 15 would be compatible with the text of A(1). 16 MR. RANKIN: So A(1) does authorize the 17 Commissioner then to impose a higher amount for a per 18 lease bond, minimum \$150,000? 19 MR. BIERNOFF: Absolutely. 20 MR. RANKIN: Okay. And under A(1) are there any 21 limitations or factors or guidance that would limit the 22 Commissioner's ability to impose the maximum on a single 23 lease? 24 MR. BIERNOFF: I don't see any in A(1). And 25 again, that tracks a current bonding rule which simply
Page 150 1 corrected, but a party that's interested in making a 2 proposal can certainly make that. 3 This language tracks the existing bond rule, 4 which does not impose any maximum. It sets what has 5 unfortunately, we think, become the default, which is 6 these 10,000 and 20,000 and 25,000 bonds. 7 But I think we know from our personal experience 8 working together, that there are some instances, rare, 9 where the Land Office does seek and require a higher bond 10 under the existing rule. 11 But I think that your statement of what A(1) is 12 intended to convey or your statement of how you read it, 13 is in line with my understanding of what it's intended 14 convey. 15 MR. RANKIN: Well, I'm just trying to figure out 16 and make sure it's clear. So from my understanding then, 17 A(1) requires the Commissioner to set the bond amount at 18 no less than \$150,000, but if the Commissioner wants to 19 raise it for whatever reason, for whatever factors may be 20 applicable, then you have to look to the factors under Sub 21 Part B, correct? 22 MR. BIERNOFF: Right. 23 MR. RANKIN: So A(1), the Commissioner's not 24 authorized to raise the amount of a bond under the per 25 lease above \$150,000. It has to go to the other	Page 152 1 says -- I'm paraphrasing, but simply says that for the 2 different categories, you know, the single lease, the 3 multi-lease and the mega bond, the Commissioner can -- a 4 good and sufficient bond is required, and no less than 5 that stated amount. 6 MR. RANKIN: So a lessee that comes to the 7 Commissioner with a single lease and is told that their 8 bond is going to be something in excess of \$150,000 has no 9 basis then to determine, other than the Commissioner's 10 discretion what the justification is for that higher bond 11 amount under A(1). 12 MR. BIERNOFF: Maybe. That's certainly not our 13 practice. I think in every instance where we've required 14 a heightened bond, we've communicated very clearly and 15 directly with the lessee to make clear why they need a 16 higher bond. 17 You and I have worked on at least one situation 18 where the lessee needed a significantly higher bond, and 19 we, I think, very explicit about why that was and what the 20 compliance shortcomings were, and that's certainly what 21 our practice is. 22 MR. RANKIN: Okay. So here, it's going to be on 23 a case-by-case basis based on what factors or facts the 24 Commissioner then identifies as a justification, correct? 25 MR. BIERNOFF: Just like in the existing rule,

Page 153 1 just like in myriad State Land Office rules, this rule 2 provision does vest the Commissioner with significant 3 discretion. And again, just like the legislature has 4 done. 5 MR. RANKIN: And so -- but there's no requirement 6 to demonstrate to the lessee what the basis is for those 7 higher amounts, correct? 8 MR. BIERNOFF: In A(1) there is not. 9 MR. RANKIN: Okay. So moving on to the 10 heightened financial assurance requirements. Let me just 11 back up, I guess. And just for purposes of a 12 hypothetical, okay. Let's just assume a lessee came to 13 the Commissioner with a lease, and the Commissioner 14 determined that given the factors identified that the 15 lease was required to have a higher bond amount, say, 16 \$200,000, okay. So we'll start as a base lease bond 17 amount of \$200,000 under A(1). I'll come back to that as 18 we walk through the rest of the provisions here. 19 So under Sub Part B then, as I understand, where 20 certain factors apply, then the Commissioner may, in her 21 discretion, require heightened bonding, which would be in 22 addition to the base bonding, correct? 23 MR. BIERNOFF: The heightened bond is -- I mean, 24 I guess you could conceptualize it that way. It's -- 25 instead of 150,000, it's a higher amount of money. Does	Page 155 1 that burden, but obviously subject to agency review. We 2 don't want a lessee asking their cousin to estimate 3 plugging and remediation costs for the lease. But 4 certainly we would reserve the ability whether it's to 5 come up with our own estimate or simply to review an 6 outside party's estimate to make the final decision about 7 what costs are actually expected to be. 8 MR. RANKIN: So if any of these factors come into 9 play, and the Commissioner identifies a basis for 10 requiring a heightened financial assurance under B Sub 1, 11 and the amount of the potential additional financial 12 assurance applicable would be the amount required to plug, 13 remediate, reclaim the entire lease, correct? 14 MR. BIERNOFF: Well, it could be up to that 15 amount. 16 MR. RANKIN: Up to that amount. 17 MR. BIERNOFF: So in the example that you and I 18 have worked on, and I'll just -- for people that are not 19 familiar, there's a company called "Contango Resources" 20 that had a number of very serious compliance problems on 21 state trust land. And we determined that a heightened 22 bond was necessary in order to protect our beneficiaries. 23 The amount that was required was \$500,000. 24 That represented just a fraction of the work that 25 that company or its operators would have had to do to
Page 154 1 that mean it's 150 in your left hand and the delta in your 2 right hand? Maybe, or it could just be the higher number. 3 MR. RANKIN: Well, for example, I'll just point 4 to the language at B Sub 2, which is on page 2 of the 5 printed rule. It says that if any of the following 6 conditions have occurred in the past 10 years, the 7 Commissioner may require the lessee to file an additional 8 financial assurance. It sounds like it's an additional 9 amount on top of the base amount, correct? 10 MR. BIERNOFF: An additional finance assurance 11 meaning, more than \$150,000. And note that B(2) provides 12 that there is a cap on the heightened bond, and that that 13 cap is a full value, actual estimated environmental 14 compliance cost, cleanup costs. 15 MR. RANKIN: So under B Sub 1, for example, then 16 the limitation for the max would be an estimate of the 17 applicable plugging, remediation and reclamation costs, 18 correct? 19 MR. BIERNOFF: Right. 20 MR. RANKIN: Who determines what that estimate 21 is? 22 MR. BIERNOFF: We do not provide that a specific 23 party determines that. And certainly we would consider 24 tasking the lessee with coming up with that number in the 25 first instance if lessee's are interested in shouldering	Page 156 1 bring all of the issues into compliance. So that is an 2 example -- a real life example of under the current 3 bonding rule, a heightened bond that does not hit a cap of 4 estimated plugging and remediation and reclamation costs. 5 MR. RANKIN: So using that example, then in the 6 instance where we had that first initial base bond amount 7 of \$200,000 based on the Commissioner's discretion to 8 impose an additional heightened financial assurance under 9 that provision. And then under B Sub 1, if any of those 10 additional factors contribute to a determination that an 11 additional amount should be required, in that instance 12 \$500,000, then the total financial assurance would be the 13 200 plus the \$500,000, correct? 14 MR. BIERNOFF: No. I think the intention is that 15 a heightened bond, and if you perceive an ambiguity there, 16 I'm happy to visit with you further about how to clear 17 that up because I think our intention is that a heightened 18 bond -- I mean, the word "additional" means more money -- 19 more money than the base level. 20 And it's not as if there's a stacking of bonds. 21 There's a larger bond, but the non-compliant lease 22 requires. I was about to say "non-compliant lessee," but 23 the lessee itself may be cooperative. But the lease has 24 compliance issues that require higher bonding. And the 25 idea is that the higher amount is the amount of financial

Page 157 1 assurance. 2 So when in the Contango example, and again, this 3 is under our current bonding rule, the company had, I 4 believe a \$20,000 bond that the Land Office needed to 5 claim. It did claim. And the replacement bond, you know, 6 if we want to line up the current rule and current 7 practice with this provision, would be like the heightened 8 financial assurance, and that was a bond in the amount of 9 500. So it wasn't 20,000 plus 500, it was just 500. 10 MR. RANKIN: So you sort of offered a short 11 circuit to my questions here, Mr. Biernoff. And that is, 12 is the intent of this rule to provide for the Commissioner 13 to stack heightened financial assurance from each of these 14 provisions or are they to be applied universally so that 15 there -- you know, so that there's not stacking? 16 In other words, the potential concern here is 17 that each of these could apply separately because when you 18 read, for example, under B Sub 4, the language is, "In 19 addition to the heightened financial assurance factors 20 identified in one and two, the Commission may require a 21 higher level of financial assurance on an individual." 22 It's indicating potentially that the intent was 23 to stack the base financial assurance that has no cap or 24 limitation to it, to the additional heightened financial 25 assurance under B(1) to the additional heightened	Page 159 1 these are addressing the heightened financial assurance 2 conditions. And then the bulk financial assurance 3 provision we understand that the cap that might be 4 applicable of \$40 million does not apply to any lease that 5 is subject to the heightened financial assurance, correct? 6 MR. BIERNOFF: That is correct. 7 MR. RANKIN: Okay. So the concern there is that 8 because there's no other cap potentially applicable to the 9 leases subject to the heightened financial assurance, the 10 risk of the Commissioner stacking additional bases for 11 financial assurance is alarming potentially because it can 12 get big very quickly. 13 MR. BIERNOFF: So I'm not sure if I followed that 14 last point. The bulk financial assurance provision is, I 15 think your question anticipated this or captured this, is 16 intended for compliant leases. And compliant leases are 17 eligible for that -- for the discounts that are built into 18 the bulk bonding or bulk financial assurance section of 19 the rule. And non-compliant leases or leases with 20 heightened bond triggers are not. 21 MR. RANKIN: You know, during this public comment 22 period the term "compliance" and "non-compliant" comes up 23 a lot. And my question, I guess, I'll just kind of jump 24 to that point is: What's the process for determining 25 non-compliance in order to assert these provisions? Is
Page 158 1 financial assurance under B(2). And then when you go to 2 B(4), unlike B(1) and B(2), there are no limitations based 3 on the estimation of plugging, reclamation or remediation. 4 So conceptually, I guess just reading through 5 this rule, I can see the State Land Office administration 6 taking advantage of that and stacking the financial 7 assurance beyond maybe what this Commission has 8 intended -- yeah, beyond what this Commission had 9 intended. And then so if the intent is not to have 10 stacking, then I would ask and recommend that the 11 Commission make clear in the modification that these 12 provisions aren't to be stacked. 13 MR. BIERNOFF: I think that's a very reasonable 14 point. And obviously, it is the Commissioner's decision 15 ultimately, what version of rule or what kind of a rule to 16 promulgate. But that point is, I think well-made. And I 17 hope I've made it clear that our intention is to have what 18 we think is adequate financial assurance for every lease 19 and not to have a whole series of bonds piled up on top of 20 each other. 21 MR. RANKIN: And to that point, just following 22 around to it, when I look at the next provision under 23 Subparagraph C, which provides for the bulk financial 24 assurance. Under Sub Part B, there are no caps or 25 limitations. Of course, I understand that being because	Page 160 1 there a show-cause order that the Commission intends to 2 provide to follow through with evidence to demonstrate 3 that any of these lessees are non-compliant, in order to 4 impose a heightened financial assurance? 5 Is there some evidentiary basis that is going to 6 be demonstrated so that each of the lessees understand the 7 bases for which they are being charged with 8 non-compliance? 9 MR. BIERNOFF: There is. And the rule makes 10 clear that we are going to provide notice to lessees in 11 writing about -- and I'm just paraphrasing from B(5) that 12 we provide notice of the amount required -- and I'm 13 paraphrasing a little bit -- and the reasons for the 14 higher financial assurance requirement. 15 And certainly a lessee is free, as they are now, 16 today, to say, "That's actually not a problem that I 17 caused or that anyone else caused on my lease on account 18 of oil and gas operations. The agricultural lessee dumped 19 all of those tires on the well pad. That wasn't any of 20 the oil and gas operators." 21 And the lessee is free to make that point and the 22 Land Office is free to consider that. And so I think that 23 there is a process that the rule contemplates for both us 24 communicating with lessees and lessees also being able to 25 respond.

Page 161 1 MR. STEWART: Yeah. I would also draw your 2 attention to B(3) where it explicitly provides that a 3 lessee may submit written documentation showing that the 4 conditions that trigger heightened financial assurance 5 requirements have been diligently addressed. And then, 6 you know, includes a deferment period that allows the 7 company to address the underlying concerns. So that also, 8 is indicative of the, you know, purpose and the approach 9 here of not just providing notice of A, you're subject to 10 a heightened bond requirement, but also, building in, you 11 know, an ability of a lessee to respond to the underlying 12 issues and say, well, actually -- you were saying, "There 13 are unremediated spills. We just cleaned them up. We 14 just never reported back." 15 I mean, there is a framework for that built in. 16 MR. RANKIN: I appreciate that, and that 17 provision is appreciated. And I guess, I kind of see that 18 as a potential informal pathway to resolution. 19 My question, I guess though is I also appreciate 20 Mr. Biernoff's, you know, pointing out the notification 21 process here. And it appears to me that the State Land 22 Office has opted rather than to put the burden on itself 23 to a show cause order to demonstrate basis for a 24 heightened financial assurance, but to instead put it, the 25 burden, on the lessee to demonstrate why that's not	Page 163 1 to lessees who are unwilling to do the work that's 2 required to restore oil and gas harms on our land. 3 And so there is -- I'm just pointing out -- and I 4 mean, I think we all know, but there is always that 5 backstop. And unfortunately, we are frequently having to 6 take that step. 7 MR. STEWART: I would also just like to point 8 out, because this was raised by your client during the 9 informal rulemaking -- not rulemaking process, but the 10 stakeholder engagement process. And if you look at 11 paragraph 5, you know, we added language to address this 12 specific issue of, you know, are the reasons going to be 13 as stated, you know, and I'll read it. "In the event a 14 higher level of financial assurance is required under any 15 provision of this rule, the Commissioner will provide 16 written notice by certified mail or courier to the lessee 17 of the required amount and the reasons for the higher 18 financial assurance requirement. And the lessee shall 19 have 90 days from the date of mailing to update its 20 financial assurance." 21 And then there's an exception for, you know, I 22 think some of the instances that Ari noted. But that 23 due-process argument or the fact there would be no idea 24 like, what the reason or the reasons that we're basing our 25 decision on, you know, that was raised by your client, and
Page 162 1 appropriate; is that fair? 2 MR. BIERNOFF: The lessee is in the best position 3 to know about what's going on with the lease. And I think 4 the annual reporting requirement speaks to that directly. 5 Lessees, more than anybody else, know or should know 6 whether there's inactive wells, whether there are spills, 7 whether there's other conditions of concern on a lease 8 that might trigger a heightened requirement. 9 And so, yes, it is appropriate, from our point of 10 view, that in the first instance a lessee, particularly if 11 we've already gone to the trouble of identifying a 12 specific compliance issue, that it is on the lessee to 13 respond to that. 14 And the response may be, "There's a terrible 15 misunderstanding. As NMOGA's counsel, not you, not your 16 firm, but NMOGA's counsel in the OCC rulemaking proceeding 17 has told us before, that aerial image that you claim is a 18 spill is just a shadow. A lessee could say that. A 19 lessee could say, "I'm really sorry. I need more time." 20 A lessee could say a number of different things. And we 21 think it's appropriate for the lessee to make that kind of 22 a response. 23 I will point out that we do take on a significant 24 administrative burden by taking lessees to court when we 25 need to, and there's plenty of due process that's afforded	Page 164 1 that language was in there addressing it. 2 MR. RANKIN: Understood and I appreciate that, 3 and they do as well. And on that point then, I guess, is 4 that notification and the reasons and the basis for the 5 heightened financial assurance a final administrative 6 order sufficient to invoke the contest petition process, 7 if there's a disagreement over the basis for the position 8 of the heightened financial assurance? 9 MR. BIERNOFF: I think that a lessee could 10 certainly construe it that way. I'm not sure whether we 11 would agree. It might be. 12 MR. RANKIN: What's the process to challenge a 13 determination? 14 MR. BIERNOFF: Yeah. Yeah. No, it's a contest. 15 I think we would anticipate some lessees being 16 dissatisfied and probably taking that step. 17 MR. RANKIN: And just so I understand how an 18 aggrieved party might challenge if -- through the process 19 under Subparagraph 3; informal efforts to identify and 20 show that the purported basis for the heightened financial 21 assurance is not correct or valid. Nevertheless, receives 22 notification that it's being imposed on them, then there 23 ought to be a pathway for a hearing to contest or 24 challenge that basis. 25 So I guess my question is: Was it the intent of

Page 165 1 the Commission to allow for that step in Part 5 to be 2 subject to a contest petition if the lessee disagrees with 3 the determination? 4 MR. BIERNOFF: A lessee is always free or any 5 other party that's aggrieved by an agency action is always 6 free to file a contest position. There are many instances 7 in our rules, this one and other rules where we do not 8 specifically invite lessees or other parties to file 9 contest petitions, but I think that's inherent in our 10 legal framework. So again, I think we would expect some 11 disaffected lessees to take that step. 12 MR. RANKIN: On -- sticking with -- to Sub Part 13 B(5,) in the event that any of these heightened financial 14 assurance requirements are imposed on a lessee, the 15 Commissioner then may under Part 5 require that that 16 lessee undertake heightened reporting for that lease, 17 correct? 18 MR. BIERNOFF: Yes, that's correct. Although I 19 think -- no, that's -- 20 MR. RANKIN: I'm sorry. 21 MR. BIERNOFF: -- that's in 6, but, yeah. 22 MR. RANKIN: I apologize. 23 MR. BIERNOFF: We're on the same page. 24 MR. RANKIN: Sorry. I'll just rephrase to 25 correct the reference to B Sub 6. So that's right. Once	Page 167 1 what the Commissioner could require of a lessee, subject 2 to this heightened financial reporting requirement to 3 undertake, correct? 4 MR. BIERNOFF: Do you want to take that, and then 5 I'll -- 6 MR. STEWART: Yeah. Just, you know, a couple of 7 notes here. You know, it's -- the lease is subject to the 8 heightened financial reporting. You know, I mean, I think 9 we're -- it is broadly worded to capture, you know, 10 additional reporting. There's a -- you know, we mention 11 "asset retirement obligations," for example. That was 12 something that came about based on your client's concern 13 that we were being too burdensome in our across-the-board 14 annual reporting of all leases. 15 And we put in the additional reporting 16 requirements in the heightened bonding section to reflect 17 that: Okay, well, maybe we will relieve the burden kind 18 of across the board, but we'll retain the ability to ask 19 for information that we may need that is tailored towards 20 at-risk leases. So just a little background on how this 21 provision came to be. 22 MR. BIERNOFF: And I would just add, Mr. Rankin, 23 that it's not the intention of, at least of this duration 24 of the proposed rule, to limit the categories of 25 information that we can ask for.
Page 166 1 any of these provisions invoke or implicate the heightened 2 financial assurance on a lessee, that they're required to 3 undertake heightened reporting for that lease, correct? 4 MR. BIERNOFF: They may be required to under take 5 heightened reporting. 6 MR. RANKIN: But under B(6) a lessee, as we sit 7 here today or once this rule is promulgated has no way of 8 knowing what that heightened reporting would require or 9 entail, correct? 10 MR. BIERNOFF: No, I don't think that's correct. 11 I agree that the text of the rule doesn't specify every 12 aspect of heightened financial assurance bonding 13 reporting, additional reporting requirements. But I don't 14 think it's our intention that a lessee would be left to 15 just guess what they're asked to report on. It seems like 16 an easy enough addition to note that the Land Office would 17 indicate what additional forms of information are 18 required. But that is not in the text of the rule, right 19 now. 20 MR. STEWART: So -- 21 MR. RANKIN: As drafted however, it's not clear 22 whether the additional reporting would be limited to the 23 lease itself, other operations of the lessee in the state, 24 other financial conditions of the lessee. As we sit here 25 today, under the proposal, there are no limitations to	Page 168 1 Now, if we're asking for genealogy of, you know, 2 family tree of the owner, I suppose there's probably 3 objections that somebody could raise. But we routinely 4 ask in discovery, and are entitled -- we believe are 5 entitled to information, for example, about a lessee's 6 compliance practices in other states, oil and gas 7 operations in neighboring Texas or in Colorado. 8 I don't think that it's possible or realistic to 9 come up with a list of every category of information that 10 the Land Office might conceivably ask for from a lessee 11 that has unremediated spills on its leases, for example. 12 MR. RANKIN: And just to --I think you've helped 13 me out here. Just to kind of put a closure on that then, 14 I understand, Mr. Biernoff, that, in fact, there are no 15 limits under Subpart 6 to what the Commissioner may ask of 16 require of a lessee under this provision in terms of 17 heightened reporting requirements? 18 MR. BIERNOFF: Not that are stated in the rule. 19 MR. RANKIN: None that are intended either? 20 MR. BIERNOFF: I think we're limited by our 21 concern for protecting state land. And so any information 22 that we believe is germane to that inquiry, we're not 23 looking to waste anyone's time, but we are looking to get 24 the information we need to assess risk. And if we believe 25 that a particular lessee is posing a threat to our

