

NMSLO RULE ORDER 2026-02

FINAL RULEMAKING ORDER APPROVING THE AMENDMENT OF 19.2.100.23 NMAC, RELATING TO FINANCIAL ASSURANCE

The Commissioner of Public Lands (“Commissioner”), executive officer of the New Mexico State Land Office (“NMSLO”), in accordance with law and a previously published Notice of Rulemaking, hereby amends existing Part 19.2.100.23 NMAC, relating to financial assurance (“Surety to Protect Surface Purchaser and Lessee – Waivers”), and promulgates and approves an amendment to Part 19.2.100.23 NMAC (the “Rule”), which is attached to this Order as Exhibit 1 and incorporated herein, and effective September 28, 2026.

Procedure. In accordance with applicable laws and administrative rules, the Commissioner published in the New Mexico Register, Vol. XXXVII, Issue 7 (April 7, 2026) a Notice of Public Hearing (“Notice”) to consider amending State Land Office Rule 19.2.100.23 (19.2.100.23 NMAC) relating to financial assurance. The Notice informed the public where and how copies of the proposed amended Rule could be obtained, stated that written comments regarding the rule could be submitted through May 26, 2026, and provided various options for how interested parties could submit written comments. The Notice also informed the public of opportunities to participate in the Commissioner’s public hearing on the proposed Rule, scheduled for and held on May 27-28, 2026.

In addition, NMSLO (i) concurrently published the Notice and proposed Rule on the NMSLO website (<https://www.nmstatelands.org/>); (ii) posted the Notice to the New Mexico Sunshine Portal (<https://ssp.nm.gov/>) on April, 7, 2026; (iii) made the Notice available at NMSLO district offices on April 7, 2026; (iv) emailed the Notice and proposed Rule to the New Mexico Legislative Council Service on April 6, 2026 for distribution to the appropriate interim and standing legislative committees; and (v) transmitted the proposed Rule to the New Mexico Small Business Regulatory Advisory Commission by email and postal mail on June 4, 2026. Beginning on September 11, 2026, as required by NMSA 1978, Section 19-10-21, NMSLO has posted the final Rule in a conspicuous place in its office.

Legal Authority. The Commissioner, as the executive officer of NMSLO, is responsible for the management and care of state trust lands. *See* N.M. Const., Art. XIII; NMSA 1978, § 19-1-1 (1912) (Commissioner is the “chief executive officer” of the NMSLO charged with “management, care, custody, control and disposition” of state trust lands). State trust lands – lands conveyed by the United States to the State of New Mexico – are held in trust, *see* Enabling Act, § 10, and the Commissioner serves as the trustee of the state land trust, which provides revenue for specific public beneficiary institutions, to whom she owes a fiduciary duty. *See* NMSA 1978, § 19-1-1.4(B) (1989) (Commissioner “alone has the constitutional and fiduciary responsibility as trustee for the trust[]”); *see also* *Forest Guardians v. Powell*, 2001-NMCA-028, ¶¶ 8-13, 24 P.3d 803 (general principles of trust law apply to the Commissioner’s management of state trust lands); *State ex rel. King v. Lyons*, 2011-NMSC-004, ¶ 103, 248 P.3d 878 (Chavez, J., dissenting) (“The Commissioner is subject to the same fiduciary obligations as any private trustee [these] duties include the protection and management of the trust property to provide returns or other benefits to the trust ... duty of prudence ... and loyalty.”) (internal citations omitted).

The New Mexico Constitution and statutes endow the Commissioner with jurisdiction over and broad authority with respect to the management, care, custody, control, and disposition of state trust lands. *See Lyons*, 2011-NMSC-004, ¶ 28 (recognizing the Commissioner’s “broad discretion to manage state trust lands”); *State ex rel. Otto v. Field*, 1925-NMSC-019, ¶ 57, 241 P. 1027 (referring to the Commissioner’s “broad powers which are recited in the Constitution and the statutes”).

In furtherance of this delegation of broad powers, the Legislature has authorized the Commissioner to “make rules and regulations for the control, management, disposition, lease and sale of state lands and perform such other duties as may be prescribed by law,” NMSA 1978, § 19-1-2 (1912), and indeed imposes on the Commissioner the “duty ... to prescribe reasonable rules and regulations governing the conduct of all business of the office.” NMSA 1978, § 19-1-23 (1921).

The Commissioner also exercises specific statutory authority to require terms and conditions for oil and gas leasing “as the commissioner may deem to be for the best interests of the state, NMSA 1978, § 19-10-1 (1929), and to promulgate rules and regulations “as [s]he may deem necessary to carry into effect the terms and provisions” of statutes applicable to oil and gas leasing. NMSA 1978, § 19-10-30 (1925); *see also* NMSA 1978, § 19-10-21 (1929) (authorizing the Commissioner “to prescribe and publish ... all rules and regulations necessary for carrying out the provisions of this act” and to “amend or rescind any rule or regulation”).

In general, the term “rule” or “regulation,” when used in a statute, means an agency rule issued as the result of a notice-and-comment process. *See* NMSA 1978, § 12-8-2(G) (Administrative Procedures Act definition of “rule” as including “regulation ... of general or particular application adopted by an agency to implement, interpret or prescribe law or policy enforced or administered by an agency, if the adoption or issuance of such rules is specifically authorized by the law giving the agency jurisdiction over such matters”) and § 12-8-4 (Administrative Procedures Act requirement that rules be issued only after notice and opportunity for comment).

Questions, Comments and Responses. NMSLO first circulated a pre-publication discussion draft of the proposed Rule to stakeholders, including oil and gas industry associations and environmental advocates, in October 2025, and also published the discussion draft on its public website. NMSLO held a series of stakeholder meetings (noticed on the agency’s website) in Santa Fe on November 6 and 12, 2025, in Hobbs on November 14, 2025, and in Farmington on November 17, 2025 and a follow-up meeting in Santa Fe on January 21, 2026, to address questions and receive verbal and written comments. The stakeholder meetings informed a number of changes NMSLO made to the text of the proposed Rule prior to its publication.

NMSLO published the proposed Rule on April 7, 2026, and invited written public comment to be submitted by May 26, 2026, as well as in-person or virtual participation in the public rule hearing on May 27-28, 2026.

Public Hearing. The May 27-28, 2026 public hearing was held in a hybrid format, i.e., an in-person hearing at the NMSLO building in Santa Fe, New Mexico, with a virtual (online) option

allowing interested parties to observe and participate remotely. Hearing Officer Felicia Orth presided over the hearing and her report from the hearing will be part of the rulemaking record posted on NMSLO's website.

NMSLO staff attended the hearing and presented in support of the proposed Rule or answered questions from the public about the proposed Rule. Approximately 32 interested parties appeared to provide in-person or virtual statements regarding the proposed Rule (some of those parties also provided written comments regarding the Rule).

Review and Synopsis of Public Comments. During the public comment period, the State Land Office received a total of approximately 215 written comments and around 37 unique written comments. A number of public comments covered similar topics and made similar points. To reduce repetition, this Order addresses all comments making the same or similar points with consolidated responses. Comments and responses appear in sequential order (i.e., in the order of the relevant sections of the Rule), followed by general comments. A table identifying each comment by name and affiliation (if any) is attached to this Order as Exhibit 2. NMSLO's summary of the substantive comments, and the agency's responses to each, are attached to this Order as Exhibit 3.

Comments that concern matters of implementation rather than the text of the Rule itself are generally not addressed in this Order or its exhibits, but instead are addressed in a separate Frequently Asked Questions document.

Concurrent with the publication of the final Rule, the State Land Office will post to its website and the Sunshine Portal the text of the final Rule; this Order and its exhibits; a copy of all written questions and comments received during the public comment period, as well as pre-publication written feedback from the stakeholder engagement process; the Hearing Officer's Report from the May 27-28, 2026 public hearing; and answers to Frequently Asked Questions. These materials will be available on the agency's website at least through December 31, 2026, and thereafter will be available on request. In addition, as required by NMSA 1978, § 19-1-24, NMSLO also will make printed copies of the final Rule available at its offices.

Reasons for Adoption of the Rule. The protection and long-term stewardship of trust assets – especially state trust surface land and mineral acreage – is an essential part of the Commissioner's fiduciary duty to the state land trust and a top priority of Commissioner Garcia Richard. While oil and gas development generates significant and vital revenue for the trust, it is beyond reasonable debate that it also has caused and continues to cause significant damage to state trust land and natural resources. As a fiduciary of the state land trust, the Commissioner has an obligation to protect trust assets from damage and waste and ensure that the beneficiaries of the trust are not left with a significant fiscal burden related to cleanup costs that is properly borne by oil and gas lessees.

In 2021, an independent study released by the Center for Applied Research concluded there is a shortfall of several billion dollars between the cost of fully restoring state lands impacted by oil and gas operations on the one hand, and the amount of financial assurance currently on file with NMSLO. More recently, the New Mexico Legislature issued a report estimating the State's current and near-term future liability for well plugging and site remediation to be up to \$1.6 billion.

See Center for Applied Research, Inc., *An Analysis of the Adequacy of Financial Assurance Requirements for Oil and Gas Infrastructure Located on State Trust and Private Lands in New Mexico* (Apr. 30, 2021) at 1, 28-29; New Mexico Legislative Finance Committee, *Policy Spotlight: Orphaned Wells* (June 24, 2025) at 1-2.

The agency's base bonding levels for oil and gas lessees have remained unchanged in more than 40 years (since the early 1980s) even as the number of inactive wells, oil and produced water spills, and other environmental harms, and the costs of addressing those harms, have all increased substantially in the same time period. More recent assessments by the Legislative Finance Committee and the New Mexico Oil Conservation Division confirm that the average cost of even a single inactive well and conducting associated site cleanup far outstrips the typical \$10,000.00 - \$25,000.00 oil and gas lease bond. See New Mexico Legislative Finance Committee, *Policy Spotlight: Orphaned Wells* (June 24, 2025) at 12 (indicating average per-well plugging costs alone were \$163,00.00 – in fiscal year 2024); New Mexico Oil Conservation Division, *FY 26 Plugging Program Update* (July 13, 2026) at 15 (OCD plugging costs averaged \$193,000.00 per well). In fact, most NMSLO oil and gas lessees have been able to post a single \$25,000.00 bond to cover an unlimited number of leases, so that the actual amount of financial assurance on a per-lease level may be as low as \$35.00.

NMSLO has taken a number of steps to address the pervasive damage caused by oil and gas operations on state land, including the launch of the Accountability and Enforcement Program in 2020 and the creation of the Environmental Compliance Office in 2022. Through these and other efforts, NMSLO has obtained the plugging of more than 930 inactive wells to date, at an estimated cost savings upwards of \$100 million, the cleanup of a significant number of spills, and the establishment – for the first time in the agency's history – of meaningful and enforceable expectations that lessees must fully restore the state-owned land they have used for oil and gas production.

These existing efforts, however, are not sufficient to adequately protect state trust lands and other resources (such as water, wildlife, and habitat); although NMSLO has filed nearly 50 enforcement lawsuits and a nearly equal number of bond claims, many lease sites remain contaminated and unreclaimed, preventing the restoration of the natural landscape and the full use of the land for other leasing purposes, and many irresponsible oil and gas producers have rendered themselves effectively judgment-proof by dissipating assets, flipping marginal wells and other properties to shell companies or poorly capitalized successors, filing for bankruptcy protection, and other maneuvers. Affirmative litigation, while a necessary tool to enforce the Commissioner's trust responsibilities, is not the most efficient mechanism to secure compliance given that NMSLO has nearly 6,000 active oil and gas leases with many thousands of wells located on their acreage, and given the inherent inefficiencies of litigation as well as NMSLO's staff limitations.

The Rule is an exercise of the Commissioner's broad authority to manage state trust lands (and more specifically to promulgate rules for the management of oil and gas lease activity on state land), and it complements and expands upon NMSLO's pre-existing efforts to protect state trust lands in several ways. First, the Rule requires that lessees post financial assurance in amounts that move closer toward (although they still do not reach) actual plugging and cleanup costs. Second, the Rule provides a much-needed update to the agency's current bare-bones financial assurance

requirement by recognizing that some lessees pose additional risk to NMSLO and its trust beneficiaries because those lessees have allowed compliance problems to remain unaddressed, requiring heightened levels of financial assurance. Third, the Rule provides for periodic inflationary adjustments and other reviews of financial assurance adequacy, and establishes alternative mechanisms for financial assurance, in addition to traditional surety bonds. Finally, the Rule requires lessees to provide basic information on an annual basis about oil and gas operations on their state leases to help guide and inform financial assurance levels on a forward basis, as well as to inform other NMSLO management decisions involving oil and gas operations. With these changes, the Rule will incentivize responsible behavior from lessees, provide a dedicated source of funding for plugging, remediation, and reclamation in the event the lessee fails to honor its legal obligations to NMSLO and trust beneficiaries, and anchor a culture of compliance and responsible stewardship of state trust land.

