

Comments of WildEarth Guardians on the New Mexico State Land Office's Proposed Bonding Rule Revision (19.2.100.23 NMAC)

Submitted to: Commissioner of Public Lands, New Mexico State Land Office

Date: January 6, 2026

I. Introduction and Interest of Commenter

WildEarth Guardians submits these comments on the October 1, 2025 discussion draft of 19.2.100.23 NMAC (Bonding).

Guardians is a nonprofit organization with long-standing engagement in oil and gas accountability across New Mexico, including rulemakings before the Oil Conservation Division (OCD) and the Water Quality Control Commission (WQCC). Guardians has presented data and testimony on PFAS contamination, produced water spills, and waste management failures that threaten public health and state trust lands.

II. Overview and Context

Guardians recognizes the State Land Office (SLO) is taking a significant step toward modernizing financial assurance.

Important improvements in the draft include:

- Raising the minimum per lease bond to 150,000 dollars (\$150,000).
- Establishing heightened bonding triggers for inactive wells, low producers, and unremediated spills.
- Requiring annual reporting on wells, infrastructure, and releases.
- Adding periodic inflation adjustments and bond sufficiency review.

These changes are consistent with the Commissioner's fiduciary duties under NMSA 19-7-57 to protect trust assets from degradation.

However, key gaps remain. The rule does not yet align bonding with real world plugging, reclamation, and waste cleanup costs on modern leases. It does not explicitly address financial assurance for produced water and other exempt wastes, and it treats high risk and low risk operators too similarly. Those gaps expose trust beneficiaries to large, unrecoverable liabilities.

III. Detailed Analysis and Recommendations

A. Bonding Amounts and Adequacy – need for a cost-based formula and bad actor provisions

A flat \$150,000 per lease bond does not reflect actual plugging and reclamation costs, particularly in the Permian Basin. Public EMNRD and OCD records show that:

- Plugging modern horizontal wells can cost on the order of \$250,000 to \$350,000 per well, depending on depth and complexity.
- Produced water spills are among the most expensive surface impacts to address and can add roughly \$100,000 to \$500,000 in excavation, soil disposal, and site restoration per site.
- Multi well plugging and reclamation packages in Lea and Eddy Counties frequently fall in the \$1,000,000 to \$3,000,000 range.

Guardians' review of OCD procurement and legislative records, summarized in Exhibit A, indicates that many modern wells exceed \$250,000 in total plugging and reclamation costs, and multi well pads regularly exceed \$1,000,000 in total liability.

Recommendation 1 – cost based bond formula

Replace the flat minimum with a cost-based formula that accounts for:

- Number of wells on the lease (plugging cost basis).
- Well depth and type (vertical, directional, horizontal).
- Age and integrity of infrastructure.
- Presence of produced water storage, treatment, or handling facilities.
- Required surface reclamation (roads, pads, caliche removal).

OCD already uses standardized cost factors for plugging under 19.15.8.9 NMAC; SLO should adopt the same cost methodology for consistency and defensibility.

Recommendation 2 – minimums as a floor, not a ceiling

Clarify in rule text that:

“Minimum bond amounts establish a floor. The Commissioner shall require higher bonding where cost-based analysis shows that plugging, reclamation, or contamination costs exceed the minimum.”

This prevents the \$150,000 from being used as a de facto cap.

Recommendation 3 – integrate mandatory risk multipliers for high risk operators

To align bond levels with actual risk, SLO should adopt mandatory risk multipliers applied to the cost-based bond result, not to the minimum. Risk multipliers reflect documented cost escalation associated with repeat noncompliance and infrastructure-intensive operations.

Suggested schedule:

- More than 10% of an operator's wells in temporary abandonment: plus 25%.
- Any spill or release not fully remediated within one year: plus 25%.
- More than two reportable spills on a lease in any 12 month period: plus 50%.

- Any OCD compliance order or stipulated final order in the last 5 years: plus 50%.
- Any SLO bond claim in the last 10 years: plus 75%.
- Produced water pits, treatment systems, or recycling facilities on site: plus 50% to 100%.
- Unpaid royalties, rentals, or surface damage obligations: plus 25%.

Formula example:

Required financial assurance = cost-based bond × (1 + applicable multipliers).

This approach:

- Treats high performing operators fairly.
- Shields trust assets from chronic violators.
- Aligns with risk-based financial assurance models used in mining, landfills, and UIC programs.

Recommendation 4 – explicit bad actor provisions

The rule should define a “high-risk operator” class and link it to mandatory consequences. For example:

- Classify operators who meet one or more of the conditions above (repeat spills, unremediated releases, compliance orders, prior bond claims, unpaid royalties) as high-risk.
- Make high-risk operators ineligible for bulk bonds, bonding waivers, or downward bond adjustments.
- Require at least 100% of estimated plugging and reclamation cost for any high risk lease, and at least 150% where produced water contamination is present.
- Allow denial of new leases or lease assignments to high risk operators until all violations and financial obligations are resolved.