Page 169 1 integrity of our land or our natural resources, or if we 2 believe that that lessee has a lease that has issues of 3 concern that pose those threats, then we will certainly 4 seek the information that we think that we need, just like 5 we would do in any proceeding, just like we would do in 6 discovery. 7 MR. RANKIN: Then under the general reporting 8 requirements of this rule, lessees who fail to report, 9 have omissions or errors in the report, have an 10 opportunity to cure, even under this heightened financial 11 reporting requirement, their lease may be subject to 12 cancellation if they fail to comply with the Commission's 13 determination that they have complied with the heightened 14 reporting requirement, correct? 15 MR. BIERNOFF: That's certainly a possibility. 16 That is not, as much as, I think some have tried to scare 17 monger and make it sound like the Land Office is perched 18 vulture-like, waiting for a lessee to make a minor error 19 in a report or forget to file a report, or be late by a 20 day so that its lease can be taken away. That is not the 21 intention, nor does the rule reflect that. The rule 22 reflects that we will notify a lessee if there's a 23 deficiency. 24 And I do think, if your point is that a lessee 25 that ignores that communication may be subject to lease	Page 171 1 may have issues requiring additional bonding, correct? I 2 think that's one of the statements you made that in some 3 situations it's not the lessee's own operations that may 4 be a problem. There may be a problem -- there may be 5 another operator whose operations may require higher 6 bonding, correct? 7 MR. BIERNOFF: That happens all the time. 8 MR. RANKIN: And under Section 19.10.26 of the 9 statutes the legislature expressly provides that operators 10 may provide a bond to the Commissioner, correct? 11 MR. BIERNOFF: We may accept bonds from 12 operators. I don't believe that operators have a right to 13 post bonds. 14 MR. RANKIN: So under the existing rule at least, 15 the existing rule recognizes that operators may post 16 bonds, correct? 17 MR. BIERNOFF: The existing rule says that 18 although it is not our agency's practice to accept 19 operator bonds. 20 MR. RANKIN: Okay. And the new proposed rule 21 excludes that opportunity, correct? 22 MR. BIERNOFF: Not entirely. The proposed rule 23 makes clear that operators at communitized wells under 24 approved communitization agreements can post bonds with 25 the Commission's approval.
Page 170 1 cancellation, that is correct. It might be. 2 MR. STEWART: I would also just draw your 3 attention to D(4), which was also added to address a 4 concern your client raised about somehow we would penalize 5 companies and cancel leases for, you know, innocent 6 mistakes in the annual report. And we added that language 7 to address that concern as well. 8 MR. RANKIN: Yes. And the fact -- I mean, 9 generally speaking, I think to the extent any lease is 10 going to be cancelled, the statute requires a 30-day 11 notice, doesn't it? 12 MR. STEWART: It does, and your client was very 13 concerned that we specifically indicate a process for 30 14 days to amend and resubmit prior to, right, the reporting 15 errors or omissions, you know, that you've got that basis 16 for them to be able to correct. And that wouldn't be used 17 as an independent basis. There may be other reasons to 18 cancel, but, you know, correcting a minor error in an 19 annual report won't be used by the Land Office. It's not 20 our intent whatsoever. 21 MR. RANKIN: I just have a few more question. I 22 appreciate everyone's accommodation. 23 Mr. Biernoff, you mentioned in one of your 24 responses to me that, you know, the may be the lessee in 25 some circumstances may be compliant, but the lease itself	Page 172 1 MR. RANKIN: In that circumstance -- 2 MR. BIERNOFF: And that's -- go ahead. I'm 3 sorry. 4 MR. RANKIN: In that circumstance, what would the 5 bond look like? The bond would identify the specific 6 operations that that communitization agreement operator is 7 undertaking? 8 MR. BIERNOFF: No. The bond would need to be for 9 one or more leases held by the bond agreement -- 10 MR. RANKIN: So -- 11 MR. BIERNOFF: -- because what we -- let me just 12 say really fast. What we can't have is a situation, for 13 instance, where a comm operator has an understandable 14 commercial interest in ensuring, so to speak, their own 15 property, the comm well that they have an interest in, and 16 has no particular interest in posting financial assurance 17 for the derelict, old vertical well that's next door to 18 their comm well on the same lease acreage. We don't want 19 that situation -- if comm operators are going to be 20 permitted to post bonds in lieu of lessees, it has to be 21 for the entire lease acreage. 22 MR. RANKIN: So recognizing that, at least in 23 that circumstance, the Commission is willing to accept a 24 bond from an operator, why not in other circumstances 25 where you have the challenge of multiple operators on a

Page 173 1 single lease? Why not authorize, as the statute provides 2 for an operators of those separate operations to post 3 separate bonds for their operations? 4 MR. BIERNOFF: Because we don't have any ability 5 to bind operators. It doesn't advantage the State Land 6 Office to create an optional pathway for operators to post 7 bonds. In instances in the past where the Land Office has 8 allowed operators to post bonds, the bonds are written to 9 provide any actual protection for us. 10 Here's an example. A client of Mr. Cloutier's 11 filed a contest petition based on cancellation of one or a 12 few leases for lack of a bond. And one of the contesting 13 parties claims was that, "Oh, an operator had posted a 14 bond," an infamous well operator named Larry Marker. 15 Indeed, there was a bond posted by that operator on file 16 with the Land Office. 17 But two problems, one of them germane to your 18 question, one not so much. That operator didn't have any 19 wells on the leases in question, so the bond would have 20 been of no value in any case. But even if that operator 21 did have leases and the contesting party's canceled 22 lease did have wells on the canceled party's canceled 23 leases, the way that the bond was written was to cover 24 that party's State Land Office leases. 25 In other words, they took our bond form and just	Page 175 1 some explanations for why there's not interest, at least 2 there hasn't been to date, in wholesale allowing operators 3 to post bonds in lieu of lessees. 4 MR. RANKIN: Just a few final questions before I 5 relinquish my position. I appreciate again. And I'm not 6 sure who to address this to. These may be a bit more 7 legal in nature. But would you all agree that the State 8 Land Office is bound by the terms and provisions of 9 individual state oil and gas leases? 10 MR. BIERNOFF: Just as lessees are, yes. 11 MR. RANKIN: And that you agree -- and I have 12 actually a copy of it here. I'm sure you already know it 13 well, but under Tab 2 is a printout of Article 24 of the 14 Constitution of New Mexico. You agree that the 15 Constitution provides that the legislature, not the 16 Commissioner, is authorized to determine the terms and 17 provisions included in any and all of their leases? 18 MR. BIERNOFF: It's a little more complicated 19 than that, but I agree that the constitutional provision 20 that you're calling our attention to does provide that the 21 legislature will provide terms and provisions for state 22 oil and gas leessees. 23 MR. RANKIN: And it's not limited to state oil 24 and gas leases. It's all mineral leases, correct? 25 MR. BIERNOFF: Geothermal, steam -- yeah, I think
Page 174 1 completed it and put their name in as operator. And since 2 that party had no leases, the bond was really of no 3 effect. So those are some reasons, but there are others. 4 Operators change without us ever knowing about it, and 5 that uncertainty is not acceptable. 6 We have contractual relationships with lessees. 7 Lessees obtain and enjoy a pretty significant bundle of 8 the rights from the Land Office. And one of the things 9 that the Land Office asks in return contractually is for 10 lessees to accept responsibility for lease conditions, and 11 that does include, and I think lessees generally 12 understand, conditions that that company, the lessee or 13 that person may not have personally caused. But allowing 14 that to be outsourced to potentially 20 or 30 or more 15 different companies on the same lease just creates 16 confusion and uncertainty for us. 17 MR. RANKIN: Now, isn't it true that the 18 Commission can identify and require bonds that acceptable 19 to the Commissioner? Wouldn't that include the ability to 20 identify specifically the operations and require 21 subsequent operators to post replacement bonds when 22 operations change? 23 MR. BIERNOFF: Certainly, the Commissioner could 24 have proposed a different rule and the Commissioner could 25 promulgate a different rule. But I've offered at least	Page 176 1 there's more to this that's beyond the scope of the oil 2 and gas rule that's on the table today, that I'm not going 3 to address. But I will agree that this language does 4 state that the legislature will provide terms and 5 conditions for -- certainly for state oil and gas leases. 6 MR. RANKIN: And it doesn't give that power or 7 authority to the Commissioner, does it? 8 MR. BIERNOFF: We do not write the leases. 9 MR. RANKIN: Correct. In fact, in this case, nor 10 do you have the ability to modify or change the lease 11 forms, do you? 12 MR. BIERNOFF: Nor have we done so. 13 MR. RANKIN: Right. And so here, to that point, 14 there's a statutory form currently in place for all oil 15 and gas leases, correct? 16 MR. BIERNOFF: Yes, there is. 17 MR. RANKIN: And it's the only mineral lease form 18 for which the legislature has dictated the entire form of 19 lease, correct? 20 MR. BIERNOFF: I'm not sure if that's the case. 21 That's -- there may be another form of mineral leasing 22 that has a legislatively-drafted lease contract. I'm not 23 sure about that. 24 MR. RANKIN: So I'm not going to grill you on it 25 since, I don't think we're getting you by surprise, but to

Page 177 1 your knowledge, as you sit here, your' re not sure of -- 2 you're not aware of any others? 3 MR. BIERNOFF: No, I'm not. 4 MR. RANKIN: I think that concludes my questions. 5 Thank you very much, Madam Hearing Officer. 6 Thank you very much, Mr. Biernoff and 7 Mr. Stewart. I appreciate your time. 8 HEARING OFFICER ORTH: Thank you very much, 9 Mr. Rankin. 10 Let's take a break until 10 after 3:00. 11 (A break was taken from 2:55 until 3:12, and the 12 proceedings continued as follows:) 13 HEARING OFFICER ORTH: We're going to come back 14 from the break. We would be moving to the next lawyer to 15 question the staff panel, but first, because we're between 16 lawyers and because this gentleman traveled up from 17 Albuquerque, I'd like to invite Peter Schoenburg to come 18 up to offer a brief public comment. 19 Peter. 20 HEARING OFFICER ORTH: Would you please spell 21 your first and last name? 22 MR. SCHOENBURG: P-E-T-E-R S-C-H-O-E-N-B-U-R-G. 23 HEARING OFFICER ORTH: Go ahead. Thank you. 24 MR. SCHOENBURG: Thanks. Thanks for fitting me 25 in. And I'm here as a layperson in this whole business.	Page 179 1 15,000 bond. 2 The -- I read in the paper yesterday about the 3 70-foot high geyser of waste water near Lovington, and 4 that was an accident on MLG's lot. They move oil and 5 waste water. It's a huge company, presumably tried to be 6 competent, but they are also making big mistakes that are 7 polluting acequias and almost made it to the Pecos River. 8 I know this oil and gas extraction, not movement. But it 9 speaks to the fact that even well-funded corporate 10 companies make mistakes. They ought to pay to remediate. 11 The last thing I'd like to -- two more things. 12 One, I understand small independent extraction businesses 13 are complaining this would put them -- be too onerous. 14 This is a highly dangerous industry. It's like having ten 15 tigers in your backyard and saying, "Well, I'm a small 16 independent person. I don't need to ensure that they 17 don't get out and kill people." This is the same thing. 18 If you don't have the basic financial support and baseline 19 to enter the industry, you ought not to. 20 And lastly, I want to compliment the annual 21 reporting requirements, which I think will be a great 22 improvement. Constant oversight, accountability, 23 visibility as well as the ability to -- when the risk 24 seems heightened in individual cases, raise the bonding 25 requirement to accommodate the additional risks posed by
Page 178 1 I was a 40-year career as a lawyer mostly with Rothstein 2 Law Firm based here in Albuquerque. I've been retired. I 3 now raise bees and have a small orchard and a small 4 vineyard in the North Valley. And I am very active in the 5 acequia community and the Middle Rio Grande Conservatory 6 District and very conscious of water quality. I have twin 7 grandkids who live next door, so they need good water 8 quality too. 9 But I'm here just in support of 19.2.100, the 10 adequate bonding for plugging of wells and remediation of 11 the site. It is a super important piece of closing the 12 loop on our oil and gas industry. We've all learned early 13 on if you took Economics 101 in college that internalizing 14 industry cost is a critical part of capitalism, to make it 15 work, that you don't create problems that then have to be 16 picked up by the taxpayer, and you turn that into profits 17 that are really ill-deserved. Internalize the cost of 18 your business, whatever it is, and I think this does that 19 basic piece. 20 The amount, seems to me, conservative. The 21 150,000 is sort of the default bond per well site. As I 22 understand it, the average in New Mexico is something 23 between 160 and 218 per well, so the mandatory bonding 24 amount is -- barely makes that. And I think still 25 represents a huge improvement over the current much lower	Page 180 1 individual wells. 2 And I thank you for your time. 3 HEARING OFFICER ORTH: Thank you, Mr. Schoenburg. 4 We'll turn now to Mr. Cloutier, and any questions 5 he has of the panel. Looks like he may have a few. 6 MR. CLOUTIER: Thank you, Madam Hearing Officer. 7 Before I begin, I am joined in my comments from 8 my colleagues from NMOGA, and I want to thank you all for 9 your public service. We may disagree with you on this 10 rulemaking, but you guys do a hard job and a necessary 11 job, and I want to thank you for doing it, both on my 12 behalf and my associations. 13 I'm going to skip around a little bit because I'm 14 going to try and avoid any questions that NMOGA asked you. 15 I you think you've already answered it, it's inadvertent, 16 and if you have, I'll be happy to withdraw. 17 I'll like to -- I'll try and highlight where I'm 18 going so that you know where my questions are. I'm going 19 to start -- 20 HEARING OFFICER ORTH: Mr. Cloutier, I'm sorry. 21 Would you offer your first and last name, and spell it? 22 MR. CLOUTIER: Oh, sorry. Yes. My name is 23 Andrew Cloutier, A-N-D-R-E-W, last name, C-L-O-U-T-I-E-R. 24 I represent the Independent Petroleum Association of New 25 Mexico, or IPA.

Page 181 1 HEARING OFFICER ORTH: Thank you. 2 MR. CLOUTIER: Sorry about that, Madam Hearing 3 Officer. 4 Let's talk about reporting first. And I want to 5 talk about a couple of issues. First of all, 6 Mr. Biernoff, you mentioned communitization agreements 7 earlier in some questioning. What is a lessee's 8 responsibility on reporting for oil and gas wells that 9 traverse their lease, but there are no physical 10 infrastructure on the surface? 11 MR. BIERNOFF: Seems like it would be sufficient 12 for the lessee in that instance to simply note the 13 existence of the lease. If there's not surface issues of 14 concern, the existence of the lease, and I suppose the 15 status of the lease -- of the well. Excuse me -- not the 16 lease -- of the well meaning, whether it's in production 17 or not in production, and who the operator is, pretty 18 basic information. 19 MR. CLOUTIER: Okay. And is the intent on 20 reporting hydrocarbon releases to be similar to or the 21 same as the OCD spill rule requirements except that the 22 more minor spills are supposed to be reported too, or does 23 hydrocarbon releases mean something else in the Land 24 Office's mind? 25 MR. BIERNOFF: I don't think it's intended to be	Page 183 1 MR. BIERNOFF: Well, I think everybody may have 2 in mind that there's a statutory requirement for not only 3 30 days notice. I mean, it could be more than that. But 4 for at least 30 days notice, but also for a method of 5 delivery. 6 I agree with you personally, certified mail is 7 probably not the best way of communicating quickly, but we 8 read our applicable statutes to require that. And so to 9 the extent that provisions of this rule require a 10 notification that may involve a lease default, we are 11 trying to track that language. 12 I'll certainly add that it is practice where we 13 have other contact information for a lessee or another 14 responsible party to provide communications, for example, 15 by e-mail. Our goal is to get the message into their 16 hands quickly, but we also do have this statutory 17 requirement. 18 MR. CLOUTIER: And then I also wonder, have you 19 investigated the burdens on these lessees that aren't the 20 operator that we've discussed today, of trying to do the 21 title examination to figure out who owns what and who's on 22 their leaseholds, if they have to do this annual 23 reporting? 24 MR. BIERNOFF: So I will say that I don't think 25 that the reporting provision of the rule contemplates the
Page 182 1 a different category of spill or release. As you noted, 2 Mr. Cloutier, there is a numerical threshold that does not 3 appear in this rule, that does appear on the OCD side. So 4 that is a conscious difference. And in addition, I think 5 it's our intention that a lessee would do reasonable 6 diligence and assessment of the lease premises. And, for 7 example, if there's evidence of a historical spill, that 8 may also be something that needs to be reported, not just 9 a brand-new spill that happened yesterday. 10 MR. CLOUTIER: Okay. Thank you for the 11 clarification. 12 Mr. Biernoff, as you've noted, we've had a number 13 of matters together and oftentimes the State Land Office 14 sends out a letter by certified mail giving notice 15 requiring 30 days from the date of the letter to respond. 16 And that's how I read the 30-day requirement, and I'm 17 wondering of how aware you are of how little time that 18 gives the person getting the letter. 19 Because especially when letters are sent by 20 certified mail, I'm getting clients call me on the 27th 21 day because on the 26th day they received the letter. And 22 they're just realizing they've got four days to respond. 23 And I'm just wondering if we can -- if you've considered a 24 longer period for a response to allow for that, or a 25 quicker means of delivery for notification?	Page 184 1 heavy duty title research that you and some of your 2 colleagues specialize in. 3 I think identifying who operates a well is a 4 pretty straightforward matter. That is certainly not the 5 only piece of information that we ask for, but the notion 6 that a full-blown title report is contemplated, I don't 7 really see that in the text of the proposed rule. 8 MR. STEWART: And if I could just add, you know, 9 industry has come up with a framework that is somewhat 10 counterintuitive in terms of the lack of relationship and 11 knowledge between an operator or operators and the lessee, 12 who is -- who we have a contract with. We have tried to 13 be cognizant of that, but it's reasonable for us to be 14 asking for information from the lessee, who we actually 15 have the contract with. 16 However, we did, based on these comments in 17 previous versions, incorporate language -- I'm just 18 pointing you to in D(2) under the reporting and 19 notification requirements that recognized that sometimes 20 the lessee may not have all the information that an 21 operator has, and that is reflected in that language to 22 have a different attestation standard there. 23 MR. CLOUTIER: I do appreciate to the extent -- 24 the language, Mr. Stewart, so thank you for pointing that 25 out.

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1 Mr. Stewart, my next questions may be going to
2 you because you were talking in your opening about the
3 billions of potential liability that is out there. Is
4 that based on the Vertex Report estimating closure
5 responsibilities for all the active wells in New Mexico,
6 at least from 2021 or 2022?

7 MR. STEWART: So we're drawing from a variety of
8 sources. You know, you have the LFC Report that is more
9 recent; you have the Carr Report that draws on the Vertex
10 information, you know, they're all slicing it in different
11 ways in terms of, you know, are we just talking about, you
12 know, the unleased activities? Are we talking about
13 infrastructure in a broader sense? Are we talking about
14 pulling up piping or the level of remediation or
15 reclamation?

16 As, I think our examples here today illustrated,
17 you know, any one site could be very different, so efforts
18 to kind of calculate what the total liability is with
19 exact precision are going to be difficult, challenging to
20 say the least.

21 So looking at everything from micro-specific
22 examples that we have, you know, OCD averaged
23 well-plugging costs, remediation and reclamation
24 experiences, the reports, all of that information taken
25 together and what it illustrates is that we probably have

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1 billions in potential liability.

2 I'm hesitant to, you know, say a specific number
3 because A, I don't think whatever the number is will be
4 exactly correct. But number 2, it's really not -- I don't
5 want to say it's not relevant. It is relevant. For the
6 purpose of determining where we are in adequacy today,
7 when we have about \$20 million of financial assurances for
8 oil and gas leases, in terms of financial assurances that
9 we have, whether that number is one billion, two billion,
10 three billion, it's such a big gap.

11 So I know that a little long-winded, but that's
12 kind of how we approached it.

13 MR. CLOUTIER: No. And I was not going to
14 follow-up with an exactitude of 75 bucks or anything like
15 that. But my question more is: When I've looked at the
16 studies that estimate the higher figures, it tends to
17 assume that the taxpayer will get 100 percent or nearly
18 100 percent of the active well production. And, you know,
19 you-all have testified this morning or presented this
20 morning -- we're not under oath.

21 You talked about this morning how, for instance,
22 you've compelled or referred to it as "forced plugging,
23 but whatever compels 860 wells that were done by industry,
24 and then to yourself. And, you know, the LFC Report says
25 industry has taken care of about 95 percent of the wells

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1 historically. So I just want to bring that color to you
2 and ask if you're aware of that?

3 MR. STEWART: Yeah. I mean, I think, you know,
4 the way that the LFC cut it, it can be a little bit
5 challenging sometimes. When you're pulling numbers and
6 you're looking at the, you know, number of wells plugged
7 by industry, on the OCD side it may not always be clear
8 whether that is plugged by industry based on their accord
9 because a company wants to maintain, you know, low,
10 inactive well counts. I mean, we have companies that just
11 as a matter of practice, you know, don't really have
12 inactive wells, you know, and they plug them.

13 MR. BIERNOFF: And those numbers -- those wells
14 are not reflected -- I think we said this earlier, are not
15 reflected in that figure that we cited earlier.

16 MR. STEWART: Yeah. So it's hard to aggregate
17 some of that when their pulling from the reporting side.
18 You know, because often, some of those are being counted
19 as industry doing them, but they're doing them under the
20 threat of litigation.

21 MR. CLOUTIER: Sure. And -- but they're also
22 sometimes lessees -- I mean, lessees are just simply not
23 aware there's a problem out there. You send them a demand
24 letter, and they're calling up people like me saying, "I
25 had nothing to do with this well. Why is this

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1 Mr. Biernoff guy asking me and," and -- but they end up
2 doing it. Are you including those in the compelled
3 figures too, threat of litigation or --

4 MR. BIERNOFF: Yes. If we have to take a formal
5 action, which can be a demand letter, and we obtain
6 plugging, as a result of that, that would be included in
7 that total. Those aren't -- in other words, those wells
8 weren't all plugged as a result of litigation, and it
9 certainly is our hope that we don't have to go to that
10 extent in a number of cases.