Final Rule. The final Rule incorporates all stylistic and formal requirements of the State Records Administrator set forth in 1.24.10 NMAC. The new Rule as proposed was modified as a result of comments received and further deliberation on the part of NMSLO, as described in this Order and exhibits, and as attached.

FOR THE ABOVE REASONS, AND IN ACCORDANCE WITH LAW, IT IS HEREBY ORDERED:

Existing Part 19.2.100.23, relating to financial assurance, is hereby amended.

An amended Part 19.2.100.23, relating to financial assurance, is hereby adopted as shown in Exhibit 1 attached to this Order, incorporated herein, and effective September 28, 2026.

Signed by:

Stephanie Garcia Richard

A94E5274237844D...

Stephanie Garcia Richard
Commissioner of Public Lands

Dated: September 10, 2026

EXHIBIT 1 – REDLINE AMENDMENT TO 19.2.100 NMAC, SECTION 23

This is an amendment to 19.2.100 NMAC, Section 23, effective 9/28/2026.

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

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

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

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

FINANCIAL ASSURANCE:

_____ A. _____ Minimum financial assurance requirements.

(1) Prior to the development, use, or occupation of any lease acreage that is state-owned surface, an oil and gas lessee shall execute and file with the commissioner good and sufficient bond or acceptable alternative form of financial assurance ("financial assurance") in an amount to be fixed by the commissioner but not less than \$150,000 per lease, except as otherwise set forth under this Part, in favor of the commissioner and state land office for the benefit of the applicable trust beneficiary and surface lessees of the affected acreage and their respective grantees or successors in interest, to protect the commissioner and state land office against damage to state trust land, and to ensure the lessee's compliance with all lease obligations. Damage to state trust land includes, but is not limited to, the failure to plug inactive wells located on the lease acreage; remediate spills and releases of hydrocarbons, produced water, or other contaminants; and reclaim surface disturbance.

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

(3) In the event the commissioner executes a deed or contract for the sale of state trust land whose acreage is encompassed by one or more active oil and gas leases, each oil and gas lessee or well operator shall file a good and sufficient bond, in an amount to be fixed by the commissioner, but not less than \$2,000 per lease, on behalf of the purchaser to secure the payment for such damage to the livestock, range, water, crops or tangible improvements on such lands as may be caused by operations under the oil and gas lease; provided that if the purchaser shall file with the commissioner a duly executed and acknowledged waiver of the purchaser's right to require such a bond, the development, occupation, and use of the lands by the oil and gas lessee may be permitted without the deed/purchaser bond.

_____ B. _____ Heightened financial assurance requirements.

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

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

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

(ii) that has received an approved shut-in or extension from the commissioner or that is located on a lease which has received an approved shut-in from the commissioner.

(b) a production well that has produced less than 1,000 barrels of oil or the equivalent volume of gas, or a disposal well that has injected less than 5,000 barrels in the preceding 12 months;

(c) a spill or release of hydrocarbons, produced water, or other contaminants whether or not reported to the oil conservation division, that has not been completely remediated pursuant to both state land office and oil conservation division rules and requirements within the latter of one year of occurrence or discovery, or one year from the effective date of this Part;

(d) a pattern of repeated spills or releases of hydrocarbons, produced water, or other contaminants on the lease premises or on the lessee's other state oil and gas lease; or

(e) the lessee has failed to file an annual report or certification of no change for the prior year or other prior years.

(2) If any of the following conditions have occurred in the past 10 years, the commissioner may require the lessee to file a heightened financial assurance, in an amount to be determined by the commissioner not to exceed one-hundred percent of estimated applicable plugging, remediation, and reclamation costs:

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

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

(c) the lessee is out of compliance with an agreed compliance order, stipulated final order, other final order of the oil conservation division, a final order of another agency of the state or the United States or a court order or settlement agreement from a legal proceeding involving the state land office, oil conservation division, or another state or united states agency, that pertains to environmental damage caused by lessee's oil and gas operations in New Mexico.

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

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

(5) In the event a heightened level of financial assurance is required under any provision of this Part, the commissioner will provide written notice to the address, associated with the oil and gas lease on file with the oil, gas, and mineral division of the state land office, by certified mail or courier to the lessee of the required amount and the reasons for the heightened financial assurance requirement. The lessee shall have 90 days from the date of the mailing to update its financial assurance; except that in instances where the commissioner requires a heightened level of financial assurance because the commissioner has been paid on a claim against the lessee's prior financial assurance, or because the commissioner has filed a claim against the lessee's prior financial assurance and the surety, bank, or other third party issuing the financial assurance has refused to honor the commissioner's claim, the lessee shall have 30 days.

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

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

C. Bulk financial assurance.

(1) Lessees holding 10 or more leases may, with the commissioner's written approval, submit a single bond or other financial assurance instrument to cover multiple leases, according to the following schedule, except that no lease that is subject to heightened financial assurance requirements is eligible for inclusion in, or coverage under, a bulk financial assurance instrument:

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

(2) In the event the commissioner accepts one or more bulk financial assurance instruments from a particular lessee, the lessee shall provide a schedule listing all leases subject to the bulk financial assurance instrument, and the wells located on each lease. The commissioner shall require the lessee to update such schedules annually, or upon any lease assignment, expiration or cancellation as the commissioner may require.

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

D. Reporting requirements.

(1) Each lessee shall file an annual report on or before July 1 of each year, beginning on July 1, 2027, certified by a person with authority to bind the lessee. Operators of communitized wells subject to communitization agreements approved by the commissioner may in lieu of the lessee, and upon written approval by the commissioner, submit the annual report upon which the communitized well(s) has a location, provided that (a) the lessee in writing agrees to be bound by the operator's report and (b) the operator-submitted report encompasses the entire lease and is not limited to only the communitized well(s) located on the lease(s).

(2) The report shall cover activities for the previous calendar year (January 1 – December 31) and include the following for each lease held by that lessee:

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

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

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

(d) identification of any wells plugged in the previous 12 months and a summary and cost of plugging, remediation, and reclamation performed for associated areas of operations;

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

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

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

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

(5) In the event that any errors or omissions are identified, the lessee shall amend and resubmit the annual report within 30 days.

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

(7) Information contained in annual reports will be available for public inspection.

E. Periodic adjustment and review of financial assurance levels.

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

(2) The commissioner will periodically, but no less than every five years, review the sufficiency of each lessee's financial assurance. Factors the commissioner may consider include the status of the lease (e.g., number of active and inactive wells, lease acreage, number of operators on the lease), the compliance history of lessee with respect to the specific lease in question and other state land office instruments, and changes to actual or estimated costs of plugging, remediation, reclamation, and other compliance activities. In the event the commissioner determines a given financial assurance is inadequate to protect the state land office and applicable trust beneficiary, the commissioner shall send written notice by certified mail or courier to the lessee of the change and lessee shall have 90 days from the date of mailing to update its financial assurance. Failure of the commissioner to engage in financial assurance sufficiency review of any particular lease or lessee in accordance with this paragraph shall not be evidence or an admission of the commissioner's acceptance of the lessee's current financial assurance as adequate and shall not prevent any subsequent financial assurance sufficiency review.

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

F. Forms of financial assurance.

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

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

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

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

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

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

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

I. Claims on financial assurance.

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

(2) The commissioner may require heightened financial assurance, or a different form of financial assurance, based on payment of the financial assurance claim.

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

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

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

J. Notifications.

(1) A notification by the state land office that a lease will be canceled for failure to file adequate financial assurance shall be made by certified mail. A notification that heightened financial assurance is required or that a claim is made against a financial assurance instrument shall be made by certified mail or courier. All other notifications or communications by the state land office may be made by certified mail or courier, regular mail, or electronic mail. No proof of receipt is required for any of the notices referenced in this paragraph. The agency has no obligation to mail any correspondence to an address other than the address of record on file with the oil, gas, and minerals division of the state land office.

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

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

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

(1) any lease subject to any heightened financial assurance requirements shall be in compliance within 90 days of written notice by the commissioner by certified mail or courier that heightened financial assurance is required (subject to any authorized deferral by the commissioner); except that in instances where the commissioner requires a heightened financial assurance because the commissioner has been paid on a

claim against the lessee's prior financial assurance, or because the commissioner has filed a claim against the lessee's prior financial assurance and the surety, bank, or other third party issuing the financial assurance has been unresponsive to the commissioner's claim, the lessee shall have 30 days;

(2) lessees holding 50 or more oil and gas leases shall bring all their leases into compliance with this part by March 1, 2027; and

(3) all other lessees shall bring their leases into compliance with this part by June 1, 2027.
[19.2.100.23 NMAC - Rp, 19.2.100.23 NMAC, 6/30/2016; A, 6/11/2019; A, 9/28/2026]

EXHIBIT 2 – LIST OF COMMENTERS AND STATED AFFILIATION

Commenter Name	Commenter Affiliation
Zach Pavlik, Center for Biological Diversity	Center for Biological Diversity
Teresa Seamster, MS EDS, NCP-CCAQ primary contact person for Counselor Chapter HIA Committee etc.seamster@gmail.com	Chapter HIA Committee
Carlos Matutes	Green Latinos
Hinkle Shanor, counsel for Independent Petroleum Association of New Mexico (“IPANM”)	IPANM
Jim Winchester, Executive Director, IPANM	IPANM
Judy Williams <jkwilliams24@gmail.com> Judith Williams, Board Member, League of Women Voters	League of Women Voters
A Williams <whycantwealljustcheer@gmail.com>	N/A
Adnane Rhoulam <pvtrhoulam@gmail.com>	N/A
Adrian Ennis <funky.are@gmail.com>	N/A
Adriel Molina <badxam07@gmail.com>	N/A
AJ Cho <amenoartemis@gmail.com>	N/A
Alan Gracia <graciaalan343@gmail.com>	N/A
Alasdair Lindsay <alasdair.d.lindsay@gmail.com>	N/A
Alberto del Campo <albertodxlcampo@gmail.com>	N/A
Amor Gaytan <danielrsjuu08@gmail.com>	N/A
Amy Larsen <amyliv@gmail.com>	N/A
Anika Marcus <nikapmm@gmail.com>	N/A
Ann Gibson <ann.l.gibson@gmail.com>	N/A
Aria Chiodo <ariachiodo@gmail.com>	N/A
Avelina Bardwell MD <avelina@newmexico.com>	N/A
Barbara Grothus	N/A
Barbara Wisoff <barbarawisoff@gmail.com>	N/A
Barry Goldberg <barry@hwgoldberg.com>	N/A
Betty Stokes <bettydaystokes@hotmail.com>	N/A
Bill Kipnis	N/A
Bo Bergstrom <bo.cinesthetic.30.yx@gmail.com>	N/A
Bobbe Besold <bobbepbird@gmail.com>	N/A
Brain Hauck <hauckb45@gmail.com>	N/A
Bruce Sogolow PhD <drbrucesogolow@gmail.com>	N/A
Caitlin Podsiadlo <cnpodsiadlo@gmail.com>	N/A
Caitlyn Oliver Brown <caitlyn.brown@gmail.com>	N/A
Camilla Feibelman	N/A
Carly Baca <carlybaca1010@gmail.com>	N/A
Carol A Sassaman <carol.sassaman@gmail.com>	N/A
Catana Lopez <catana@newenergyeconomy.org>	N/A
Catey Marquez <careynm@gmail.com>	N/A