This uses financial tools, not new environmental standards, to manage risk and is squarely within the Commissioner’s authority to protect trust assets.

Recommendation 5 – quantify exposure and close the gap

Guardians’ conservative modeling, summarized in Exhibit B, uses SLO’s own lease counts and OCD cost ranges to estimate expected per lease liability of approximately \$370,000 for plugging, surface reclamation, and expected produced water remediation. Applying that figure to:

- roughly 800 unbonded leases,
- roughly 1,200 minimally bonded leases, and
- the remaining leases carrying outdated blanket or bulk bonds

yields an estimated \$1,300,000,000 in potential unfunded liability on state trust lands. Even modest risk multipliers for known high risk operators increase that exposure by at least

\$100,000,000. The proposed \$150,000 minimum bond covers less than half of the expected per lease liability.

The bonding rule should be calibrated to close that gap over time.

B. Insurance and Joint and Several Financial Assurance for Produced-Water and High-Risk Operations

WildEarth Guardians recommends that the State Land Office add a new subsection to 19.2.100.23 NMAC requiring insurance and joint and several financial responsibility as supplemental financial assurance for high-risk operations on state trust lands, particularly those involving produced-water storage, treatment, recycling, transport, or disposal.

Bonding alone does not adequately protect trust beneficiaries from catastrophic or high-cost releases. Produced-water contamination and waste facility failures routinely generate cleanup costs that exceed lease-level bonds. These risks are foreseeable, recurring, and are not otherwise covered by the OCD Reclamation Fund or by federal hazardous-waste financial assurance requirements due to the RCRA oil and gas exemption. Where multiple parties benefit from or control shared infrastructure and indivisible risks, the Commissioner's fiduciary duty to protect trust assets supports requiring both insurance and joint and several financial responsibility as conditions of lease performance.

The Commissioner's authority to require joint and several financial responsibility derives from the Commissioner's statutory authority to impose conditions necessary to prevent waste, protect trust assets, and ensure performance of lease obligations, including financial assurance sufficient to cover foreseeable cleanup and remediation costs arising from shared operations.

Waste and Produced Water as Financial Risk to the Trust

The draft rule does not clearly state that "damage to trust land" includes contamination from produced water, drilling muds, tank bottoms, or other oilfield wastes exempt from hazardous waste regulation. This omission materially understates both environmental and fiscal risk.

Guardians' analysis of public data show thousands of produced water releases in recent years, many unresolved after one year, with chloride, chemical, heavy metal, benzene, and other contaminant levels above drinking water and remediation benchmarks.

Recommendations

To address these risks using financial assurance tools within SLO's authority, Guardians recommends the following integrated revisions:

1. **Clarify "damage to trust land"** in 19.2.100.23(A) to explicitly include:
"Contamination from produced water, drilling muds, and other oilfield waste, whether or not classified as hazardous under federal or state law."
This clarification ensures that bonds and other financial assurance instruments cover

saline, chemical, and radioactive contamination from exempt waste streams that nonetheless carry higher cleanup costs.

2. **Add waste management to heightened bond triggers** in 19.2.100.23(B) by inserting a new mandatory trigger:

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

A pattern of toxic waste-related spills or releases on a lease should trigger heightened bonding up to 100 percent of estimated remediation costs.

3. **Require waste facility specific financial assurance** for leases hosting produced water storage, recycling, treatment, or disposal infrastructure. The Commissioner should require a separate financial assurance instrument, which may include bonding, insurance, or a combination, sufficient to cover closure, decommissioning, spill response, and contamination cleanup, analogous to landfill and injection well closure requirements.

4. **Require insurance and joint and several financial responsibility for shared-risk operations.**

Where produced-water or waste infrastructure is jointly owned, operated, or used by multiple parties, the Commissioner should require insurance or equivalent risk-transfer instruments that are jointly and severally binding on all responsible parties. This ensures the State Land Office can recover cleanup costs from any solvent party without apportioning fault and prevents insolvency or corporate structuring from shifting liability onto the trust.

5. **Create a Trust Contamination Reserve Fund** financed by a modest per-well annual fee or spill surcharge. Because SLO cannot access the OCD Reclamation Fund, a dedicated reserve is necessary to address legacy contamination, emergency response, and interim cleanup where responsible parties default or disputes delay action.

6. **Coordinate with OCD produced-water rules without reducing SLO protection.**

The rule should make clear that SLO will not reduce or waive its bonding or insurance requirements based on OCD financial assurance unless the OCD instrument explicitly covers plugging, reclamation, and waste-related contamination on state trust lands and is fully accessible to the SLO.