11 MR. CLOUTIER: Okay. Thank you.

12 Mr. Stewart, you also mentioned concerns about
13 beneficiary liability a few times. Could you explain what
14 that looks like? How is the beneficiary liable?

15 MR. STEWART: Yeah. Sure. The way that we work
16 is we earn money off of state trust lands every. Single
17 parcel of state trust land is assigned to a specific
18 beneficiary. So an example is across the street you have
19 a hotel. That hotel is on state trust land, and the
20 assigned beneficiary is the University of New Mexico. So
21 any earning that we have is something that goes to benefit
22 that particular beneficiary.

23 When you look at the liability side, all of the
24 money that we have including our Restoration Fund money,
25 our contractual funds, all of that money is paid for

Page 189 1 through the earnings of the beneficiaries. So we take the 2 income in and then we take out our budget, and that 3 budgetary amount is set by the legislature. And so the 4 more we have to take out of our earnings, the less delta 5 there is to distribute to the beneficiaries. 6 So when we look at potential liabilities, if 7 there are a bunch of inactive wells, a bunch of sites that 8 are needing to be cleaned up, those companies go bankrupt, 9 we're unable to get a responsible party to do it, and we 10 need to take on that burden. When we say, "we," it is 11 ultimately the money of the school kids that would be used 12 for that purpose. 13 MR. CLOUTIER: So it's spending money out of the 14 internal funds, not the permanent fund or anything like 15 that? 16 MR. STEWART: All of our budget is paid for 17 through the Land Maintenance Fund. It is not paid for -- 18 it doesn't come at all from the Land Grant Permanent Fund. 19 MR. CLOUTIER: Okay. Thank you. I want to ask 20 some questions about the surety instruments and surety 21 market. Has there been an investigation into the capacity 22 of the surety markets to provide the surety products that 23 are being proposed under this rulemaking? 24 MR. BIERNOFF: Well, I would say informally, yes. 25 In other words, we haven't done a study, but we've	Page 191 1 end of the day going to guide our actions or proposed 2 actions. 3 MR. CLOUTIER: Are you aware that the number of 4 entities offering surety products to the oil and gas 5 industry at all is decreasing annually? 6 MR. BIERNOFF: I'm not sure that I had a specific 7 awareness of that. I know it's a pretty limited market. 8 I also know that our lessees currently, those who are 9 bonded, which is supposed to be all of them, who don't 10 have waivers, do have surety bonds, most of them. And I 11 think those are written by -- I don't know -- maybe a half 12 dozen companies. I'm going off of memory. 13 MR. STEWART: And we also -- you know, he 14 mentioned -- and it's Paragraph F, the different forms of 15 financial assurance, you know, we tried to be flexible. 16 So, you know, we do allow for cash deposits if somebody is 17 unable to secure them. 18 MR. CLOUTIER: Understood, and I appreciate that. 19 But I hope you appreciate that a cash deposit ties up that 20 amount of capital for the operator as opposed to a 21 single-digit percentage usually in the case of a face 22 value for the bond for a fee for the bond. So you're 23 nodding your head, so I appreciate that. But it is a 24 burden, and I appreciate your comment earlier that you've 25 got to be aware of the lessees, but they're not your
Page 190 1 certainly done some research, certainly tuned in to the 2 discussion of this issue in the OCC rulemaking, and so are 3 aware of -- well, let's just say among others, your 4 client's concerns that were stated in that proceeding. 5 And I would -- I guess I would say, number one, 6 we strove to strike a balance between what we think is 7 ultimately the level of financial assurance that we need 8 to protect trust beneficiaries and state land and 9 resources. And at the same time, not go so high that it 10 didn't seem that lessees would be able to comply. That is 11 not to say that every single lessee is going to be able to 12 find a surety to issue a bond to them. 13 Bonds are written based on risk, based on 14 financial health, based on net or gross income. And so 15 there could be lessees who are bad risks. There could be 16 lessees who are just financially very precarious, who may 17 have difficulty obtaining surety bonds. And so we have 18 offered alternatives contemplating that getting a bond 19 from Lexon or RLI or something may be out of reach for 20 some companies. 21 I guess at the end of the day, besides trying to 22 strike that balance, that I mentioned, you know, we're 23 also -- ultimately, we are mindful of the needs of our 24 lessees, but at the end of the day, our ultimate 25 obligation is to our beneficiaries, and so that is, at the	Page 192 1 beneficiaries. So -- 2 MR. BIERNOFF: They're certainly -- I would say 3 it's certainly been an important consideration for us in 4 the development of and discussion of this proposed rule, 5 what impact the rule change will have on lessees 6 operationally, financially. That's definitely been a 7 consideration, and I think will continue to be. 8 But I did want to make clear that at the end of 9 the day, we answer to the beneficiaries. 10 MR. CLOUTIER: And are you cognizant of the 11 testimony elicited from the WELC witnesses or for the 12 applicant's witnesses at the WELC rulemaking that they 13 thought that the increased bonding requirements that they 14 were proposing would drive some operators out of business 15 and orphan additional wells? 16 MR. BIERNOFF: I did hear at least some testimony 17 to that effect. 18 MR. CLOUTIER: And have you considered the fact 19 that this might drive some of your lessees out of business 20 prematurely when they are able to meet these lease 21 obligations, but they are not able to meet the increased 22 bonding requirements? 23 MR. STEWART: So I think, you know, as Ari 24 indicated, you know, this is absolutely something that 25 we've given thought to. We do have small operators. They

Page 193 1 don't produce a lot of our overall revenue, but there are 2 a variety of operators who are on the state trust land 3 that are, you know, smaller in nature. And like you said, 4 we tried to come up with a framework that had a kind of 5 minimum threshold that works for us, but was also 6 cognizant of the fact that, you know, we didn't want it to 7 be too high, unless there were, you know, reasons for 8 that, in terms of heightened risk. 9 So that's something we contemplated, but 10 ultimately, I would suggest that if a \$100,000, \$150,000 11 bond is really the make-it-or-break-it, in terms of, you 12 know, a company not being able to be solvent and not being 13 able to be in business if we post that bond, "We're going 14 out of business," oil and gas, a highly-regulated industry 15 involving toxic substances is probably not the -- you 16 know, that's a scenario that we want to really encourage 17 them to be doing it, but it is something we gave a lot of 18 thought to. 19 MR. CLOUTIER: And thank you, Mr. Stewart. But 20 my question also presupposes that there are operators or 21 lessees with multiple leases. So if they have to go to 22 cash bonds, it may be multiple \$150,000, and that could be 23 a difference -- I hope you would consider that too. 24 MR. STEWART: Yeah. And we did, and in F, you 25 know, it goes through a variety of different types of	Page 195 1 up front. 2 MR. BIERNOFF: I didn't hear that specific line 3 of testimony, but I'll accept your representation that 4 that was part of the OCC rulemaking. 5 MR. STEWART: You know, we also -- and we hit on 6 this -- I don't want to be redundant, but the deferment 7 provision in the rule for heightened bonds, I mean, that's 8 meant to give companies an opportunity rather than to just 9 write a heightened bond, to go ahead and use the money to 10 address the underlying concerns. 11 MR. CLOUTIER: And thank you for pointing that 12 out, Mr. Stewart. 13 HEARING OFFICER ORTH: Mr. Cloutier, I don't want 14 to overstep here. But last night a lot of written comment 15 was roaming -- 16 MR. CLOUTIER: Right. 17 HEARING OFFICER ORTH: -- into my e-mail inbox, 18 and I'm not sure when this will be posted and shared with 19 everyone, but there is a letter from the Surety and 20 Fidelity Association of America -- 21 MR. CLOUTIER: I don't think I saw it. 22 HEARING OFFICER ORTH: -- that includes a 23 statement about whether the bond form language itself 24 appears generally workable, which is what they said. 25 MR. CLOUTIER: Okay. I'd like to follow up on
Page 194 1 forms of financial assurances, you know, in lieu of, you 2 know, a revokable letter of credit, you know, and that 3 there are different options. I mean, we want to be as 4 flexible as possible, but ultimately, we need to have 5 something that we can utilize for the purpose that it 6 serves. 7 MR. CLOUTIER: Have you run the State Land Office 8 proposed bond form by the surety industry to see if 9 they'll write in that amount for current practices? 10 MR. BIERNOFF: I don't think so. Our current 11 bond form has been around for -- actually, I don't know 12 for how many years, but certainly for the last -- the time 13 that I've been here, that form has been consistent. 14 Sureties may have difficulty -- or I should say lessees 15 may have difficulty getting a bond in a particular 16 instance, but I would say across our lease portfolio, 17 industry wide, we have not seen any issues like that. 18 MR. CLOUTIER: And I'm recalling some testimony 19 from again, the WELC hearing, Mr. Biernoff. But there was 20 testimony, and I wonder if you're aware of it, that the 21 bonding industry expert said that the higher the amount of 22 the bond, the more likely the surety is only going to 23 write the bond to be released upon the beneficiary showing 24 performance of the breached obligation by reimbursing for 25 say, plugging, abandonment, reclamation costs, paying them	Page 196 1 some of Ms. Serafimova's questioning where she's 2 questioning about where the bond were to go, and I just 3 kind of want to get tangible examples, just walk through a 4 couple of the experiences you've had so that I can maybe 5 understand that process better. And I thought I might 6 start with the High Plains incident or well that is 7 currently being, I guess, plugged, reclaimed and 8 remediated. 9 So is it -- my understanding is that while the 10 work is ongoing, the bond has been called, and the \$10,000 11 is in, I think Mr. Stewart was mentioning in a suspense 12 account here; is that what would be happening? 13 MR. BIERNOFF: That's what's happened. 14 MR. CLOUTIER: Okay. And then the contractors 15 are being paid for funds that the legislature has given 16 the Land Office permission to spend on contractors through 17 Maintenance Fund monies; is that -- did I understand that 18 correctly? 19 MR. BIERNOFF: Right. 20 MR. STEWART: We're expending it? 21 MR. CLOUTIER: You may not have been billed if 22 the work's just been going on in the past week or two, but 23 that's -- is that where the money would be -- 24 MR. STEWART: From a budgetary standpoint, that's 25 the way that it would work is we expend money out of our

Page 197 1 contractual line item. 2 MR. CLOUTIER: Okay. And then since the Land 3 Office is actually paying the contractors, is that bond 4 money from suspense eventually going to move over back to 5 the maintenance funds to reimburse the Maintenance Fund 6 because you anticipate it's going to cost more than 7 \$10,000? 8 MR. STEWART: Yes. 9 MR. BIERNOFF: Yes. 10 MR. CLOUTIER: Okay. Good. Then I understood 11 the abstract questioning correctly. I just wanted to put 12 a single example on it so that I could follow it. 13 Was the High Plains well eligible for OCD 14 plugging and reclamation? 15 MR. BIERNOFF: The High Plains well was not coded 16 as reclamation fund-approved. I will say we had asked OCD 17 to consider various steps with respect to High Plains, and 18 this was several years ago. This wasn't this year or last 19 year. But we needed to proceed. We need to get our land 20 restored, and so we did that. 21 MR. CLOUTIER: Okay. Was OCD asked to put the 22 pipeline's well on the master orphan well spreadsheet that 23 received some attention at the WELC hearing or -- 24 MR. BIERNOFF: I believe that what I asked OCD 25 was whether they would claim High Plain's financial	Page 199 1 MR. BIERNOFF: Oh, okay. And Nordstrand is an 2 example of that. That was one of our case studies from 3 this morning. In that case, it was not the responsible -- 4 legally responsible party that did the work. It was a 5 third party that we had a separate agreement with that 6 sort of stepped into the breach and did some work. They 7 plugged the inactive wells on the site, for five inactive 8 wells, and did some preliminary surface work. 9 We noted that we had claimed a \$20,000 bond, a 10 blanket bond of the lessee, Nordstrand. And that money is 11 in suspense today because site restoration has not been 12 completed. 13 MR. CLOUTIER: And I was -- I don't know if there 14 is one. What I was looking for was maybe an example where 15 essentially, the ECO released the site after the third 16 party did the work. Are there any examples of that, that 17 we can think of or can we just make a hypothetical where 18 that happened? 19 MR. BIERNOFF: We can make a hypothetical where 20 that happened. 21 MR. CLOUTIER: Okay. So the hypothetical is 22 Company A refused to live up to the obligations to plug 23 abandoned and reclaim a record title lessee. Company B 24 comes in. Company A had a \$20,000 bond, and Company B 25 plugged, abandoned, reclaimed, and your office approved
Page 198 1 assurance and utilize that funding, you know, put that 2 funding -- 3 MR. STEWART: I'm sorry. Could we just pause for 4 a second? It seems like we might have some difficulties 5 online. 6 (A pause for taken to correct technical issues online 7 from 3:42 PM to 3:45 PM, and the proceedings continued 8 as follows:) 9 MR. CLOUTIER: Okay. Ready to go? 10 Okay. Mr. Biernoff and Mr. Stewart, I'd like to 11 run through the same sort of example questions on a well 12 where you claimed the bond. I understand there's been a 13 few dozen instances where you've claimed the bond. And 14 the well was compelled to be plugged by a third party 15 either the lessee or another operator, something like 16 that. I don't know. Is there a good example to use or -- 17 MR. BIERNOFF: There's a lot of examples. 18 MR. CLOUTIER: I know, unfortunately, there's a 19 few. I just want to try and walk through one. 20 MR. BIERNOFF: And just to make sure I'm 21 understanding the scenario that you're looking for. 22 MR. CLOUTIER: I just want to seek the flow of 23 the bond money after you've reclaimed the bond money, but 24 another oil and gas company came in and did the work that 25 you demanded to be done and claimed the bond for.	Page 200 1 the reclamation efforts. And I don't know if "release the 2 site" is the correct internal terminology. I'm getting a 3 nod. Thank you. 4 I want to follow that same path with the money. 5 So the bond would be claimed and go into the suspense 6 account, and then as the work's being performed, does it 7 go to reimburse the Company B doing the work, or where 8 does it go upon release? 9 MR. BIERNOFF: Yeah. A fair question. I think 10 there's a lot of variables here, right. In the Nordstrand 11 example, we had a contractual agreement, we had a 12 settlement agreement with a third party to resolve some 13 related issues. And part of the consideration that we 14 were getting from that company was doing site work at this 15 distressed site that wasn't their legal responsibility to 16 clean up. 17 So in that instance, we would not reimburse them. 18 We would use the money for, you know, the additional 19 cleanup costs that had still had not been completed. 20 In your hypothetical, if the work was all 21 finished, and we had not -- our bond claim against Company 22 A's bond was just for that lease or just for that specific 23 issue -- 24 MR. CLOUTIER: That's your only issue with 25 Company A, yes.

Page 201 1 MR. BIERNOFF: Right. Right. Because oftentimes 2 when we make bond claims, we'll present multiple issues, 3 and it's probably no surprise that lessees who have more 4 than one lease, who are non-compliant, tend to be 5 non-compliant across their leases, maybe not every single 6 one of them. 7 But assuming we had just a single lease with 8 compliance issues, you know, that money would be eligible 9 for return to the lessee. That money could also be held 10 in suspense pending further confirmation that the lessee 11 is actually in good standing. 12 MR. CLOUTIER: Okay. So in that instance though, 13 the state would hold the money if there were other 14 potential issues with that lessee until you were satisfied 15 that that lessee was clean or good on everything, and at 16 that point it would be released to the lessee, or if it 17 was a single issue, any they were good on everything, it 18 would be released to the lessee? 19 MR. BIERNOFF: It could be released to the 20 lessee. If the lessee would -- if they were still 21 operating. If that was their last lease and it had 22 expired, and the compliance issue was resolved, and they 23 weren't operating on state land anymore, they'd be 24 eligible to get the bond money back, assuming satisfactory 25 cleanup.	Page 203 1 MR. CLOUTIER: Okay. Thank you very much, 2 Mr. Biernoff. 3 There have been some questions about heightened 4 bonding. I've got an outline of some questions. I'm 5 going to try and skip the ones that I think have been 6 asked. Be a little patient with me. I think Mr. Rankin 7 hit that one. 8 How often can a bond amount be raised in the 9 heightened bonding provisions? 10 MR. BIERNOFF: I don't think there's a limitation 11 on how often a heightened bond can be raised nor is there 12 a limitation in today's rule for when a bond can be 13 raised. 14 So the examples that I gave before, I mentioned 15 some companies by name. There's others that I've just 16 mentioned generically where the Land Office has required a 17 heightened bond. And in those instances, if additional 18 compliance problems were discovered requiring additional 19 financial assurance, I think the agency would be well 20 within its rights to require -- to determine that the bond 21 was no longer good and sufficient, to use the language of 22 our current rule and needed to be updated. 23 MR. CLOUTIER: And how often have you, under the 24 current rule, raised an oil and gas lessee's bond amount? 25 MR. BIERNOFF: I can't speak to that
Page 202 1 If they still have active operations, then they 2 would need to supply a substitute form of financial 3 assurance. And I'll say that in a few cases, we have 4 agreed with the lessee in question, that rather than the 5 lessee obtaining a new surety bond, we'll just hold on to 6 the money that you already claimed, and that'll 7 essentially be with a cash deposit. 8 MR. CLOUTIER: Okay. Are there any other options 9 for the money to flow other than the ones that you've 10 described for me? 11 MR. BIERNOFF: I'm sure there are other scenarios 12 that we could develop. There's not another -- 13 MR. CLOUTIER: If -- I want one that has 14 happened. If it hasn't, then -- 15 MR. BIERNOFF: We have bonds that we've claimed 16 in a couple of instances. This is both for oil and gas 17 lease bonds and also for salt water disposal easement 18 bonds where the lessee has awakened to its compliance 19 obligations after the bond proceeds were paid to the State 20 Land Office. And if we evaluate that lessee and believe 21 that they're both acting in good faith and capable of 22 being prompt and diligent and getting cleanup done, we've 23 been willing to essentially hold the money in escrow, in 24 suspense, with the idea that it would be released back 25 upon successful completion.	Page 204 1 comprehensibly, but in this administration, I believe that 2 it's a very limited number of instances, maybe a half 3 dozen. I'm just guesstimating. It's not 50 or 100. 4 MR. CLOUTIER: Okay. I guess instead of this 5 rulemaking, what consideration was -- there are clearly 6 some people on OCD's master orphaned wells spreadsheet, 7 people that you've experienced out there who, let's say, 8 maybe give industry a bad name and are repeat offenders or 9 frequent flyers, or whatever we want to call them. Why 10 not look to implement the existing rule to say, "Hey, if 11 you're continue operating on state lands or leasing state 12 lands, we're going to revisit your bonding." 13 MR. STEWART: So I think a couple of points from 14 a policy perspective. You know, one, you know, we often 15 hear the criticism from industry that, you know, more 16 detail, more clarity in the rule, more, you know, 17 guidance. You know, some of the comments that have 18 occurred so far, you know, our existing rule is three 19 paragraphs. It's fairly bare-bones. 20 So one part, providing additional clarity. 21 Obviously, updating it and modernizing it, to really the 22 issues that we see today, the annual reporting. And it's 23 important to allow us to be able to identify heightened 24 risk and get actionable information to make informed 25 decisions.