Commenter Name	Commenter Affiliation
Cathy Kumar <ecocathy@gmail.com>	N/A
Cathy Lady <1kolibri2@gmail.com>	N/A
Cheryl Gardopee <cgardlange@gmail.com>	N/A
Chris Calvert <chriscalvert82@gmail.com>	N/A
Chrysa Wikstrom <misscgwhee@gmail.com>	N/A
Colette Scaff <ismatmscaff@gmail.com>	N/A
Dani Gutierrez <daniruthere@hotmail.com>	N/A
Daniel Burval <danleeb@hotmail.com>	N/A
Daphne Swancutt <daphneswancutt@gmail.com>	N/A
David Fackler <datfackler@gmail.com>	N/A
David Goldberg <dav.nat.goldberg@gmail.com>	N/A
David Prescott <prescottdavidp@gmail.com>	N/A
Dean Richardson <ddrichardson@cityofcarlsbadnm.com>	N/A
Deanna Galkin-Doran <deanna.doran@gmail.com>	N/A
Debra Bohler <debbohler@gmail.com>	N/A
Debra Denker <swlight1@gmail.com>	N/A
Debra Jones <breakline23@gmail.com>	N/A
Deniz Pinkerton <denizmbm@gmail.com>	N/A
Diane Gibson <dggibso@gmail.com>	N/A
Diane MacInnes <storyscapes108@gmail.com>	N/A
Diane Reese <DianeAbqNM@gmail.com>	N/A
Dianna Woods <diannawoods13@gmail.com>	N/A
Dominic Tarango Tarango <tarangodom@gmail.com>	N/A
Doug Dunkle <coachdugger@gmail.com>	N/A
Douglas Gruenau <bwr54dtg44@gmail.com>	N/A
E. Bemis <evalyn@newmexico.com>	N/A
Elena Vena <leilagreen66@gmail.com>	N/A
Elizabeth Fryer <modharma@gmail.com>	N/A
Ellen Lee <pelican730f@gmail.com>	N/A
Emily Hibbs <hibbsemily78@gmail.com>	N/A
Emily Severance <emilyaseverance@gmail.com>	N/A
Emily Torres <emtorres92@gmail.com>	N/A
Erin Gibson <erinfg@gmail.com>	N/A
Esperanza Chairez <aznarepse575@gmail.com>	N/A
Ethan Crisp <crispethan@gmail.com>	N/A
Frank Hoffman <bullhoffy@gmail.com>	N/A
Gabby Cordova <gabriellecordova328@gmail.com>	N/A
Ginny Schneider <bigmoneyoutofpolitics@gmail.com>	N/A
Glenn Wikle <glennwikle@gmail.com>	N/A
Gordon Palmer	N/A
Gregory Sandoval <gregjade@gmail.com>	N/A
Hayley Harper <hayleyharperdesigns@gmail.com>	N/A
Hope Wimer <hopeloma1@gmail.com>	N/A
Ireland Vandergriff <irero1331@gmail.com>	N/A

Commenter Name	Commenter Affiliation
Isaac Allen-Arave <iallenara@gmail.com>	N/A
Isabella Botello <isabellabotello8@gmail.com>	N/A
Jacqueline Jaramillo <jacquelinecjaramillo@gmail.com>	N/A
James Guntis <epicherping@gmail.com>	N/A
James Shanley	N/A
James Stewart <giacomo38@hotmail.com>	N/A
Janet Phillips <moonflowersea6@gmail.com>	N/A
Jay Veater <jayveater.lmt@gmail.com>	N/A
Jeff Mason <mason87104@gmail.com>	N/A
Jeff Silesky <jeffsilesky@gmail.com>	N/A
Jo Reis <jo.reis43@gmail.com>	N/A
Joaquin Karcher <joaquin@zeroedesign.com>	N/A
Johanna Montez <johannamontez108@gmail.com>	N/A
John Foreman <foremanj268@gmail.com>	N/A
John Margerum <jmargerum1@gmail.com>	N/A
Josephine Tucker <success.josephine00tucker@gmail.com>	N/A
Joshua Beltran <joshuabeltran2121@gmail.com>	N/A
Judith Williams	N/A
Judy Goldberg <jude@cns.net>	N/A
Judy Mellow <graygrammarian@gmail.com>	N/A
Julia Dickenson <thinairjewelry@gmail.com>	N/A
Justin Friedman <justin20friedman@gmail.com>	N/A
Karen Smith <karensmithnm@gmail.com>	N/A
Katherin Hinton <katherin.hinton@gmail.com>	N/A
Katherine Shera <katherine_shera@protonmail.com>	N/A
Katherine Sogolow PhD <soaglow@gmail.com>	N/A
Katja Mesch <katja_960@hotmail.com>	N/A
Kenley Frey <kenners8228@gmail.com>	N/A
Kevin M Skelly <kevin@kmskelly.com>	N/A
L. Watchempino <5000wave@gmail.com>	N/A
Lauren Meiklejohn <lauren.meiklejohn@gmail.com>	N/A
Lauren Teffeu <Lteffeu@gmail.com>	N/A
Leah Miller <leahbmiller1307@gmail.com>	N/A
Leeondra Schuler <leeondra13@gmail.com>	N/A
Lisa M Verdi <nmmom2@gmail.com>	N/A
Lisa Silva <ddirving@gmail.com>	N/A
Lisa Whitehouse <lisanawhitehouae@gmail.com>	N/A
Lora Lucero <loralucero3@gmail.com>	N/A
Lura Brookins <lurabrookins@gmail.com>	N/A
Lydia Davis <lydiadavis174@gmail.com>	N/A
Lynn Barker <lynbark65@gmail.com>	N/A
Maja Hawkes <frytki40@gmail.com>	N/A
Mandy Sackett	N/A
Maresa Pryor-Luzier <mpluzier@gmail.com>	N/A

Commenter Name	Commenter Affiliation
Margaret Bell <annieb8@msn.com>	N/A
Margaret Hadderman <haddermanm@gmail.com>	N/A
Margaret Westfall <mjw8012@gmail.com>	N/A
Marion Carter <marion@newmexico.com>	N/A
Marsha Souers <mmsho@msn.com>	N/A
Marshall Magnuson <mags4swim@gmail.com>	N/A
Martha Martinez del Rio <marthamdelrio@gmail.com>	N/A
Mary Russell <mhrussell100@gmail.com>	N/A
Mary Thomas <maryghthomas@gmail.com>	N/A
MaryJayne Rogers <profoundwellness@gmail.com>	N/A
Meg Meltz <megmeltz.nm@gmail.com>	N/A
Melissa Lujan <momolujan@gmail.com>	N/A
Michael Lawler <oeillist@gmail.com>	N/A
Michael Sweringen	N/A
Michelle Barrows <michellebarrows.cs@gmail.com>	N/A
Miriam Vaughn <vaughnmiriam@gmail.com>	N/A
Naima Shea <naima9alma@gmail.com>	N/A
Nancy King <nanking1224@earthlink.net>	N/A
Nanibah Chacon <nanibahchacon@gmail.com>	N/A
Naomi Harrison <ngharrison1@gmail.com>	N/A
Natalie Gutierrez <nataliegutierrez012@gmail.com>	N/A
Natasha Durel <natashadurel@gmail.com>	N/A
Nathan Valdez <polier505@gmail.com>	N/A
Nell Burrus	N/A
Nicole Maestas <nicolebeautyway@gmail.com>	N/A
Nikki Benekr <nikkibnk224@gmail.com>	N/A
Nodiah Brent <mydogfawn@gmail.com>	N/A
Noor-un-nisa Touchon <nisatouchon@gmail.com>	N/A
Olivia Hartwell	N/A
Pamela Morgan <starow13@hotmail.com>	N/A
Pamela Wolff <pam@wolffmann.us>	N/A
Patrice Goodkind <pgoodkind@gmail.com>	N/A
Patrick Garrett <pat.garrett9@gmail.com>	N/A
Peggy Froelich <peggyfroelich@gmail.com>	N/A
Pelican Lee <pelicanlee4@gmail.com>	N/A
Penelope Mainz	N/A
Peter and Marita Prandoni <mprandoni@gmail.com>	N/A
Peter Schoenburg	N/A
Pixie Jacobs <pixiejacobs0@gmail.com>	N/A
Rachel Winston <rachewin@gmail.com>	N/A
Rica Maestas <ricamaestas@gmail.com>	N/A
Riley Deskins <potatoroaster85@gmail.com>	N/A
Rita Glasscock <ritalink9@gmail.com>	N/A

Commenter Name	Commenter Affiliation
Robert Hays <robhnm@gmail.com>	N/A
Roberta Price <bertaprice@gmail.com>	N/A
Roberto Roibal	N/A
Roger Peirce <rjpeirce@prodigy.net>	N/A
Ron Abramshe <raamplex@gmail.com>	N/A
Ron Mittan <rgmittan@gmail.com>	N/A
Roxanne Marquez <marquez.r1121@gmail.com>	N/A
Ruby Oland <rubyoland@gmail.com>	N/A
Ruby Zeuner <rubyzeuner@gmail.com>	N/A
Sabri Sansoy	N/A
Sally Beers <beers1111@gmail.com>	N/A
Sam Hitt <sam@wildwatershed.org>	N/A
Sandra Stulberg <sandydan@prodigy.net>	N/A
Sara Henning <sarajhenning@gmail.com>	N/A
Sarah DeRadke <sdevos4@gmail.com>	N/A
Sarah Knopp	N/A
Sarah Stout <sarahclaudia.s@gmail.com>	N/A
Sayrah Namaste <sayrahn@hotmail.com>	N/A
Scott Leonard <binsworth@gmail.com>	N/A
Sharon Argenbright <sharonargenbright@msn.com>	N/A
Sharon Bookwalter <zipnada000@gmail.com>	N/A
Sharon Minnix <sharonminnix@outlook.com>	N/A
Sherry Thompson <thompson.online@gmail.com>	N/A
Signe Stuart <sstuartstudio@gmail.com>	N/A
Simone James <jamessimone9@gmail.com>	N/A
Sofia Martinez	N/A
Stella Clifford <stellalynne87@gmail.com>	N/A
Stephanie Waltermann <expressionsofhealing@gmail.com>	N/A
Stephen Hochmann <steve@wolffmann.us>	N/A
Steve Collins <stevecollins45@gmail.com>	N/A
Steven and Susan Mayes <bookravens@gmail.com>	N/A
Susan Peirce <speirce@prodigy.net>	N/A
Susan Schuurman <susanjschuurman@gmail.com>	N/A
Susan Selbin <sselbin24@gmail.com>	N/A
Susana Vasquez <oxsusiexo@gmail.com>	N/A
Tashenna Simpson <nomnom1620@gmail.com>	N/A
Thomas Talbot <ntalbot56@gmail.com>	N/A
Trevor Vigil <trevorvigil.tv@gmail.com>	N/A
Vicki Gottlieb	N/A
Victor Webster <awebster.sar@gmail.com>	N/A
Victoria Hern <victorialhern@gmail.com>	N/A
Walker Laughlin <wlaughlin1@gmail.com>	N/A
Wendy Volkmann <pinontrees@gmail.com>	N/A

Commenter Name	Commenter Affiliation
William Riker <wriker@mindspring.com>	N/A
Wyn Lewis <wynlewissf@gmail.com>	N/A
Yazh Pending <yazh.yuccapolicy@gmail.com>	N/A
Zoe Dennison <kay99zoe@gmail.com>	N/A
Mariel Nanasi, New Energy Economy	NEE
Sister Joan Brown	New Mexico and El Paso Interfaith Power and Light
Tom Paterson, President New Mexico Cattle Growers Association (“NMCGA”)	NMCGA
Andrea Felix, VP Regulatory Affairs New Mexico Oil and Gas Association (“NMOGA”)	NMOGA
Olga M. Serfimova, of Counsel, Holland & Hart, on behalf of NMOGA	NMOGA
Kimberly Mendoza-Cooke, Director, Policy & External Affairs, Occidental Petroleum	Occidental Petroleum
Sister Marlene Perropte	Partnership for Earth Spirituality
MJ Robinson, Asst. Gen. Counsel, The Surety & Fidelity Association of America	The Surety & Fidelity Association of America
Rebecca Sobel	WEG
Samantha Ruscavage-Barz, Senior Atty Wild Earth Guardians (“WEG”)	WEG

EXHIBIT 3 – SUMMARY OF SUBSTANTIVE COMMENTS, AGENCY RESPONSES, AND SIGNIFICANT CHANGES FROM PROPOSED RULE TO FINAL RULE

OVERVIEW

The protection and long-term stewardship of trust assets – especially state trust surface land and mineral acreage – is an essential part of the Land Commissioner’s fiduciary duty to the state land trust and a top priority of Commissioner Garcia Richard. While oil and gas development generates significant and vital revenue for the trust, it is beyond reasonable debate that it also has caused and continues to cause significant damage to state trust land and natural resources. As a fiduciary of the state land trust, the Commissioner has an obligation to protect trust assets from damage and waste and ensure that the beneficiaries of the trust are not left with a significant fiscal burden related to cleanup costs that is properly borne by oil and gas lessees.