These recommendations frame produced water and other oilfield wastes not as a regulatory classification issue, but as a material financial risk to trust assets. Insurance and joint and several financial responsibility are standard risk-management tools where cleanup obligations are indivisible and multiple parties benefit from shared infrastructure. Used as supplemental financial assurance, they complement bonding, close catastrophic-risk gaps, and ensure that trust beneficiaries are not left subsidizing cleanup costs for high-risk or poorly managed operations.

C. Enforcement and Discretion – “may” needs to become “shall”

Throughout the draft, key triggers are framed as the Commissioner “may require” heightened bonding. In practice, this invites inconsistent enforcement and creates a loophole that future

administrations can exploit. Where this comment recommends conversion of “may” to “shall,” the intent is to ensure consistent application of objective financial risk triggers, not to limit the Commissioner’s discretion in calculating amounts.

Recommendation

Convert core triggers from “may” to “shall,” including:

- Inactive or idle wells.
- Low producing wells that function as de facto idle wells.
- Unremediated spills or releases.
- OCD and SLO enforcement history.
- Presence of produced water or waste handling infrastructure.

The rule should also state that where triggers are present, the Commissioner shall apply the risk multiplier schedule described above in Section A.

This is consistent with lease provisions requiring lessees to prevent waste and damage to the premises and with the Commissioner’s fiduciary duties under NMSA 19-7-57 and 19-10-4.

D. Transparency and Public Oversight

Annual lessee reports under 19.2.100.23(D) are not required to be public. Guardians’ experience with OCD’s online spill and incident portal shows that public access to data is critical for accountability and deterrence.

Recommendations

- Require SLO to post annual lessee reports, including well status, spills, enforcement history, and bonding levels, on a publicly accessible web portal.
- Require SLO to publish an annual bonding sufficiency summary showing total financial assurance held versus estimated cleanup liabilities, along with the number of leases in compliance with new standards.

E. Bulk Bonding and Systemic Risk

The proposed bulk bond provision provides discounts for large portfolios, reducing per lease coverage to as little as \$100,000. Bulk bond discounts are incompatible with a cost-based, risk-based framework. Large operators with many leases present the greatest cumulative risk, not the least.

Recommendations

- Eliminate or strictly cap per lease bulk bond discounts.

- Require corporate-level surety instruments or parent guarantees for operators controlling large numbers of leases, instead of allowing them to spread inadequate blanket bonds over many high-risk assets.
- Make high-risk operators ineligible for bulk bonding.

These limitations are intended to preserve administrative efficiency for low-risk portfolios while ensuring that portfolio-scale risk is not undersecured through per-lease bond discounts.

F. Phase In and Compliance

Allowing up to one year for compliance, without prioritization, leaves high-risk leases underbonded for too long.

Recommendations

- Require high-risk operators and leases with inactive wells, unremediated spills, or enforcement orders to meet new bonding standards within 90 days.
- Require SLO to report quarterly on progress in bringing leases into compliance, including numbers and percentages by operator and lease type.

IV. Fiduciary and Legal Considerations

The Commissioner's duty is not only to generate lease revenue but to protect the long term value of the trust corpus. Under NMSA 19-7-57 and 19-10-4, SLO has broad authority to ensure lessees bear the full cost of plugging, reclamation, and cleanup.

New Mexico courts have recognized that the state must manage trust lands in the interest of beneficiaries and cannot externalize long-term environmental liabilities. Aligning bonding requirements with realistic cleanup costs, and ensuring that high-risk operators are fully bonded, is consistent with this duty.

Because SLO cannot directly access the OCD Reclamation Fund, and because the federal RCRA exemption prevents use of hazardous waste financial assurance mechanisms for most oilfield wastes, robust bonding is the primary tool available to prevent trust beneficiaries from subsidizing cleanup.

V. Conclusion

Guardians supports SLO's initiative to strengthen oil and gas bonding on state trust lands. To fully protect the trust and its beneficiaries, the final rule should:

- Tie bonding to realistic, cost-based plugging, reclamation, and waste-remediation estimates.
- Apply mandatory risk multipliers and bad-actor provisions to high-risk operators.
- Require supplemental financial assurance, including insurance and joint and several liability, for produced-water facilities and other high-risk or shared operations.

- Explicitly cover produced water and other exempt oilfield wastes as “damage to trust land.”
- Convert key triggers from discretionary “may” to mandatory “shall.”
- Increase transparency through public reporting of bonding sufficiency and compliance.
- Eliminate or tightly constrain bulk bond discounts that mask cumulative risk.
- Prioritize accelerated compliance timelines for high-risk leases and operators.

Adopting these reforms would align the bonding rule with real-world cleanup costs, close systemic liability gaps, and ensure that trust beneficiaries are not left bearing the financial consequences of operator failure, waste contamination, or asset shedding.

We appreciate the opportunity to comment and are available to continue working with SLO staff as the rule is revised and finalized.

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