Page 205 1 So the structure of the rule, in modernizing it 2 and it goes beyond simply just providing, as you know, 3 under the current rule, we do have the authority to 4 increase bonds. This provides a lot more structure to 5 that, and that's something that we thought was important. 6 MR. CLOUTIER: And thank you for that, 7 Mr. Stewart. I guess my question though, rather than 8 raising bonds on everybody, why not -- even if you adopt a 9 rule that clarifies the increase, why not pursue that 10 avenue against the higher risk operators? 11 MR. STEWART: Well, I think we tried to have a 12 fairly -- well, I don't want to say, low, but a -- you 13 know, a baseline minimum, and then a tailored approach 14 that does reflect adjustments for heightened -- I mean, we 15 went through a variety of different options. You know, 16 one option was a bond for 100 percent. We do that in 17 other contexts. 18 In our renewable energy leases, solar and wind, 19 you know, we decommission for 100 percent, so we have an 20 independent assessment of that particular lease of what 21 the decommissioning costs are at the -- at the end of the 22 life, and we make them step up bonding to 100 percent. 23 One of the core objectives in this rule that I 24 noted on the onset is it has to be manageable. With 5,700 25 leases, that approach of a completely tailored system per	Page 207 1 today, don't present specific compliance problems. 2 MR. CLOUTIER: Okay. I'm looking at questions 3 that I see -- oh. The rule provides for heightened 4 bonding upon 90-days notice. Is there any list of 5 heightened bonding targets internally now that could be 6 notified to let them know if you're going to proceed with 7 this rulemaking and get you information, or is that 8 something that's going to happen in the future? 9 MR. BIERNOFF: I mane, I could probably -- we 10 could probably, together, generate a list -- 11 MR. CLOUTIER: You -- just like we could over -- 12 MR. BIERNOFF: -- you and I could. 13 MR. CLOUTIER: -- a beer. We probably could, 14 yes. 15 MR. BIERNOFF: No, there is not such a list, but 16 I don't think it would be hard to assemble. I think given 17 fully-ripened compliance problems that are flagrant and 18 severe, I think we would certainly want to start with what 19 we know about already that poses the biggest danger to our 20 land. 21 MR. CLOUTIER: And would you agree with me that 22 those people that you and I would likely come up with in 23 the list are the least likely to comply with this 24 financial assurances rule? 25 MR. BIERNOFF: Well, so it's a little bit of a
Page 206 1 lease was not manageable. 2 So we have a little bit of a hybrid here of 3 having a base minimum and then tailoring it. That was 4 some of the thought process there. 5 MR. BIERNOFF: And I would just add while the 6 maybe most urgent concern for the Land Office when it 7 comes to bringing our financial assurance requirements 8 into the 21st century is current, existing compliance 9 problems. All leases are eventually going to have some 10 issues of concern that develop, and that's not to say that 11 every single lessee is going to be irresponsible. I think 12 we've acknowledged today that some lessees are very 13 responsible. But even a lease that is "clean" today may 14 turn into a compliance problem in the future, and will 15 certainly at a minimum require plugging and 16 decommissioning and site reclamation, even if it's a very 17 clean lease. 18 And so it is important, since we have no control 19 over commercial transactions between companies and we have 20 no control over changes in operators of wells, and we have 21 oversight over changes in holders of record title, lease 22 assignments. But there's many aspects of oil and gas 23 operations on a given lease that we don't have any control 24 over, and do need to provide some basic -- as Mr. Stewart 25 said, basic financial assurance even for leases right now	Page 208 1 mixed bag. Certainly, I think those companies that you 2 and I probably have in mind are not likely to comply. 3 There are those. But there are also lessees, and we 4 talked a little bit about this with Mr. Rankin, who may 5 not be acting unlawfully, who may not be irresponsible, 6 but who have, let's say, the misfortune of having bad 7 operators on their lease acreage. 8 And that's an example of a lessee who may be 9 compliant with the rule, who wants to honor their 10 obligations and recognizes that their obligations extend 11 to lease conditions associated around gas development, and 12 not just their own operations. So I would say, I guess 13 again, it's a little bit of both. 14 MR. CLOUTIER: Thank you. I was not trying to be 15 rude. I'm looking at my computer, Mr. Biernoff -- 16 MR. BIERNOFF: No, it's fine. 17 MR. CLOUTIER: So I'm trying to be efficient for 18 everybody and make sure Ms. Tripp doesn't have any 19 questions that I've missed. 20 MR. STEWART: And could I just note, we are able 21 to see via the camera your computer -- 22 MR. CLOUTIER: Oh. 23 MR. STEWART: -- so if you do have privileged 24 information -- 25 MR. CLOUTIER: Okay. So this --

Page 209 1 MR. BIERNOFF: Although I can't see -- 2 MR. STEWART: One could potentially see. 3 MR. CLOUTIER: Thank you, Mr. Stewart. That's 4 very polite of you. Am I -- 5 MS. DI PALMA: You're good. You can -- 6 MR. STEWART: You're good. 7 MS. DI PALMA: -- put your actual one in now. 8 We're not going to get it. 9 MR. CLOUTIER: Okay. No other questions. I 10 don't have any further questions, Madam Hearing Officer. 11 I guess, I spoke to the two of you, so thank you very much 12 for your polite cooperation. 13 HEARING OFFICER ORTH: Thank you, Mr. Cloutier. 14 Ms. Nanasi, do you questions? 15 HEARING OFFICER ORTH: Could you spell your first 16 and last name? 17 MS. NANASI: Good afternoon. My name is Mariel 18 Nanasi. M-A-R-I-E-L N-A-N-A-S-I, and I'm the attorney for 19 New Energy Economy. Do you want me to say that again or 20 is that -- was that -- 21 HEARING OFFICER ORTH: I think we're good. 22 MS. NANASI: Okay. Madam Hearing Officer, may I 23 present our comments, New Energy Economy's comments, and 24 then go into questions? I don't have -- it's not very 25 long, our comments.	Page 211 1 reclamation obligations. 2 Eventually those operators default, go bankrupt 3 or disappear, leaving the New Mexico taxpayers holding the 4 bag for billions in cleanup costs. This is not 5 responsible resource development. That is debt transfer. 6 It is the privatization of profit and the socialization of 7 environmental liability. 8 The statistics are alarming. new Mexico has 9 approximately 138,864 wells, but only about 56,733 are 10 currently producing. Nearly 64 percent of active wells in 11 New Mexico are low-producing stripper wells. These wells 12 generate very little revenue, as you all have talked about 13 today. And according to the Legislative Finance Committee 14 are unlikely to generate sufficient revenue to finance 15 their own plugging and abandonment costs. 16 At the same time, plugging and remediation costs 17 continue to rise dramatically. The state has estimated 18 average decommissioning costs at more than \$214,000 per 19 well with some wells costing hundreds of thousands and 20 even millions of dollars to remediate. 21 Independent studies estimate New Mexico's bonding 22 gap ranges from 8.1 billion to more than 22 billion. That 23 means New Mexico taxpayers are effectively subsidizing an 24 unfunded environmental liability created by private 25 industry.
Page 210 1 HEARING OFFICER ORTH: Okay. That's fine if your 2 comments are less than 10 minutes or so. 3 MS. NANASI: Yes. 4 HEARING OFFICER ORTH: All right. Go ahead. 5 MS. NANASI: Good afternoon, Commissioner Garcia 6 Richard, who imagine is watching, Hearing Officer, and 7 members of the State Land Office. Again, my name is 8 Mariel Nanasi, and I represent New Energy Economy. New 9 Energy Economy strongly supports these proposed rule 10 amendments. They are not only reasonable, they are long 11 overdue. 12 New Mexico is facing an orphan well crisis of 13 staggering proportions, and it did not happen by accident. 14 It is the predictable results of an oil and gas business 15 model that allows major operators to extract enormous 16 profits during the productive life of wells, distribute 17 those profits to shareholders and investors, and then 18 systematically offload aging, low-producing and 19 environmentally-risky wells on to smaller, 20 undercapitalized operators that cannot possibly afford the 21 true cost of cleanup. 22 This is the industry's playbook. Major operators 23 keep the profits and externalize the liabilities. They 24 sell declining assets downstream often to entities with 25 insufficient assets to cover plugging, remediation and	Page 212 1 Based on current estimates, every New Mexico 2 taxpayer is on the hook for more than \$6,000, and again, 3 that is based on what we know now. 4 So the question before the state is no longer 5 whether this crisis exists. It plainly does. The real 6 question is whether New Mexico is willing to prevent this 7 from continuing and getting even worse. 8 And there is another major crisis directly 9 implicated by this rulemaking, produced water spills and 10 releases. Produced water is not ordinary waste. It 11 contains hydrocarbons, heavy metals, volatile organic 12 compounds, radioactive materials, carcinogens, and PFAs 13 "forever chemicals." 14 One report that approximately 86 percent of the 15 chemicals associated with produced water lacks sufficient 16 toxicity data to conduct a complete risk assessment. The 17 scale of contamination is extraordinary. In 2025 alone, 18 operators reported 38,153 spills statewide. That's more 19 than 100 spills per day, more than 9.4 million gallons of 20 liquid waste were released into the environment, and over 21 3.5 million gallons were permanently "lost" into soil, 22 groundwater, waterways and eco systems. These are not 23 isolated accidents. 24 The record demonstrates the primary causes of 25 spills are equipment failure, corrosion, blowouts,

Page 213 1 overflow events, and human error. In other words, these 2 spills are foreseeable operational failures associated 3 with aging infrastructure and high-volume extraction 4 activity. 5 One catastrophic failure in Lee County released 6 approximately 1.54 million gallons of produced water after 7 a cycling pit wall collapsed. Another spill released more 8 than 169,000 gallons from a corroded pipeline. Just weeks 9 ago, a produced water pipeline blowout near Loving, New 10 Mexico, you've heard about this already today, erupted 11 nearly 70 feet into the air, discharging toxic waste water 12 across the home, vehicles, yard, animals of the Rodriguez 13 family home, which was built by the Rodriguez's -- 14 Mrs. Rodriguez's grandfather 40 years ago. 15 The pipeline blowout impacted the irrigation 16 ditch, acequia, the farmers rely on to feed their crops 17 and animals. The oil and gas industry is poisoning New 18 Mexicans, and yet despite tens of thousands of spills, 19 enforcement remains weak, and remediation is often 20 incomplete. 21 Operators can seek alternative abatement 22 standards when cleanup is deemed too burdensome or 23 technically infeasible, leaving contamination in place 24 indefinitely. 25 That is exactly why our proposed amendment is	Page 215 1 That concludes my statement. But before I go 2 into my questions, which are brief, I'd like to make a 3 report about the orphan well crisis that New Energy 4 Economy finalized yesterday. I request to include it in 5 the record. 6 And may I approach, Madam Hearing Officer? 7 HEARING OFFICER ORTH: Yes. Yes. Thank you. 8 MS. NANASI: Thank you. Now, I did, for the 9 record, send during the lunch hour, a copy of that 10 electronically. So I don't know how that gets to the 11 court reporter, but if you could please make that happen? 12 HEARING OFFICER ORTH: It will be so. Now for 13 the questions. 14 (New Energy Economy Report of the Orphan Well Crisis was 15 submitted into the record.) 16 MS. NANASI: Thank you. 17 Would you agree that the purpose of financial 18 assurance is to ensure that operators, not taxpayers, bear 19 the cost of plugging, remediation and reclamation when 20 things go wrong? 21 MR. STEWART: Yes. 22 MS. NANASI: And would you also agree that oil 23 and gas fluid waste is one of the most hazardous waste 24 streams associated with oil and gas operations containing 25 toxic chemicals, heavy metals, and even radioactive
Page 214 1 necessary. I did submit that to you yesterday 2 electronically. In 19.2.100.23(b) we are asking this 3 amendment. "A pattern of multiple major spills or 4 releases of produced water, as defined by 19.15.29.7(a) 5 NMAC, due to equipment failure, corrosion, blowouts and 6 human error." 7 We are asking this Commission to explicitly 8 authorize heightened financial assurance requirements 9 where an operator demonstrates a pattern of major produced 10 water spills. And you know that "major" under that NMAC 11 is 25 barrels, and each barrel is 42 gallons of produced 12 water spills, releases, equipment failures, corrosion 13 problems, or improper waste management practices. 14 If an operator repeatedly contaminates New 15 Mexico's land and water, the state should not wait until 16 bankruptcy or abandonment occurs before requiring stronger 17 financial protections. Heightened financial assurance is 18 not punishment. It is basic risk management. It ensures 19 that the polluter, not taxpayers, not ranchers, not 20 communities, and not future generations pay the true costs 21 of contamination and cleanup. 22 These reforms are necessary, overdue, and 23 entirely consistent with the State Land Office's 24 constitutional obligation to protect state lands and the 25 public's interest.	Page 216 1 materials? 2 MR. STEWART: Yes. 3 MS. Nanasi: Given that reality, would it make 4 sense for the State Land Office to explicitly consider 5 repeated oil and gas fluid waste spills, discharges, and 6 releases as a trigger for heightened financial assurance 7 requirements? 8 MR. STEWART: That's something that we will 9 definitely take under consideration. I would point to -- 10 under B(1)(c) we talk about a release, and that a release 11 generally covers produced water. 12 We also did intend to collect this type of 13 information. When you look at the annual reporting in 14 D(c), I think our original draft may have just said, "any 15 release," and we made this explicit in terms of 16 hydrocarbon or produced water to make that explicit. 17 MS. NANASI: I do note in the rule, and I don't 18 have it right in front of me, but I understand that it 19 does allow for unremediated produced water spills to be 20 considered for heightened release. But what I am 21 specifically asking you on behalf of New Energy Economy 22 and WildEarth Guardians, in particular, is that if there's 23 a pattern, a practice essentially, a code of conduct of 24 continuously having produced water spills on our, your, 25 property that that also be considered in and of itself.

Page 217 1 To make that into a question, would you consider that? 2 MR. BIERNOFF: I will say, yes, absolutely 3 that'll be considered along with all of the other feedback 4 that's presented in this rulemaking hearing. And I think 5 you definitely heard that request or that comment from 6 some of the other speakers today as well. 7 MS. NANASI: Thank you. 8 The record shows that oil and gas fluid waste 9 releases are not rare events, but occur frequently, as 10 often as every six to seven hours due to equipment 11 failure, corrosion and blowouts. Would you agree these 12 are predictable operational risks, rather than 13 unforeseeable accidents? 14 MR. BIERNOFF: I am going to try to answer that 15 as a layperson, not as a technical person of any technical 16 knowledge. I would imagine that there's probably some 17 fact dependency, but that there are certainly releases and 18 leaks and spills that are predictable and that are 19 avoidable. There are, from our point of view, way too 20 many spills and releases, produced water, and of 21 hydrocarbons on state trust land. 22 There are certainly, as far as we know, as far as 23 we can tell from where we're sitting, genuine accidents 24 that take place that are not the result of carelessness or 25 poor planning on the part of a particular operator, but	Page 219 1 status, et cetera. So there's potential there as well. 2 MS. NANASI: I do note that and really appreciate 3 the rule and all your effort in promulgating it. I just 4 want to say on behalf of New Energy Economy and WildEarth 5 Guardians that this is very serious, that the 6 contamination and the real-world impacts of contaminated 7 groundwater when 78 percent of New Mexicans rely on 8 groundwater for our drinking water and agriculture and 9 everything else is -- and our economic activity, for that 10 matter, is a -- we are asking you to -- and I know you 11 have said that you will consider a specific inclusion of 12 these spills. 13 So I thank you. I just want to say that I 14 represent the Rodriguez family who was showered upon on 15 May 12th, and that was an injection pipeline blowout just 16 two weeks ago, and they are worried for their life and 17 their grandchildren's life. And we are asking you to take 18 into consideration the severity of the harm. This is not 19 just a numbers game. It's not just conceptual. I know 20 that you have a lot of integrity, and that's why you're 21 promulgating this rule, but it's super important to know 22 that there are faces of people's lives that are at stake. 23 And so as you're considering these amendments 24 that New Energy Economy and WildEarth Guardians put 25 forward, we are asking you to really think about, yes, the
Page 218 1 there are many instances where it is. 2 MS. NANASI: If these risks -- I mean, I 3 understand that you said you would consider it, so this 4 might be redundant. But if these risks are predictable, 5 depending on the factual basis, wouldn't it follow that 6 the financial assurance should be calibrated to reflect 7 that known risk including patterns of repeated spills? 8 MR. BIERNOFF: Okay. So, yes. Patterns of 9 misconduct, we believe, should be considered in setting 10 financial assurance levels. And I think that is reflected 11 in this rule proposal, and it may be that there's a -- I 12 understand from the comment and question that there may be 13 a desire, you know, on New Energy Economy's part to see 14 that made more -- manifest or expressed more clearly. 15 We're certainly very cognizant that, for 16 example, a company whose financial assurance we have to 17 pull is at higher risk of having their financial assurance 18 pulled again. And so we're happy to look at what, I think 19 is an important observation about repeat bad behavior in 20 other areas of lease operations. 21 MR. STEWART: And I would just point to paragraph 22 B(4) as well, although it's not explicit in terms of 23 pattern or practice, but it does capture, you know, other 24 factors pertinent to the lessee's oil and gas operations 25 in New Mexico, the environmental condition compliance	Page 220 1 beneficiaries, but the people who are living right now, 2 who are subject to this contamination. 3 MS. BISBEY-KUEHN: May I add something also? And 4 part of what the annual report does actually is -- in four 5 months it will allow us to analyze trends in the cause of 6 spills, and analyze for deferred maintenance and analyze 7 for equipment failures, and where lessees need to pay more 8 attention to maintaining equipment properly and addressing 9 root cause -- doing a root-cause analysis of the causes of 10 the spills. 11 All of that information will be -- will come in 12 the form of a standardized uniformed report. And we will 13 be able to analyze those trends and spills and analyze 14 the fluctuating costs associated with cleaning up those 15 spills, and adjust the heightened bond requirements based 16 on that data. 17 MS. NANASI: Thank you. 18 And my final question is: Wouldn't adopting the 19 proposed amendments by New Energy Economy and WildEarth 20 Guardians simply align the rule with its core purpose, 21 ensuring that financial assurances reflect real-world 22 risks and protect the health, welfare, and economic future 23 of New Mexicans? 24 MR. STEWART: I think -- I don't know that we've 25 seen all of the comments yet because they're all still

Page 221 1 coming in, and we need to review them all. But, you know, 2 we will absolutely look at efforts to strengthen the rule. 3 MS. NANASI: Thank you so much. Thank you for 4 this opportunity. 5 HEARING OFFICER ORTH: Thank you, Ms. Nanasi. 6 Samantha Ruscavage-Barz. If you would, spell 7 your first and last name to begin. 8 MS. RUSCAVAGE-BARZ: Samantha, S-A-M-A-N-T-H-A, 9 Ruscavage-Barz, R-U-S-C-A-V-A-G-E-B-A-R-Z. 10 Madam Hearing Officer, Land Commission, I'm 11 Samantha Ruscavage-Barz, Counsel for WildEarth Guardians. 12 So I just have a few questions. I know we're at the end 13 of the day. And I appreciate you-all giving members of 14 the public and interested parties the opportunity to 15 participate to come here and ask questions, to review the 16 rule, so thank you for that. And we also wanted to thank 17 you for putting this rule forward and compelling a 18 highly-profitable and significantly-polluting industry to 19 pay more of its fair share of cleaning up its toxic mess 20 and not leaving that to the taxpayers of the state. 21 So my first question is about Section B(1) and 22 B(2) of the heightened financial assurance requirements. 23 And so Section B(1) it says, "If a lease includes on its 24 premises any of the following conditions, the 25 Commissioners shall -- may require the lessee to file an	Page 223 1 up its toxic mess. 2 And so my question to you is: Why did you use 3 the "may" language and not use "shall" for these 4 provisions? 5 MR. STEWART: So when you have a list -- our 6 thought process was when you have a list of a variety of 7 factors that often -- you know, they may be different on a 8 lease-by-lease basis enabling some flexibility to look at 9 the various factors in totality to see what that risk 10 profile was, and maybe if there was just one of the 11 factors, for example, you know, an inactive well for over 12 one year, one year and 30 days, that that one factor in 13 itself, may not justify a higher risk portfolio overall. 14 That's just kind of one example. But that was some of the 15 thought process. 16 We've heard various comments on this in terms of 17 changing "may" to "shall," and that's something that, you 18 know, obviously we'll take under advisement in terms of 19 the comments. 20 MR. BIERNOFF: And I would just add, I think 21 there's inherently attention that we're still wrestling 22 with, and I don't think the Land Office or the 23 Commissioner and her staff are alone in this regard 24 between wanting an across-the-board, very clear mandatory 25 "shall" language prescription for what happens if one or
Page 222 1 additional financial assurance." And then there are a 2 number of triggering factors there that could require a 3 heightened financial assurance. 4 And then Section 2 says, "If any of the following 5 conditions have occurred in the past 10 years, the 6 Commissioner may require the lessee to file an additional 7 financial assurance." 8 And Guardians has some concerns about the 9 discretionary nature and use of the word "may" because 10 this discretionary language can invite inconsistent 11 enforcement of the heightened financial assurance 12 requirements. And in particular, you could end up with a 13 situation where similarly-situated lessees that meet these 14 triggers could be treated differently where some lessees 15 have heightened financial assurances imposed on them and 16 some do not. 17 And I think even looking forward into the future, 18 given what the Land Office's intent is with this 19 regulation, you could get a situation where heightened 20 financial assurances are never imposed, even if these 21 triggering requirements are met. 22 And given that they're such -- they're objective 23 requirements, it's easy to know if you meet them or not, a 24 future land commission, especially one who's industry 25 friendly, could give industry a free pass, some cleaning	Page 224 1 more of the compliance factors is met on the one hand. 2 And on the other hand -- and the risks that I think you -- 3 or Counsel identified -- for example, a future 4 commissioner disregarding the heightened bond 5 requirements. That is a concern. 6 And on the other hand, as Mr. Stewart said, 7 recognizing that there may be some situations that do call 8 for flexibility. And I think that's the balance that 9 we've try to strike here, but definitely we're hearing the 10 comment and the critique about some of the potential 11 shortcomings of that approach. 12 MS. RUSCAVAGE-BARZ: So is it then not off the 13 table that you might change that language to "shall" or 14 make some adjustments in those sections? 15 MR. STEWART: I think, you know, we have a 16 proposed draft rule, you know, the comments, as indicated 17 are going to be collected by the Hearing Officer. You 18 know, we haven't seen them all yet. Some of the comments 19 have been reiterated verbally today. Once we have all 20 those, the Commissioner is going to look at it and, you 21 know, make ultimately a determination on these different 22 issues. 23 So, you know, I would say, across the board, in 24 terms of the issues that have been raised today, we're 25 going to flag all of the comments for consideration