In 2021, an independent study released by the Center for Applied Research concluded there is a shortfall of several billion dollars between the cost of fully restoring state lands impacted by oil and gas operations on the one hand, and the amount of financial assurance currently on file with NMSLO. More recently, the New Mexico Legislature issued a report estimating the State’s current and near-term future liability for well plugging and site remediation to be up to \$1.6 billion. See Center for Applied Research, Inc., *An Analysis of the Adequacy of Financial Assurance Requirements for Oil and Gas Infrastructure Located on State Trust and Private Lands in New Mexico* (Apr. 30, 2021) at 1, 28-29; New Mexico Legislative Finance Committee, *Policy Spotlight: Orphaned Wells* (June 24, 2025) at 1-2. NMSLO currently holds only about \$15 million in financial assurance for its entire state oil and gas lease portfolio of approximately 5,700 leases.

The agency’s base bonding levels for oil and gas lessees have remained unchanged in more than 40 years (since the early 1980s) even as the number of inactive wells, oil and produced water spills, and other environmental harms, and the costs of addressing those harms, have all increased substantially in the same time period. More recent assessments by the Legislative Finance Committee and the New Mexico Oil Conservation Division confirm that the average cost of even a single inactive well and conducting associated site cleanup far outstrips the typical \$10,000.00 - \$25,000.00 oil and gas lease bond. See New Mexico Legislative Finance Committee, *Policy Spotlight: Orphaned Wells* (June 24, 2025) at 12 (indicating average per-well plugging costs alone were \$163,00.00 – in fiscal year 2024); New Mexico Oil Conservation Division, *FY 26 Plugging Program Update* (July 13, 2026) at 15 (OCD plugging costs averaged \$193,000.00 per well). In fact, most NMSLO oil and gas lessees have been able to post a single \$25,000.00 bond to cover an unlimited number of leases, so that the actual amount of financial assurance on a per-lease level may be as low as \$35.00.

The New Mexico State Land Office (NMSLO) has taken a number of steps to address the pervasive damage caused by oil and gas operations on state land, including the launch of the Accountability and Enforcement Program in 2020 and the creation of the Environmental Compliance Office in 2022. Through these and other efforts, NMSLO has obtained the plugging of more than 930 inactive wells to date, at an estimated cost savings upwards of \$100 million, the cleanup of a significant number of spills, and the establishment – for the first time in the agency’s

history – of meaningful and enforceable expectations that lessees must fully restore the state-owned land they have used for oil and gas production.

These existing efforts, however, have not been sufficient by themselves to adequately protect state trust lands and other resources (such as water, wildlife, and habitat); although NMSLO has filed nearly 50 enforcement lawsuits and a nearly equal number of bond claims, many lease sites remain contaminated and unreclaimed, preventing the restoration of the natural landscape and the full use of the land for other leasing purposes, and many irresponsible oil and gas producers have rendered themselves effectively judgment-proof by dissipating assets, flipping marginal wells and other properties to shell companies or poorly capitalized successors, filing for bankruptcy protection, and other maneuvers. Affirmative litigation, while a necessary tool to enforce the Commissioner's trust responsibilities, is not the most efficient mechanism to secure compliance given that NMSLO has nearly 6,000 active oil and gas leases with many thousands of wells located on their acreage, and given the inherent inefficiencies of litigation as well as NMSLO's staff limitations.

The Rule is an exercise of the Commissioner's broad authority to manage state trust lands (and more specifically to promulgate rules for the management of oil and gas lease activity on state land), and it complements and expands upon NMSLO's pre-existing efforts to protect state trust lands in several ways. First, the Rule requires that lessees post financial assurance in amounts that move closer toward (although they still do not reach) actual plugging and cleanup costs. Second, the Rule provides a much-needed update to the agency's current bare-bones financial assurance requirement by recognizing that some lessees pose additional risk to NMSLO and its trust beneficiaries because those lessees have allowed compliance problems to remain unaddressed, requiring heightened levels of financial assurance. Third, the Rule provides for periodic inflationary adjustments and other reviews of financial assurance adequacy, and establishes alternative mechanisms for financial assurance, in addition to traditional surety bonds. Finally, the Rule requires lessees to provide basic information on an annual basis about oil and gas operations on their state leases to help guide and inform financial assurance levels on a forward basis, as well as to inform other NMSLO management decisions involving oil and gas operations. With these changes, the Rule will incentivize responsible behavior from lessees, provide a dedicated source of funding for plugging, remediation, and reclamation in the event the lessee fails to honor its legal obligations to NMSLO and trust beneficiaries, and anchor a culture of compliance and responsible stewardship of state trust land.

The Commissioner's amendment of 19.2.100.23 NMAC, Relating to Financial Assurance ("Rule") is the culmination of more than a year of review, consultation, and revision. NMSLO first circulated a pre-publication discussion draft of the proposed Rule to stakeholders, including oil and gas industry associations, individual oil and gas producers, and environmental advocates, in October 2025, and also published the discussion draft on its public website. NMSLO held a series of stakeholder meetings (noticed on the agency's website) in Santa Fe on November 6 and 12, 2025, in Hobbs on November 14, 2025, and in Farmington on November 17, 2025 and a follow-up meeting in Santa Fe on January 21, 2026, to address questions and receive verbal and written comments.

Feedback from the initial stakeholder engagement process informed a number of changes NMSLO made to the text of the proposed Rule prior to its publication, including:

- *Capping financial assurance requirements for an individual lessee at \$40 million (for compliant leases) and clarified that a claim on a financial assurance instrument would not by itself result in the loss of other financial assurance instruments held by the same lessee

- *Requiring that leases subject to a heightened financial assurance requirement be listed on the agency's website

- *Extending the period of time for a lessee to secure heightened financial assurance from 60 days to 90 days, and limited the potential deferment period for a lessee to avoid needing to post heightened financial assurance to 270 days

- *Extending the annual reporting timeframe, and providing that a heightened financial assurance requirement may subject a lessee to additional annual reporting requirements

NMSLO published the proposed Rule on April 7, 2026, and invited written public comment to be submitted by May 26, 2026, as well as in-person or virtual participation in the public rule hearing on May 27-28, 2026. The May 27-28, 2026 public hearing was held in a hybrid format, i.e., an in-person hearing at the NMSLO building in Santa Fe, New Mexico, with a virtual (online) option allowing interested parties to observe and participate remotely. Hearing Officer Felicia Orth presided over the hearing and her report from the hearing will be part of the rulemaking record posted on NMSLO's website. NMSLO staff attended the hearing and presented in support of the proposed Rule and answered questions from the public about the proposed Rule. Approximately 32 interested parties appeared to provide in-person or virtual statements regarding the proposed Rule (some of those interested parties also provided written comments regarding the Rule).

NMSLO received around 215 written comments, with about 37 unique comments. Although the individual comments speak for themselves, from NMSLO's perspective more than 200 of the written comments were broadly supportive of the Rule and of the Commissioner's efforts to protect state trust land and the land trust beneficiaries' financial well-being through the Rule's significant revisions to NMSLO's financial assurance requirements for oil and gas leasing – which had not been updated for more than 40 years.

As a result of feedback received from written and oral comments and agency deliberations, NMSLO made the following substantive or significant organizational changes from the proposed Rule to the final Rule. The reasons for the changes are described in the review of individual comments.

- *19.2.100.23(A) – for clarity, separated reference to a specialized bond (intended for outside parties who purchase state trust land that is under an active oil and gas lease) into its own subsection

*19.2.100.23(A) and throughout – added specific references to produced water spills as a compliance concern

*19.2.100.23(B) – raised threshold for marginally producing wells to <1,000 barrels of oil, or an equivalent volume of gas, or <5,000 barrels of wastewater for a disposal well

*19.2.100.23(B) – added a pattern of repeated spills or releases as a heightened risk factor

*19.2.100.23(D) – removed notification requirements and merged into subsection J

*19.2.100.23(D) – clarified that annual report requirement first becomes due on July 1, 2027

*19.2.100.23(D) – removed references to certifications under penalty of perjury

*19.2.100.23(D) – removed references to lease cancellation

*19.2.100.23(F) – made clear that self-insurance is prohibited

*19.2.100.23(I) – removed references to lease cancellation

*19.2.100.23(L) – extended several deadlines in phase-in schedule

Following is a synopsis of substantive suggestions and proposed edits to the Rule, and arguments against the Rule, and NMSLO's responses.

GENERAL COMMENTS

1. **Reducing discretion to avoid financial risk.** A commenter suggested that discretionary standards in the Rule undermine the Rule's protective purpose and expose trust beneficiaries to avoidable financial risk.

Response: *See Responses to Comments No. 16, 19, and 36.*

2. **Adding a new section requiring insurance and joint and several financial responsibility.** A commenter proposed adding a new subsection of the Rule to require insurance and joint and several financial responsibility as supplemental financial assurance for high-risk operations on state trust land.

Response: NMSLO has determined that financial assurance (surety bonds or acceptable alternatives) is the best mechanism for protecting the trust. NMSLO retains much greater control over the form and content of financial assurance instruments, and can avoid potentially significant exclusions in insurance policies and attendant insurance coverage litigation. Because NMSLO maintains a contractual relationship with its lessees (as opposed to non-lessee well operators, in most instances) NMSLO believes it most

appropriate to keep the Rule's financial assurance and reporting obligations, and associated liabilities, with lessees.

3. **Preservation of protection for agricultural lessees.** A commenter asked that the Rule make explicit that it does not diminish existing protections historically afforded to agricultural lessees.

Response: The Rule retains references from its predecessor to agricultural lessees.

4. **Rule is unlawful because only bonds to protect outside purchasers/contract purchasers are authorized.** A commenter claimed that the Rule is at odds with governing statute because the only bonds the Commissioner is authorized to require for oil and gas lessees are for the protection of the interests of outside parties (purchasers and contract purchasers) who buy state trust land.

Response: *See* Response to Comment No. 17.

5. **Rule will not cure or prevent compliance failures on state trust land.**

Response: The Rule is one tool – albeit an important one – in securing compliance with lease terms, applicable rules, and other legal duties to the Commissioner and the land trust. The Rule cannot possibly prevent or remedy every compliance deficiency, but it can (and does) incentivize lessee compliance and provide NMSLO with access to financial resources to help defray the cost of environmental damage to state land caused by oil and gas operations that the responsible private parties fail to remedy.

6. **Low-producing wells are not high-risk.** A commenter noted that low-producing wells should not be treated as a heightened risk factor.

Response: Marginal wells do pose a higher risk to NMSLO and its beneficiaries than robustly producing wells. According to the Legislative Finance Council, the average well produced roughly two barrels of oil equivalent a day in the year before it was plugged. New Mexico Legislative Finance Committee, *Policy Spotlight: Orphaned Wells* (June 24, 2025) at 4. The United States Environmental Protection Agency has also identified low-producing wells as a particular risk because they produce disproportionately high emissions and are more likely to become orphaned. *See* United States Environmental Protection Agency, *Marginal Conventional Wells* (webpage), available at <https://www.epa.gov/natural-gas-star-program/marginal-conventional-wells> (June 3, 2026).

7. **Determination of inadequacy to be made through formal proceeding.** A commenter asked that the Rule require any determination by NMSLO that a given financial assurance instrument is inadequate to be made through a formal administrative (“show-cause”) hearing.

Response: The Commissioner through NMSLO staff makes many determinations – including whether to issue leases, whether to approve oil and gas unit agreements, and whether to cancel leases – at an administrative level, without initiating a quasi-judicial process. The suggestion would add unnecessary delay and bureaucracy to a process that can be better managed by communication between NMSLO and lessees.

8. **Operators should be added to the Rule’s coverage.** A commenter stated that references to lessees in the Rule should include operators.

Response: This suggestion is not accepted. With two narrow exceptions (bonds for purchasers of state land, and operators of communitized wells, with certain conditions) operators may not submit financial assurance or annual reports on behalf of a lessee. NMSLO has a contractual relationship with lessees, and generally does not with well operators (unless they are also lessees). It is important to NMSLO that lessees retain responsibility for oil and gas operations on their state lease acreage.

9. **Potential duplication of bonding.** A commenter pointed out the possibility that oil and gas companies could be subject to duplicative bonding from NMSLO and the Oil Conservation Division (OCD).

Response: NMSLO and OCD financial assurances are submitted by different parties, for different (though to a limited extent overlapping) purposes. Even with NMSLO and OCD financial assurances combined, in many cases a given lease or well will still be underbonded. NMSLO has no control over or access to financial assurance maintained by another agency for the benefit of that agency, but explicitly provides in the Rule that if it later gains access to OCD financial assurance, that company’s financial assurance on file with NMSLO may be reduced.

10. **Financial assurance should be set based on an individual lease and well analysis.**

Response: See Response to Comment No. 16.

11. **Address the disconnect between bonding liability and operational control.**

Response: NMSLO has contractual relationships with lessees, not well operators (unless they are also lessees, or in some other narrow circumstances). The oil and gas industry chose to organize itself in its present configuration – with different and sometimes overlapping entities holding lease interests, working interests, non-operated working interests, royalty interests, and so on. State oil and gas leases give exclusive development rights to lessees, and so lessees appropriately retain associated compliance obligations to go along with those extensive benefits.

12. **NMSLO should not seek financial assurance for plugging, remediation, or reclamation obligations governed by the Oil Conservation Division’s statutory authority.**

Response: The Commissioner has a fiduciary duty to protect the financial interests of the trust, which include protecting the health of state trust land and avoiding the assumption of cleanup liabilities that are the responsibility of private parties. Many aspects of state oil and gas leasing are regulated by the Oil Conservation Division, but that does not intrude on – or contradict – the Commissioner’s ability and duty to protect state land and resources. There is no provision of the Rule that is in direct conflict with OCD laws or rules.

SECTION 19.2.100.23(A) – Minimum Financial Assurance Requirements

13. **Reducing bond “floor.”** A commenter suggested that NMSLO consider revising single lease base financial assurance requirements from \$150,000.00 to \$75,000.00.

Response: The suggestion is not accepted. The \$150,000 base financial assurance is already on the lower end of current estimates for single-well plugging, let alone associated remediation and reclamation. See Center for Applied Research, Inc., *An Analysis of the Adequacy of Financial Assurance Requirements for Oil and Gas Infrastructure Located on State Trust and Private Lands in New Mexico* (Apr. 30, 2021) at 3 (2021 estimating per-well plugging and surface remediation/reclamation costs at between \$168,900.00 and \$218,400.00); New Mexico Legislative Finance Committee, *Policy Spotlight: Orphaned Wells* (June 24, 2025) at 12 (indicating average per-well plugging costs alone were \$163,00.00 – in fiscal year 2024); New Mexico Oil Conservation Division, *FY 26 Plugging Program Update* (July 13, 2026) at 15 (OCD plugging costs averaged \$193,000.00 per well).

Most state oil and gas requiring financial assurance (i.e., excluding leases that have no oil and gas development or production located on their premises at all) have more than one well on their acreage, meaning that on a per-well basis, for most leases the base amount of available financial assurance will be significantly less than \$150,000.00. Dropping the financial assurance floor to less than half of outdated, 2021 per-well plugging estimates does not meet NMSLO’s or its beneficiaries’ needs and is insufficient to address the crisis of legacy oil and gas-related pollution on state trust lands.

14. **More explicitly declaring the interests of agricultural lessees with respect to higher financial assurance requirements for oil and gas lessees.** A commenter suggested adding that a purpose of financial assurance under the Rule should be to protect the interests of agricultural lessees against losses or damages arising from disturbance, impairment, destruction, or interruption of agricultural operations and related resources or uses. The commenter also asked for extensive, explicit language itemizing various categories of damage (such as damage to fences, corrals, pens, cattleguards, etc.) that would be compensable through oil and gas lessees’ financial assurances.

Response: The current version of 19.2.100 NMAC, as well as the final Rule that is amending it, already reference the interests that agricultural lessees have in compensation for damage to their cattle or improvements. See 19.2.100.23(A)(1) (noting financial assurance also benefits “surface lessees of the affected acreage.”) (as amended). Statutory oil and gas leases also include a provision making oil and gas lessees responsible for

compensation for such damage, *see* NMSA 1978, § 19-10-4.3, ¶ 10. Furthermore, in more limited circumstances involving certain purchasers of state trust land, the oil and gas statutory lease and other statutes, and the Rule, provide for a distinct financial assurance requirement to protect against damage to protect the livestock, range, water, crops or tangible improvements that occurs because of mineral development. *See* NMSA 1978, § 19-10-26; NMSA 1978, § 19-10-4.3, ¶ 10; and 19.2.100.23(A)(3).

NMSLO manages state trust lands under a multiple use approach. The acreage of most state oil and gas leases is also leased or authorized for other uses, including agricultural leases, business leases, and rights-of-way. Some “impairment” and “interruption” of agricultural operations – and for that matter, of oil and gas, other mineral, or commercial operations – may occur as a result of multiple lessees using the same land for different pursuits in the ordinary course of business. Ultimately, while the primary purpose of the Rule is to protect state trust land and resources from unremediated damage, the Rule, statutory lease and other state law reflects safeguards for agricultural lessees.

15. **Expanding the definition of “damage” to state trust land.** Two commenters suggested amending 19.2.100.23(A)’s reference to “damage to state trust land” to include spills from produced water, drilling muds, and other oilfield waste, whether or not classified as hazardous waste, to cover contamination from exempt waste streams that nonetheless carry significant cleanup costs.

Response: NMSLO agrees that the referenced substances – produced water, drilling muds, and other oilfield waste – pose real risk to the health of state trust lands and the people, animals, and plants who depend on those lands for their sustenance. The existing language is generally broad, and the Rule makes clear that the list of harms is illustrative rather than exhaustive, so the suggestion is not adopted in its entirety. NMSLO does accept the commenters’ suggestion to add a specific reference to spills of produced water – a euphemism for toxic wastewater that is a byproduct of oil and gas drilling and production – since those are unfortunately pervasive on state trust lands and have created an outsize share of compliance problems for the agency.

16. **Replacing uniform financial assurance minimum with a cost-based formula.** A commenter proposed that NMSLO replace the base minimum financial assurance requirement of \$150,000.00 per lease with a cost-based formula for each lease, and apply mandatory risk multipliers to that amount.

Response: The proposed Rule (and final Rule) identify specific risk factors on whose basis NMSLO will require heightened financial assurance, so NMSLO recognizes the importance of taking site conditions and compliance history into account in assessing financial assurance requirements, rather than employing a “one size fits all” approach. At the same time, NMSLO currently lacks the staff resources to implement fully customized financial assurance on a lease-by-lease basis – the agency currently manages a portfolio of around 5,700 active oil and gas leases with around 550 individual lessees. The Rule finds reasonable middle ground between the agency’s prior practice of typically allowing lessees to post flat \$25,000.00 bonds to cover an unlimited number of leases (meaning that on a

per-lease level, available financial assurance might be as little as \$35.00, and on a per-well level, conceivably much less) on the one hand, and a very time-consuming and detailed process of assessing the precise amount of financial assurance required for each lease on the other hand. The final Rule retains the discretionary, rather than mandatory, use of specific factors to trigger a heightened financial assurance requirement because there are many other considerations that might go into setting financial assurance at a particular level, including the lessee's overall compliance history with NMSLO or other agencies, the diligence of the lessee in responding to compliance demands, and the severity and numerosity of the compliance issues presented.

17. **Reworking the Rule to provide financial assurance only for surface purchasers.** A commenter states that the “Rule implements NMSA 1978, Section 19-10-26 and, therefore, applies only to state oil and gas leases that embrace lands included in any deed or outstanding contract of purchase issued pursuant to a sale made of the surface of such lands (“Surface Estate”) prior to the date of such leasing and containing a reservation to the state of the minerals contained in such lands and only if the state oil and gas lease contains an express term requiring financial assurance for damage to such Surface Estate[.]” Another commenter agrees with an adopts this comment.

Response: The commenter misapprehends the purpose of, and the statutory support for, the Rule. The Rule is not being promulgated to “implement[] NMSA 1978, Section 19-10-26.” While the Rule is consistent with Section 19-10-26, the Rule is being promulgated to implement the broader and fundamental need to more generally protect state trust lands from damage caused by oil and gas operations and correspondingly to protect the state land trust beneficiaries’ financial interests, pursuant both to her general authority over state trust lands and her specific rulemaking authority. Section 19-10-26 was enacted to cover a narrow set of circumstances when state trust lands are subject to purchase agreements; it does not restrict or even address the authority of the Commissioner to require financial assurances more broadly focused on protecting state trust lands and beneficiaries.

The Commissioner, the executive officer of NMSLO, is responsible for the management and care of state trust lands. *See* N.M. Const., Art. XIII; NMSA 1978, § 19-1-1 (1912) (Commissioner is the “chief executive officer” of the NMSLO charged with “management, care, custody, control and disposition” of state trust lands). State trust lands – lands conveyed by the United States to the State of New Mexico – are held in trust, *see* Enabling Act, § 10, and the Commissioner serves as the trustee of the state land trust, which provides revenue for specific public beneficiary institutions, to whom she owes a fiduciary duty. *See* NMSA 1978, § 19-1-1.4(B) (1989) (Commissioner “alone has the constitutional and fiduciary responsibility as trustee for the trust”).

The New Mexico Constitution and statutes endow the Commissioner with jurisdiction over and broad authority with respect to the management, care, custody, control, and disposition of state trust lands. *See State ex rel. King v. Lyons*, 2011-NMSC-004, ¶ 28, 248 P.3d 878 (recognizing the Commissioner’s “broad discretion to manage state trust lands”); *State ex rel. Otto v. Field*, 1925-NMSC-019, ¶ 57, 241 P. 1027 (referring to the Commissioner’s “broad powers which are recited in the Constitution and the statutes”).

In furtherance of this delegation of broad powers, the Legislature has authorized the Commissioner to “make rules and regulations for the control, management, disposition, lease and sale of state lands and perform such other duties as may be prescribed by law,” NMSA 1978, § 19-1-2 (1912), and actually goes further and imposes on the Commissioner the “duty ... to prescribe reasonable rules and regulations governing the conduct of all business of the office.” NMSA 1978, § 19-1-23 (1921).

The Commissioner also exercises specific statutory authority to require terms and conditions for oil and gas operations on state land “as the commissioner may deem to be for the best interests of the state, NMSA 1978, § 19-10-1 (1929), and to promulgate rules and regulations “as [s]he may deem necessary to carry into effect the terms and provisions” of oil and gas leases and associated statutes. NSMA 1978, § 19-10-30 (1925); *see also* NMSA 1978, § 19-10-21 (1929) (authorizing the Commissioner “to prescribe and publish ... all rules and regulations necessary for carrying out the provisions of this act” and to “amend or rescind any rule or regulation”). And the statutory oil and gas leases make lessees responsible for damage not only to a lessee’s cattle or improvements but also to the land itself. *See, e.g.*, NMSA 1978, § 19-10-4.3(1985) (sample form of lease).

Section 19-10-26 generally requires oil and gas lessees to submit bonds for the benefit of third parties who are purchasers or “contract purchasers”¹ of state trust surface lands, the mineral estate being reserved to the state land trust. NMSA 1978, § 19-7-25 (1912). The statutory oil and gas lease forms mirror this provision, e.g.:

If any lands embraced in this lease shall be included in any deed or contract of purchase outstanding and subsisting issued pursuant to any sale made of the surface of such lands prior to the date of this lease, it is agreed and understood that no drilling operation shall be commenced on any such lands so sold unless and until the lessee shall have filed a good and sufficient bond with the lessor as required by law, to secure the payment for such damage to the livestock, range, water, crops or tangible improvements on such lands as may be suffered by the purchaser holding such deed or contract of purchase, or his successors, by reason of the developments, use and occupation of such lands by such lessee. Provided, however, that no such bond shall be required if such

¹ Contract purchasers are individuals or entities who have entered into an agreement for the sale of state trust land but have not yet taken title. *See Romero v. State*, 1982-NMSC-028, ¶¶ 2-3, 6, 642 P.2d 172 (“legal title to [state trust land that is sold] is retained by the State until the full purchase price is paid.”); *City of Carlsbad v. Ballard*, 1963-NMSC-031, ¶¶ 4-5, 8, 378 P.2d 814; *see also* 19.2.14.14(A) and (B) NMAC (providing that purchasers of state trust land may pay for the land with 30 annual installment payments, if the Commissioner allows an installment contract, and providing that no patent for the land will be issued until the purchase price of the contract is paid in full).

purchaser shall waive the right to require such bond to be given in the manner provided by law.