Page 225 1 including this one. 2 MS. RUSCAVAGE-BARZ: Okay. Thank you. 3 I have a question about the bulk financial 4 assurances in Section C. And in there, you're giving 5 discounted rates for holding multiple leases. Why give a 6 discounted rate when multiple leases logically and 7 practically mean there's more potential, cumulative risk 8 to the Land Office, not less? 9 MR. STEWART: I think that's an important point 10 to highlight some of the thought process there as you 11 start getting with large operators that, you know, they've 12 got a lot more operations. They have a lot more capital. 13 It doesn't completely mitigate the risk, but 14 there was a thought that, you know, as long as we have a 15 collective amount, for example, we capped it at 40 16 million, that that was a sufficient assurance overall, 17 that if there was a problem with a particular lease, that 18 we would be able to draw upon that. 19 And that it's unlikely that our exposure 20 necessarily would be, you know, beyond 40 million, and 21 that could be, and there's a potential. So we thought, 22 you know, having some discount there would be appropriate 23 in terms of that bulk process. 24 MR. BIERNOFF: Let me follow up on that a little 25 bit. I think we're mindful that there is inherent risk in	Page 227 1 MR. STEWART: It is a floor, yes. 2 MS. RUSCAVAGE-BARZ: Okay. Thank you for that 3 clarification and for the opportunity to ask questions. 4 HEARING OFFICER ORTH: Thank you, 5 Ms. Ruscavage-Barz. 6 Okay. Let's see. Mr. Cox, do you have 7 questions? 8 Anyone else in the room have questions of the 9 State Land Office panel? 10 Is there anyone else on the platform with 11 questions of the State Land Office panel? Please put 12 something in the chat. 13 All righty. I'm not seeing anything. Terrific. 14 It's 4:30. What is the best use -- we do have a hard stop 15 at 5:00. Mr. Rankin, what's the best use of the next half 16 hour? I would ordinarily be calling on you. 17 MR. RANKIN: Thank you for the opportunity to 18 weigh in. And subject to others' contribution on this 19 point. My thought is since there's half-an-hour left, we 20 both, IP&M and NMOGA have 15 minutes of oral comments. My 21 thought would maybe to break. It's been a long day. 22 Allow us to come back in the morning and make those oral 23 comments. I think there's another pop-up session going 24 anyway. That would give us an opportunity to reflect a 25 little bit on the day and make some adjustments, if
Page 226 1 oil and gas operations, period, full stop. And even the 2 most responsible company with the finances and the 3 diligence and the values may still end up with costly 4 issues of concern that need to be remediated or addressed 5 by -- well, it should be that company or by someone. 6 We're definitely mindful of that. 7 On the other hand, I think as I mentioned when we 8 were talking with Mr. Cloutier, our primary concern is the 9 out-of-control legacy environmental issues that we're 10 facing now. And we saw this provision as an opportunity 11 to acknowledge when lessees are acting responsibly because 12 this provision is only available to leases that don't have 13 the heightened risk or compliance issues to provide that 14 acknowledgement and to take account of that. 15 And to -- I will say to incentivize good 16 behavior, and certainly that approach is open to, just 17 like every other aspect of the rule, and we've heard a lot 18 of different points of view about different provisions 19 here. I think that treatment that we took -- or the 20 approach that we took is certainly open to critique, and 21 we're happy to hear every interested person's or 22 organization's point of view on every aspect of the rule. 23 MS. RUSCAVAGE-BARZ: Okay. Thank you. I only 24 have one more question. So does the State Land Office 25 view the \$150,000 minimum in Section A as a floor?	Page 228 1 necessary, to what we were going to say, and start fresh 2 in the morning. 3 So subject to everyone else, and in particular 4 State Land Office's input, that would be my 5 recommendation, and I think Mr. Cloutier seconds that. 6 HEARING OFFICER ORTH: All right. Mr. Biernoff, 7 what do you think? 8 MR. BIERNOFF: I visually canvassed our team and 9 we're amenable for that. 10 HEARING OFFICER ORTH: Terrific. Let's break. 11 We'll break for the day then. We'll be back in this room 12 at 9:00 AM, and I'll invite -- oh, I'm sorry. 13 Mr. Stewart. 14 MR. STEWART: We missed one note. Thank you. 15 I just wanted to highlight for the record and for 16 folks, that we do have materials in the back of the room 17 in terms of the section by section summary and overview 18 that talk about the purpose as well as we had printed out 19 the slide show presentation. I think that folks had 20 requested. You know, a little caveat there. I think, you 21 know, Mr. Biernoff had noted that there was a mistake that 22 we're going to be correcting in that slide. And I know 23 that's something that you-all had requested. So I just 24 wanted to make sure that folks were aware of those 25 materials back there. Thank you.

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1 HEARING OFFICER ORTH: Thank you very much,
2 Mr. Stewart.
3 And written comments can be submitted until we
4 adjourn. I expect we'll be adjourning in the morning, so
5 be sure to get in your written comments before then.
6 And Francesca has asked me to say to the folks
7 online that there will be a different link to join us
8 virtually tomorrow.
9 MS. NANASI: Madam Hearing Officer.
10 HEARING OFFICER ORTH: Yes, Ms. Nanasi.
11 MS. NANASI: Is it possible for the State Land
12 Office to send us electronically the slides?
13 HEARING OFFICER ORTH: Is that --
14 MR. BIERNOFF: It's possible. Absolutely. We'll
15 send the electronic version of the slide presentation to
16 all of the interested parties who were on the last --
17 MS. NANASI: Thank you.
18 MR. CLOUTIER: Ms. Tripp tells me they're already
19 posted up on the website, I think, so --
20 MR. STEWART: So we'll make that correction on
21 the website.
22 HEARING OFFICER ORTH: Great. It will be on the
23 web page then.
24 Anything else before we break?
25 And we'll see you again at nine o'clock tomorrow

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1 CERTIFICATE
2
3 STATE OF NEW MEXICO)
4)
5 COUNTY OF BERNALILLO)
6
7 I, MICHELE NELSON, New Mexico Provisional
8 Reporter, working under the direction and direct
9 supervision of Yvonne Gonzales, New Mexico CCR License
10 Number 62, hereby certify that I reported the attached
11 proceedings; that pages 1-231, inclusive, are a true and
12 correct transcript of my stenographic notes.
13
14 Dated at Albuquerque, New Mexico, this 27th day
15 of June, 2026.
16
17 Michele Nelson
18 
19 YVONNE GONZALES
20 Certified Court Reporter #62
21 License Expires: 12/31/26
22
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1 morning. Thank you, all.
2 (The proceedings concluded at 4:40 PM.)
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1 HEARING ON 2 PROPOSED REVISION TO 3 FINANCIAL ASSURANCE PROVISION OF 4 RULE RELATING TO OIL AND GAS 5 LEASES (192.100.23 NMAC) 6 7 At 8 9 New Mexico State Land Office 10 Morgan Hall 11 310 Old Santa Fe Trail 12 Santa Fe, New Mexico 87501 13 Held on 14 May 28, 2026 15 9:02 AM 16 17 18 19 20 21 22 REPORTED BY: MICHELE NELSON 23 INDEPENDENT COURT REPORTERS 24 46 Shawn Lane 25 Los Lunas, New Mexico 87031	1 TABLE OF CONTENTS 2 PAGE 3 1. WELCOME 4 4 2. PUBLIC COMMENT 5 5 3. STATEMENT BY MR. RANKIN, NMOGA 34 6 4. STATEMENT BY MR. CLOUTIER, NMOGA 44 7 5. QUESTIONS BY MR. BIERNOFF 56 8 6. CLOSING REMARKS BY MR. STEWART 60 9 7. CLOSING REMARKS BY MR. BIERNOFF 65 10 8. ADJOURN 70 11 9. REPORTER'S CERTIFICATE 71 12 13 14 15 16 17 18 19 20 21 22 23 24 25
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1 A T T E N D E E S 2 3 STATE LAND OFFICE: 4 Felicia Orth, Hearing Officer 5 Francesca Di Palma, Technical Coordinator 6 Joey Keef 7 Ari Biernoff 8 Sunalei Stewart 9 Elaine Heltman 10 Elizabeth Bisbey-Kuehn 11 Paige Czoski 12 13 PUBLIC COMMENTS: PAGE 14 15 Judith Williams 5 16 Margaret Bell 6 17 Mandy Sackett 7 18 Carlos Matutes 8 19 Nell Burrus 11 20 Sister Marlene Perropte 14 21 Bill Kipnis 16 22 Barbara Grothus 17 23 Sally Beers 19 24 James Shanley 19 25 Rebecca Sobel 25 26 Vicki Gottlieb 26 27 Roberto Roibal 29 28 Sofia Martinez 30 29 Sandra Stulberg 31 30 Gordon Palmer 33 31 32 33 34 35	1 HEARING OFFICER ORTH: Good morning. My name is 2 Felicia Orth, Hearing Officer, appointed by the Land 3 Commissioner to conduct a hearing in the proposed 4 amendments to the Oil and Gas Financial Assurance rule. 5 This is day two of the hearing. We'll be accepting 6 comment on the proposed amendments. 7 At the back of the room, you'll find a sign-in 8 sheet. Please sign in and indicate whether you'd like to 9 offer comments. We use the sign-in sheets as evidence of 10 public participation and the correct spelling of your 11 name. I will also ask you for the spelling of your name 12 if you offer comment so that Michele Nelson can record it, 13 again, for the transcript. 14 Yesterday we heard from the State Land Office 15 panel, and questioning of that panel was completed. This 16 morning, I'd like to start first with the brief comments, 17 if I could. 18 Is there anyone in the room or on the platform, 19 who would have a comment of five minutes or less, five 20 minutes or less? If you're on the platform, please raise 21 your hand in the chat. 22 Great. Okay. That's okay, gentlemen? All 23 right. Thank you. 24 If you'd like to just unmute one at a time. 25 MS. DI PALMA: Judith Williams, do you want to

Page 5 1 unmute and you can begin? 2 HEARING OFFICER ORTH: Judith Williams. You're 3 on mute. 4 MS. WILLIAMS: Can you hear me? 5 HEARING OFFICER ORTH: Yes, I can hear someone. 6 MS. WILLIAMS: My name is Judy Williams, and I'm 7 representing the League of Women Voters of New Mexico. In 8 addition to our -- 9 HEARING OFFICER ORTH: Hold on. 10 MS. DI PALMA: Please spell your first and last 11 name. 12 MS. WILLIAMS: J-U-D-Y Williams, W-I-L-L-I-A-M-S. 13 HEARING OFFICER ORTH: Thank you so much. Go 14 ahead. 15 MS. WILLIAMS: In addition to our well-known 16 voter education activities, we also conduct detailed 17 studies of issues and develop positions that we use for 18 advocacy at the state level. Today we're supporting the 19 new oil and gas bonding rules being proposed by the 20 Commissioner of the state lands. 21 We support environmentally-sound regulation and 22 enforcement to prevent drilling activities from 23 contaminating surface, our groundwater or the surrounding 24 landscape. 25 We believe that companies should be required to	Page 7 1 lands are significantly less than the actual cost of 2 cleaning up abandoned and orphaned wells, leaving 3 taxpayers to pay the cost of plugging and remediation. 4 With the current rules, polluters make the 5 promise; taxpayers pick up the tab for cleaning up the 6 mess and restoring our state lands. 7 As a New Mexico taxpayer and someone who cares 8 deeply about our environment and frontline communities, 9 I'm asking you to approve all of these proposed rules so 10 that the oil and gas industry pays to clean up the damage 11 their wells and extractive activities do to our 12 environment. Thank you. 13 HEARING OFFICER ORTH: Thank you, Ms. Bell. 14 MS. DI PALMA: Mandy Sackett. 15 HEARING OFFICER ORTH: Mandy Sackett. Can you 16 unmute yourself, please? 17 MS. SACKETT: Good morning. My name is Mandy 18 Sackett, M-A-N-D-Y S-A-C-K-E-T-T. 19 HEARING OFFICER ORTH: Thank you. 20 MS. SACKETT: I am a New Mexico League campaigner 21 for Earthworks. I'm also a certified thermographer, which 22 means I spend time in the oil fields with a infrared 23 camera documenting the invisible pollution that the oil 24 and gas industry constantly leaves behind. And what I've 25 seen tells you a lot about who you're dealing with.
Page 6 1 obtain adequate bonding or other financial guarantees for 2 drilling activities to fund cleanup operations in the 3 event of abandonment by the oil and gas companies. This 4 cost should not be left the taxpayers, and the current 5 rates do not begin to cover the cost of plugging inactive 6 wells and cleaning up areas contaminated by the extraction 7 activities. 8 It's time to modernize the environment and 9 protect state lands. We ask you to approve these rules. 10 Thank you. 11 HEARING OFFICER ORTH: Thank you very much, 12 Ms. Williams. 13 MS. DI PALMA: Margaret Bell. 14 HEARING OFFICER ORTH: Margaret Bell, can you 15 unmute yourself, please? 16 MS. BELL: Yes. Good morning. My name is 17 Margaret Bell, MARGARET BELL. 18 HEARING OFFICER ORTH: Thank you. 19 MS. BELL: I live in Albuquerque. I am in strong 20 support of the proposed amendments to the oil and gas 21 financial assurance rule. 22 The oil and gas industry makes millions of 23 dollars in profits from our natural resources and then 24 leaves us the toxic mess to clean up. 25 Existing bonding requirements for wells on state	Page 8 1 Equipment is leaking. There's invisible plumes 2 of methane; volatile organic compounds near homes; near 3 schools; near places where children play; a partially lit 4 flare near an elementary school in Carlsbad; emissions 5 drifting towards a Navajo K-8 school in Counselor. These 6 are things I've actually seen. And these are the 7 operators we're asking to clean up after themselves when 8 the wells stop producing. 9 Bonding is how we make sure that they actually 10 do. And so when those operators do walk away, and some 11 do, the current bond structure means that the public is 12 left with the bill. \$10,000 does not plug a well. It 13 barely covers the paperwork. That's why this rulemaking 14 matters. 15 The proposed \$150,000 per lease minimum, the 16 heightened requirements for inactive and marginal wells, 17 the annual reporting, these are the difference between an 18 industry that cleans up after itself and one that 19 externalizes its mess onto New Mexico's land, water, and 20 communities. 21 The state trust lands exist to fund our schools, 22 and operators who can't be bothered to maintain basic 23 equipment near those same schools are exactly the ones who 24 will walk away from unplugged wells and unremediated 25 spills without a second thought, unless there's real money

Page 9 1 on the line. 2 So we urge the State Land Office to hold firm on 3 these requirements. The structure as proposed here is 4 exactly what accountability looks like. Please don't let 5 the industry water it down. Thank you. 6 HEARING OFFICER ORTH: Thank you, Ms. Sackett. 7 MS. DI PALMA: Carlos Matutes. 8 HEARING OFFICER ORTH: Carlos Matutes. Can you 9 unmute yourself, please? 10 MR. MATUTES: Yes. Thank you very much. My name 11 is Carlos Matutes, C-A-R-L-O-S M-A-T-U-T-E-S. 12 HEARING OFFICER ORTH: Thank you. 13 MR. MATUTES: I am the New Mexico State Director 14 for the Green Latinos. Green Latino is a national 15 organization dedicated to working for environmental 16 justice for Latina communities and other communities of 17 color. 18 I'd like to start out by thanking Commissioner 19 Garcia Richard for the amazing work that she has done 20 throughout her tenure as Commissioner of State Lands. I 21 personally, as a resident of Sandia Park, feel better 22 about living in New Mexico having had her running the 23 State Lands Office, so I just wanted to start out there. 24 I'm in strong support, as is my organization, for 25 increasing the financial responsibility of oil and gas.	Page 11 1 Burrus. It's N, like Nancy, E-L-L. The last name is 2 Burrus, B-U-R-R-U-S. 3 HEARING OFFICER ORTH: Thank you. 4 MS. BURRUS: And I want to thank the Land 5 Commissioner and the State Land Office for bringing 6 forward these proposed rule changes. 7 Last fall, I was -- I volunteered to a company, a 8 group of people from Albuquerque, to go and visit the 9 Permian Basis for ourselves to see what's happening, and 10 we met with local leaders and specialists that have 11 equipment that allowed us to see emissions that aren't 12 visible to the naked eye. We went to an area called "Loco 13 Hills." And if you're wondering whether the orphaned and 14 abandoned wells is truly a crisis, going there will 15 convince you that it is. 16 There's a terrible stench. You can see petroleum 17 flowing onto the ground. There's debris. There's baths 18 of abandoned chemicals. And when we were able to use a 19 thermal camera to see which of the wells were emitting, we 20 could see many of them were emitting. So that was of a 21 great concern to me, knowing that methane, one of the 22 primary emissions, greatly contributes to climate change, 23 knowing how New Mexico and vulnerable populations are 24 extremely impacted by climate change, that's happening and 25 affecting us right now, and also knowing that in addition
Page 10 1 We have seen an absolutely epidemic in orphaned and 2 abandoned wells throughout the Southwest. The number of 3 abandoned wells in the Permian Basis on both sides of the 4 state line are egregious. 5 These abandoned wells are incredibly dangerous to 6 our ecosystem, leaking not only methane, but also, 7 benzene, which is a known cancer-causing agent. The 8 methane of these abandoned wells and orphaned wells leak 9 out is rapidly increasing climate change, and the people 10 who are at the highest risk from climate change are 11 communities of color. Our Latina communities are 12 indigenous communities here in New Mexico. 13 We just want oil and gas to clean up their mess, 14 to pay for the egregious environmental damage that their 15 industry is incurring upon the people who can least afford 16 to keep up with climate change. 17 So I implore the State Lands Office to continue 18 with this bonding increase. We are just getting started 19 here. Thank you. 20 HEARING OFFICER ORTH: Thank you, Mr. Matutes. 21 MS. DI PALMA: Nell Burrus. 22 HEARING OFFICER ORTH: Nell Burrus. Can you 23 unmute yourself? 24 MS. BURRUS: Good morning. Thank you to the Land 25 Commissioner and to the -- excuse me. My name is Nell	Page 12 1 to climate change, the volatile organic compounds that 2 emitted are also cancer-causing. 3 If you look at a satellite map, there's -- I 4 think these are also infrared-based. You can see a huge 5 cloud of emissions, mostly methane, over southeast New 6 Mexico and western Texas. In fact, we have one of the 7 biggest methane clouds over the Permian Basis compared to 8 any other area in the whole world. 9 So we have a responsibility to do something about 10 this. I am strongly in favor of updating our bond rules 11 to slow down our contribution to climate change, to 12 breathe better air, to protect the land for future 13 agricultural or housing use. And I would say that not 14 only do we need to pass these updated rules, we need to 15 strengthen them in two aspects. 16 One, we need the rules to be harder on those 17 repeat offenders, and when there's documented 18 contamination of our waterways. It's obvious when you see 19 the damage that's being done with your own eye, that there 20 is a lot of negligence that is happening. This is not 21 accidental spills. The people know that their wells are 22 uncapped. They know that they're contaminating and they 23 walk away from them. So those people who are repeat 24 offenders should be fined more. They should be -- and 25 they should also have to pay more up front to get the

Page 13 1 license to drill. 2 And finally, while nobody in this room -- well, I 3 would say everybody in this room is likely aware that 4 enforcement is the other part of this picture. And when I 5 was in the Permian Basin, I was told with the current 6 level of funding for inspectors, each of the wells would 7 get inspected once every seven years. Now, imagine the 8 amount of damage that can be done in seven years with the 9 methane emissions, the volatile, organic compound 10 emissions. 11 We need -- side by side with these rule changes, 12 we need funding for inspection and enforcement. 13 Thank you very much for your time. Again, I am 14 strongly in favor of updating our bond rules especially 15 taking into consideration the need for repeat offenders to 16 be held to a higher standard. Thank you very much. 17 HEARING OFFICER ORTH: Thank you, Ms. Burrus. 18 Barbara Grothus. Can you unmute yourself? 19 MS. GROTHUS: Hi. I'm sorry. My camera isn't 20 working, but I am -- 21 MS. DI PALMA: Barbara, do you happen to have 22 sound on your computer and maybe on your phone as well? 23 There's some feedback on that, if you want to mute one of 24 your -- either the computer or the phone, that would be 25 great.	Page 15 1 impossible to believe that our state has allowed this kind 2 of destruction on this land." 3 We now have a possibility of putting law for 4 justice. And here, across rural and tribal communities, 5 aging oil and gas wells, many long abandoned are leaking 6 dangerous toxins into our air, water and land. Methane, 7 benzene and other pollutants don't just harm wildlife and 8 ecosystems, they threaten the very people and traditions 9 that have cared for this place for generations. 10 This is a problem that can be solved. However, 11 our current rules let corporations walk away from the mess 12 they've made because the insurance they're required to pay 13 up front called, "bonding" is nowhere near enough to cover 14 the real cost of cleanup. According to the Legislative 15 Finance Committee it costs about 163,000 per well to 16 safely plug and clean up the site. 17 We've seen cleanup for a few of these wells, but 18 yet under current rules, oil and gas corporations can post 19 as little as 250,000 total, even if they operate dozens or 20 hundreds of wells. 21 When companies walk away or go bankrupt, the 22 public is left with the bill and the pollution. In 23 Mexico, we don't let our neighbors dump garbage on someone 24 else's land and shouldn't allow corporations to leave 25 behind rusting, leaking, infrastructure that threatens our
Page 14 1 MS. GROTHUS: Yeah. 2 MS. DI PALMA: Barbara, why don't you work on 3 getting whatever's causing that feedback. Something in 4 the room is hearing it twice. We'll go ahead and go to 5 Marlene, and then we'll come back to you, Barbara. 6 MS. GROTHUS: Thank you. 7 HEARING OFFICER ORTH: Sister Marlene Perropte. 8 Can you unmute yourself? 9 SISTER PERROPTE: Good morning. 10 HEARING OFFICER ORTH: Good morning. If you 11 would spell your name, please. 12 MS. PERROPTE: My name is Marlene Perropte. I am 13 a Sister of -- M-A-R-L-E-N-E P-E-R-R-O-P-T-E. I am a 14 Sister of Mercy and A member of the Partnership for Earth 15 Spirituality. And I wanted to thank all those that have 16 brought this updating possibility for the bond rules. 17 Faith calls us to care for one another and for 18 creation. As the late Pope Francis reminded energy 19 executives, "Civilization requires energy, but energy use 20 must not destroy civilization." 21 I have participated in many emersion retreats in 22 the Permian Basis and seen with my own eyes where 23 companies walk away or go bankrupt and left us with the 24 bill and the pollution. 25 As previously speaker, Nell Burrus said, "It's	Page 16 1 water and our way of life. 2 Let's rise to the moment with courage, 3 compassion, and common sense, and protect the blessings 4 we've inherited by making sure they endure for those who 5 come next. If you pollute, you need to make sure that you 6 clean up. 7 I support the bonding rules that are before us. 8 Thank you very much. Blessings. 9 HEARING OFFICER ORTH: Thank you very much, 10 Sister. 11 Bill Kipnis. Can you unmute yourself? 12 MR. KIPNIS: Thank you. Bill, B-I-L-L, Kipnis, 13 K-I-P-N-I-S. I am the owner of Kipnis Strategic, a energy 14 consulting firm here in Santa Fe, New Mexico. 15 Over the past years, I was the owner of Taos 16 Development Group, a real estate design, development and 17 construction company, which built The Edelweiss Lodge and 18 Spa in Taos Ski Valley. And I have built energy projects 19 at Clovis Community college, the City of Grants, Santa Fe 20 Community College, Netflix Albuquerque Studios, as well as 21 others outside of the state. 22 And I'd like to first thank the State Land Office 23 for holding a public hearing, for suggesting and asking 24 for these new bonding rules, and even for providing two 25 dates where we could provide input.