NMSA 1978, § 19-10-4.3.

The bond-to-protect-purchaser provisions in Section 19-10-26 and the statutory leases were enacted in response to a very specific concern that arose more than a century ago, when third parties purchasing state trust surface land may not have even been informed that the land they contracted to buy subsequently had been leased for oil and gas development and worried that in the absence of legal protections there would be a cloud on their title as a result of the oil and gas lease. *See American Trust & Savings Bank of Albuquerque v. Scobee*, 1924-NMSC-022, ¶¶ 2-4, 224 P. 788.

Protecting the ostensible rights of outside parties who buy state trust surface and may not know what oil and gas-related activity (or liability) exists on the land is not the “problem” the Rule was developed to solve. First, it is an uncommon scenario. While in the early and mid-20th century NMSLO earned significant revenue from surface land sales, under recent administrations land sales have become rare: Just eight land sales in the past decade, totaling less than a thousand acres. Second, contract purchasers have sufficient legal recourse to protect their interests under existing law, since the oil and gas lease contracts and Section 19-10-26 require oil and gas lessees to post bonds for lease acreage where the surface has been sold to a third party. The Rule does preserve the reference in the current 19.2.100.23 NMAC to the bond requirement in the event the leased land was purchased or contract-purchased, so that all financial assurance-related provisions in NMSLO’s Oil and Gas Rule (19.2.100 NMAC) are in the same location.

Outside of this limited reference, the Rule does not depend on, and is not limited by, Section 19-10-26. In enacting Section 19-10-26 and the bond-for-purchaser provision of the statutory oil and gas lease forms, the Legislature spoke only to a narrow issue that it believed needed to be addressed (the potential impairment of the rights of purchasers or contract purchasers of state trust land). Nothing in Section 19-10-26 or the statutory lease forms provides that the interests of contract purchasers are the only interests that can be protected through bonding, or restricts the Commissioner from requiring financial assurance through rulemaking to protect the integrity and health of state trust land and the trust beneficiaries’ associated financial interests.

The Rule is promulgated under the Commissioner’s broad management authority, general rulemaking authority, and specific authority (and duty) to promulgate rules pertaining to oil and gas leasing and operations on state trust lands. The Commissioner does so to protect the trust and its beneficiaries from the well-documented harms caused by oil and gas activity on state land, and from the massive prospective liability that the State and trust beneficiaries face if legally responsible parties – oil and gas lessees – are able to walk away from their lease obligations (such as repairing or providing compensation for damage they cause to state trust land).

SECTION 19.2.100.23(B) – Heightened Financial Assurance Requirements

18. **Adding clarity to heightened financial assurance requirements.** A commenter pointed out that any increased financial assurance requirement should be clearly identified as such, that NMSLO's bond form should clearly indicate when it is being used to satisfy a heightened financial assurance requirement, and that the Rule should aim to minimize the number of inactive wells.

Response: NMSLO agrees that the oil and gas industry, and the state agencies that oversee oil and gas development, should focus on minimizing the number of inactive wells – and the Rule is intended to play an important role in that effort. Requiring regular reporting on inactive wells, assessing heightened financial assurance requirements for leases with inactive wells, and providing limited discounts to lessees whose leases are in good standing all are expected to help reduce the number of inactive wells on state trust lands.

The Rule already provides that a communication from NMSLO to a lessee regarding a heightened financial assurance requirement will identify the basis for that determination. NMSLO is still developing updated forms to comport with the Rule and will publish those forms prior to the phase-in dates listed in Section L.

19. **Changing “may” to “shall.”** A commenter suggested changing the word “may” to “shall” in several references in this section of the Rule, including 19.2.00.23(B)(1), B(2), and B(6).

Response: NMSLO believes it is important to retain discretion for the Commissioner in determining whether to require heightened financial assurance. First, the facts and circumstances of any given heightened risk factor may differ, and the Commissioner and NMSLO staff should be able to take those facts into consideration. For example, two leases might have inactive wells located on their acreage; the well on the first lease has been inactive for five years and has significant associated contamination, while the well on the second lease is on a relatively clean site and the well has only been inactive for a short period of time and is imminently scheduled for recompletion. NMSLO needs to preserve the ability to differentiate between these two scenarios that both fit within a heightened risk factor.

20. **Require waste facility financial assurance and create a Trust Contamination Reserve Fund.** A commenter proposed requiring waste facility specific financial assurance for leases hosting produced water storage, recycling, treatment, or disposal infrastructure, and suggested creating a Trust Contamination Reserve Fund.

Response: NMSLO agrees with the commenter that produced water (or other oilfield-related waste) facilities present a significant environmental risk. In general, produced water recycling and treatment facilities on state trust land, and most disposal facilities (“saltwater” disposal wells) are authorized under business leases or SWD easements rather than oil and gas leases. Financial assurance requirements for SWD easements, for example, are now \$260,000.00 per well, but the Commissioner also has greater flexibility in revising financial assurance requirements for produced water recycling facilities, SWD easements,

etc. without the need for a rule change. NMSLO appreciates the commenter's suggestion to create a Trust Contamination Reserve Fund and believes the idea deserves further study and consideration, but it is beyond the present scope of the Rule.

21. **Create a category of “high-risk operator.”** A commenter suggested defining a class of “high-risk operators” and link that designation to mandatory consequences.

Response: There are many ways that the Rule could be structured and the commenter's proposal has merit. NMSLO, however, has opted to approach the heightened risk requirement on a lease basis rather than a company basis, although a company's overall compliance record – not just its operations on the lease in question – is explicitly considered under multiple heightened risk factors. See Response to Comment No. 16 above.

22. **Adding a heightened risk factor for a pattern of multiple major spills and various other compliance failures; adjust volume threshold for marginal wells.** A commenter asked that an additional heightened risk factor be added for a company that has demonstrated a pattern of multiple major spills or releases of produced water, and for improper storage, handling, treatment, or disposal of oil and gas waste. Another commenter suggested raising the production threshold for marginal wells from <250 barrels in a year to <1,000 barrels.

Response: NMSLO agrees with the substance of the first comment, because a pattern of disregard for the protection of state trust land does indicate a higher likelihood for future violations, and because produced water spills pose a particular risk in NMSLO's experience. Accordingly, the final Rule includes an additional heightened risk factor for “a pattern of repeated spills or releases of hydrocarbons, produced water, or other contaminants” on any of the lessee's state oil and gas leases.

NMSLO agrees with and adopts the second comment. Marginal wells pose a higher risk to NMSLO and its beneficiaries than robustly producing wells. According to the Legislative Finance Council, the average well produced roughly two barrels of oil equivalent a day in the year before it was plugged. New Mexico Legislative Finance Committee, *Policy Spotlight: Orphaned Wells* (June 24, 2025) at 4. The increased volume threshold also aligns the NMSLO rule with a similar metric in a forthcoming Oil Conservation Commission rule.

SECTION 19.2.100.23(C) – Bulk Financial Assurance

23. **Sufficiency of \$40 million cap for bulk financial assurance.** A commenter asked NMSLO to review whether the \$40 million cap per lessee (excluding leases subject to heightened risk financial assurance) is sufficient for operators with extensive portfolios and cumulative reclamation exposure.

Response: The requester makes an important point about the drop in per-lease financial assurance that will occur for the largest lessees. While very few NMSLO oil and gas leases hold hundreds of leases, a lessee with 400 leases eligible for bulk financial assurance would

only be “insured” in the amount of \$100,000.00 per lease, and that number would drop to \$57,000.00 per lease for lessees with 700 eligible leases. Given the Rule’s restriction that only compliant leases are eligible for bulk financial assurance, the final Rule will retain the \$40 million cap, but NMSLO will monitor the adequacy of the cap, especially if state oil and gas leases get consolidated into a smaller number of lessees’ hands. Furthermore, while the overall \$40 million cap may represent a per lease “discount” for larger lessees, it is a significant increase from the current financial assurance framework that permits a lessee to capture all of their leases under a single \$25,000.00 “mega bond.” Also as a point of reference, NMSLO currently holds only around \$15 million in financial assurance for the entire state oil and gas lease portfolio, a number that Center for Applied Research’s 2021 report and other sources demonstrate is shockingly inadequate, and so even with the \$40 million per-lessee cap, the Rule represents a significant improvement over the agency’s current, minimal financial assurance requirements.

24. **Bulk bonds incompatible with risk-based financial assurance framework.** A commenter stated that large operators with many leases present the greatest cumulative risk, not the least, and suggested eliminating or capping per-lease bulk bond discounts, and making high-risk companies ineligible for bulk financial assurance.

Response: The Rule’s primary focus is on compliance problems that are already in full view or that are expected in the near-to- medium-term future – inactive wells, unremediated and in some cases unreported spills, leaking tanks and flowlines, etc. That approach explains why the Rule provides for significantly higher financial assurance requirements for non-compliant lessees, and also why the Rule provides a limited discount for compliant lessees with larger lease portfolios. The commenter is correct that further in the future, a different kind of risk may emerge – catastrophic failure of some (or many) oil and gas lessees who abandon large numbers of currently operational wells and other facilities, potentially leaving that liability with NMSLO and its beneficiaries. NMSLO believes that the periodic review of financial assurance that is built into the Rule, *see* 19.2.100.23(E), is a good mechanism for monitoring whether additional financial assurance safeguards are needed in the future.

The Rule disallows high-risk *leases* from bulk financial assurance, rather than *lessees*; this is because a large lessee might have a generally positive compliance record but hold a small number of leases (or even a single lease) with unresolved compliance issues, and NMSLO wants to retain the flexibility to permit the lessees’ compliant leases to be held by bulk financial assurance.

25. **Steeper discounts for bulk financial assurance.** A commenter proposed reducing per-lease bulk financial assurance requirements to \$104,000.00 for 10-19 leases, to \$88,000.00 for 20-49 leases, to \$72,000.00 for 50-99 covered leases, to \$56,000.00 for 100-249 leases, and to \$48,000.00 for 250 or more leases. The commenter also suggested reducing the total financial assurance required of a single lessee from \$40 million to \$14 million. A second commenter also proposed slashing bulk financial assurance requirements, to \$50,000.00 per lease or less for lessees with as few as two leases, and as low as \$30,000.00 for lessees with fifty or more leases.

Response: The suggested changes are rejected. While NMSLO believes it is appropriate to provide a modest discount for the financial assurance required for compliant leases, the commenters' approach would slash financial assurance well below estimated per-well plugging costs, let alone full site remediation, and the second commenter's proposal would plunge NMSLO financial assurance back toward the grossly inadequate prior status quo. Massive cuts to the financial assurance thresholds would undermine the Rule's intended purpose of providing meaningful (though often still incomplete) financial protection for NMSLO and the beneficiaries from the costs associated with well plugging, remediation, and reclamation on leases where the lessee has failed to honor those responsibilities. The commenters offer no real rationale for reducing bulk financial assurance requirements or for reducing a lessee's total financial assurance obligation so drastically, and those proposed changes would significantly erode the benefits the Rule will afford NMSLO and its trust beneficiaries.

26. **Bulk bonding discount structure may lead to market consolidation.** A commenter observed that the bulk bonding discount structure may accelerate market consolidation favoring large operators and leading to more intensive surface disturbance and greater interference with agricultural operations.

Response: NMSLO expects oil and gas companies operating on state trust land to do so responsibly and to honor their plugging, remediation, and reclamation obligations (and for lessees to honor all their contractual obligations). Complying with almost any law or rule involves some cost. What's important is that the cost of compliance be reasonable and proportionate to the benefit obtained. Through the Rule, NMSLO will obtain more meaningful – although not total – protection from harmful impacts caused by oil and gas operations that producers fail to address. Companies that are unable to provide some basic guarantee (in the form of financial assurance) that they will not abandon their compliance obligations and shift associated costs onto the state land trust should not operate or hold leases on state land. The commenter's thoughts about larger companies creating more surface disturbance are purely speculative and unexplained; a lessee with a larger number of leases does not necessarily create more surface disturbance on each lease than a company with a smaller number of leases would, nor is there any logical connection between the number of leases a lessee holds and the likelihood that agricultural operations (or other uses of state trust land, for that matter) will be disrupted on any given lease.