Page 17 1 It's unthinkable to me that any project of 2 magnitude of an oil and gas well could be built with 3 minimum bonding requirements. In none of the projects 4 that I mentioned were bonding requirements less than the 5 value of the project. Not a single one could have been 6 built without stringent bonding and insurance requirements 7 in order for permitting. 8 And what does that mean? That means that a bond 9 is designed with the project in mind. So say, for 10 example, a construction project, we pay for and issue 11 performance and completion bonds that protects the 12 community from half-built sites, other pollution on the 13 site. We provide insurance policies for the performance 14 of the project. 15 So with all that in place in order to require 16 permitting, why would the oil and gas industry skip free 17 of that requirement? As a business person, that makes no 18 sense to me. That would be like me asking for relief from 19 my bonding requirements for my construction and energy 20 projects, which obviously, I don't do, and the state 21 wouldn't allow, anyway. 22 So many people have spoken eloquently about 23 health issues, about ethical issues, and so I thought it 24 would be useful perhaps to talk about the business issues. 25 So thanks again for bringing this up and bringing	Page 19 1 MS. DI PALMA: It looks like Sally Beers is 2 actually next. 3 HEARING OFFICER ORTH: All right. Sally Beers. 4 MS. BEERS: Okay. 5 HEARING OFFICER ORTH: Hello. If you would spell 6 your first and last name, please? 7 MS. BEERS: Hi. My name is Sally Beers, and 8 that's S-A-L-L-Y B-E-E-R-S. I am cutting my prepared 9 statement due to the previous speakers, who said it 10 better. I support the bonding rules. I just wanted to 11 say our State Land Office has it in their power to update 12 the bonding rules and require oil and gas polluters to 13 clean house. So thank you for the healthy choice in 14 holding the oil and gas industry accountable. Thank you. 15 HEARING OFFICER ORTH: Thank you very much. 16 MS. DI PALMA: Let's go now to Jaemes Shanley. 17 HEARING OFFICER ORTH: Jaemes Shanley. 18 MR. SHANLEY: Okay. Good morning. It's 19 J-A-E-M-E-S S-H-A-N-L-E-Y. I am President of the Mark 20 Twain Neighborhood Association in Albuquerque and Vice 21 President of the District 7 Coalition of Neighborhood 22 Associations and a member of the Coalition for a Safer 23 Albuquerque. I have been closely connected to New Mexico 24 for 57 years. 25 Having watched multiple film versions of Frank
Page 18 1 bonding requirements up to par with what's required of the 2 rest of our industries. Thanks again. 3 HEARING OFFICER ORTH: Thank you, Mr. Kipnis. 4 MS. DI PALMA: Barbara, do we want -- Barbara, 5 let's try it again. See if you can unmute and see if we 6 have that echoing. 7 MS. GROTHUS: No. 8 MS. DI PALMA: No. Barbara, I think perhaps you 9 have a second -- like maybe your phone or your computer. 10 If you can just turn the volume down on your computer if 11 you're speaking into a phone or vice versa. 12 MS. GROTHUS: Yeah. No. 13 MS. DI PALMA: Okay. 14 MS. GROTHUS: I don't know. Sorry. 15 MS. DI PALMA: I'm going to go ahead and mute 16 you, Barbara. But if you want, and I'll put it in the 17 chat, you can e-mail your comments, and I could put it 18 into the record. 19 HEARING OFFICER ORTH: Yes, please. Anyone on 20 the platform -- actually anyone in the room, you can -- 21 particularly if you already spoke or if you have a comment 22 longer than five minutes, please put it in an e-mail to 23 Francesca. Her information is on the web page. It's 24 info -- the e-mail beginning with "Info." 25 Let's move to -- let's see Vicki Gottlieb.	Page 20 1 Herbert's epic saga, Dune, I am increasingly struck by the 2 degree to which New Mexico is being allowed to resemble 3 Arrakis, a colony, prized and prioritized solely for 4 extraction at the expense of the more than 2,000,000 of us 5 for whom it is home. 6 There's no amount of sovereign wealth managed by 7 the state government that will compensate for the 8 conversion of vast swaths of our state into a toxic waste 9 land. The owners and shareholders of the oil and gas 10 companies, who have been permitted, till now, to 11 financially engineer their way out of responsibility to 12 clean up their mess do not live here. 13 Their children will not breathe the air fouled by 14 their enterprise by any measure, financial, ethical or 15 simply the golden rule: Those who scar and poison New 16 Mexico's environment for wealth and profit must be legally 17 obligated to restore our lands to a neutral state when 18 their dirty work is done. 19 The proposed new oil and gas bonding rules are 20 essential to realize that for current and future 21 generations of New Mexicans. Thank you very much. 22 HEARING OFFICER ORTH: Thank you, Mr. Shanley. 23 MS. DI PALMA: Rebecca Sobel. 24 HEARING OFFICER ORTH: Rebecca Sobel. 25 MS. SOBEL: Good morning. R-E-B-E-C-C-A

Page 21 1 S-O-B-E-L. 2 HEARING OFFICER ORTH: Thank you. 3 MS. SOBEL: Good morning, Commissioner Garcia 4 Richard, Hearing Officer, and State Land Office staff. My 5 name is Rebecca Sobel. I am the Climate and Health 6 Program Director with WildEarth Guardians. First, I want 7 to thank you for the opportunity to comment and to thank 8 you for moving forward with this rule. Truly, this 9 Commissioner and this Land Office have been a model for 10 long, overdue accountability for preservation of shared 11 state trust lands. 12 Let me start clearly, this proposal represents 13 meaningful and overdue progress. For too long, New 14 Mexico's oil and gas financial assurance framework has 15 failed to reflect the actual costs of plugging wells, 16 reclaiming damaged lands, and cleaning up contamination, 17 leaving trust beneficiaries and the public exposed to 18 enormous unfunded liabilities. This rule begins to 19 correct that. 20 Raising the minimum bond requirement, creating 21 heightened financial assurance triggers, requiring annual 22 reporting and acknowledging that some operators present 23 significantly greater risk than others are all important 24 steps in the right direction. Guardians appreciates that 25 leadership.	Page 23 1 protect. 2 These are not isolated accidents. The most 3 common causes of these spills are predictable, operational 4 failures. Corrosion, equipment breakdown, infrastructure 5 failure, overpressure and human error. That means that 6 this is foreseeable risk, and foreseeable risk requires 7 stronger financial safeguards. 8 We do not have to speculate about repeat 9 offenders. The company responsible for the May 13th 10 produced water blowout, NGL Water Solutions, has reported 11 47 spill incidents in New Mexico. Roughly, 85 percent of 12 these were classified as major events including multiple 13 blowouts. In fact, 20 percent of their spills are 14 blowouts. That 70-foot geyser of toxic waste should be no 15 surprise. 16 At some point, repeated failure stops being an 17 accident and becomes a business model risk that requires 18 stronger accountability. That is exactly why this rule 19 should more clearly distinguish between low-risk 20 operators and chronic repeat offenders. 21 The State Land Office has a fiduciary obligation 22 not simply to collect lease revenue, but to protect the 23 long-term value of the trust assets for the beneficiaries. 24 That means financial assurance should reflect actual 25 liability.
Page 22 1 But the record also shows that financial risks to 2 state trust lands remains significantly larger than this 3 proposal currently captures. Public data from the 4 Legislative Finance Committee, the Oil Conservation 5 Division and EMNRD show that the average costs of plugging 6 alone commonly exceed \$125,000 to \$163,000 per well with 7 documented outliers far more than \$800,000 for a single 8 well. 9 And plugging is only one piece of the liability 10 picture. Surface reclamation, infrastructure removal, 11 contamination cleanup, and long-term remediation can add 12 tens of thousands, hundreds of thousands, or even millions 13 more. 14 Industry's toxic waste byproduct euphemistically 15 coined, "produced water" is where this becomes especially 16 urgent. Produced water is the toxic industrial waste 17 stream containing salts, hydrocarbons, heavy metals, 18 radioactive constituents, PFAs, and thousands of poorly- 19 characterized chemicals. This is not a hypothetical risk. 20 In 2025 alone, operators reported spilling 323 21 spilling events toxic liquids on New Mexico state trust 22 lands, releasing more than 2.1 million gallons of oilfield 23 waste. Nearly 27 percent of all of these identified 24 liquids spilled only in New Mexico, occurred in the very 25 lands that this office has a fiduciary responsibility to	Page 24 1 So we urge several targeted improvements. First, 2 the rule should explicitly clarify the damage the state 3 trust lands includes contamination from produced water and 4 other oilfield waste whether or not those wastes are 5 exempt from hazardous waste regulation. The federal 6 hazardous waste exemption does not make this waste less 7 toxic. It simply means that the burden of managing 8 financial risk falls even more heavily on this agency. 9 Second, where objective indicators of elevated 10 risk exist, stronger financial assurances should be 11 expected, not optional. Operators with repeated spills, 12 unresolved contamination, chronic inactivity, or serious 13 compliance history, should not be treated the same as 14 lower-risk operators. 15 Third, bulk bonding deserves tighter guardrails. 16 Administrative efficiency is understandable, but large 17 operators do not represent less risk simply because they 18 are large. In many cases, they represent the greatest 19 cumulative exposure. 20 And finally, transparency matters. Public 21 reporting is one of the strengths of this proposal, but 22 that reporting should be accessible and meaningful so 23 beneficiaries and communities can evaluate whether 24 financial protections are actually adequate. 25 At its core, this is about responsible

Page 25 1 stewardship. State trust lands should not function as 2 collateral for undercapitalized cleanup risk. If 3 contamination occurs, if a well fails or an operator walks 4 away, trust beneficiaries should not inherit the 5 liability. 6 This rule is an important step forward. But the 7 strongest version of this rule is one that fully aligns 8 financial assurance with the real-world risks that are 9 already occurring on state trust lands every single year. 10 Thank you. 11 HEARING OFFICER ORTH: Thank you, Ms. Sobel. 12 MS. DI PALMA: So I believe Barbara has figured 13 out what was causing the echoing. And so, Barbara. 14 HEARING OFFICER ORTH: Barbara. 15 MS. GROTHUS: Oh, let's try this again. Thank 16 you so much. 17 HEARING OFFICER ORTH: Terrific. Just spell your 18 name. 19 MS. GROTHUS: Oh, let me spell my name. B, as in 20 boy, A-R-B-A-R-A, and my last name is G, like George, R-O, 21 T, like Tom, H-U, S, like Sam. 22 You know, I also am here in support of the rules. 23 I want to thank Secretary Garcia Richard for her fantastic 24 service to our state. We all appreciate everything that 25 you've done and your leadership on this, in particular.	Page 27 1 bonding rule changes because they will ensure the health 2 and well-being of New Mexico citizens. 3 An orphaned well is a festering wound, leaking 4 poison into the soil, water, and air of nearby 5 communities. Methane, benzene, and other noxious 6 pollutants stream into the air and water from tens of 7 thousands of unplugged wells. 8 State bonding requirements are inadequate. 9 Current law allows bonds for asset retirement obligations 10 to cover an unlimited number of wells for only \$250,000, 11 which lags behind federal law, and represents a fraction 12 of the liability owed, as I think we've heard others 13 detail. 14 Although OCD has access to some funding for 15 orphan well decommissioning through the New Mexico 16 Reclamation Fund, the majority of funding used to plug and 17 remediate orphaned wells have come from the federal 18 government, which has been halted under the Trump 19 Administration. The new challenges posed by frac wells 20 will far surpass the expenses borne by OCD up until now. 21 Justice Bosson stated in his opinion that the law 22 does not allow oil and gas companies to shift their 23 liabilities to New Mexico taxpayers, in Stephanie Garcia 24 Richard vs. Marathon Petroleum, which was decided in the 25 New Mexico Court of Appeals on May 14, 2025. "This is
Page 26 1 The need for these rules is really clear. The 2 ability of producers to avoid responsibility for the 3 damage they are leaving while extracting profits from our 4 air, land, water, all of the cultural aspects of our 5 communities, and the impacts that this creates. And the 6 burdens on taxpayers make it clear that these rules need 7 to be implemented and really, as other people have 8 mentioned, strengthened. So I will leave my comments at 9 that, but I'm here in support and grateful for the 10 opportunity to leave comments. Thank you so much. 11 HEARING OFFICER ORTH: Thank you, Ms. Grothus. 12 MS. DI PALMA: Vicki Gottlieb. 13 HEARING OFFICER ORTH: Vicki Gottlieb. 14 MS. GOTTLIEB: Yes. Bear with me. 15 Hello. Spell your name, please. 16 MS. GOTTLIEB: Yes. Okay. Sorry. My name is 17 Vicki Gottlieb, V-I-C-K-I, capital G-O-T-T-L-I-E, as in 18 every, and B, as in boy. 19 My son was born in Roswell, New Mexico in the 20 heart of the Permian Basin. I have been a New Mexico 21 taxpayer since 1970. My remarks are drawn from and often 22 directly quote this month's New Energy Economy report, How 23 to Stop Oil and Gas Companies from Evading their 24 Obligations to New Mexicans Before it's too Late. 25 I support Stephanie Garcia Richard's proposed	Page 28 1 because larger oil and gas companies tend to assign their 2 leases to smaller and less profitable companies, which 3 then reassign the leases to even smaller and less 4 profitable operations." 5 Under Marathon's interpretation, the burden of 6 paying for a former lessees tortious context would be 7 shifted to these assignees even though they are less 8 likely to have the resources to remediate the land. 9 Marathon acknowledged that this may lead to situations 10 where the state would need to fund such remediation. 11 There is no evidence before this Court that the 12 legislature intended to subsidize the tortious conduct of 13 oil and gas companies at the expense of New Mexico 14 taxpayers. 15 New Mexico currently allows oil and gas operators 16 to put up a single, statewide, blanket bond of \$250,000 to 17 cover the ARO for an unlimited number of wells. The OCD 18 can request additional funds to cover the actual costs of 19 plugging and remediation, but companies consistently avoid 20 paying an amount that ensures plugging and remediation. 21 The proposed changes must rectify this egregious 22 situation. Thank you for the opportunity to speak and to 23 hear from citizens and organizations and companies around 24 the state. 25 HEARING OFFICER ORTH: Thank you, Ms. Gottlieb.

Page 29 1 MS. DI PALMA: Roberto Roibal. 2 HEARING OFFICER ORTH: Roberto Roibal. 3 MR. ROIBAL: Hello. My name is Roberto Roibal. 4 ROBERTO, R-O-I-B-A-L. 5 HEARING OFFICER ORTH: Thank you. 6 MR. ROIBAL: I live here in Santa Fe. I have 7 lived here all my life. Two of my major concern here in 8 New Mexico has been our environment and our economy. I 9 have long been in support of the State Land Office's 10 attempts to increase the bonding. If anything, they 11 should increase it many, many times more. 12 We should not be held liable with our tax money 13 to cover the costs to cap these oil wells and then pay for 14 the bills. It is unconscionable. 15 New Mexico is the second largest oil producer in 16 the United States. Between New Mexico and Texas, we 17 produce more oil than all the other states in the United 18 States combined, so I strongly urge the Land Office to 19 increase the bonding. 20 And I want to take this opportunity to also thank 21 the New Mexico Environmental Department, Secretary Kenney 22 for his stewardship and leading the charge to keep our 23 environment clean. Thank you very much. 24 HEARING OFFICER ORTH: Thank you very much 25 Mr. Roibal.	Page 31 1 will pay for all of that, and unfortunately, the lack of 2 enforcement, right. 3 So definitely we support this bonding rule, and 4 we hope that in the future, now if this can be done, that 5 basically this rule will be strengthened as well. 6 Thank you very much. 7 HEARING OFFICER ORTH: Thank you. 8 MS. DI PALMA: Sandra S. 9 HEARING OFFICER ORTH: Sandra S. 10 MS. STULBERG: Hi. My name is Sandra Stulberg, 11 STULBERG. And I had prepared remarks, but an emergency 12 came up, but I still felt that this was so important that 13 I weigh in. I want to thank you all for taking my 14 comments, and I want to thank Secretary Garcia for the -- 15 and team -- for the work that they've done in putting 16 forth this strong rule. And in listening to the comments 17 and the testimony yesterday, I was just so pleased to hear 18 the openness of this group to looking at strengthening 19 this rule. 20 I am in support. I'm just myself. I'm not with 21 anybody. But I do appreciate the openness to 22 strengthening this rule even more. When I was listening 23 to some of the comments from the NMOGA lawyers, and they 24 talked about how this will cut into earnings and that it 25 will tie up capital, it struck me that, isn't that the
Page 30 1 MS. DI PALMA: Sofia Martinez. 2 HEARING OFFICER ORTH: Sofia Martinez. 3 MS. MARTINEZ: Buenos Diaz, Stephanie Garcia 4 Richard's staff and the public. 5 HEARING OFFICER ORTH: Please spell your name. 6 MS. MARTINEZ: Sofia Martinez, S-O-F-I-A 7 M-A-R-T-I-N-E-Z. I am with Los Jardines Institute. Our 8 two coordinators of the organization basically have worked 9 on issues of environmental justice and as a legacy 10 organization launching the environmental justice in this 11 country. 12 I want to acknowledge the administration that we 13 have had under Stephanie Garcia Richard. It gives hope, 14 right, considering some of the previous State Land 15 secretaries that we have had. I want to support the bond 16 rule and really kind of encourage any of the 17 recommendations that have been proposed today to be 18 included, that that is done. 19 Of course, we all know that the oil and gas is 20 the largest contributors. Some of the issues that we're 21 facing with climate change right now, we know that the 22 pollution to water, to air, to land, to human health, that 23 the oil and gas industry basically is benefiting -- or 24 basically killing us with, the impact on the air and the 25 water especially abandoned wells, and the dollars that we	Page 32 1 cost of doing business, and why would they expect the 2 taxpayer to subsidize that. I mean, that is basically 3 corporate welfare, and I don't think that the State of New 4 Mexico should be in that business. 5 We know a lot of, you know, huge corporations 6 that have gotten very wealthy by shifting the cost onto 7 the taxpayers, and that just seems an absurd type of 8 endeavor that taxpayers should be expected, by any 9 corporation, to take on. 10 So again, thank you for the work that you've put 11 into this and for taking my comments today. 12 HEARING OFFICER ORTH: Thank you, Ms. Stulberg. 13 MS. DI PALMA: And that is all that have their 14 hands -- 15 HEARING OFFICER ORTH: Is there anyone else on 16 the platform who'd like to offer a brief comment this 17 morning, who has not already spoken? Either raise your 18 virtual hand or put something in the chat. 19 MS. DI PALMA: Mary Russell. 20 HEARING OFFICER ORTH: Mary Russell. Can you 21 unmute yourself? 22 MS. DI PALMA: Mary. you have your hand up. Oh, 23 there you are. You're unmuted. 24 HEARING OFFICER ORTH: Ms. Russell? We can't 25 hear you if you're speaking. Ms. Russell?

Page 33 1 All right. In the event you're unable to unmute 2 yourself, you can send your comment to the address that's 3 in the chat. It'll be to Francesca. "Info" is the 4 beginning of that e-mail. Right there, info@nmslo.com. 5 All right. Let me ask if there's anyone in the 6 room here to offer a brief public comment. 7 Sir, if you would come up? And we do need you to 8 speak into a microphone, and then if you would spell your 9 first and last name. 10 MR. PALMER: Okay. My name is Gordon Palmer 11 spelled, G-O-R-D-O-N. Last name is spelled, P-A-L-M-E-R. 12 I'm looking at the proposed changes and I would 13 like to propose a minor insertion on page 2, under 14 number 4. If you look to the end of the second line of 15 the text, I propose adding the words "number of oil and 16 gas wells located on the lease and the," and that would 17 all of the changes that I'm proposing. 18 I'm a resident of New Mexico, live here in Santa 19 Fe, and I'm certainly in support of the new bonding 20 requirements. 21 HEARING OFFICER ORTH: Thank you very much, 22 Mr. Palmer. 23 Is there anyone else in the room here to offer 24 brief public comment? No. 25 All right. Gentlemen, how have you decided to	Page 35 1 proposed rule. Thank you again, to the State Land Office 2 Commissioner. We appreciate the opportunity. 3 NMOGA has actively engaged with the State Land 4 Office throughout this rulemaking process, meeting with 5 leadership land staff, participating in listening sessions 6 and workshops, and submitting informal comments in a 7 proposed alternative rule. 8 NMOGA and its members appreciate the engagement 9 and process they've been afforded, and the consideration 10 given. While several of NMOGA's comments were addressed 11 in the final proposed rule, numerous fundamental issues 12 remain unresolved, and NMOGA remains committed to good 13 faith dialogue, but because key legal issues were not 14 resolved at the outset, we must raise them here. 15 NMOGA supports the adoption of bonding rules that 16 comply with all constitutional and statutory requirements. 17 NMOGA also supports promulgating fair and reasonable rules 18 that are protective of the state's trust resources for 19 current and future generations. But any rule adopted by 20 the Commissioner, the State Land Office or any other state 21 agency must be authorized under the existing 22 constitutional and statutory framework. 23 For the reasons I will outline, NMOGA 24 respectfully requests that the State Land Office reject 25 the proposed rule and adopt NMOGA's proposed revisions,
Page 34 1 sort yourselves this morning? 2 MR. RANKIN: I'm happy to go first. 3 HEARING OFFICER ORTH: Thank you, Mr. Rankin. 4 Question, Madam Hearing Officer? 5 HEARING OFFICER ORTH: Yes. 6 MR. RANKIN: I fell like the audience is partly 7 to my -- that I'm directing this is to my rear over here. 8 Might I orient the lectern in a way that I can address 9 them or would you rather me face this way? 10 HEARING OFFICER ORTH: So your comment is 11 actually to the State Land Commissioner, and I'm sitting 12 here as her avatar this morning. But I know that the 13 staff is listening, and if the staff would like to come up 14 to the dais -- I thought that worked pretty well 15 yesterday -- but to listen from up here, that's great. 16 MR. RANKIN: They can stay where they are. 17 That's all right. I don't mean to make them move around. 18 I appreciate it though. Thank you very much, Madam 19 Hearing Officer. 20 Good morning, Madam Hearing Officer. My name is 21 Adam Rankin. I'm with the Santa Fe office of Holland & 22 Hart. I'm here on behalf of the New Mexico Oil and Gas 23 Association or NMOGA with my partner Robert Sutphin, and 24 yesterday, our colleague, Olga Serafimova. 25 Thank you for the opportunity to comment on the	Page 36 1 which are attached to our written comments as Exhibit A, 2 and are intended to align with the bonding requirements 3 currently imposed by statute and incorporated into the oil 4 and gas statutory lease forms. 5 To the extent the State Land Office rejects our 6 legal position, NMOGA has submitted substantive comments 7 on each provision through its Vice President of Regulatory 8 Affairs, Andrea Felix, which are attached as Exhibit B, 9 but does so, reserving all rights and arguments it may 10 raise in a legal challenge. 11 The Permian Basin Petroleum Association adopts 12 and endorses NMOGA comments. Before I walk through the 13 details, here is core problem in plain terms. The 14 legislature gave the State Land Office one narrow bonding 15 tool. Protect surface purchasers from damage to their 16 livestock, crops, water and improvements when the state 17 minerals are leased for oil and gas. 18 The proposed rule tries to expand that tool 19 through rulemaking into a full environmental bonding 20 program, well plugging, spill cleanup, reservoir damage. 21 But the legislature already granted that authority through 22 a comprehensive legislative framework through the OCD, 23 which has its own bonds, its own dedicated oil and gas 24 tax-funded Reclamation Fund and its own enforcement 25 Powers. The practical result is double bonding from two

Page 37 1 agencies for the same work on the same land. 2 This cannot be what the legislature intended or 3 authorized. There is no legal mechanism for the State 4 Land Office to allocate bonding funds for plugging, 5 reclamation or remediation. The legislature has strictly 6 provided for how those revenues are to be spent, and the 7 proposed rule does not fit within that framework. 8 We also know it can't be what the legislature 9 intended because the proposed rule conflicts with the 10 statutory lease forms for oil and gas leases, and the sole 11 statute governing State Land Office bonding authority. 12 The New Mexico Constitution authorizes the 13 legislature, not the State Land Office, to dictate the 14 lease provisions and terms for all mineral leases 15 including oil and gas leases. 16 Oil and gas production is so critical to the 17 state's revenue and budget, funding nearly 50 percent of 18 the state's coffers that the legislature decided not to 19 leave any aspect of the state oil and gas lease terms to 20 chance or to the discretion of the Commissioner of Public 21 Lands. 22 Oil and gas leases are the only state mineral 23 leases where the entire lease form is dictated by statute. 24 For all other mineral leases, the legislature leaves most 25 provisions to the commissioner's discretion. That is not	Page 39 1 before drilling operations commence. Either the lessee or 2 an operator may execute and file the bond. Bonds must be 3 in the favor of the State of New Mexico, and for the use 4 of benefit of the purchaser of the severed estate, not the 5 commissioner, not the State Land Office, and not the state 6 trust beneficiary. The bond may only be used to cover 7 specific statutorily-defined damages: Livestock, range, 8 water, crops or tangible improvements. And the surface 9 estate purchaser, not the commissioner has the unequivocal 10 right to waive the bond requirement. 11 These are not guidelines. They are legislative 12 directives that define the outer limits of the State Land 13 Office's bonding authority. 14 Now, the current rule already fails to comply 15 with these limitations. It does not limit the bond 16 requirement to oil and gas leases, encompassing surface 17 estates sold prior to the execution of the lease, but 18 applies to all leases. It does not require a bond before 19 drilling operations commence, but instead requires one 20 before any prospecting activities begin, and it does not 21 limit the bond to the benefit of the surface estate 22 purchaser, but extends it to trust beneficiaries and 23 surface lessees. 24 But rather than correct these infirmities, the 25 proposed rule compounds them with additional lawful
Page 38 1 the case for oil and gas. It's too important to the 2 state's economics to allow a single elected official to 3 determine how they should be managed. The commissioner's 4 not authorized to change a word, not even a comma. 5 The bonding requirements are locked in by 6 statute. Nearly 100 years ago, the legislature set the 7 bonding requirements in the Statutory Lease Form and 8 mirrored them to Section 19.10.26. To satisfy with that 9 scope, the State Land Office now seeks to create new 10 bonding provisions and reporting requirements by rule with 11 the retroactive application to already existing lease 12 agreements. 13 The State Land Office acknowledges its authority 14 over oil and gas leases on state trust land begins at 15 Section 19.10.1 Of those provisions, 19.10.26 is the sole 16 authority to require financial assurance of any kind, and 17 that authority is exceedingly narrow. 18 Section 19.10.26 applies only to oil and gas 19 leases that embrace a severed surface estate that was sold 20 prior to issuance of the oil and gas leases. That is 21 confirmed by each statutory oil and gas lease form in the 22 books, Sections 19.10.4.1, 4.2, and 4.3, all of which 23 require that the sale of the surface estate must have 24 occurred prior to execution of the lease. 25 Under these statutes, the bond must be filed	Page 40 1 provisions. First, the proposed rule abolishes an 2 operator's statutory right to file a bond and places that 3 responsibility solely on the lessee. This directly 4 conflicts with the statute 19.10.26. 5 The proposed rule requires that the bond be in 6 favor of the commission and State Land Office, instead of 7 the State of New Mexico. Again, in contra mention of the 8 statute. Third, the proposed rule expands the permissible 9 uses of bond funds to include plugging wells, remediating 10 spills and addressing damage to mineral resources and 11 reservoirs, none of which are authorized by Section 12 19.10.26 or the Statutory Lease Form. 13 Fourth, the proposed rule sets mandatory minimum 14 financial assurance amounts while giving the State Land 15 Office unfettered authority to exceed those amounts, and 16 grants the State Land Office broad discretion to vary bond 17 amounts based on subjective factors. These provisions are 18 arbitrary, capricious, and without statutory basis. 19 Fifth, the proposed rule eliminates the surface 20 estate purchaser's statutory right to waive bond 21 requirements applied retroactively to existing statutory 22 leases, provides for lease cancellations for 23 non-compliance, and fails to require adequate notice to 24 affected lessees and operators. 25 Now, the State Land Office cites Article 13 of

Page 41 1 the New Mexico Constitution and in Sections 19.11 and 2 19.12 as authority, but none provide the necessary legal 3 support. Article 13 is not self-executing. The Supreme 4 Court has held that a constitutional provision is not 5 self-executing where it merely indicates a principle 6 without laying down rules having force of law, and Article 7 13 must be read in conjunction with Article 24, Section 1, 8 which provides the oil and gas lease terms are prescribed 9 by the legislature, not the State Land Office. 10 Now, the Supreme Court has also held that the 11 Commissioner's dominion over public lands is not absolute 12 or plenary. The Commissioner is merely an agent of the 13 state with such powers and only such as having conferred 14 upon him or her by the Constitution and the laws of the 15 state. 16 Section 19.10.26 addresses the State Land 17 Office's bonding authority specifically, and under settled 18 principles of statutory construction, this specific 19 statute controls over more general provisions, like 19.11. 20 Now, there's a critically important reason that 21 the State Land Office's bonding authority is so narrow. 22 The legislature created a separate comprehensive framework 23 for unplugged wells, reclamation and remediation on state 24 lands, and entrusted that work to the division -- the Oil 25 and Gas Divisions.	Page 43 1 reporting requirements or for requiring reports under 2 penalty of perjury, a fourth-degree felony under New 3 Mexico law. 4 The State Land Office may not use limited 5 rulemaking authority to create criminal liability where 6 the legislature has not done so itself. Likewise, there's 7 no authority for the lease cancellation provisions under 8 this proposed rule. 9 The State Land Office's power to cancel leases is 10 limited to non-compliance with the lease's terms dictated 11 by the legislature and only after an opportunity to cure. 12 Because the proposed rules provisions have no 13 corresponding terms in the Statutory Lease Forms or a 14 mechanism to be incorporated into the governing leases, 15 the State Land Office lacks authority to cancel any lease 16 under this rule. 17 Now, closing, NMOGA has offered constructive 18 revisions that limit the rule's scope to what is 19 authorized under existing law, includes suggested 20 financial assurance options for multiple leases, and avoid 21 double recovery issues. 22 In our opinion, the State Land Office may not use 23 this rulemaking process to aggregate to itself powers that 24 the legislature has not granted or has expressly entrusted 25 to other agencies.
Page 42 1 The legislature created the Oil and Gas 2 Reclamation Fund as well to finance plugging, reclamation 3 and remediation through OCD covering all state lands. 4 Now, that fund has an independent, continuous, 5 non-reverting revenue source through the Oil and Gas 6 Conservation Tax, paid for by oil and gas operators, not 7 public taxpayers. OCD has comprehensive statutory bonding 8 authority, power to order wells plugged and lands 9 reclaimed, and robust enforcement mechanisms, including 10 bond forfeiture in civil suits. 11 The OCD is a constituent agency of the Water 12 Quality Control Commission, not the State Land Office, 13 with authority to oversee cleanup and remediation. And 14 OCD has authority and jurisdiction over the disposition of 15 non-domestic oilfield wastes, not the State Land Office. 16 The legislature deliberately structured these 17 authorities to avoid overlap. Section 19.10.26 and the 18 Statutory Lease Forms limit the State Land Office to 19 damages to livestock, range, water, crops or tangible 20 improvements. OCD rules explicitly provide that its bond 21 funds may not be used for those same purposes. Those two 22 frameworks are complementary by design, interlocking, but 23 they're not duplicative. 24 Now, I'll conclude with two additional points. 25 There's no statutory authority for the proposed rules	Page 44 1 Now, the proposed rule, for these reasons, 2 exceeds the State Land Office's statutory authority in 3 fundamental ways. We respectfully request that the State 4 Land Office reconsider and reject its proposed rule, and 5 instead adopts NMOGA's propose revisions. 6 Thank you very much for the consideration and 7 attention. We appreciate the opportunity to provide our 8 comments. Thank you. 9 HEARING OFFICER ORTH: Thank you, Mr. Rankin. 10 Mr. Biernoff, do you have questions of 11 Mr. Rankin? 12 MR. BIERNOFF: I don't. Thank you. 13 HEARING OFFICER ORTH: All right. Thank you. 14 Who will we hear from next? 15 Mr. Cloutier. 16 MR. CLOUTIER: Thank you, Madam Hearing Officer. 17 My name is Andrew Cloutier. I'm with the Hinkle 18 Shanor Firm. I represent the Independent Petroleum 19 Association of New Mexico. 20 Thank you, Madam Hearing Officer. 21 Thank you, members of the staff for our 22 opportunity to engage here. 23 As we tried to do in the prior hearing, Madam 24 Hearing Officer, that we spent many weeks in, NMOGA and I 25 have tried to coordinate our comments so that there's not

Page 45 1 much repetition in the comments to you. 2 I want to thank the Land Office staff for not 3 engaging in the trip that we've heard in some of the 4 public comments that there's some grand scheme by industry 5 to suck New Mexico dry of oil and gas and leave all the 6 oil wells and gas wells for the taxpayer to clean up. 7 That's false. 8 We have a master orphan well spreadsheet at the 9 OCD. Three-quarters of the orphaned wells were by ten 10 operators. Some went bankrupt, some are bad actors. 11 Industry recognizes, like all aspects of society, we have 12 people who do not do the right thing. And we agree that 13 the orphaning of wells and the failure to clean them up 14 and the failure to plug them is a problem. 15 What IPANM opposes is policies that will increase 16 orphaning and our inefficient, costly and ineffective. In 17 the OCC hearings, the applicants, witnesses, affirmatively 18 stated, and the OCD, who supported the rulemaking agreed 19 that the bonding increases are going to orphan wells by 20 driving people out of business. 21 By focusing on the lessee in this rule, that's 22 even more so because lessees often have legally subdivided 23 their lease and retained an interest in the 24 undeveloped portions of the lease, and they keep record 25 title because if the Land Office is going to cancel the	Page 47 1 cost was not borne by industry. That's less than a 2 quarter of one percent of the wells that this 3 administration has had plugged, that there was somebody 4 besides industry bearing the cost for that. 5 One of those two wells was a saltwater disposal 6 wells, so isn't even subject to this rulemaking. So we've 7 got one well, that if we had compliance, instead of 8 \$20,000, the commissioner would have received \$150,000 9 from a bonding company. In eight years, \$150,000 -- 10 \$130,000 difference that this rulemaking would have made, 11 and we suggest that's not very effective or very 12 efficient. That is \$151 per well that was forced or 13 compelled-plugged. 14 So it's not -- yes, \$130,000 is real money to the 15 beneficiary of whatever that lease is -- whatever the 16 beneficiary of that lease is, but it's not very efficient, 17 and it's not very effective, and it's very costly. 18 And I said, "industry," and my association 19 recognized the problem. We recognized this problem 20 decades ago, that there was an incentive, a perverse 21 incentive for bad actors to dump wells on the state and 22 the taxpayer. 23 And decades ago, we went to the legislature and 24 saw that problem. NMOGA was part of the solution, all of 25 industry was. We agreed to an additional tax imposed just
Page 46 1 lease, they get notice, and they can take action if their 2 assignee is not going to. 3 It also leaves them with liability, but the 4 lessee may have no interest in the production from the oil 5 and gas, and it even has less incentive to bear the cost 6 of bonding than an operator does. I'll get back to that 7 later in my remarks. 8 But I started thinking about the efficiency of 9 this rule in the context of this administration, and as 10 Mr. Biernoff points out, we don't have a time machine, but 11 hypothetically, let's go back in time and say, that 12 Commissioner Garcia Richard came into this office with 13 this rulemaking enacted as her first act in office, first 14 day, and let's also suppose 100 percent compliance with 15 that rule, so that every lease is bonded as required by 16 this rule. 17 And then let's look at it from the prism of what 18 has really happened. Commissioner Garcia has been very 19 zealous about pursuing -- I call it, "force plugging." I 20 think Mr. Stuart called it, "compelled plugging." But 21 coming to industry and asking for industry to plug wells 22 even when its lessees, who had no interest in the well. 23 And we heard yesterday that they have compelled 24 plugged 862 wells in this administration. And one of 25 the -- there were two wells, two wells only, where the	Page 48 1 on us, the Oil and Gas Conservation Tax, to fund this 2 Reclamation Fund, and so that whoever dumps wells in this 3 state, there's going to be money set aside that's paid for 4 by the only tax that's only on the participants who 5 receive revenue from oil and gas wells, save two. The 6 State Land Office isn't -- and the beneficiaries don't pay 7 the tax and the federal government don't bear the tax. 8 Every one of the rest of us bear that tax. 9 Unfortunately, despite industry lobbying and 10 frankly, very strong lobbying from prior administrations 11 in this building, the legislature during budge crisis, 12 swept or raided this -- our verb -- the Reclamation Fund 13 to fund other portions of government, and they redirected 14 the conservation tax so that only somewhere between 10 and 15 20 percent of that tax was going into the Reclamation 16 Fund. The rest of it was going into the General Fund. 17 Industry has been pushing for years. My 18 association's been pushing for years especially during 19 these -- I call them, "salad days" of oil and gas revenue 20 in the state, that the Reclamation Fund be fully-funded by 21 the Conservation Tax, and finally this year it happened. 22 HB 80 was passed unanimously by both houses of the 23 legislature. The most ardent environmentalists in the 24 legislature joined by the most arch conservatives, all 25 voted for this bill.

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1 The governor signed it into law, and it's going
2 to cause 50 percent of the conservation tax next fiscal
3 year and 100 percent thereafter to go into the Reclamation
4 Fund. The legislative estimates that well over \$1 billion
5 will flow into the funding and in the well rulemaking. We
6 know from the cost estimated by the applicants and the
7 orphaning -- estimated by the applicants, that's going to
8 be more than sufficient to take care of every well that
9 they were predicting will be orphaned.

10 I want to preface my next remarks, because I only
11 have one example from this hearing. And I don't know all
12 the considerations that the Land Office had on this
13 decision, and I do know that the decisions had to have
14 been made in a pre-HB 80 environment, so I want to -- I'm
15 not being critical, but it's the only example I have. And
16 if I am missing some context, I apologize, but from what I
17 heard yesterday, we had a relatively clean site that
18 they're using the maintenance funds to plug an abandoned,
19 and roughly \$250,000 is coming out of it to plug this well
20 from High Point because -- primarily because they felt
21 that the OCD's priorities were not aligned with their
22 priorities on timing.

23 And the site appears to be in the non-revenue
24 generating wilderness area. And trying to put on --
25 hypothetically, the fiduciary hat that the commissioner

1 with the operator. It made me doubt my legal training.
2 And, you know, years ago in the nineties and the first
3 decade of this century I spent a lot of time in this
4 building on royalty disputes with representing operators
5 and the Land Office speeding the method of royalty
6 calculation and the amounts paid.

7 There are a lot of great in-house counsel, a lot
8 of great private lawyers, a lot of great lawyers here in
9 the Land Office. Not one of us ever thought that the
10 company paying the royalty could evade liability by
11 saying, "Hey, we're not the lessee of record. Go look at
12 the lessee, and if the lessee wants to come after us, go
13 do that." To the extent there was a payment to the Land
14 Office, they did it.

15 So yesterday I went back -- last night I went
16 back and looked at the law, and I think it's best
17 summarized in Uniform Jury Instruction 13-18. And it's
18 the concept of delegation when a contract is assigned.
19 The assignee gets the benefit of the contract, but it's
20 also presumed that unless there's wording and conduct
21 absolutely to the contrary, that the obligations of the
22 contract are delegate to the assignee. Operators are
23 absolutely responsible directly to the land commissioner,
24 even if they're not the lessee of record for the covenants
25 in obligations in the lease, and to follow the regulations

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1 wears, I'm wondering in a post HB 80 world that I again,
2 emphasize, I'm sure these decisions were all made prior to
3 HB 80, whether when we know that the OCD has the money, as
4 opposed to when, I think these decisions were made, there
5 could have been legitimately -- the question would the OCD
6 ever get around to plugging this well.

7 Is it better off waiting a little bit longer and
8 not taking \$250,000 out of the beneficiaries pocket, or
9 should the money come out of the pocket -- my suggestion
10 is that we're better off waiting for the OCD now that
11 they're fully-funded on the Reclamation Fund.

12 But to be clear, industry is paying for the
13 problem and I think that HB 80 provides very good reasons
14 to reexamine the policy choices that underly this proposed
15 rulemaking.

16 I'd like to talk about two aspects of the
17 rulemaking that if it's going to be adopted I would --
18 then my association would urge to be changed. First of
19 all, operators should be able to post the required bond,
20 so long as the bond is applicable to the entire lease, no
21 matter what the operator owns in the lease. For the
22 described -- the first reasons, operators have more
23 incentive to pay the bond.

24 I heard yesterday two reasons why not. The first
25 one is a lawyer surprised me. We don't have a contract

1 on state lands.

2 And what the statute does, that allows there to
3 be a lessee of record, that is responsible, unless an
4 assignment is approved, is it potentially gives the land
5 commissioner two people to look at for the satisfaction of
6 those obligations.

7 When the operator does something wrong on the
8 portion of the lease that it's assigned, they can look to
9 the operator -- she can look to the operator and she can
10 look to the lessee of record. And so I quibbled with -- I
11 have a lot of respect for Mr. Biernoff and his staff, but
12 I certainly disagree with them on this issue.