SECTION 19.2.100.23(D) – Reporting Requirements

27. **Post annual reports on agency website.** A commenter asked that NMSLO post lessee annual reports on the agency's website, and publish an annual bonding sufficiency summary. Another commenter spoke more broadly about the benefits of additional reporting on the status of oil and gas operations, and remediation and reclamation efforts, on state oil and gas leases.

Response: NMSLO supports maximum transparency regarding lessees' oil and gas operations on state lease acreage, the environmental impacts of those operations, and

lessees' compliance records. The Rule requires that leases subject to 19.2.100.23(B)'s heightened financial assurance requirements will be identified on the agency's website. The Rule also requires that the information contained in annual reports will be made available to the public, although NMSLO has not yet determined whether to accomplish that disclosure by posting annual reports on the agency's website, or using an electronic portal or other platform to make the reports available. NMSLO thus agrees with the substance of the commenter's first suggestion but believes the existing rule language is sufficient to promote the underlying goals of informing the public and holding non-compliant lessees accountable. NMSLO expects to provide periodic updates to lessees, other stakeholders, and the general public on overall financial assurance metrics, but has not yet determined the best mechanism to provide that information.

28. **Clarifying that annual reporting obligations are expressly limited to state trust land.** A commenter asked that the annual reporting requirement be expressly limited to "SLO-leased premises."

Response: In all material respects, the annual reporting is already limited to state trust lands. Inventories of wells, spills, and other compliance issues are limited to any specific lease that is the subject of the report, as is the identification of notices of violation or litigation arising out of oil and gas operations on the lease premises.

29. **Removing "penalty of perjury" language.** The proposed Rule included a reference that lessees would certify the information in the annual reports under penalty of perjury. A commenter observed that the "penalty of perjury" language creates the potential for individual employee criminal prosecution or liability, and suggested striking that reference. Another commenter agreed with that suggestion.

Response: NMSLO does not agree that a reference to perjury in the Administrative Code, standing alone, creates a significant risk of criminal prosecution. NMSLO is not a prosecuting agency and does not have the legal authority to initiate criminal charges for perjury. If a prosecuting agency determined that a lessee made a false statement in its annual report, knowing the statement to be untrue, that agency could conceivably initiate a criminal charge just as it could presently do for certain false statements made in various settings, including to NMSLO or in judicial proceedings. *See* NMSA 1978, 30-25-1 (defining criminal offense of perjury). Numerous administrative rules in New Mexico impose a requirement that a party submitting a statement or application do so under penalty of perjury. *See, e.g.,* 16.30.5.8(A) NMAC (submission of disciplinary complaints for licensed professionals); 3.3.35.11(F)(7) NMAC (submission of application for certain tax credits); 20.2.92.503(C)(2)(c) NMAC (reporting for clean transportation fuel program).

NMSLO's primary interest in including the certification language, however, is to ensure that lessees take their reporting obligations seriously, avoid making material misrepresentations and omissions, and provide accurate and complete information to NMSLO about activities taking place on the state trust land those lessees are utilizing for oil and gas development – not in raising the specter of potential criminal liability. Although not sharing the commenter's rationale, NMSLO adopts this commenter's suggestion and

removes the “penalty of perjury” phrase because there are sufficient alternative mechanisms to enforce the annual reporting requirement without invoking specific legal consequences for false reporting within the text of the Rule.

30. **Various changes to annual reporting requirement, including frequency.** A commenter stated that annual reporting “would impose an unreasonable burden on lessees” and therefore proposed that reporting be made every five years instead. The commenter also stated that the core components of the report provision are ambiguous, that the Rule should be modified to make clear that the Commissioner shall prescribe a form and format for reporting, that lessees should be afforded additional time to report and an opportunity to challenge any adverse NMSLO determinations, and that lessees should have more time to notify NMSLO of name or address changes for sureties or financial institutions that issued their financial assurance. Furthermore, oil and gas statutory leases include a standard provision contemplating annual reports. *See, e.g.*, NMSA 1978, § 19-10-4.3, ¶ 4 (“The lessee further agrees to submit to the lessor annually upon forms furnished by the lessor, verified reports showing the lessee’s operations for the preceding year.”).

Response: The commenter does not explain why or how the annual reporting requirement imposes an unreasonable burden on lessees. The information contained in the annual reports will require some investment of time and human effort on the front end, although NMSLO’s expectation is that for many leases, changes reflected in subsequent years’ annual reports may be modest. It is reasonable and appropriate for lessees, as parties who enjoy the substantial use of publicly-owned state trust lands, to bear the limited cost of compliance with the Rule’s annual reporting requirements.

NMSLO disagrees that the annual reporting specifications are ambiguous. The Rule is specific and prescriptive in calling for defined information about wells, spills, lease infrastructure, and compliance actions. It is NMSLO’s intention to prescribe a form and format for the annual report, but the Rule retains “may” rather than “shall” phrasing, in keeping with the Rule’s general preference for reaffirming the Commissioner’s broad discretion over nearly all aspects of the management of state trust lands, and certainly over the details of implementing the Rule’s financial assurance program. NMSLO believes that the Rule provides sufficient time – nearly 10 months – for lessees to establish reporting systems and practices before their first annual report is due, and sufficient time (30 days) for lessees to cure any identified errors or omissions in their reporting.

To the commenter’s last point, the final Rule moves the notification-of-change-of-name-or-address requirement to Section J, which pertains to other notifications. Lengthening the time from 30 days to an unspecified longer window for lessees to provide this notification is not in NMSLO’s interest, since the agency needs to be able to timely communicate with sureties or financial institutions in the event it needs to pursue a claim on a financial assurance instrument.

31. **Miscellaneous edits to the annual reporting provision.** A commenter would have NMSLO add additional language to several portions of the annual reporting section: “fixed, permanent infrastructure” rather than just “fixed infrastructure” and adding an exclusion

for “equipment that is routinely moved from one location to another” in addition to “transient equipment such as vehicles.” The commenter would also limit releases that have to be included in the annual report to releases that are or were reported to the Oil Conservation Division; would permit operators to submit annual reports; and would make clear that errors or omissions in annual reporting are not a basis for lease cancellation, absent fraud or gross negligence.

Response: NMSLO does not view the commenter’s first set of edits as necessary. “Fixed, permanent infrastructure” does not have a substantially different meaning than “fixed infrastructure,” and the phrase “equipment that is routinely moved from one location to another” does not add much of substance to the phrase “transient equipment such as vehicles.”

NMSLO rejects the commenter’s second suggestion. In NMSLO’s experience, numerous spills of hydrocarbons and produced water exist on state oil and gas lease acreage that are never reported to the Oil Conservation Division. The annual reporting requirement is not a hoop-jumping exercise; it is intended to provide valuable and actionable information to NMSLO, including about the location and status of spills. Artificially limiting the annual report provision to OCD-reported spills is at cross purposes with the environmental protection and lease compliance imperatives that animate the Rule.

NMSLO accepts the commenter’s third suggestion in part. Because the Rule permits communitized well operators to submit annual reports as long as the lessee assents and the report covers the entire lease and not just the communitized well, the referenced text should be revised to include communitized well operators. However, NMSLO does not believe there is any need to use the term “representative” in this provision, since a lessee or communitized well operator will necessarily be communicating through a representative (unless the lessee is an individual).

With respect to the fourth suggestion, NMSLO has determined to remove any reference in the annual reporting section to lease cancellation, and so the “absent fraud or gross negligence” limiting clause is no longer applicable. During the stakeholder engagement process reviewing the preliminary discussion draft of the Rule, the New Mexico Oil and Gas Association requested the addition of this language (providing a safe harbor so that errors or omissions in annual reports that are timely corrected will not lead to lease cancellation). NMSLO has also removed the primary reference to lease cancellation in the section of the Rule pertaining to claims on financial assurance. NMSLO removes these references because whether a material omission or misrepresentation in an annual report or a failure to replace a claimed financial assurance instrument is a lease violation subjecting the lease to cancellation may depend on the specific provisions of the applicable oil and gas lease, a subject that is beyond the scope of the Rule.

The purpose of the annual reporting requirement is not to trap hapless lessees in errors or misstatements that then trigger lease cancellation, but instead is to institutionalize diligence on the part of lessees; to promote communication with the party that has the greatest interest in what is taking place on the leased land – the landowner; and to provide NMSLO with

information that will be salient to financial assurance adjustments as well as to other aspects of land management. In addition, whether a given lease is subject to cancellation based on material omissions or misrepresentations in annual reports is dependent on the language of the specific lease, and for these reasons, NMSLO has omitted the reference.

SECTION 19.2.100.23(E) – Periodic Adjustment and Review of Financial Assurance Levels.

32. **Defining the sufficiency of financial assurance.** A commenter wrote that the Rule should specify that financial assurance must be sufficient to “fully cover” certain costs, including reclamation, losses associated with diminished agricultural productivity, repair of agricultural improvements, and “administrative and enforcement costs associated with unresolved reclamation or damage disputes.”

Response: The suggestion is not adopted. While NMSLO is making real progress with enactment of the Rule, financial assurance levels required under the Rule still would not “fully cover” plugging and site cleanup at most leases, let alone speculative or attenuated costs (“losses associated with diminished agricultural productivity”) or attorney fees and other litigation costs of agricultural lessees (“administrative and enforcement costs associated with unresolved reclamation or damage disputes”). The focus of the Rule is and needs to remain on protecting state land and the trust beneficiaries, who currently have little recourse other than uncertain and time-consuming litigation when lessees fail to honor their lease obligations, whereas agricultural lessees have (and avail themselves of) surface use agreements and other mechanisms to protect their interests, including claims under the Surface Owners Protection Act, NMSA 1978, § 70-12-1 to 70-12-10. *See, e.g., Woody Inv., LLC v. Sovereign Eagle, LLC*, 2015-NMCA-111, 362 P.3d 107.

33. **Limitations on upward adjustment of financial assurance.** A commenter offered a host of limitations on NMSLO’s ability to periodically adjust financial assurance, such as allowing an increase in financial assurance only if specific triggers are met, and providing that financial assurance may only be adjusted upward “after a show cause order under 19.2.15 NMAC.” The commenter also stated that financial assurance should be adjusted upward or downward based on CPI changes.

Response: To the commenter’s last point, the proposed and final Rule already provide that financial assurance will be adjusted based on the CPI-U, which contemplates the possibility (although unlikely) of a downward adjustment (subject to the minimum financial assurance requirements). The commenter’s other suggestions would interfere with the purpose of the Rule and are rejected. The purpose of this section is to systematize a recurring review of financial assurance levels because in addition to inflationary adjustments, plugging and remediation (and other) costs can fluctuate, and lessees’ compliance behavior or the standing of individual leases may change (for better or worse). Requiring NMSLO to engage in a cumbersome administrative process to periodically adjust financial assurance levels is also inconsistent with the Commissioner’s broad discretion, including with respect to this Rule (for instance, by identifying the need for heightened financial assurance, releasing financial assurance, permitting waivers of financial assurance in specific

instances, and permitting operators of communitized wells to post financial assurance for the lease(s) where they operate).

SECTION 19.2.100.23(F) – Forms of Financial Assurance

34. **Conflict between form of surety and controlling state oil and gas lease.** A commenter stated that this provision should expressly provide that where there is a conflict between a form of surety permitted under the Rule and “the controlling state oil and gas lease, the state oil and gas lease must control.” The commenter also requested that NMSLO expressly include as an authorized form of financial assurance an option for a parent company guaranty with an investment-grade rating or better, and include third-party guarantees, escrow accounts, and dual-obligee bonds. The same commenter also proposed a free-standing new section of the Rule to make the same point.

Response: There is not a conflict between the forms of surety permitted under the Rule and the terms of any state oil and gas lease, because oil and gas leases do not specify the forms of financial assurance that may be accepted to protect state land and the land trust from damage or other contractual breaches. NMSLO does not accept the suggestion to specifically authorize parental guarantees or third-party guarantees. The purpose of financial assurance is to give NMSLO access to actual funds – not merely a promise to pay – in the event a lessee falls out of compliance with environmental or other lease obligations and fails to cure the deficiency. As to escrow accounts and other alternative forms of financial assurance, the Rule does allow for consideration of such alternatives on a case-by-case basis.