13 The second reason given was that there can be
14 transfers between the operators, and so who the operator
15 is, is opaque to the Land Office staff and the
16 Commissioner. And I understand the accuracy of that
17 statement. But I'm not sure how it applies to bonding.
18 Because if Operator A, who is not the lessee, posts the
19 bond for the lease, it is an irrevocable bond under the
20 State Land Office rules. The fact that the operator walks
21 away from operations doesn't do anything to the bond
22 unless and until Operator B, the assignee, or the lessee
23 or somebody else, comes and posts a replacement financial
24 assurance instrument that is acceptable to the Land
25 Commissioner, and the Land Commissioner releases that

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1 financial assurance.

2 So there is no reason why an operator, who's more
3 incentivized to pay for the bond should not be able to
4 post the bond. The protection -- the money spends the
5 same. 150,000 is \$150,000, and there's no reason that the
6 Land Office can't call the bond from the operator, as long
7 as the operator post the bond for the entire lease.

8 I'd like to talk briefly about something
9 Mr. Rankin mentioned, which is the lack of reporting and
10 the lease cancellation. I would urge that that is a
11 disproportionate -- it's disproportionate to cancel the
12 lease because of one breach. I raised the mail issue in
13 my questioning yesterday. I think the Land Office staff
14 understands that certified mail is not what it once was.
15 When I moved to New Mexico, I could send a certified
16 letter up here, and it was as good as FedEx. It was
17 overnight delivery. Now it's taking weeks.

18 The Land Office staff demonstrated that if they
19 really need to know what's going on on a lease and there's
20 a lack of reporting, they've got the Google Earth capacity
21 and can put pictures up and see exactly how many tank
22 batteries there are. You can see berms. You can see
23 signs of spills, but at least there ought to be a failure
24 to give notice over some much more extended period of
25 time, not 30 days before a lease is canceled because

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1 sometimes on these certified mails, the people only have a
2 few days between the receipt to get a response in.

3 I'd like to close talking about the financial
4 burden. I represent the smaller, independent companies
5 exclusively, and when I say, "smaller," some of them are
6 actually quite well-funded and large. They're just not
7 what we call the, "major" companies. They're independent
8 companies. One of our members commented to me that these
9 bonding rules are being written in an administration that
10 really hasn't experienced the boom-bust cycles that have
11 taken up our industry -- hurt our industry and helped our
12 industry in the boom times.

13 In the past eight years, we've only had a little
14 "micro bust," I would call it, during the COVID time
15 period where the price -- it was very sudden and a lot
16 uglier than a bust was on the first days of it. But there
17 was a few months where the price of oil and the price
18 commodities went down, but it rebounded within the year.
19 It was not the extended bust of say, the 1990s, which in
20 the entire decade, prices were soft.

21 In those periods of time, it's the independents
22 who have stayed in New Mexico. I suspect if we go back
23 20, 30 years and look at the lease sale results from the
24 Land Office, that those lists are going to be littered
25 with independents from Yates Petroleum, that no longer

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1 exist, and others buying up the leases and conducting
2 activity in the state.

3 In the late nineties and early two-thousands, we
4 saw almost all of the majors pull and retreat out of New
5 Mexico in whole or in part. Many of them -- one that left
6 completely is now back again in spades, because of the --
7 in the industry we refer to it as "elephant hunting," when
8 you're looking for big oil fields. And a lot of the
9 majors left, not realizing that a giant elephant herd was
10 running under their feet in the Delaware Basin portion of
11 the Permian Basin.

12 But it's the small independents who have kept the
13 industry alive here in New Mexico and have continued to
14 pay taxes and continued to pay the state royalties,
15 continued to honor their lease obligations to the State
16 Land Office, and they're going to bear the hardest
17 financial burden of this rulemaking. It's going to put
18 some smaller ones out of business, and it's going to hurt
19 others and make New Mexico less attractive in bidding on
20 leases.

21 At lease sales, if you've got to post 150,000
22 bond right away on a lease where you're going to hold it
23 for a while, you're going to have to put \$150,000 bond on
24 it, that's going to affect the price. Any rational
25 purchaser is going to bid at the lease sale knowing that

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1 they have an immediate \$150,000 cost on the lease.

2 I think the financial burden is going to be
3 significant. It's going to hurt the beneficiaries in ways
4 that I've described, and it's going to put people out of
5 business. And I urge that the Commissioner think long and
6 hard about this rulemaking especially in light of HB 80.

7 Thank you, Madam Hearing Officer. Thank you,
8 Members of the Staff. I'll now subject myself to
9 Mr. Biernoff's withering cross-examination.

10 HEARING OFFICER ORTH: Thank you, Mr. Cloutier.

11 Questions, Mr. Biernoff?

12 MR. BIERNOFF: I do have one question,
13 Mr. Cloutier.

14 MR. CLOUTIER: Sure.

15 HEARING OFFICER ORTH: Would you come up to the
16 microphone, please?

17 MR. BIERNOFF: Of course.

18 Thank you. Yeah. I just have one question. So
19 to your last point about thinking long and hard about the
20 rulemaking, can you speak more to that? Is your client
21 suggesting that with the adjustments or changes that
22 you've outlined in your presentation regarding operators
23 posting bonds, the specific changes that you've mentioned,
24 that the rule would then be acceptable to IPANM, or is
25 IPANM taking the position that even with those changes,

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1 the rule is unacceptable to IPANM. That would be good for
2 us to know.

3 MR. CLOUTIER: I'm happy to answer that question,
4 Mr. Biernoff. We have fundamental concerns about the
5 rulemaking that Mr. Rankin expressed well. And I make
6 those comments in "thinking long and hard," I was
7 hearkening back to my HB 80 comments earlier, and really
8 think that it should be reexamined in light of that.

9 But IPANM wants to be constructive and wants
10 to -- if it's going to face a rulemaking it doesn't like,
11 it would still like some of those sharp edges to be sanded
12 off the rulemaking. And that's the nature of those
13 proposals, not that we're going to embrace the rulemaking,
14 but that, if we're going to face a rule, we want to see a
15 better one.

16 MR. BIERNOFF: I understand, and thank you for
17 the clarification. Does IPANM adopt NMOGA's comments and
18 NMOGA's position as expressed earlier this morning?

19 MR. CLOUTIER: We have similar legal concerns,
20 and I think we adopted affirmatively in a written
21 comment -- the NMOGA written comment on the legal issues.
22 So, yes.

23 MR. BIERNOFF: Thank you.

24 MR. CLOUTIER: Those were two questions, by the
25 way. I know lawyers can't count, but --

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1 MR. BIERNOFF: You can add it to my tab.

2 HEARING OFFICER ORTH: All right. Thank you.
3 Anything else from Mr. Cloutier? No.

4 All right. Who will we be hearing from next?

5 MR. BIERNOFF: I don't know if there are other
6 individuals, either here in the room or online, who are
7 wanting to give public comment.

8 HEARING OFFICER ORTH: I'll make the invitation
9 again.

10 Is there anyone else in the room here to offer
11 public comment? This really is the last chance at this
12 point.

13 Mr. Rankin.

14 MR. RANKIN: Madam Hearing Officer, I request
15 actually on behalf of Mr. Cloutier's colleague. If the
16 public comments may be kept open for written submissions
17 until noon, that would be appreciated, to allow for them
18 to address additional issues that came up during
19 yesterday's discussions.

20 HEARING OFFICER ORTH: All right. Let me ask for
21 the position of the Land Office.

22 Mr. Biernoff or Mr. Stewart?

23 MR. STEWART: That's fine.

24 MR. BIERNOFF: That's fine with us, Madam Hearing
25 Officer.

1 HEARING OFFICER ORTH: All right. Thank you,
2 Mr. Rankin and Mr. Biernoff.

3 The opportunity to submit written comments will
4 be left open until noon. Again, those comments go to
5 Francesca here. The e-mail is info@nmslo.gov.

6 Mr. Biernoff.

7 MR. BIERNOFF: Madam Hearing Officer, I wanted to
8 propose that we take a short break and, we, the Land
9 Office, would like to offer some concluding remarks.

10 HEARING OFFICER ORTH: That's terrific. Thank
11 you so much.

12 It's 10:25. Let's come back at 10:40. Thank
13 you.

14 (A break was taken from 10:25 AM to 10:40 AM, and the
15 proceedings continued as follows:)

16 HEARING OFFICER ORTH: Let me issue another
17 invitation, in the event someone has come to us on the
18 platform or in the room to offer comment on the rule.
19 This really is the last opportunity before we hear from
20 State Land Office staff with their responses or
21 reflections on what they've heard during the hearing.

22 I did -- the woman who just came in and left
23 decided to offer her commented writing. It relates
24 primarily to air quality and particulate matter, so we
25 won't be hearing from her verbally, but her written

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1 comments -- this is Teresa Seamster will be made part of
2 the record.

3 Anyone else at all? No.

4 In that case, Mr. Biernoff, would you like to
5 come back up to the dais?

6 MR. STEWART: Thank you. Good morning. My name
7 is Sunalei Stewart, Deputy Commissioner of Public Lands.

8 So I really appreciate the comments that we've
9 received over these last two days. I wanted to kind of
10 capture a little bit in summary of some of our thoughts,
11 but also just remind folks kind of why we're doing this.

12 The Commissioner of Public Lands is responsible
13 for the care and management of state trust lands. That is
14 enshrined in our state constitution, it's enshrined in the
15 state law. She's a fiduciary of a trust, and our state
16 trust lands are part of that trust. They are our core
17 asset that we need to protect.

18 The approach that we have taken in terms of this
19 rulemaking is a very reasonable approach, and it's to
20 address the very concrete and very real problem. This is
21 long overdue. I noted at the beginning of this hearing
22 that the last time that some of these thresholds were
23 updated, Jimmy Carter was president. That is unacceptable
24 in terms of having a modernized rule that is applicable to
25 the challenges and issues at hand.

Page 61 1 The rule is focused on ensuring that we have 2 adequate base levels in terms of bonding, tailoring to the 3 risk at hand, and also providing actionable information 4 about the activities and the risks on our leases. 5 There's been a lot of comments about -- or I 6 shouldn't say, "a lot of comments," but there have been 7 comments about the financial burden on industry. 8 Just to put this in context a little bit, over -- 9 since Commissioner Garcia Richard became Land 10 Commissioner, we have earned \$15 billion, primarily from 11 oil and gas activities. This revenue has been incredibly 12 important in terms of state services, primarily in funding 13 education in our schools. But it doesn't mean that 14 because we are making money, we shouldn't also consider 15 the very real damages and the potential risks and 16 liabilities to state trust land. 17 When you put that 15 billion in context, our 18 effective royalty rate at the Land Office is about 15 19 percent. So you can back that out -- and I'm a lawyer. 20 I'm not very good at math, but I would say that's about 21 \$100 billion that industry has made off of those 22 properties, and we're getting that 15 billion in terms of 23 our share. So there is a lot of money being made by a 24 very profitable industry, and we don't think this rule is 25 overly burdensome in crafting very fair and reasonable	Page 63 1 remediation, reclamation. It is broader in scope in that 2 respect as well. 3 It's also important to note that we've got 4 different parties. OCD looks through the lens of an 5 operator of a specific well. We are looking through the 6 lens of a lessee on broad acreage that may include one 7 operator, multiple operators, and there is a different 8 party that we have a contractual relationship with. Our 9 contractual relationship is with the lessee. 10 OCD and their permitting and registration is 11 focusing on operators. It's also very different when 12 we're talk about accessibility. The only benefit of a 13 financial assurance is if that you can pull it and use it 14 for the purposes that you seek. As I indicated, we have 15 somewhat different uses. You know, I mentioned on the 16 perform side, for example, that obviously has nothing to 17 do with OCD functions about payment and rentals or 18 royalties, but we do not have the authority to pull bonds 19 and utilize bonds of operators for those broad lease 20 activities that we may need to undertake. 21 However, to the extent that there was any 22 duplication, and there is to a certain extent when you're 23 talk about well plugging, our rule included -- our 24 proposed rule includes language that reflects that the 25 Land Office could make adjustments, downward adjustments
Page 62 1 bonding and financial assurance requirements. 2 I'd also like to just make clear, this is not a 3 duplicative rule with regard to the OCC rulemaking process 4 and what has been done there. There was a comment that 5 this is the same work on the same land and, you know, OCD 6 covers that, so why are we really needing to address 7 financial assurances on state trust land. 8 First of all, what our approach is, it is much 9 broader in scope than what OCC is focused on. We didn't 10 get into a lot of detail about this, but it was mentioned. 11 Damages to our lands is a major driving force behind why 12 we're going this rule. But our financial assurances also 13 include performance. 14 So if you look at our existing rule in terms of 15 megabonds, it speaks to "and performance of the lease 16 obligations." So our bond form includes, you know, the 17 coverage for rentals, for royalties, and other terms of 18 compliance with the lease. This is our existing process. 19 It is a long-standing practice at the land office. 20 We also have a difference scope when it comes to 21 the OCD approach with regard to remediation and 22 reclamation. If you look at the OCD bond forms, they 23 cover well plugging. That's what they cover, well 24 plugging. We are interested in and concerned about a much 25 broader focus than simply well plugging in terms of	Page 64 1 to reflect that level of duplication to the extent that we 2 are actually able to access bonds on the OCD side. 3 I also want to hit on public engagement. The 4 Commissioner is really committed to an open and 5 transparent rulemaking process. We kicked this off back 6 in October 2025 with an informal rulemaking essentially, 7 engaging stakeholders, trying to get feedback from a 8 variety of parties to try to ensure that when we hit this 9 state of formal rulemaking, that we had the best possible 10 draft to get reactions and comments on. And we really do 11 appreciate all of the comments that we got. 12 We do think that the rule because of that 13 process, that it is stronger and it's better. We also 14 recognize that we got a lot of additional comments as part 15 of this process. We are going to consider them all. In 16 terms of our State Land Office rulemaking process, you 17 know, the hearing officer is going to produce a 18 compilation of the comments that were received. 19 We are going do consider those, and there will be 20 a final report issued by the Commissioner that goes 21 through the comments one by one, indicating why we either 22 adopted something, why we decided not to adopt it, and the 23 justification. So there will be that additional process 24 coming out of this hearing. 25 With that, I'm going to hand it over to

Page 65 1 Mr. Biernoff, and I think he has some additional comments. 2 But I do just want to greatly appreciate -- express my 3 great appreciation for everybody's participation and the 4 comments that we've received, and we look forward to 5 reviewing those. Thank you. 6 MR. BIERNOFF: And I'll start where Mr. Stewart 7 left off, which is to thank all of the individuals and 8 organizations that have participated in this rulemaking 9 process whether in the prepublication engagement of the 10 stakeholder meetings, in addition to the written comments 11 that have been submitted during this formal rulemaking 12 process and, of course, the individuals who have spoken to 13 share their points of view either on the Zoom platform or 14 here in this room. 15 We're grateful for everybody's engagement. And 16 as Mr. Stewart said, the State Land Office under the 17 Commissioner of Public Land's direction will review all of 18 the comments that have been submitted, and they will all 19 receive full consideration. 20 Financial assurance is ultimately an essential 21 tool for the Commissioner of Public Land's effective and 22 responsible management of state trust lands. It is one of 23 a number of tools that the Land Office has at its disposal 24 and must exercise to be a responsible land manager. 25 We had some discussion about the State Land	Page 67 1 that have no responsible party at all are being plugged or 2 will be plugged through those efforts and through that 3 funding. 4 The notion that a single well that the State Land 5 Office is for some specific reasons needing to proceed 6 with plugging on its own is somehow a reflection of poor 7 fiscal management, I think is not ultimately borne out by 8 the facts. 9 We still have over 700 chronically inactive oil 10 and gas wells on state land, and that's way too many. 11 Despite our efforts and, I think our progress has been 12 significant, there is still a lot of work to do. 13 Financial assurance is an essential component of the State 14 Land Office's relationship with oil and gas lessees, and 15 one that we believe is very well-anchored in existing law. 16 We appreciate the constructive feedback that 17 various individuals and organizations have provided over 18 the last several days. I do want to note though, that the 19 Oil and Gas Association's unprecedented attack on the Land 20 Commissioner's core authority to manage state trust lands 21 is a very serious concern to us. 22 Followed to its logical conclusion, NMOGA's 23 position would convert the Land Commissioner from having 24 the wide authority and the broad discretion that the 25 legislature has invested in her to essentially turning her
Page 66 1 Office's enforcement program, and we appreciate the 2 acknowledgements from industry representatives about the 3 success of that program. However, litigation against 4 irresponsible oil and gas companies is not enough. We 5 cannot solve the problem inactive wells, chronic spills, 6 and other legacy, environmental issues on state trust land 7 through litigation alone. There are simply too many 8 defendants. There are too sites of concern for our staff, 9 which includes now seven attorneys to address that problem 10 only through litigation. 11 In addition, the enforcement work that is bearing 12 fruit today in 2026, a lot of that was started in 2020, 13 2021, 2022, and has taken years to come to fruition. So 14 many of the oil and gas sites that are finally being 15 remediated on state trust land have, indeed, taken a long 16 time to get to that stage. 17 There's been also discussion in this proceeding 18 about the extent to which the Land Office does or should 19 coordinate the Oil Conservation Division. I want to make 20 clear that Oil Conversation Division does have, as 21 industry counsel have acknowledged and have explained, 22 does have a list of wells that it's intending to plug with 23 Reclamation Fund dollars. And we have -- the State Land 24 Office have been in regular contact with OCD about those 25 efforts. And certainly a number of truly orphaned wells,	Page 68 1 into a powerless figurehead with no authority of any kind 2 over one industry, oil and gas. That is not an outcome 3 that New Mexico law supports, and it is not an outcome 4 that the Commissioner of Public Lands or the State Land 5 Office can tolerate. 6 Coming back to the essence of the rule, we 7 believe that reasonable and incremental upward adjustments 8 in financial assurance are long overdue. We appreciate 9 feedback from all interested parties that in some cases 10 have indicated that the numbers are too low, and in others 11 that the numbers are too high. 12 We believe that identifying specific risk factors 13 as opposed to a one-size-fits-all approach to financial 14 assurance is also long overdue, recognizing that some 15 lessees or that the conditions on some leases pose 16 outsized compliance risks to the agency and ultimately to 17 the public and our beneficiaries. 18 We also think that there's no reasonable dispute 19 that the Land Office can and actually at this point needs 20 to require simple basic information reporting from our oil 21 and gas lessees. We cannot be operating in an 22 informational vacuum. 23 A number of commenters have raised attention and 24 focused attention on the importance of transparency, and 25 we couldn't agree more. It is imperative, not only for

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1 the Land Office to have information about what is actually
2 taking place on state trust lands, but it is also
3 imperative that New Mexicans know what is happening on
4 their land. And so to that end, I just want to remind
5 everybody that this rule already incorporates some
6 important public disclosure provisions. And we'll be
7 looking for ways to strengthen those provisions as we look
8 forward to a final rule.

9 One of the commenters earlier this morning
10 mentioned, I think very eloquently, that the current
11 financial assurance or bonding framework fails to
12 adequately and accurately reflect cleanup costs. I think
13 that is indisputable at this point. But what we need to
14 do and the challenge for the Land Office, as an agency and
15 evaluating, considering, and ultimately deciding among the
16 comments what to incorporate, is to ensure, hopefully, a
17 financial assurance rule that best reflects the needs of
18 the State Land Office and its beneficiaries, and of other
19 interested parties, and ultimately of New Mexicans.

20 I wanted to just briefly next steps. I think
21 some are familiar already, but for those who are not, as
22 the Hearing Officer indicated, a written comment can be
23 submitted until noon today. That's an extension of the
24 previous deadline. And then, at that point the written
25 comment that's been received will be put in the Land

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1 CERTIFICATE

2
3 STATE OF NEW MEXICO)
4)
5 COUNTY OF BERNALILLO)
6

7 I, MICHELE NELSON, New Mexico Provisional

8 Reporter, working under the direction and direct
9 supervision of Yvonne Gonzales, New Mexico CCR License
10 Number 62, hereby certify that I reported the attached
11 proceedings; that pages 1-72, inclusive, are a true and
12 correct transcript of my stenographic notes.
13

14 Dated at Albuquerque, New Mexico, this 27th day
15 of June, 2026.
16

17 _____
18 Michele Nelson

19 YVONNE GONZALES
20 Certified Court Reporter #62
21 License Expires: 12/31/26
22
23
24
25

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1 Office's hands for review and consideration.
2 And at the end of that process, there will be
3 publication of a final rule that may look different from
4 the version that's been under discussion during in this
5 hearing, and there is also a parallel written product
6 essentially, which is an explanatory statement that the
7 Land Commissioner will issue explaining why the final rule
8 takes the form that it does, and whether any particular
9 comment that was offered was accepted or modified or
10 rejected, and the reason for doing that.

11 And so that will be a record, not only for us as
12 an agency, but also for the public to understand the
13 outcome of this proceeding. So I wanted to offer that.
14 And again, we're very grateful for everybody's time and
15 engagement and good thoughts that you shared with us.

16 HEARING OFFICER ORTH: Is there anything further
17 at all?

18 We'll adjourn then. And again, the record is
19 left open for about another hour for a written comment,
20 which would go to e-mail, Francesca's e-mail at
21 info@nmslo.gov.

22 Thank you all very much. We're adjourned.
23 (The proceeding concluded at 11:02 AM.)
24
25

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