Responding to and accepting a comment made in response to the preliminary discussion draft of the Rule, in the final Rule NMSLO also adds a proviso to this section that self-insurance is never a permissible form of financial assurance. What is called self-insurance is simply a promise by the lessee to honor its obligations; in signing oil and gas leases, lessees have already made contractual promises (such as to compensate NMSLO and the state land trust for damage to leased land caused by oil and gas operations), but promises are sometimes broken – as nearly 50 enforcement lawsuits, dozens of bond claims, and hundreds of inactive wells demonstrate – and “[m]ost authorities agree that self-insurance is not insurance.” *Cordova v. Wolfel*, 1995-NMSC-061, ¶ 8, 903 P.2d 1390.

SECTION 19.2.100.23(G) – Waivers

35. **Conflict between waiver provision and controlling state oil and gas lease.** A commenter stated that the Rule’s language on waivers conflicts with statutory provisions governing the comprehensive framework for oil and gas financial assurance requirements authorized by statute.

Response: The Commissioner is authorized under multiple statutes to promulgate the Rule to protect state trust land and state trust beneficiaries from harm. The commenter does not identify specific language in any statute that precludes the waiver language contained in the Rule, and NMSLO has not located any through its own inquiry.

36. **Rule should not retain reference to discretion.** A commenter noted that the Rule’s reference to the Commissioner’s discretion “infect[s] application of the rule with uncertainty.”

Response: Discretion is a quintessential feature of the Commissioner’s performance of the office’s trust responsibilities. *See Lyons*, 2011-NMSC-004, ¶ 28; *see also NationsBank of Va., N.A. v. Estate of Grandy*, 450 S.E. 2d 140, 143 (Va. 1994) (“Generally, a trustee’s discretion is broadly construed”); *Friends of the Wild Swan v. Dep’t of Natural Res. and Conservation*, 2005 MT 35 ¶ 10, 127 P.3d 394 (noting that Montana’s equivalent of NMSLO exercises “large discretionary power” due in part to its trustee obligations). Consequently, New Mexico statutes are replete with references to the Commissioner’s discretion. *See, e.g.*, NMSA 1978, § 19-10-4.3(sample statutory oil and gas lease); § 19-7-50 (1939); § 19-10-7 (1987). In addition, the financial assurance rule provision that is being amended (19.2.100.23 NMAC) treats the Commissioner’s acceptance of a bond waiver as discretionary. To NMSLO’s knowledge, no party has (at least in the past seven years) raised a complaint that the existing discretionary language creates unworkable uncertainty. The suggestion is not adopted.

SECTION 19.2.100.23(H) – Riders Limited

No substantive comments.

SECTION 19.2.100.23(I) – Claims on Financial Assurance

37. **Conflict between claims provision and controlling state oil and gas lease.** A commenter stated that the Rule’s provision on how claims are made on financial assurances submitted for oil and gas leases conflicts with statutory provisions governing the comprehensive framework for oil and gas financial assurance requirements authorized by statute.

Response: The Commissioner is authorized under multiple statutes to promulgate the Rule to protect state trust land and state trust beneficiaries from harm. The commenter does not identify specific language in any statute that precludes the claims language contained in the Rule, and NMSLO has not located any through its own inquiry.

38. **Authorizing direct payments to agricultural lessees; creating a claims procedure for agricultural lessees.** A commenter asked that the Commissioner/NMSLO authorize direct payments from claimed financial assurance instruments to agricultural lessees for verified damages, emergency repairs, and for other expenses incurred as a result of oil and gas leasing activity on overlapping state acreage. The commenter also proposed that agricultural lessees should be able to file written damage claims with NMSLO arising out of oil and gas lease activity, and that NMSLO must investigate and complete the claim within specified deadlines.

Response: The suggested comment is not adopted. The Rule’s financial assurance provisions are primarily focused on protecting New Mexico state trust land, and

agricultural lessees have pre-existing mechanisms to enforce their rights against oil and gas lessees who may cause the agricultural lessees to incur unwanted or unreasonable expenses. *See Response to Comment No. 42 below.*

39. **Rule lacks time-certain procedure for surface lessees to obtain payment.** A commenter observed that the Rule has no explicit, time-certain procedures for surface lessees to initiate or receive direct payment on a bond.

Response: Unless the financial assurance in question is a cash deposit on file with NMSLO, filing a claim on a financial assurance instrument will be subject to the processes of the surety, bank, or other institution that issued or guaranteed the financial assurance instrument. The purpose of this section is to make clear what notifications NMSLO provides in the event of a financial assurance claim and what steps might follow a successful financial assurance claim. As a practical matter, agricultural lessees have access to numerous other mechanisms for obtaining relief for damage arising out of oil and gas activities on overlapping acreage – such as surface use agreements, or claims under the Surface Owners Protection Act, *see* NMSA 1978, § 70-12-1 to 70-12-10, or other causes of action.

SECTION 19.2.100.23(J) – Notifications

40. **Adding notification requirement for agricultural lessees.** A commenter asked that NMSLO add a requirement that agricultural lessees be notified in writing prior to any proposed reduction, substitution, termination, or release of financial assurance, with a number of prescriptive details (the notice must describe the proposed action, advise lessees of their right to file written objections, and provide 30 days or more for the agricultural lessees to file objections).

Response: The suggested comment is not adopted. The Rule's financial assurance provisions are primarily focused on protecting New Mexico state trust land, and agricultural lessees have pre-existing mechanisms to enforce their rights against oil and gas lessees who may cause the agricultural lessees to incur unwanted or unreasonable expenses. *See Response to Comment No. 42 below.*

41. **Burden should shift to NMSLO to identify outstanding compliance issues.** A commenter asked that the Commissioner/NMSLO be required to specify in writing each outstanding compliance or performance issue and all supporting facts if the Commissioner/NMSLO decline to release a financial assurance.

Response: From NMSLO's point of view the commenter has it backwards; the burden should be on the lessee to demonstrate to NMSLO's satisfaction that financial assurance is no longer required, not for NMSLO to prove its entitlement to maintain the status quo and retain existing financial assurance. That said, the Rule clearly contemplates that NMSLO will regularly communicate with lessees about compliance issues, for example with respect to heightened financial assurance notifications, 19.2.100.23(B)(5), consistent with NMSLO's current practice.

SECTION 19.2.100.23(K) – Release of Financial Assurance

42. **Giving agricultural lessees “standing” to object to financial assurance reductions or releases.** A commenter stated that NMSLO agricultural lessees should have the ability to object to reductions or releases of financial assurance required under the Rule, and that if an agricultural lessee so objects, the Commissioner must then issue written findings addressing the objections, whether the agricultural lessee has suffered damages, whether the agricultural lessee is entitled to compensation, and whether sufficient financial assurance remains available to protect the agricultural lessee. In the commenter’s view, NMSLO should be constrained from releasing financial assurance unless an agricultural lessee’s claims have been adjudicated or settled.

Response: The commenter’s suggestion is not adopted. The Rule’s financial assurance provisions are primarily focused on protecting New Mexico state trust land, and agricultural lessees have pre-existing mechanisms to enforce their rights against oil and gas lessees who may cause the agricultural lessees to incur unwanted or unreasonable expenses. In addition, the NMSLO already has a formal dispute resolution process in place for all manner of potential disputes, not limited to this Rule. State Land Office Rule 15 (19.2.15 NMAC), “Administrative Proceedings Before the Commissioner of Public Lands,” provides an administrative remedy for parties who are aggrieved by final agency decisions. An aggrieved party initiates that process by filing a petition for contest, which usually includes an informal evidentiary hearing and ultimately results in a final order from the Commissioner, which any party can appeal to district court. Rule 15 describes that process in greater detail. Agricultural lessees also have access to the courts and a number of NMSLO agricultural lessees have availed themselves of that avenue for pursuing damage-related claims against oil and gas lessees. *See, e.g., Merchant Livestock Company v. Chevron USA, Inc.*, United States District Court for the District of New Mexico, 2:23-cv-00257. The process the commenter has in mind would impose significant time burdens on NMSLO staff, without any clear benefit to agency, and agricultural lessees have sufficient existing avenues to seek relief they may be entitled to receive from oil and gas lessees. For these reasons, establishing an elaborate and formal new claims adjudication system is neither necessary nor desirable.

SECTION 19.2.100.23(L) – Phase-in Schedule for Financial Assurance.

43. **Claim that Rule is being imposed retroactively.** A commenter wrote that the Commissioner “seeks to impose [the] Rule, and all its new obligations and liabilities, retroactively to all prior-existing leases, which is not supported under the law,” and asked that the Rule be revised to apply only to new oil and gas leases issued after the effective date of the Rule.

Response: The Rule makes clear that it applies on a going-forward basis; no lessee is liable for not having filed annual reports or the specific financial assurances required by the Rule prior to the deadlines provided by the Rule. The commenter is conflating retroactivity with the concept of grandfathering, and is asking that all of NMSLO’s current oil and gas leases

be forever exempt from the Rule's requirements. But "a statute or rule is not retroactively construed when applied to a condition existing on its effective date even though the condition results from events which occurred prior to th[at] date." *Kinder Morgan CO2 Co., L.P. v. State Taxation and Revenue Dep't*, 2009-NMCA-019, ¶ 40 (citing *Howell v. Heim*, 1994-NMSC-103, ¶ 17, 882 P.2d 541). NMSLO appropriately applies the Rule's requirements to future conduct of oil and gas lessees, regardless of when a given lease was issued, particularly because there are no terms in any state oil and gas leases that would exempt a lessee from following applicable legal requirements generally, or from adhering to financial assurance requirements specifically.

44. **Phase-in schedule should be more extended.** A commenter stated that the Rule provides no mechanism to obtain an extension of any financial assurance requirement deadline, and that a phase-in period of no less than 24 months for lessees with 50 or more leases, and 36 months for all other lessees, would be more appropriate and would avoid forcing premature lease cancellations.

Response: The commenter does not provide any explanation for the specific implementation delays it is suggesting. NMSLO carefully considered various timeframes for implementation of the financial assurance requirements. On the one hand, faster implementation would promote the underlying goals of the Rule – to provide financial protection to NMSLO and its trust beneficiaries and to incentivize environmental compliance among oil and gas lessees, but might impose greater hardships on some lessees. On the other hand, slower implementation would delay NMSLO realizing the benefits of the Rule, but would give lessees more time to make financial and other arrangements to secure the required financial assurance.

In an effort to find the best balance point between these different needs, NMSLO has made some limited adjustments to the phase-in schedule from the proposed Rule to the final Rule, for instance by moving the deadline in Section L(2) for larger lessees (50 or more leases) from December 1, 2026 to March 1, 2027, and the deadline for other lessees in Section L(3) from May 1, 2027 to June 1, 2027.

45. **Phase-in schedule should be more accelerated.** A commenter suggested that allowing up to a year for compliance for some leases leaves high-risk leases underbonded for too long. The commenter proposes requiring high-risk operators and lessees whose leases have inactive wells or unremediated spills, or are the subject of enforcement orders, to meet new bonding requirements within 90 days. The commenter also would require NMSLO to report quarterly on its progress bringing leases into compliance, including numbers and percentages by operator and lease type.

Response: The commenter makes an important point about the compliance risks that under-bonded leases will pose to NMSLO and the trust if grown-up financial assurance requirements are not on the books sooner. However, for better or worse NMSLO has been living with – and vigorously taking action to mitigate – these risks for some years, and the modest delays in requiring financial assurance submission will not impose significant additional burdens on the agency.

NMSLO carefully considered various timeframes for implementation of the financial assurance requirements. On the one hand, faster implementation would promote the underlying goals of the Rule – to provide financial protection to NMSLO and its trust beneficiaries and to incentivize environmental compliance among oil and gas lessees, but might impose greater hardships on some lessees. On the other hand, slower implementation would delay NMSLO realizing the benefits of the Rule, but would give lessees more time to make financial and other arrangements to secure the required financial assurance. The commenter does not provide any explanation for the specific implementation delays it is suggesting.

NMSLO has made some limited adjustments to the phase-in schedule from the proposed Rule to the final Rule, for instance by moving the deadline in Section L(2) for larger lessees (50 or more leases) from December 1, 2026 to March 1, 2027, and the deadline for other lessees in Section L(3) from May 1, 2027 to June 1, 2027.

As to the commenter's other suggestion, NMSLO is open to providing public-facing reports on its financial assurance program in the future, but for purposes of finalizing the text of the Rule believes that the requirements to publish lists of leases subject to heightened financial assurance requirements, and making information from annual reports publicly available, will provide the public with informational tools to evaluate the success of NMSLO's financial assurance program.